

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
KENNETH M. JANSSEN, L.P.N.,	:	LS9104261NUR
RESPONDENT	:	

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The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Board of Nursing.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 28 day of June, 1991.

*Jacqueline Johnson RN*

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF :  
DISCIPLINARY PROCEEDINGS AGAINST : PROPOSED DECISION  
LS 9104261 NUR  
KENNETH M. JANSSEN, L.P.N., :  
RESPONDENT :

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The parties to this proceeding for purposes of s. 227.53, Stats., are:

Kenneth M. Janssen  
E-7 Park Place  
Superior, WI 54880

101 E. Driftwood, Apt. 22  
Fredricksburg, TX 78624

Board of Nursing  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708

Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708

A hearing was held in the above captioned matter on May 30, 1991. The Division of Enforcement appeared by Attorney Richard M. Castelnuovo. Respondent Kenneth M. Janssen did not appear, nor did anyone appear on his behalf. Attorney Castelnuovo renewed his motion, previously made in writing, for a finding of default on the failure of Respondent to file an answer or otherwise appear in this proceeding. On presentation of a prima facie case, the motion for default was granted pursuant to s. RL 2.14, Wis. Admin. Code, and the allegations of the complaint are deemed admitted by Respondent. On the basis of the entire record in this matter, the Administrative Law Judge recommends that the Board of Nursing adopt the following Findings of Fact, Conclusions of Law, Order and Opinion as its Final Decision in this matter.

FINDINGS OF FACT

1. Kenneth Michael Janssen (D.O.B. 1/24/64) is a licensed practical nurse licensed in the State of Wisconsin pursuant to license # 28776, having been so licensed since November 7, 1986.

2. Mr. Janssen's latest address on file with the Department of Regulation and Licensing is E-7 Park Place, Superior, WI 54880 and his latest address on file with the Texas Board of Vocational Nurse Examiners is 101 E. Driftwood, Apt. # 22, Fredricksburg, Texas 78624.

#### AS TO COUNT I

3. On diverse occasions in April, 1987, Mr. Janssen purchased or otherwise procured alcoholic beverages for underaged persons, in violation of Sec. 125.07, Wis. Stats.

4. In March, 1987, while in the employment of the Frederic Nursing Home ("Frederic"), Grantsburg, WI, Mr. Janssen stole the check of another employee and negotiated the check without the owner's consent with the intent to convert the funds his own use, in violation of 943.20, Wis. Stats.

5. Mr. Janssen was discharged from his employment with Frederic as a result of his misconduct.

#### AS TO COUNT II

6. Following his discharge from Frederic, Mr. Janssen was employed by Capeside Cove Good Samaritan Center ("Capeside"), Siren, WI.

7. On or about April 17, 1988, Mr. Janssen failed to execute appropriate medication orders for various Capeside patients, and falsely indicated in patient records that the medications had been administered.

8. Upon his admission of the facts in par. 9 above, and in consideration of his record of prior misconduct, he was terminated from his employment with Capeside.

#### AS TO COUNT III

9. Following his discharge from Capeside, Mr. Janssen was employed by Superior Memorial Hospital ("Superior") on a part-time basis.

10. On various occasions, Mr. Janssen failed to execute appropriate medication orders and committed other errors in the course of his duties at Superior including:

a. An admission that he failed to give a patient medication on or about January 14, 1989.

b. An omission in administering medication to a patient on or about May 12, 1989.

#### CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to s. 441.07, Stats.

2. By the conduct described in paragraphs 3-5 of the Findings of Fact, Respondent Kenneth Janssen has violated sec. 441.07(1)(d), by his misconduct and unprofessional conduct, as defined by sec. N7.04, Wis. Adm. Code and specifically including sec. N 7.04(1), Wis. Adm. Code, violating a law substantially related to the practice of practical nursing, and sec. N7.04(13), Wis. Adm. Code, obtaining or attempting to obtain compensation by fraud, misrepresentation, deceit or undue influence in the course of nursing practice.

3. By the conduct described in paragraphs 6 and 7 of the Findings of Fact, Respondent Kenneth Janssen has violated:

a. sec. 441.07(1)(c), by his negligence, as defined by sec. N7.03(1), Wis. Adm. Code, and specifically including sec. N7.03(1)(b), Wis. Adm. Code, an act or omission demonstrating a failure to maintain competency in practice and methods of nursing care and sec. N7.03(1)(d), Wis. Adm. Code, failing to execute appropriate medical orders.

b. sec. 441.07(1)(d), by his misconduct and unprofessional conduct, as defined by sec. N7.04, Wis. Adm. Code and specifically including sec. N 7.04(6), Wis. Adm. Code, falsifying or inappropriately altering patient records.

4. By the conduct described in paragraphs 9 and 10 of the Findings of Fact, Respondent Kenneth Janssen has violated sec. 441.07(1)(c), by his negligence, as defined by sec. N7.03(1), Wis. Adm. Code, and specifically including sec. N7.03(1)(b), Wis. Adm. Code, an act or omission demonstrating a failure to maintain competency in practice and methods of nursing care and sec. N7.03(1)(d), Wis. Adm. Code, failing to execute appropriate medical orders.

#### ORDER

NOW, THEREFORE, IT IS ORDERED that the license previously granted to Kenneth Michael Janssen to practice as a licensed practical nurse in the state of Wisconsin be, and hereby is, REVOKED.

#### OPINION

The bare allegations of the complaint in this case demonstrate that on several occasions, Mr. Janssen did not carry out his duties as a licensed practical nurse in a manner sufficient to safeguard the safety of his patients. The allegations also show that Mr. Janssen stole a paycheck from a fellow employee and forge the necessary signature to convert it to his own use, and that Mr. Janssen provided alcohol to an underage person. The deliberate neglect of his duty to his patients needs no explication to link

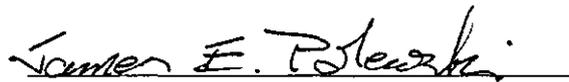
the act to disciplinary action against his license. The theft of the paycheck, the forgery, and the provision of alcohol to underage drinkers relate to his license by demonstrating a significant degree of dishonesty; the false charting entries are another manifestation of the same dishonesty.

The attorney for the Division of Enforcement suggested that a period of suspension would be sufficient discipline here, if coupled with a set of conditions for re-instatement which would allow the Board to determine that Mr. Janssen could practice with safety to his patients and the public.

It seems to me that the development of conditions for reinstatement of a suspended license when the allegations include neglecting the care of patients requires significant information from the respondent, sufficient to support a conclusion that the respondent is able to practice with safety to the public and his patients. Mr. Janssen knew that this proceeding was at least a possibility, because he spoke with an investigator for the Division of Enforcement about it, but he did not leave a forwarding address when he moved, and the notices which were sent to each of the last two known addresses have been returned. It is not possible to say with confidence that Mr. Janssen has a lively concern about the consequences of his neglect of his patients to his license, or that the passage of more time will spark such concern in him.

If and when Mr. Janssen ever wants to recover his license, the burden should be on him to show that he is a fit subject for licensure, and will not be a continuing risk to the health, safety, and welfare of his patients. Because a term of suspension, even with conditions for re-instatement, requires the Board to guess at the length of time and the appropriate conditions necessary to protect the safety of the public and patients, I recommend revocation of Mr. Janssen's license. If Mr. Janssen wishes to recover the license, the Board will be in a better position to evaluate his competence with his cooperation than it is now, on a sparse record which shows little beyond the fact that he did not consistently protect his patients' health and safety.

Dated this 30th day of May, 1991.



James E. Polewski  
Administrative Law Judge

## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each, and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Board of Nursing.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Board of Nursing

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Board of Nursing.

The date of mailing of this decision is July 9, 1991.

**227.49 Petitions for rehearing in contested cases.** (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

**227.52 Judicial review; decisions reviewable.** Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

**227.53 Parties and proceedings for review.** (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions

for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.