



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Bart Finkbiner
Master Case No.: M2010-1659
Document: Agreed Order

Regarding your request for information about the above-named practitioner; attached is a true and correct copy of the document on file with the State of Washington, Department of Health, Adjudicative Clerk Office. These records are considered Certified by the Department of Health.

Certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
SECRETARY OF HEALTH**

In the Matter of

BART FINKBINER
Credential No. NAR.NA.00153447

Respondent

No. M2010-1659

**STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
AGREED ORDER**

The Nursing Assistant Program (Program), through Mark Triplett, Department of Health Staff Attorney, and Respondent, represented by counsel, if any, stipulate and agree to the following:

1. PROCEDURAL STIPULATIONS

1.1 On August 3, 2011, the Program issued a Statement of Charges against Respondent.

1.2 Respondent understands that the Program is prepared to proceed to a hearing on the allegations in the Statement of Charges.

1.3 Respondent understands that if the allegations are proven at a hearing, the Secretary of Health (Secretary) has the power and authority to impose sanctions pursuant to RCW 18.130.160.

1.4 Respondent has the right to defend against the allegations in the Statement of Charges by presenting evidence at a hearing.

1.5 Respondent waives the opportunity for a hearing on the Statement of Charges provided that the Secretary accepts this Stipulated Findings of Fact, Conclusions of Law and Agreed Order (Agreed Order).

1.6 The parties agree to resolve this matter by means of this Agreed Order.

1.7 Respondent understands that this Agreed Order is not binding unless and until it is signed and accepted by the Adjudicative Clerk Office.

1.8 If the Secretary accepts this Agreed Order, it will be reported to the Health Integrity and Protection Databank (45 CFR Part 61), the National Practitioner Databank (45 CFR Part 60) and elsewhere as required by law. It is a public document and will be

placed on the Department of Health's website and otherwise disseminated as required by the Public Records Act (Chap. 42.56 RCW) and the Uniform Disciplinary Act (RCW 18.130.110).

1.9 If the Secretary rejects this Agreed Order, Respondent waives any objection to the participation at hearing of the Presiding Officer who heard the Agreed Order presentation.

2. FINDINGS OF FACT

Respondent and the Program stipulate to the following facts:

2.1 On March 11, 2003, the state of Washington issued Respondent a credential to practice as a nursing assistant-registered. Respondent's credential is currently active.

2.2 During November 2009 through January 2010, the Respondent was employed at an assisted living home in Shoreline, Washington. The home provides a semi-private, residential living environment for developmentally delayed and/or mentally ill individuals.

2.3 As part of the Respondent's assigned duties, the Respondent assisted Patient A with daily living activities. Patient A is a 57-year-old, developmentally delayed female.

2.4 Beginning in or around November 2009 and continuing until on or about January 23, 2010, the Respondent sexually abused Patient A on multiple occasions. The Respondent penetrated Patient A vaginally and anally with his penis, massaged her breasts, digitally penetrated her vagina, and forced Patient A to take the Respondent's penis into her mouth.

2.5 On December 14, 2010, the Department of Social and Health Services entered a Notice of Preliminary Finding (Notice). The Notice made a finding of abuse or neglect of a vulnerable adult against Respondent.

3. CONCLUSIONS OF LAW

Respondent and the Program agree to the entry of the following Conclusions of Law:

3.1 The Secretary of Health, acting through the Presiding Officer, has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 Respondent has committed unprofessional conduct in violation of RCW 18.130.180(1), (7) and (24) and WAC 246-16-100(1)(a) and (b).

3.3 The above violations provide grounds for imposing sanctions under RCW 18.130.160.

4. COMPLIANCE WITH SANCTION RULES

4.1 The disciplining authority applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions. WAC 246-16-800(2)(c) requires the disciplining authority to impose terms based on a specific sanction schedule unless "the schedule does not adequately address the facts in a case."

4.2 Respondent's alleged conduct falls in Tier C of the "Sexual Misconduct or Contact" schedule, WAC 246-16-820. The sanction range associated with that tier does not adequately address the alleged facts of this case. The disciplining authority has identified factors that justify a sanction that falls in the higher range of the above identified tier.

4.3 The disciplining authority considered the following aggravating factors:

- A. Vulnerability of the victim.
- B. Contact was non-consensual.

5. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, Respondent agrees to entry of the following Agreed Order:

5.1 Respondent's credential to practice as a nursing assistant-registered in the state of Washington is **REVOKED** for ten (10) years. Respondent may not petition for reinstatement of credential for a period of at least ten (10) years from the effective date of this Agreed Order. Upon notice and an opportunity for Respondent to be heard for reinstatement, the Disciplining Authority may impose additional conditions at that time.

5.2 Respondent shall present both portions of his credential to the Department of Health, Secretary of Health, PO Box 47873, Olympia, WA 98504-7873 within ten (10) days of receipt of this Order.

5.3 Any documents required by this Agreed Order shall be sent to the Department of Health, Compliance Unit at PO Box 47873, Olympia, WA 98504-7873.

5.4 Respondent is responsible for all costs of complying with this Agreed Order.

5.5 Respondent shall inform the Program and the Adjudicative Clerk Office, in writing, of changes in Respondent's residential and/or business address within thirty (30) days of the change.

5.6 The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Agreed Order.

6. ACCEPTANCE

I, BART FINKBINER, have read, understand and agree to this Agreed Order. This Agreed Order may be presented to the Secretary without my appearance. I understand that I will receive a signed copy if the Secretary accepts this Agreed Order.



BART FINKBINER
RESPONDENT

8.30.2011
DATE

_____, WSBA #
ATTORNEY FOR RESPONDENT

DATE

7. ORDER

The Secretary of Health accepts this Stipulated Findings of Fact, Conclusions of Law and Agreed Order.

DATED: Sept 2, 2011

Margaret C. Hahn

HEALTH LAW JUDGE
PRESIDING OFFICER

PRESENTED BY:

Mark Triplett

MARK TRIPLETT, WSBA #31179
DEPARTMENT OF HEALTH STAFF ATTORNEY

DATE 9/1/11