

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

FILE COPY

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : FINAL DECISION
: AND ORDER
MONICA A MUELLER, R.N., : LS9706181NUR
RESPONDENT. :

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:

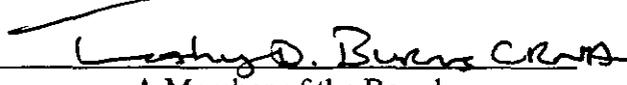
ORDER

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 Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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

Dated this 12TH day of SEPTEMBER 1997.


A Member of the Board

C. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on July 22, 1997. Ms. Mueller did not appear. The Board of Nursing was represented by attorney James Harris of the Department's Division of Enforcement. Mr. Harris moved that Ms. Mueller be found in default under sec. RL 2.14, Wis. Admin. Code, and the motion was granted. The hearing was recorded; no transcript was prepared. The complaint and the testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

APPLICABLE STATUTE AND RULES

Wisconsin Statutes

441.07 Revocation.

(1) The board may, after disciplinary proceedings conducted in accordance with rules promulgated under s. 440.03 (1), revoke, limit, suspend or deny renewal of a license of a registered nurse, a nurse-midwife or a licensed practical nurse, may revoke, limit, suspend or deny renewal of a certificate to prescribe drugs or devices granted under s. 441.16, or may reprimand a registered nurse, nurse-midwife or licensed practical nurse, if the board finds that the person committed any of the following:

...

(b) One or more violations of this chapter or any rule adopted by the board under the authority of this chapter.

(c) Acts which show the registered nurse, nurse-midwife or licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.

(d) *Misconduct or unprofessional conduct.*

Wisconsin Administrative Code

N 7.03 Negligence, abuse of alcohol or other drugs or mental incompetency.

...

(2) "Abuse of alcohol or other drugs" is the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely and reliably practice.

...

N 7.04 Misconduct or unprofessional conduct.

As used in s. 441.07 (1) (d), Stats., "misconduct or unprofessional conduct" means any practice or behavior which violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. "Misconduct or unprofessional conduct" includes, but is not limited to, the following:

(1) Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing. A certified copy of a judgment of conviction is prima facie evidence of a violation;

(2) Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law;

...

- (14) Violating any term, provision or condition of any order of the board; or,
- (15) Violating any rule of the board.

FINDINGS OF FACT

1. The respondent, Monica A. Mueller, is licensed to practice as a licensed practical nurse in the state of Wisconsin, under license number 32521.
2. On November 22, 1995, Ms. Mueller was convicted in Menominee County, Michigan, of one criminal charge of Obtaining Drugs by False Prescription, and one criminal charge of Controlled Substances - Drugs - Obtaining by False Representation.
3. On December 11, 1995, Ms. Mueller spoke to an investigator for the department and admitted that she stole prescription pads from the Rennes Health Center in Peshtigo, Wisconsin, and wrote false prescriptions for Tylenol 4.
4. On December 15, 1995, Ms. Mueller was evaluated by Lutheran Social Services in Marinette, Wisconsin and diagnosed with opioid abuse disorder.
5. On June 26, 1996, Ms. Mueller entered into a contract with the Wisconsin Impaired Professional Procedure (I.P.P.), a program to monitor rehabilitation. Statement of Fact #5 of Ms. Mueller's contract reads: "The conduct of Ms. Mueller reflects an impaired ability to safely and reliably perform her nursing duties without supervision and treatment."
6. In January of 1997, Ms. Mueller was terminated from the I.P.P. for substantial violation of her I.P.P. contract.

CONCLUSIONS OF LAW

- I. The Board of Nursing has personal jurisdiction over the respondent, Monica A. Mueller, based on her holding a credential issued by the board, and based on notice under sec. 801.04 (2), Stats. Under sec. RL 2.08 (1), Wis. Admin. Code, a respondent may be served by mailing to his or her last-known address.
- II. The Board of Nursing is the legal authority responsible for issuing and controlling credentials for licensed practical nurses, under ch. 441, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 441.07, Stats., and ch. N 7, Wis. Admin. Code.
- III. The respondent, Monica A. Mueller, is in default, under sec. RL 2.14, Wis. Admin. Code, and the Board of Nursing may enter an order on the basis of the complaint and other evidence.

IV. The convictions in fact #2 above constitute unprofessional conduct under sec. N 7.04(1), Wis. Admin. Code, and discipline is appropriate, under sections 441.07(1)(b) and (d), Stats.

V. The theft of prescription pads and writing of false prescriptions in fact #3 above constitute unprofessional conduct under sec. N 7.04(2), Wis. Admin. Code, and discipline is appropriate, under sections 441.07(1)(b) and (d), Stats.

VI. The statement of facts in Ms. Mueller's I.P.P. contract establishes that her ability to safely and reliably perform her nursing duties without supervision and treatment is impaired, contrary to sec. N. 7.03(2), Wis. Admin. Code, and discipline is appropriate, under sections 441.07(1)(b) and (c), Stats.

ORDER

THEREFORE, IT IS ORDERED that the license issued to Monica A. Mueller to practice as a licensed practical nurse in Wisconsin be revoked, effective on the date this order is signed by a member of the Nursing Examining Board.

IT IS FURTHER ORDERED that Monica L. Mueller pay the costs of this proceeding, as authorized by sec. 440.22 (2), Stats., and sec. RL 2.18, Wis. Admin. Code.

OPINION

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with Board of Nursing alleging that the respondent, Monica A. Muller,

- was convicted in Menominee County, Michigan, of one criminal charge of Obtaining Drugs by False Prescription, and one criminal charge of Controlled Substances - Drugs - Obtaining by False Representation;
- stole prescription pads from the Rennes Health Center in Peshtigo, Wisconsin, and wrote false prescriptions for Tylenol 4; and
- impaired her ability to safely and reliably perform her nursing duties, through drug use.

The burden of proof is on the Division of Enforcement to prove the allegations of the complaint by a preponderance of the evidence. Ms. Mueller did not file an answer to the complaint or appear at the hearing.

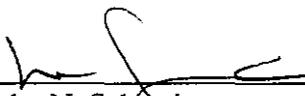
It is possible that Ms. Mueller did not receive notice of this action, and sec. RL 2.14, Wis. Admin. Code, permits the board to relieve Ms. Mueller of the effects of this decision if she contacts the board within a reasonable time with a reasonable explanation ("good cause") for her failure to answer and appear. Nevertheless, sec. RL 2.08, Wis. Admin. Code, permits the board to proceed with this action even though Ms. Mueller may not have received actual notice, as long as the complaint was mailed to her last-known address.

The effect of her failure to respond or appear is that the allegations of the complaint are taken as proven. I conclude that the above allegations are true, and I further conclude that revocation of Ms. Mueller's license is the only practical action to be taken to ensure the public safety.

Ms. Mueller has acted unprofessionally, her convictions for Obtaining Drugs by False Prescription and for Obtaining Drugs by False Representation are substantially related to the practice of a licensed practical nurse, and she has impaired her ability to practice as a nurse by abusing drugs. The Board of Nursing has a responsibility to impose discipline to protect the public and the profession, and to discourage other licensees from engaging in similar behavior. In the absence of any evidence of Ms. Mueller's rehabilitation, and especially in light of her having violated her I.P.P. contract, it must be assumed that her ability to practice nursing safely and reliably remains impaired. Although rehabilitation is another goal of discipline, and arrangements short of revocation are often made for licensees who have committed similar infractions, this approach was made available to Ms. Mueller through the I.P.P., and since Ms. Mueller was unable to comply, no practical alternative to revocation would seem possible. It should be noted that a licensee whose license has been revoked may apply for reinstatement after one year, under sec. 441.07(2), Stats.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats., and sec. RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed. One approach is routinely to impose the costs of investigating and prosecuting unprofessional conduct on the disciplined individual rather than on the profession as a whole. Another approach is to use costs as an incentive to encourage respondents to cooperate with the process, and thus to impose costs only if the respondent is uncooperative or dilatory. Both of those approaches lead to a recommendation that Ms. Mueller pay the costs of this proceeding. Ms. Mueller failed to file an answer or appear, and if her failure to respond was due to not receiving notice of this action, then she failed to notify the department of a change of address; in either case, her disregard for this regulatory authority and these proceedings makes an order for costs appropriate.

Dated and signed: July 31, 1997



John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

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.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN BOARD OF NURSING

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

SEPTEMBER 17, 1997

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	ORDER FIXING COSTS
	:	Case # LS9706181NUR
MONICA A. MUELLER, R.N.,	:	
RESPONDENT.	:	

On September 12, 1997, the Board of Nursing filed its Final Decision and Order in the above-captioned matter by which the board ordered that pursuant to sec. 440.22, Wis. Stats., 100% of the costs of this proceeding be assessed against respondent. Pursuant to sec. RL 2.18 (4), Wis. Adm. Code, on August 6, 1997, the Board of Nursing received the *Affidavit of Costs* in the amount of \$287.00, filed by Attorney James W. Harris. On September 18, 1997, the Board of Nursing received the *Affidavit of Costs of Office of Board Legal Services* in the amount of \$134.60, filed by Administrative Law Judge John N. Schweitzer. The Board of Nursing considered the affidavits on November 13, 1997, and orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to sec. 440.22, Wis. Stats., the costs of this proceeding in the amount of \$523.60, which is 100% of the costs set forth in the affidavits of costs of Attorney James W. Harris and Administrative Law Judge John N. Schweitzer, which are attached hereto and made a part hereof, are hereby assessed against respondent, and shall be payable by him to the Department of Regulation and Licensing. **Failure of respondent to make payment on or before December 12, 1997, shall constitute a violation of the Order unless respondent petitions for and the board grants a different deadline.** Under sec. 440.22 (3), Wis. Stats., the Board of Nursing may not restore, renew or otherwise issue a credential to the respondent until respondent has made payment to the department in the full amount assessed.

To ensure that payments for assessed costs are correctly receipted, the attached "*Guidelines for Payment of Costs and/or Forfeitures*" should be enclosed with the payment.

Dated this 13th day of November, 1997.

BOARD OF NURSING

By: 
A Member of the Board

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS : **AFFIDAVIT OF COSTS**
AGAINST : Case No. LS-970618-NUR
MONICA A. MUELLER, R.N., :
RESPONDENT. :

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

1. I am an attorney licensed to practice law in the State of Wisconsin, and am employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.

2. In the course of my employment, I was assigned as the administrative law judge in the above-captioned matter.

3. Expenses for the Office of Board Legal Services are set out below:

a. Court Reporter Costs, paid by the Office of Board Legal Services.	\$0.00
b. Administrative Law Judge Expense @ \$28.848/hour.	
6-18-97 Receive complaint, prepare file	5 min.
7-10-97 Attempt to reach Ms. Mueller by phone	5 min.
7-22-97 Hearing	1/2 hr.
7-29-97 Write proposed decision	3 hrs.
7-31-97 Write proposed decision	1 hr.
Total:	4 hrs. 40 min. = \$134.60

Total allocable costs for Office of Board Legal Services = \$134.60



John N. Schweitzer
Administrative Law Judge

Sworn to and signed before me this 18th day of Sept, 1997.

Donald R. Fittel, Notary Public, State of Wisconsin.

My commission is permanent.

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	AFFIDAVIT OF COSTS
MONICA A. MUELLER, R.N.,	:	LS9706181NUR
RESPONDENT.	:	

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

James W. Harris, being duly sworn, deposes and states as follows:

1. I am an attorney licensed in the state of Wisconsin employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement:
2. In the course of those duties I was assigned as a prosecutor in the above-captioned matter; and
3. Set forth below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

PROSECUTING ATTORNEY EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
5/30/97	file review	2.0
5/30/97	prepare complaint	1.0
6/05/97	prepare notice of hearing & prepare pleadings for service	1.0
7/21/97	trial preparation	2.0
7/22/97	attend hearing	1.0

TOTAL HOURS

7 Hours.

Total attorney expense for 7 hours at
\$41.00 per hour (based upon average salary and benefits
for Division of Enforcement attorneys) equals:

\$ 287.00

INVESTIGATOR EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
2/27/97	review case file, update summary	2.0
2/27/97	conf Board advisor, conf. IPP	0.3
3/03/97	ltr Menominee MI Court	0.3
7/21/97	trial preparation	1.0
7/22/97	attend hearing	1.0

TOTAL HOURS

4.6Hours.

Total investigator expense for 4.6 hours at
\$20.00 per hour (based upon average salary and benefits
for Division of Enforcement investigators) equals:

\$ 92.00

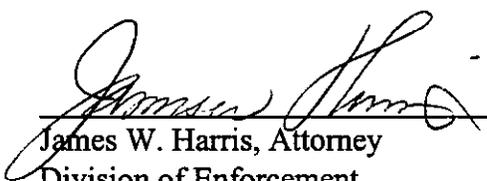
MISCELLANEOUS DISBURSEMENTS

certified copy Court judgment

10.00

TOTAL ASSESSABLE COSTS

\$ 389.00


James W. Harris, Attorney
Division of Enforcement

Subscribed and sworn to before me this
6th day of August, 1997


Notary Public

My Commission permanent

Department of Regulation & Licensing

State of Wisconsin

P.O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529, impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On September 12, 1997, the Board of Nursing
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: \$523.60 Case #: LS9706181NUR

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of \$ 523.60

The costs and/or forfeitures are due: December 12, 1997

NAME: Monica A. Mueller LICENSE NUMBER: 32521

STREET ADDRESS: W7814 G-18

CITY: Daggett STATE: MI ZIP CODE: 49821

Check whether the payment is for costs or for a forfeiture or both:

X COSTS _____ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL _____ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

For Receipting Use Only

#2145 (Rev. 9/96)
Ch. 440.22, Stats.
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Committed to Equal Opportunity in Employment and Licensing+

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE BOARD OF NURSING

In the Matter of Disciplinary Proceedings Against

Monica A. Mueller, R.N.,

AFFIDAVIT OF MAILING

Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On November 17, 1997, I served the Order Fixing Costs dated November 13, 1997, and Guidelines for Payment of Costs and/or Forfeitures, LS9706181NUR, upon the Respondent Monica A. Mueller, R.N. by enclosing true and accurate copies of the above-described documents in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 159 644.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

Monica A. Mueller, R.N.
W7814 G-18
Daggett MI 49821



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 17th day of November, 1997.



Notary Public, State of Wisconsin
My commission is permanent.



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P O BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

September 22, 1997

MONICA A. MUELLER
W7814 G-18
DAGGETT MI 49821

RE: In The Matter of Disciplinary Proceedings Against Monica A. Mueller, R.N.,
Respondent, LS9706181NUR, Assessment of Costs

Dear Ms. Mueller:

On September 12, 1997, the Board of Nursing issued an order involving your license to practice as a registered nurse. The order requires payment of the costs of the proceedings.

Enclosed please find the Affidavits of Costs of the Office of Legal Services and the Division of Enforcement in the above captioned matter. The total amount of the costs of the proceedings is \$523.60.

Under sec. RL 2.18, Wis. Adm. Code, objections to the affidavits of costs shall be filed in writing. Your objections must be received at the office of the Board of Nursing, Room 178, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before October 12, 1997. After reviewing the objections, if any, the Board of Nursing will issue an Order Fixing Costs. Under sec. 440.23, Wis. Stats., the board may not restore or renew a credential until the holder has made payment to the department in the full amount assessed.

Thank you.

Sincerely,

Pamela A. Haack
Administrative Assistant
Office of Legal Services

Enclosures

cc: Board of Nursing
Department Monitor

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary

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.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN BOARD OF NURSING

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

November 17, 1997

1. REHEARING

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