

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- 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>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
KATHLEEN A. NESSETH, R.N., : LS0809049 NUR
RESPONDENT. :

[Division of Enforcement Case # 07 NUR 209]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Kathleen A. Nesseth, R.N.
12430 Stephen Place
Elm Grove, WI 53122

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Board of Nursing
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board of Nursing. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Kathleen A. Nesseth, R.N., Respondent, date of birth November 17, 1953, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 66208, which was first granted September 17, 1976.

2. Respondent's last address reported to the Department of Regulation and Licensing is 12430 Stephen Place, Elm Grove, WI 53122.

3. EN (DOB 08/05/88) is Respondent's son. On April 21, 2007, UW-Milwaukee police found marijuana, a pipe which had been used to burn marijuana, and unmarked prescription bottles containing oxycodone and hydrocodone in a desk drawer belonging to EN.

4. EN told police he had prescriptions for the oxycodone and hydrocodone, but that he did not have the prescriptions with him. Police recommended that EN find the prescriptions and produce them at a meeting with the Milwaukee County District Attorney's Office.

5. Oxycodone and hydrocodone are schedule II narcotics.

6. Police recommended that EN be charged with multiple counts of possession of prescription medications without prescriptions.

7. On May 2, 2007, EN and his attorney met with an assistant Milwaukee County District Attorney. Respondent accompanied EN to the District Attorney's office, but did not participate in the meeting. During the meeting, EN admitted that he did not have a prescription for the oxycodone, but that his mother did. EN's attorney then produced a letter, purportedly written by Dr. Venkata K. Thota, M.D. The letter, dated April 30, 2007, stated:

To Whom It May Concern:

[EN] was diagnosed with mono on Nov 9th. He has been having on and off throat pain. I did give permission for mother Kathleen to give him her pain medication, (hydrocodone for mild pain or oxycodone for severe pain) rather than giving him a full script.

8. A Division of Enforcement consumer protection investigator obtained medical records pertaining to EN and maintained by Dr. Thota. The records contained no indication that Dr. Thota saw EN for mononucleosis; nor was there any indication that Dr. Thota spoke to EN or his mother about throat pain and/or mononucleosis.

9. The consumer protection investigator then contacted Dr. Thota. Through counsel, Dr. Thota indicated that: a) Dr. Thota did dictate the letter of April 30, 2007, at Respondent's request; b) Respondent told Dr. Thota that EN needed the letter to address "a problem at the university;" c) Dr. Thota did not diagnose or treat EN for mononucleosis; d) Respondent told Dr. Thota that EN had been diagnosed with mononucleosis at the university; e) Respondent did not contact Dr. Thota until after she had already given EN the narcotic(s).

10. In response to Division of Enforcement inquiries, Respondent indicated that she gave EN oxycodone from a 2006 prescription in her name. According to Dr. Thota, Respondent said she had given EN oxycodone and hydrocodone. However, Respondent indicated that the hydrocodone was from a prescription which EN had left-over from a 2004 dental procedure.

11. Respondent told the Division that EN was diagnosed with mononucleosis in November of 2006. Respondent states that shortly after he received the diagnosis, she gave EN one or two doses of oxycodone for throat pain from her prescription. Respondent contends she was unaware that EN took the narcotics to school.

12. Respondent states that she was concerned as a mother that his illness would cause EN to fall seriously behind in his studies. Respondent wanted to be sure that EN received enough sleep, finished his homework before he became too tired, remained hydrated, and ate properly. The purpose of the medication was to provide EN with comfort when swallowing to eat and drink fluids and control pain.

13. Respondent acknowledges that she did not contact Dr. Thota before dispensing the narcotic. Respondent contacted Dr. Thota's office while her son was ill at home to advise of the illness. Respondent again reported her son's illness to Dr. Thota when she met with him during an office visit in or about December 2006. Respondent contacted Dr. Thota in April 2007 and asked him whether he would have supported her decision to give EN the narcotic. Respondent had no role in the actual drafting of the letter by Dr. Thota and did not see the letter until after her son had met with the prosecutor.

14. Respondent acknowledges that she made a mistake in providing narcotics to her son. She realizes that a physician's order is required before narcotics may be lawfully dispensed. She provided the narcotics to her son within her home in her capacity as a mother as opposed to as a nurse in her workplace.

15. Respondent is an experienced nurse with 32 years of practice. This is the first time that a complaint has been filed against Respondent in a disciplinary matter. Respondent has not been the subject of any malpractice action. These events occurred outside of Respondent's workplace.

16. On May 15, 2008, Respondent completed a three-hour focused tutorial at the Medical College of Wisconsin on the scope of nursing practice and prescription drug diversion and abuse.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by engaging in the conduct set out above, has committed misconduct or unprofessional conduct as defined by Wis. Adm. Code § N 7.04(2) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Respondent, Kathleen A. Nesseth, R.N., is hereby REPRIMANDED for the above conduct.

2. Respondent's license is LIMITED as follows:

a. Within 180 days of the date of this Order, Respondent shall provide proof sufficient to the Board, or its designee, of Respondent's satisfactory completion of a total of twelve (12) hours of continuing education in the following areas: six (6) hours in ethics and six (6) hours in medication administration, which courses shall first be approved by the Board, or its designee. Respondent's participation in the tutorial described in paragraph 15 above, satisfies three (3) of the (6) six hours required in medication administration.

b. Upon Respondent providing proof sufficient to the Board, or its designee, that she has completed the education, the Board shall issue an Order removing this limitation of Respondent's license.

3. Respondent shall, within thirty (30) days of the signing of this Order, provide a copy of this Order to the Milwaukee County District Attorney's Office.

4. Respondent shall, within 180 days of the date of this Order, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$600.00 pursuant to Wis. Stat. § 440.22(2).

5. Requests for approval, notification of completion of educational programs and payment shall be faxed, mailed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935
Fax (608) 266-2264
Telephone (608) 267-3817

6. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event that Respondent fails to pay costs as ordered or fails to comply with the ordered continuing education, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

7. This Order is effective on the date of its signing.

Wisconsin Board of Nursing

By: Marilyn Kaufmann
A Member of the Board

9/4/08
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
 : STIPULATION
KATHLEEN A. NESSETH, R.N., : LS _____ NUR
RESPONDENT. :

[Division of Enforcement Case # 07 NUR 209]

It is hereby stipulated and agreed, by and between Kathleen A. Nesseth, R.N., Respondent; Nathan A. Fishbach of Whyte Hirschboeck Dudek, S.C., attorneys for Respondent; and Sandra L. Nowack, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement (file 07 NUR 209). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has obtained advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or her attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Kathleen A. Nesselth, R.N.
Respondent
12430 Stephen Place
Elm Grove, WI 53122

Date

Nathan A. Fishbach
Whyte Hirschboeck Dudek, S.C.
Attorneys for Respondent
555 E. Wells Street, Suite 1900
Milwaukee, WI 53202-3819

Date

Sandra L. Nowack
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date