

BEFORE THE BOARD OF NURSING
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-10-0431-NUR REGARDING:

THE PROPOSED DISCIPLINARY) Case No. 142-2011
TREATMENT OF THE LICENSE OF)
STACY MCLAUGHLIN,)
License No. 25567.)
)

**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

The Business Standards Division (BSD) seeks to impose sanctions against the nursing license of Stacy McLaughlin based on her failure to report the initiation of her prosecution for sexual contact with a minor and her conviction resulting from that sexual contact.

The licensee appeared at the final pre-hearing conference held on November 3, 2010 and stipulated to the admission of Exhibits 1 through 12 into the record.

On November 12, 2010, Hearing Examiner Gregory L. Hanchett held a hearing in this matter. Anjeanette Lindle, agency legal counsel, represented BSD. The licensee, however, failed to appear despite proper and timely notice of the hearing. Therefore, the hearing proceeded in her absence. Dustin Johnson and Cynthia Gustafson testified under oath. Based on the evidence adduced at hearing, the following findings of fact, conclusions of law, and recommended decision are made.

II. FINDINGS OF FACT

1. McLaughlin has been licensed to practice as a registered nurse in Montana at all times pertinent to this case holding license number 25567.

2. On August 7, 2009, while on a camping trip in Wyoming, the licensee had sexual contact with a minor male (who was at the time 14 years old) by performing fellatio upon him.

3. The licensee was prosecuted for her act in Wyoming Judicial District Court and charged with a felony of inflicting sexual intrusion upon a minor between the age of 13 and 15 in violation of Wyoming Statute § 6-2-315(a)(1). (Exhibit 7).

4. As a result of a plea agreement, the prosecutor amended the charge to a felony burglary (as the sexual contact with the minor was committed after the licensee unlawfully entered a structure with the intent of committing the felonious sexual act upon the minor), a violation of Wyoming Statute § 6-2-315(a)(1). (Exhibit 11). On June 21, 2010, the licensee pled guilty to this charge and was placed on five years supervised probation. The terms of her probation included the requirements that she remain a law abiding citizen, that she not violate any laws, that she not possess or consume alcohol or mood altering drugs, that she attend counseling which would include psychosexual counseling, that she have no contact with minor children, and that she notify any state in which she was licensed that she had obtained the conviction.

5. The licensee failed to notify the Board of Nursing about the institution of the criminal prosecution. It was not until after her conviction, as result of the order from the Wyoming Court, that she notified the Montana Board of Nursing of her conviction on the amended charge and the sentencing on the amended charge.

6. The properly founded expert testimony of Cynthia Gustafson, Director of Montana Board of Nursing, demonstrates that the conduct underlying the licensee's conviction evidences potentially sexually predatory behavior toward minors and that the licensee cannot maintain appropriate professional boundaries. McLaughlin's conduct violated the generally accepted standards of practice promulgated by the National Council of State Boards of Nursing, a recognized authority on generally accepted standards of nursing practice. McLaughlin's inability to maintain professional boundaries violates generally accepted standards of nursing practice even though the conduct in this case was not undertaken while acting in the capacity of a nurse.

7. The licensee's conduct of having sexual contact with a minor puts the public at risk. The licensee in her profession will come into contact with minor children and will be alone with minor children. The licensee presents a serious risk to the health and well-being of patients in Montana that cannot be alleviated by anything short of revocation of her license.

III. CONCLUSIONS OF LAW¹

A. *McLaughlin Violated Professional Standards.*

1. The Department bears the burden of proving by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126. The Department must also show that any sanction which it seeks is appropriate under the circumstances of the case.

2. Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

(1) conviction, including conviction following a plea of no lo contendere, of a crime relating to or committed during the course of the person's practice involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

* * *

(16)(c) failing to report the institution of . . . an action against the licensee by a local, state, federal, territorial, provincial or Indian tribal government; or final action . . . against the licensee;

* * *

(18) conduct that does not meet the generally accepted standards of practice.

3. The undisputed evidence in this matter shows that McLaughlin engaged in sexual conduct with a minor and as a result a criminal prosecution ensued. She was convicted of the felony on the basis of that conduct and was placed on probation for a period of five years. That conduct relates to her ability to practice her profession in that it affects whether she can safely practice her profession on minors. This conduct violates Mont. Code Ann. § 37-1-316(1).

4. The undisputed evidence also shows that McLaughlin failed to report the institution of the criminal prosecution for engaging in sexual contact with a minor. This conduct violates Mont. Code Ann. § 37-1-316(16).

¹ Statements of fact in the conclusions of law are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

5. Gustafson's expert testimony also shows that McLaughlin's conduct fails to meet generally accepted standards of practice. This is so because it shows that McLaughlin cannot appreciate the fundamental importance of maintaining appropriate professional boundaries, conduct which whether or not perpetrated while acting as a nurse nonetheless violates generally accepted standards of practice. Thus, even though her conduct was not perpetrated during the course of administering treatment to a patient, her conduct violates Mont. Code Ann. § 37-1-316(18). *Cf. Gilpin v. Board of Nursing*, 254 Mont. 308, 313, 837 P.2d 1342 (1998) (overruled on other grounds, *Erickson v. Board of Medical Examiners*, 282 Mont. 367, 938 P.2d 625 (1997)) (holding that agency properly determined that a nurse who sexually assaulted two minor females outside the course of his practice was unfit to practice nursing).

B. *The Appropriate Sanction.*

6. A regulatory board may impose any sanction provided for by Mont. Code Ann. Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Mont. Code Ann. § 37-1-312 provides that a regulatory board may revoke a license or suspend the license for an indefinite term.

7. To determine which sanctions are appropriate, the regulatory board must first consider the sanctions that are necessary to protect the public. Only after this determination has been made can the board then consider and include in the order requirements that are designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

8. In *Gilpin, supra*, the Montana Supreme Court upheld the hearing examiner's determination that revocation was an appropriate sanction. In that case, the licensee, a registered professional nurse, had been convicted of sexually assaulting two minor females. Despite the fact that the assaults had not been committed in the course of the licensee's practice, the court upheld the imposition of revocation, noting that the practice of nursing, by its very nature, "involves the care of patients, including possible contact with intimate body areas of patients who are young, old, male, and female." 254 Mont. at 313.

9. Like the licensee in *Gilpin*, the licensee in this case engaged in sexual contact with a minor and was convicted of a felony as a result of that conduct. She also failed to report the institution of the criminal charge of sexual contact with a minor. Taking account of the primary duty of the Board to protect the public, and considering both the nature of the crime committed by the licensee as well as the duties carried out by registered nurses, the licensee cannot be allowed to work as a registered nurse in Montana without subjecting the public to great risk.

10. The reasoning of *Gilpin* applies to the instant matter and compels the hearing examiner to conclude that revocation of the license is required in order to insure the protection of the public.

IV. RECOMMENDED ORDER

Based on the foregoing, the hearing examiner recommends that the license of Stacy McLaughlin, License No. 25567, be revoked.

DATED this 25th day of January, 2011.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.