

# 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  
KELLY K. MENARD, L.P.N. : LS0712141NUR  
RESPONDENT. :

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Division of Enforcement Case No. 06NUR470

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, make 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 department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 3<sup>rd</sup> day of April, 2008.

Marilyn Kaufmann  
Member of the Board  
Board of Nursing

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :

KELLY K. MENARD, L.P.N.  
RESPONDENT

:  
:  
: PROPOSED DECISION  
: AND ORDER  
: Case No. LS0712141NUR

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Division of Enforcement Case #04NUR378

The parties to this action for purposes of §227.53, Wis. Stats., are:

Ms. Kelly K. Menard  
1312 Fifth Street  
Chetek, WI 54728

Ms. Kelly K. Menard  
380 E. Merced Street  
Dinuba, CA 93618-1942

Board of Nursing  
P.O. Box 8935  
Madison, WI 53708-8935

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

**PROCEDURAL HISTORY**

A hearing in the above-captioned matter was held on February 18, 2008, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by attorney Mr. James E. Polewski. Ms. Menard did not appear.

Based on the entire record in this case, the undersigned administrative law judge recommends that the Board of Nursing adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law, and Order.

**FINDINGS OF FACT**

1. Kelly K. Menard (DOB 4/01/61) was licensed as a practical nurse in the State of Wisconsin pursuant to License #04776. Her license was first granted on November 11, 2003, and expired on April 30, 2007.
2. Ms. Menard's most recent address on file with the Wisconsin Board of Nursing is 1312 Fifth Street in Chetek, Wisconsin. However, Ms. Menard may now be residing at 380 E. Merced Street in Dinuba, California.
3. In 2003 and 2004, Ms. Menard worked as a practical nurse at Dallas Health Care Center in Dallas, Wisconsin, and at Monroe Manor in Barron, Wisconsin.
4. Between November 17, 2003, and October 27, 2004, Ms. Menard was subjected to progressive discipline because of multiple incidents of medication errors at Dallas Health Care Center.
5. Between November 17, 2003, and October 24, 2004, Ms. Menard was counseled about multiple incidents of medication

errors involving her failure to administer medications on time or at all, but documenting the proper administration of those medications. She was also counseled for multiple incidents of behavior during her shifts, including sleeping in vacant beds and claiming to have wasted narcotics in a sharps container, which, when searched, did not contain the narcotics.

6. Ms. Menard was terminated from her employment at Dallas Health Care Center on October 27, 2004.
7. Ms. Menard was employed at Monroe Manor from November 19, 2004, to November 29, 2004.
8. Ms. Menard was terminated from her employment at Monroe Manor for leaving the facility during her shift to go to a bar, for taking smoking breaks instead of attending to residents' toileting or assisting other staff in completing time sensitive tasks, and for causing other staff to become concerned about her personal use of drugs by initiating conversations about inappropriate drug use and by comments during a medication pass, including "one for them, the rest for me."
9. Ms. Menard did not notify the Board of Nursing or the Department of Regulation and Licensing of any changes to her address at 1312 5<sup>th</sup> Street in Chetek, Wisconsin.
10. The Division of Enforcement was able to trace Ms. Menard's whereabouts by means of a series of letters, inquiries to the U.S. Postal Service, and a search of a proprietary electronic database.
11. Ms. Menard received a certified letter from the Division of Enforcement requesting information relevant to her employment history at Monroe Manor. The Division of Enforcement did not receive a response from Ms. Menard.

### **CONCLUSIONS OF LAW**

1. The Nursing Board has jurisdiction in this matter pursuant to §441.07, Wis. Stats.
2. By failing to file an Answer as required by § RL 2.09, Wis. Admin. Code, and by failing to appear at the hearing, Ms. Menard is in default under § RL 2.14, Wis. Admin. Code, and the Nursing Board may make Findings and enter an Order on the basis of the Complaint and evidence presented at the hearing.
3. By engaging in the conduct as set forth in Findings of Fact #4-9, Ms. Menard has committed unprofessional conduct contrary to § 440.11 (1), Wis. Stats; and §§ N 7.03 (1) (d), and N. 7.04, Wis. Admin. Code.

### **ORDER**

**NOW THEREFORE IT IS HEREBY ORDERED** that effective the date this Order is signed the license of Kelly K. Menard to practice as a practical nurse in the State of Wisconsin is **INDEFINITELY SUSPENDED**.

**IT IS FURTHER ORDERED** that the assessable costs of this proceeding be imposed upon Kelly K. Menard, pursuant to sec. 440.22, Wis. Stats.

### **OPINION**

Section RL 2.14 of the Wisconsin Administrative Code provides that if a respondent fails to answer a complaint or fails to appear at a hearing, he or she is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent.

A Notice of Hearing and Complaint were sent to Ms. Menard by regular U.S. mail and by certified mail at her last known address on file with the Wisconsin Department of Regulation and Licensing. In addition, the Notice of Hearing and Complaint were also sent both by U.S. mail and by certified mail to Ms. Menard at her California address. However, Ms. Menard did not file an answer to the above-captioned complaint, nor did she appear at the scheduled hearing. As a result, Ms. Menard is in default and has effectively admitted all of the allegations contained in the complaint. More specifically, Ms. Menard was employed at two separate health care facilities and was terminated from both. At the first facility, Ms. Menard was counseled about multiple incidents of medication errors involving her failure to administer medications on time or at all, but

nevertheless documenting the proper administration of those medications. She was also counseled for multiple incidents of behavior during her shifts, including sleeping in vacant beds and for claiming to have wasted narcotics in a sharps container, which, when searched, did not contain the narcotics. *See Ex. 3.* Ms. Menard was also terminated from her employment at Monroe Manor after several incidents occurred there. Those incidents included leaving the facility during her shift to go to a bar, taking smoking breaks instead of attending to residents' toileting needs or assisting other staff in completing time sensitive tasks, and causing other staff to become concerned about her personal use of drugs after initiating conversations about inappropriate drug use and commenting inappropriately during a medication pass. *See Ex. 4*

Ms. Menard has effectively admitted all of the allegations contained in the complaint, the question therefore remains as to what the appropriate form of discipline is for her. Revocation or, alternatively, an indefinite suspension of her license has been recommended. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*. 41 Wis. 2d 481, 485 (1969).

Ms. Menard has had no contact with either the prosecuting attorney or the undersigned in connection with this matter. She also chose not to renew her practical nursing license, which expired in April of 2007. Ms. Menard's unresponsiveness and her lack of cooperation suggest that she is not interested in being rehabilitated at this time. By imposing an indefinite suspension upon her license, Ms. Menard will not be able to practice as a nurse and will not pose a risk or act as a threat to the public, thereby adequately protecting their interests. An indefinite suspension will also serve to deter others from engaging in similar conduct. Consequently, an indefinite suspension is an appropriate imposition of discipline and will act as a sufficient means of safeguarding the public.

The imposition of costs against Ms. Menard has also been recommended. Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against a respondent is a discretionary decision on the part of the Board of Nursing, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding. Under the circumstances of this matter, it is reasonable to assess the full costs of this proceeding to Ms. Menard.

Dated at Madison, Wisconsin, this 19<sup>th</sup> day of February, 2008.

1400 East Washington Avenue  
P.O. Box 8935  
Madison, Wisconsin 53708  
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Jacquelynn B. Rothstein  
Administrative Law Judge