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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
NANCY MOLENDA, L.P.N., 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 Hearing Examiner, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Hearing Examiner, 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 7 day of September, 1990.

Jacqueline Johnson RN

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
NANCY MOLENDA, L.P.N, RESPONDENT.	:	

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

Nancy Molenda, L.P.N.
2770 South 124th Street
West Allis, WI 53227

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 notice of hearing and complaint in the above captioned matter were served on Nancy Molenda on May 16, 1990, notifying her of the substance of the complaint against her and of the date and time of a scheduled hearing of the matter on July 25, 1990. The notice of hearing also notified her that if she failed to file an answer to the complaint within 20 days of the date of service, a default judgment could be entered against her.

Ms. Molenda did not respond in any way to the notice of hearing and complaint in this matter at any time. Complainant filed, and served upon Ms. Molenda, a motion for default, and renewed the motion at the scheduled hearing on July 25, 1990. That motion for default was granted, and all the allegations of the complaint are deemed admitted pursuant to Wis. Adm. Code RL 2.09(3) and 2.14. Ms. Molenda did not appear at the hearing; complainant appeared by Attorney Steven M. Gloe.

On the basis of the record and all the proceedings had in this matter, the hearing examiner recommends that the Board of Nursing adopt the following Findings of Fact, Conclusions of Law, Order and Opinion as its Final Decision in the matter.

FINDINGS OF FACT

1. Nancy Molenda, L.P.N., was licensed as a practical nurse in the state of Wisconsin on January 14, 1966, and resides at 2770 South 124th Street, West Allis, Wisconsin 53227.

2. At all times relevant to this proceeding, Ms. Molenda was working as a licensed practical nurse at St. Mary's Hospital, 2323 North Lake Drive, Milwaukee, Wisconsin.

Count I

3. On or about July 26, 1988, respondent Molenda charted administration of two (2) tablets of Tylenol #3 to patient MR at 1600 hours.

4. Patient MR was recovering from an appendectomy, and was under an NPO order. The medication records for patient MR indicate that the registered nurse assigned to care for patient MR administered 75 mg. of Demerol IM to patient MR at 1600 hours, July 26, 1988.

5. Respondent Molenda did not consult with the registered nurse responsible for patient MR regarding the oral administration of Tylenol #3.

COUNT II

6. On or about July 16, 1988 at 1630 hours, respondent Molenda signed out one (1) tablet of Percocet to patient FP in room 626A, when no such patient existed.

COUNT III

7. On or about July 26, 1988, at 1600 hours, respondent Molenda signed out six (6) tablets of Percocet to patient TH, but charted administration of only two (2) tablets of Percocet to patient TH.

COUNT IV

8. On or about July 26, 1988, at 1600 hours, respondent Molenda signed out four (4) tablets of Percocet to patient SB, but charted administration of only two (2) tablets of Percocet to patient SB.

COUNT V

9. On or about July 26, 1988, at 2030 hours, respondent signed out two (2) tablets of Percocet to patient SB, without charting the administration of any medication to patient SB at that time.

COUNT VI

10. On or about July 26, 1988, at 2030 hours, respondent Molenda signed out four (4) tablets of Percocet to patient TH, but charted administration of only two (2) tablets of Percocet to patient TH.

CONCLUSIONS OF LAW

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

2. Respondent's conduct in administering oral medication to patient under an NPO order is unprofessional conduct within the meaning of 441.07(1)(d), Stats., and Wis. Adm. Code sec. N 7.03(1) and 7.04(2) and (15).

3. Respondent's conduct signing out controlled substance medication for a non-existent patient, as described in paragraph 6 of the Findings of Fact, is unprofessional conduct within the meaning of 441.07(1)(d), Stats., and Wis. Adm. Code sec. N 7.04(1), (2), (6), and (15).

4. Respondent's conduct in signing out more controlled substance medication than administered to a patient, as described in paragraph 7 of the Findings of Fact, is unprofessional conduct within the meaning of 441.07(1)(d), Stats., and Wis. Adm. Code sec. N 7.04(1), (2), (6), and (15).

5. Respondent's conduct in signing out more controlled substance medication than administered to a patient, as described in paragraph 8 of the Findings of Fact, is unprofessional conduct within the meaning of 441.07(1)(d), Stats., and Wis. Adm. Code sec. N 7.04(1), (2), (6), and (15).

6. Respondent's conduct in signing out controlled substance medication to a patient without administering it to the patient, as described in paragraph 9 of the Findings of Fact, is unprofessional conduct within the meaning of 441.07(1)(d), Stats., and Wis. Adm. Code sec. N 7.04(1), (2), (6), and (15).

7. Respondent's conduct in signing out more controlled substance medication than administered to a patient, as described in paragraph 10 of the Findings of Fact, is unprofessional conduct within the meaning of 441.07(1)(d), Stats., and Wis. Adm. Code sec. N 7.04(1), (2), (6), and (15).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license previously granted to Nancy Molenda to practice as a practical nurse in the state of Wisconsin is REVOKED.

IT IS FURTHER ORDERED that Nancy Molenda pay the assessable costs of this action.

IT IS FURTHER ORDERED that Nancy Molenda may not apply for reinstatement of this license without first providing the Board of Nursing with an acceptable assessment disclosing the existence or extent of any chemical, physical, or mental impairment which might adversely affect her ability to practice nursing with safety to the public and her patients.

OPINION

There is no evidence in this case as to what happened to the medications Respondent Molenda signed out for administration to patients, both real and non-existent. There is reason to question whether any of the medication Molenda charted as administered was actually administered to the patients who existed. The State pointed out at the hearing in this matter that there is a possibility of diversion of the medication to other persons, or self-medication by Respondent Molenda. Either possibility is a serious matter.

The purpose of the licensing scheme is the protection of the health, welfare, and safety of the public. By law, when a licensee declines to participate in a proceeding such as this one, the licensee is held to admit the truth of the allegations of the complaint and thereby relieves the State of the burden of overcoming the presumption that the licensee is innocent. Because there is no information on which to support a conclusion that the health, welfare, and safety of the public can be adequately protected by less drastic measures, revocation of license is required when the State alleges, and the licensee effectively admits, serious violations.

Because this matter involves the apparent diversion of controlled substances, it is appropriate that any application for re-instatement of the practical nursing license be preceded by an assessment of Nancy Molenda by appropriate professionals to determine the existence and extent of any impairment from which she might be suffering.

Dated this 30th day of July, 1990.

James E. Polewski

James E. Polewski, Examiner

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 September 11, 1990.

WLD:dms
886-490

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) 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. 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. 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) Copies 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 all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(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.

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
608 266-2112

September 7, 1990

Nancy Molenda
2770 S. 124th St.
West Allis, WI 53227

Dear Ms. Molenda:

Under the enclosed Board of Nursing order, your license to practice is revoked.

Please return your current license to the Board of Nursing at the address above.

Sincerely,

Thomas A. Neumann, RN, MSN
Administrative Officer
Bureau of Health Service Professions

Regulatory Boards
Accounting, Architects, Professional Engineers, Designers and Land Surveyors, Barbers, Bingo, Boxing, Charitable Organizations, Chiropractic, Cosmetology, Dentistry, Funeral Directors, Hearing Aid Dealers and Fitters, Medical, Nursing, Nursing Home Administrator, Optometry, Pharmacy, Private Detectives, Psychology, Real Estate, and Veterinary
Committed to Equal Opportunity in Employment and Licensing

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST NANCY MOLENDA, L.P.N., RESPONDENT.	: : : : :	AFFIDAVIT OF COSTS

James E. Polewski, being first duly sworn on oath, deposes and says:

1. He is an attorney employed by the Department of Regulation and Licensing, and was appointed by the Board of Nursing to act as hearing examiner in the above captioned case.

2. He kept a record of the costs incurred by the Office of Board Legal Services in connection with the hearing of the above captioned matter, and that record reflects the following costs:

Date	Description	Time
7/25/90	Hearing	10 minutes
	Draft decision	80 minutes
7/30/90	Draft decision	20 minutes
	TOTAL TIME FOR EXAMINER	1 hour, 50 minutes
	Cost for Examiner, at $22.45/hour	$41.16
	ASSESSABLE COSTS, OFFICE OF BOARD LEGAL SERVICES	$41.16

James E. Polewski

James E. Polewski

Subscribed and sworn before me this 25th day of September, 1990.

Notary Public
My Commission expires 2/7/93

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST NANCY MOLENDA, L.P.N., RESPONDENT.	: : : : :	AFFIDAVIT OF COSTS 88 NUR 095

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Steven M. Gloe, being duly sworn, deposes and states as follows:

1. That he is an attorney licensed in the state of Wisconsin and is employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement;

2. That in the course of those duties he worked as the prosecutor in the above-captioned matters; and

3. That 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 business in the above-captioned matter:

INVESTIGATOR EXPENSE

Date	Activity	Time Spent
10/23/89	Review file and draft letter	1 hour, 30 minutes
11/24/89	Review response	20 minutes
11/27/89	Review response	10 minutes
01/09/90	Review records; draft letter; prepare file for PIC	3 hours
		5 hrs

Total investigator expense for 5 hours at $18.00 per hour (based upon average salary and benefits for Division of Enforcement investigators) equals: $ 90.00

PROSECUTING ATTORNEY EXPENSE

Date	Activity	Time Spent
06/12/90	Review file; draft complaint	1 hour

06/12/90	Draft motion and affidavit	1 hour
06/19/90	Review file; prepare subpoenas	2 hours
07/16/90	Correspondence	15 minutes
07/25/90	Preparation and attend hearing	45 minutes
		5 hours

Total attorney expense for 5 hours at $30.00 per hour (based upon average salary and benefits for Division of Enforcement attorneys) equals: $ 150.00

TOTAL ASSESSABLE COSTS **$ 240.00**

Steven M. Gloe

Steven M. Gloe

Subscribed and sworn to before me this 1st day of September, 1992.

Robert T. Garch

Notary Public
My Commission is Permanent.