

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF HEALTH, BOARD OF
NURSING,

Petitioner,

vs.

Case No. 22-0853PL

JESSICA R. VOLPE, A.P.R.N.,

Respondent.

_____/

DEPARTMENT OF HEALTH, BOARD OF
NURSING,

Petitioner,

vs.

Case No. 22-0854PL

JESSICA R. VOLPE, R.N.,

Respondent.

_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in these cases on June 28, 2022, in Jacksonville, Florida, and on August 18, 2022, via Zoom teleconference, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge (“ALJ”) of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

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For Respondent: Megan M. Bluncho, Esquire
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STATEMENT OF THE ISSUES

The issues are whether Respondent committed the violations alleged in the Administrative Complaints (“Administrative Complaints”) and, if so, what is the appropriate disciplinary action to be taken against her licenses to practice advanced practice registered nursing and/or registered nursing.

PRELIMINARY STATEMENT

On February 1, 2021, Petitioner, Department of Health, Board of Nursing (“Department”), filed substantively identical Administrative Complaints seeking to impose discipline on the licenses of Respondent, Jessica R. Volpe, A.P.R.N., R.N. (“Respondent” or “Ms. Volpe”). The Administrative Complaints alleged that Respondent violated section 456.072(1)(v), Florida Statutes (2020),¹ by engaging, or attempting to engage, in sexual misconduct as defined and prohibited in section 456.063(1). The specific factual allegation is that Ms. Volpe emailed photos of herself to a patient “which were sexual in nature, including of her breasts and/or buttocks.”

Respondent timely contested the allegations. On March 18, 2022, the Department referred the cases to DOAH for the assignment of an ALJ and the conduct of a formal hearing. By Order dated March 22, 2022, the cases were consolidated for hearing. The final hearing was initially scheduled for May 25, 2022.

After one continuance, the final hearing was convened on June 28, 2022. The unexpected unavailability of an essential witness necessitated that the

¹ Unless otherwise noted, references to the Florida Statutes are to the 2020 edition.

hearing be continued and reconvened on August 18, 2022, on which date it was completed. At the hearing, the Department presented the testimony of Ms. Volpe; Patient B.F.; and, via deposition, the expert testimony of Barbara Thomason, A.P.R.N. The Department's Exhibits A, B, D through F, I through M, and O were admitted into evidence.

Respondent testified on her own behalf and presented the testimony of Taylor Daniels, her former nursing assistant. Respondent's Exhibits 1 through 6 were admitted into evidence.

The two-volume Transcript of the final hearing was filed with DOAH on August 29, 2022. Both parties timely filed their Proposed Recommended Orders on September 8, 2022. The Proposed Recommended Orders have been thoroughly considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the Amended Joint Pre-hearing Stipulation, the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

1. The Department, through the Board of Nursing ("Board"), is the entity charged with establishing or modifying standards of practice for advanced practice registered nurses ("APRN") and registered nurses ("RN") and with the licensure and discipline of APRNs and RNs. Ch. 464, pt. I, Fla. Stat.

2. At all times material to the allegations in the Administrative Complaints, Ms. Volpe was a licensed APRN in the state of Florida, having been issued license number APRN 9202467 in 2017. She was issued RN license number RN 9202467 in 2003. Prior to this proceeding, Ms. Volpe had never been disciplined by the Board. At the time of the hearing, Ms. Volpe was 43 years old.

3. At all times material to the allegations in the Administrative Complaints, Ms. Volpe practiced at the Family Medical Centers' Argyle ("FMC Argyle") location at 7855 Argyle Forest Boulevard, Suite 601, Jacksonville, Florida. She practiced as a family APRN under the supervision of James Fetchero, M.D. The parties stipulated that Ms. Volpe worked at FMC Argyle from August 2018 until on or about August 19, 2020.

4. Patient B.F., a male who was 43 years old at the time of the hearing, was a patient at FMC Argyle. The medical records indicate that his first visit was on January 25, 2019. B.F. had just moved to Florida from Texas and requested a referral for pain management related to back surgery he had undergone three months previously. He presented at FMC Argyle again on April 5, 2019, with complaints of anxiety and high blood pressure. B.F.'s back pain (and the pharmaceutical management thereof), anxiety, and high blood pressure were continuing concerns throughout his treatment at FMC Argyle.

5. On March 15, 2020, B.F. went to the emergency room at Orange Park Medical Center complaining of abdominal pain and nausea possibly related to recent heavy lifting. After extensive testing, the emergency room physician recorded an impression of constipation and non-obstructive kidney stones. The examination also recorded a ventral hernia, for which B.F. received a referral to a surgeon.

6. On advice of the emergency room physician, B.F. made a follow-up appointment to visit his primary care physician, Dr. Fetchero. On March 16, 2020, B.F. went to FMC Argyle for his appointment and was seen by Ms. Volpe because Dr. Fetchero was not available. This was the first meeting between B.F. and Ms. Volpe.

7. The medical records show that Ms. Volpe saw B.F. again on June 15, 2020. His chief complaint was pain in his right jaw. His blood pressure was extremely high and Ms. Volpe's notes indicate B.F. had gone a month without his blood pressure medications. He was referred to a cardiologist and prescribed hypertension medications.

8. The medical records contain notes of a July 16, 2020 visit by B.F. to FMC Argyle at which he was seen by Ms. Volpe. The recorded reason for this visit was “anxiety flaring up [due to] home issues.” Ms. Volpe recorded the following in B.F.’s general history: “Associated features include increased stress at home due to breakdown of relationship, poor financial situation, and inability to leave current living situation.” B.F. stated that a chief stressor in his life was the worsening state of his marriage.² Ms. Volpe’s treatment notes state that she counseled B.F. “to remove himself from current living situation asap.”

9. The medical records contain a letter on FMC Argyle’s stationery, dated July 20, 2020, stating that Ms. Volpe saw B.F. in her office that day and that B.F. would be unable to return to work until the following day. The medical records signed by Ms. Volpe states that the reason for the appointment was “nurse visit.” B.F.’s vital signs were taken. His blood pressure was still high but lower than it had been on his July 16, 2020 visit. No other procedures, diagnoses, or instructions to the patient were recorded.

10. On July 27, 2020, Ms. Volpe saw B.F. for the final time at FMC Argyle. This was not an appointment but an emergency presentation. B.F. had received a bug bite of some sort while doing yardwork and feared he might be having an allergic reaction. Ms. Volpe’s examination revealed no acute symptoms, such as airway compromise, to indicate an anaphylactic reaction. B.F. was given steroid injections and instructed to take Benadryl.

11. The record evidence established, and Ms. Volpe did not dispute, that she emailed two photographs of herself to B.F. One was of Ms. Volpe facing the camera with her bare breasts showing. The second was of Ms. Volpe’s buttocks. Ms. Volpe was wearing underpants that partially covered her buttocks.

² B.F. has since gone through a divorce. At the hearing, it was established that his then-wife had also been seen as a patient by Ms. Volpe at FMC Argyle prior to his first encounter with Ms. Volpe. It was also established that B.F.’s wife sent the photos of Ms. Volpe to the Department.

12. The record evidence established, and Ms. Volpe did not dispute, that she and B.F. engaged in a brief romantic relationship that included sexual intercourse.

13. The factual dispute in this case is over the circumstances and timing of the relationship between Ms. Volpe and B.F. Ms. Volpe contends that the relationship with B.F. did not commence while B.F. was a patient in her care.

14. Ms. Volpe testified that B.F. had “hit on” her during the July 16, 2020 visit but that she had turned him down flat because she was in a relationship. During that visit, B.F. told Ms. Volpe that his marriage was over and he was getting a divorce.

15. On or about July 24, 2020, Ms. Volpe broke up with her longtime live-in boyfriend. She testified that she was more amenable to B.F.’s blandishments on his July 27, 2020 visit.

16. Ms. Volpe testified that after the July 27, 2020 visit, which occurred late in the day, B.F. stopped her in the parking lot as she was leaving the office. He flattered her, told her that she was a good listener, that she was pretty, and that he would like to spend time with her. Ms. Volpe testified that she could not recall her exact response but that she did not turn him down. She testified that they talked about their children and their work situations. She stated that the romantic relationship began a few days later.

17. Ms. Volpe had given her 60-day notice of resignation from FMC Argyle in June 2020. Ms. Volpe testified that July 27, 2020, was at “the very end of my employment there.” As noted above, the parties stipulated that Ms. Volpe worked at FMC Argyle until on or about August 19, 2020.

18. Ms. Volpe was uncertain as to the date her relationship with B.F. became romantic, but stated that it was definitely after the last time she saw him as a patient on July 27, 2020. She stated that they dated only for a few weeks. The relationship was fraught and emotional. They broke up a time or two before their final separation on September 17, 2020.

19. B.F. testified that his sexual relationship with Ms. Volpe commenced within ten days of their first meeting. He was certain they had already had sex by the time he came in for the bug bite on July 27, 2020. B.F. testified that he discussed his marriage with Ms. Volpe on his first visit with her. He told Ms. Volpe that he needed something for anxiety because his wife had another man.

20. B.F. stated that after his first visit, Ms. Volpe texted him about a prescription that she needed permission to fill from B.F.'s pain management physician. B.F. stated that the text was from "Jess" and he was confused at first as to who was texting him because he had never before received a direct text from a doctor or APRN.

21. B.F. stated that within a few days of this text, Ms. Volpe sent him the photos of herself baring her breasts and buttocks. B.F. then began seeing her every day from 5:30 to 6:30 p.m., after she finished work at FMC Argyle. They would talk and "make out" in one of their vehicles. B.F. testified that on the day he saw Ms. Volpe for the bug bite, she offered him oral sex instead of treatment.

22. B.F.'s version of the circumstances of his relationship with Ms. Volpe is not entirely credible. The undersigned finds that B.F. must, at best, have elided much of what occurred between them prior to her sending him the nude photos. It does not make sense that Ms. Volpe would send such photos out of the blue to a patient she had just met. B.F. was obviously not a mere passive recipient of Ms. Volpe's unsought sexual advances and showed no indications of having been traumatized by the experience.

23. However, B.F.'s chronology of events is more credible than Ms. Volpe's. His version is supported by the fact that his cell phone information indicated that he received the photos of Ms. Volpe no later than July 23, 2020. This fact belies Ms. Volpe's insistence that nothing untoward occurred before her last treatment of B.F. on July 27, 2020.

24. Ms. Volpe tried several tacks to support her insistence that the romantic relationship with B.F. did not commence while he was her patient. She argued that B.F. was never really her patient, that she only stepped in to pinch-hit for Dr. Fetchero, who was in fact B.F.'s primary healthcare provider. This argument appears to be trying to distinguish Ms. Volpe's position as a family practice APRN working under a physician's supervision from an autonomous APRN registered pursuant to section 464.0123, Florida Statutes, who practices independently and has her own patients.

25. Ms. Volpe's argument is not persuasive. Section 456.063(1) prohibits sexual misconduct in the practice of a healthcare profession, which means in relevant part, "violation of the professional relationship through which the healthcare practitioner uses such relationship to engage or attempt to engage the patient or client ... or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession." No distinction is made between healthcare practitioners who treat patients under the supervision of another practitioner and those practitioners who operate independently. Ms. Volpe used information about the parlous state of B.F.'s marriage, gleaned through the nurse-patient relationship, to induce B.F. into a sexual relationship.

26. The undersigned is cognizant of the fact that B.F. required very little inducement to commence the sexual relationship with Ms. Volpe. However, even if Ms. Volpe's version of events is entirely credited and it is found that B.F. was the avid pursuer in the relationship, it is Ms. Volpe who had the professional obligation to refrain from a sexual relationship in the situation presented. In the final analysis, there is simply no way to characterize Ms. Volpe's sending photos of her bare breasts and buttocks to a patient as

anything other than an inducement to engage in a sexual relationship, regardless of what the patient said to her before she sent them.³

27. Ms. Volpe argued that this situation was really no different than a medical professional's treating her spouse or live-in partner. Ms. Volpe argued that in those cases, as in this one, there is a sexual relationship between the professional and the patient and she could see no reason to treat her situation differently. Ms. Volpe rightly points out that there are ethical concerns when a physician or nurse treats a family member, but fails to acknowledge the distinction present in her case: section 456.063(1) is not a general prohibition on sexual relations between practitioner and patient but a prohibition on *using the professional relationship* to induce or engage in sexual activity with a patient. While other ethical considerations would apply, section 456.063(1) would not where the romantic or sexual relationship was established before the nurse-patient relationship commenced.

28. Finally, Ms. Volpe argued that she genuinely believed that B.F. was no longer her patient at the time the romantic relationship commenced. She was at the very end of her notice period with FMC Argyle and had no reason to believe she would ever see B.F. as a patient again. She just happened to be the only person available to see B.F. when he appeared without an appointment on July 27, 2020.

29. There is no merit to this argument. Ms. Volpe is again attempting to make fine distinctions as to which patients of FMC Argyle were and were not her patients, the latter apparently being fair game for romantic overtures. B.F. was a patient of FMC Argyle and Ms. Volpe was an APRN working for FMC Argyle at the time she sent the suggestive photos to B.F. Ms. Volpe knew that B.F. was a patient of FMC Argyle at the time she sent the photos. She had personally treated B.F. as of July 23, 2020, and had no way of

³ The Department offered expert testimony on this point, which was admitted over Ms. Volpe's objection. In retrospect, the undersigned finds the expert testimony to have been redundant because the ultimate finding as to the purpose of the photos is glaringly obvious.

knowing that she would not treat him again before her employment at FMC Argyle concluded in August 2020. She testified that she had sex with B.F. in early August 2020, when she was still employed by FMC Argyle and B.F. was still a patient there.

30. The specific factual allegations of the Administrative Complaints are that on or about July 23, 2020, Ms. Volpe “emailed patient B.F. photos of herself which were sexual in nature, including of her breasts and/or buttocks,” and that Ms. Volpe again treated B.F. at FMC Argyle on or about July 27, 2020. Based on all the evidence, it is found that the Department proved these factual allegations by clear and convincing evidence and thereby proved that Ms. Volpe violated section 456.072(1)(v) by engaging or attempting to engage in sexual misconduct as defined and prohibited in section 456.063(1).

31. At times during her testimony, Ms. Volpe appeared abashed and embarrassed by what she had done. She conceded that the relationship with B.F. was a mistake that she would never make again. She was fearful of losing her licenses, which are her only source of income and for which she still owes \$40,000 in student loans. However, at other times, she was oddly defensive of her actions and argued that somehow the plain statutory prohibition on sexual misconduct should not apply to her.

32. Ms. Volpe testified as to the emotional turmoil she was experiencing at the time of these events. Her long-term relationship was falling apart and because of that she felt a kinship to B.F., who was undergoing his own marital problems. She portrayed herself as having fallen prey to B.F.’s smooth-talking charm at a time she was extremely vulnerable.

33. By every indication, Ms. Volpe is an excellent APRN. Her medical assistant at FMC Argyle, Taylor Daniels, testified that Ms. Volpe’s patient care was “amazing.” Ms. Daniels recalled B.F. as a patient and saw nothing unusual occur between him and Ms. Volpe. Ms. Volpe submitted numerous statements from former colleagues, both nurses and physicians, attesting to

her skill, dedication, and consideration as a nurse. She conceded that the authors of these statements were not aware of the nature of the charges against her in this proceeding.

34. Dmitriy Model, M.D., is the vice president of Avecina Medical, Ms. Volpe's employer since March 2020.⁴ Ms. Volpe testified that Dr. Model is aware of the charges against her in these cases. Dr. Model submitted a letter that glowingly described her as a "reliable, compassionate, and clinically excellent provider." She goes "above and beyond in her patient care." Dr. Model described her as a "model employee" whose "professional ethics are above reproach" and who is "trusted by myself and our management team without reservation."

CONCLUSIONS OF LAW

35. DOAH has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

36. The Department, through the Board, is the entity charged with establishing or modifying standards of practice for nurses and with the licensure and discipline of nurses. §§ 464.004 and 464.018, Fla. Stat.

37. This is a proceeding in which Petitioner seeks to discipline Ms. Volpe's licenses to practice as an APRN and RN. Because disciplinary proceedings are considered to be penal in nature, Petitioner is required to prove the allegations in the Administrative Complaints by clear and convincing evidence. *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 60 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

38. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a

⁴ Ms. Volpe began working part time at Avecina Medical while she was still working full time at FMC Argyle. When she left FMC Argyle in August 2020, she started working full time at Avecina Medical.

reasonable doubt.” *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997). The Florida Supreme Court further enunciated the standard:

This intermediate level of proof entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994)(quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). “Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous.” *Westinghouse Elec. Corp. v. Shuler Bros.*, 590 So. 2d 989 (Fla. 1st DCA 1991).

39. Section 456.072 is penal in nature and must be strictly construed, with any ambiguity construed against Petitioner. Penal statutes must be construed in terms of their literal meaning, and words used by the Legislature may not be expanded to broaden the application of such statutes. *Beckett v. Dep’t of Fin. Servs.*, 982 So. 2d 94, 100 (Fla. 1st DCA 2008); *Latham v. Fla. Comm’n on Ethics*, 694 So. 2d 83 (Fla. 1st DCA 1997).

40. The allegations set forth in the Administrative Complaints are those upon which this proceeding is predicated. *Trevisani v. Dep’t of Health*, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005); *Cottrill v. Dep’t of Ins.*, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996). Due process prohibits Petitioner from taking disciplinary action against a licensee based on matters not specifically alleged

in the charging instruments, unless those matters have been tried by consent. *See Shore Vill. Prop. Owner's Ass'n v. Dep't of Env't Prot.*, 824 So. 2d 208, 210 (Fla. 4th DCA 2002); *Delk v. Dep't of Pro. Regul.*, 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

41. The Administrative Complaints seek to discipline Ms. Volpe on a charge that she violated section 456.072(1)(v), which provides:

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

* * *

(v) Engaging or attempting to engage in sexual misconduct as defined and prohibited in s. 456.063(1).

42. Section 456.063(1) provides:

(1) Sexual misconduct in the practice of a health care profession means violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. Sexual misconduct in the practice of a health care profession is prohibited.

43. The Administrative Complaints allege that Ms. Volpe engaged or attempted to engage in sexual misconduct with patient B.F. by emailing him photos of herself “which were sexual in nature, including of her breasts and/or buttocks.” The Administrative Complaints allege that Ms. Volpe treated B.F. before and after sending the photos to him.

44. The Department proved by clear and convincing evidence that Ms. Volpe committed the acts alleged and that her actions constituted sexual misconduct in violation of section 456.072(1)(v).

45. Section 464.018(2)(a) provides that the Board may enter an order imposing any of the penalties in section 456.072(2) against any nurse who is found guilty of violating section 456.072(1).

46. Section 456.079(1) requires boards within the Department's jurisdiction to adopt "disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board." Penalties imposed must be consistent with any disciplinary guidelines prescribed by rule. *See Parrot Heads, Inc. v. Dep't of Bus. & Pro. Regul.*, 741 So. 2d 1231, 1233-34 (Fla. 5th DCA 1999). In compliance with the statutory mandate, the Board has adopted Florida Administrative Code Rule 64B9-8.006, which sets forth disciplinary guidelines, range of penalties, and aggravating and mitigating circumstances for violations of section 456.072.

47. Because the events in these cases occurred in 2020, the version of rule 64B9-8.006 adopted on June 11, 2020, is applicable.⁵ The specific guidelines for violations of section 456.072(1)(v) are found at rule 64B9-8.006(3)(u) of the rule. The minimum penalty for a first offense is a \$250 fine, suspension, and IPN evaluation.⁶ The maximum penalty for a first offense is a \$500 fine and suspension, or revocation.

48. Rule 64B9-8.006(5) permits the Board to deviate from the guidelines upon a showing of aggravating or mitigating circumstances, which include, but are not limited to:

⁵ The rule was subsequently amended on February 10, 2022.

⁶ The Intervention Project for Nurses ("IPN") is the Board's impaired practitioner program adopted pursuant to section 456.076. Section 456.076(1) defines "impairment" to mean "a potentially impairing health condition that is the result of the misuse or abuse of alcohol, drugs, or both, or a mental or physical condition that could affect a practitioner's ability to practice with skill and safety." There was no evidence presented that Ms. Volpe suffers from an impairment. She has practiced with skill and distinction both before and after the episode with B.F.

1. The danger to the public.
2. Previous disciplinary action against the licensee in this or any other jurisdiction.
3. The length of time the licensee has practiced.
4. The actual damage, physical or otherwise, caused by the violation.
5. The deterrent effect of the penalty imposed.
6. Any efforts at rehabilitation.
7. Attempts by the licensee to correct or stop violations, or refusal by the licensee to correct or stop violations.
8. Cost of treatment.
9. Financial hardship.
10. Cost of disciplinary proceedings.

49. There appears to be little danger to the public posed by Ms. Volpe's continued licensure. It is extremely unlikely that she will repeat her mistake, given the consequences she has already suffered and those recommended here. This factor is neutral in the consideration of whether to deviate from the guidelines.

50. There has been no previous disciplinary action against Ms. Volpe in this or any other jurisdiction. This factor weighs in favor of mitigation.

51. Ms. Volpe has practiced as an RN since 2003 and as an APRN since 2017, with a clean disciplinary record and good job reviews. This factor weighs in favor of mitigation.

52. The "actual damage" caused by the violation appears to have been suffered mostly by Ms. Volpe herself. B.F. did not blame her for his marriage's dissolution, which appeared to have been well underway when he

met Ms. Volpe. This factor is neutral in the consideration of whether to deviate from the guidelines.

53. In mitigation of revocation, the undersigned recommends a \$500 fine and a suspension of Ms. Volpe's APRN and RN licenses for one year. The undersigned concludes that this penalty is appropriate considering the underlying facts behind the violation and will have an adequate deterrent effect on Ms. Volpe's future behavior. Revoking Ms. Volpe's license would be draconian under all the circumstances. Prior to these cases, Ms. Volpe's record as an APRN and RN was spotless. Her licenses are her sole source of income and deprivation of that income for one year will be sufficient to ensure that she never makes a similar error.

54. As to rehabilitation efforts, Ms. Volpe's counsel suggested at the hearing that Ms. Volpe would be willing to submit to IPN for a psychosexual evaluation. As noted in footnote 7 above, the undersigned does not conclude that Ms. Volpe suffers from an "impairment," as defined by section 456.076(1). She exercised staggeringly poor judgment by throwing herself into an affair with a patient, but that poor judgment did not and should not in the future affect her ability to practice with skill and safety. This factor is neutral in the consideration of whether to deviate from the guidelines.

55. The factor of licensee efforts to correct or stop violations is not applicable and therefore neutral.

56. The "cost of treatment" factor is not applicable and therefore neutral.

57. Revocation would cause insuperable financial hardship to Ms. Volpe and is a reason why the undersigned recommends the lesser penalty of a \$500 fine and one year suspension in mitigation of the revocation penalty. A one year suspension will impose a significant financial burden, appropriate to the violation she committed, without permanently depriving Ms. Volpe of her livelihood and the public of her services as a skilled APRN.

58. Section 456.072(4) provides that, in addition to any other discipline imposed for violation of a practice act, any board under the Department's

jurisdiction shall assess costs related to the investigation and prosecution of the case. The Board should therefore also assess the costs of the Department's investigation and prosecution of Respondent in this matter.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Health, Board of Nursing, issue a final order: finding that Respondent violated section 456.072(1)(v) by engaging or attempting to engage in sexual misconduct as defined and prohibited in section 456.063(1); imposing a fine of \$500; suspending Respondent's licenses for a period of one year; and assessing the costs of the Department's investigation and prosecution of Respondent.

DONE AND ENTERED this 23rd day of September, 2022, in Tallahassee, Leon County, Florida.



LAWRENCE P. STEVENSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of September, 2022.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.