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STATE OF WISCONSIN
BEFORE THE NURSING HOME ADMINISTRATOR EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
RODNEY E. PETERSON, RESPONDENT.	:	LS9404061NHA

The State of Wisconsin, Nursing Home Administrator Examining Board, 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, Nursing Home Administrator Examining Board.

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 October 1995.

Shirley A. Keller

STATE OF WISCONSIN
BEFORE THE NURSING HOME ADMINISTRATOR EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

RODNEY E. PETERSON, LS9404061NHA

Respondent

PROPOSED DECISION

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

Rodney E. Peterson
4902 Cottage Grove Road
Madison, WI 53716

State of Wisconsin Nursing Home Administrator Examining Board
1400 East Washington Avenue
P.O. Box 8936
Madison, WI 53708

State of Wisconsin Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

This matter was commenced by the filing of a Complaint by the Division of Enforcement on March 23, 1994. Complainant is represented by Henry E. Sanders, attorney with the division. Respondent is represented by Attorney Jon P. Axelrod of the DeWitt Ross & Stevens Law Firm. Attorney James E. Polewski was originally assigned as Administrative Law Judge. Mr. Polewski was succeeded by the undersigned on April 18, 1995.

Based upon the entire record in this case, the administrative Law Judge recommends that the Nursing Home Administrators Examining Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Rodney E. Peterson, 4902 Cottage Grove Road, Madison, Wisconsin 53716 (respondent), was at all times material to this matter licensed as a Nursing Home Administrator by license #205, issued November 4, 1970. The license expired on July 1, 1994.

2. Respondent was at all times material to this matter owner and administrator of Karmenta, Inc., a nursing home located at 4502 Milwaukee Street, Madison, Wisconsin 53714 (Karmenta).

3. The Complaint in this matter alleges that pursuant to a Civil Forfeiture Complaint filed by the Attorney General of the State of Wisconsin, respondent and Karmenta entered into a Stipulation with the State of Wisconsin by which respondent agreed not to contest that on June 27, 1989, May 7, 1990 and July 1, 1991, the defendants violated sec. 49.49(4m)(a)2., Stats., by filing cost reports for Karmenta which omitted certain revenues required to be reported, and that a Consent Judgment was entered on January 4, 1993, by the Circuit Court of Dane County accepting the terms of the Stipulation and ordering restitution. The Complaint further alleges that the conduct which respondent agreed not to contest constitutes a violation of secs. NHA 5.02(1), (4) and (8), Code, in violation of sec. 456.10(1)(a), Stats.

4. Section 6. of the Stipulation between respondent and the State of Wisconsin states as follows:

> **6. Completeness.** This stipulation is intended by the parties to be the complete agreement between the parties. The state agrees that as to the State of Wisconsin, this agreement is dispositive of any medical assistance violations known to the MFCU at the time of execution of this agreement, whether itemized in the pleadings or not.

5. On June 7, 1994, respondent filed his *Motion of Rodney E. Peterson to Dismiss Disciplinary Action*, on the grounds that this disciplinary proceeding is barred by the January 4, 1993 Stipulation or, alternatively, that the proceeding is impermissibly based upon a plea of "no contest" and the January 4, 1993, Consent Judgment based on that plea.

6. On July 13, 1994, Administrative Law Judge James E. Polewski entered his *Order on Motion to Dismiss*, by which the motion was denied. Respondent thereafter filed his *Motion to Enforce Plea Bargain* in the Circuit Court for Dane County on July 26, 1994. The motion sought an order that the Department of Regulation and Licensing cease and desist from pursuing disciplinary proceedings on the same violations that were the subject of the stipulation and Consent Judgment.

7. On September 15, 1994, the state, by Assistant Attorney General Thomas L. Dosch, notified the court that the parties to the *Motion to Enforce Plea Bargain* had reached a tentative settlement of all issues related to the motion. That settlement, if in fact one was reached, is not a matter of record in this proceeding.

8. On July 24, 1995, complainant, by Attorney Henry E. Sanders, filed his *Motion to Dismiss* these proceedings with prejudice. The basis of for the motion was stated at paragraph 11. of the Motion as follows:

> 11. Complainant Attorney, after consulting with the Wisconsin Department of Justice, Medicaid Fraud Unit Personnel, concluded that because the alleged violations occurred about 1986-1991, and that the parties have conflicting recollections of the facts underlying the Consent Judgment, that Complainant and the department could not meet its burden of proof if the matter proceeded to hearing.

9. On August 1, 1995, respondent, by Attorney Jon P. Axelrod, filed his *Response to Motion to Dismiss*. The substance of respondent's response is his request that if the matter is dismissed with prejudice, the order provide that neither the board nor the department shall be permitted to use the substantive allegations of the complaint to deny any application for renewal of respondent's license.

CONCLUSIONS OF LAW

1. The Nursing Home Administrator Examining Board has jurisdiction in this matter pursuant to secs. 456.02 and 456.10, Stats.

2. Dismissal of a disciplinary proceeding with prejudice precludes subsequent litigation of the same issues.

ORDER

NOW, THEREFORE, IT IS ORDERED that the Matter of Disciplinary Proceedings Against Rodney E. Peterson be, and hereby is, dismissed with prejudice, and the board and the department shall be foreclosed from further licensure action against respondent based upon the conduct and events alleged in the Complaint in this matter.

OPINION

The Findings of Fact set forth above constitute little more than a procedural history of this case and serve merely to chronicle the events leading to complainant's Motion to Dismiss with prejudice. The record does not reflect what would appear to have been considerable negotiation between the parties to both this matter and the circuit court action, and does not document the results of those negotiations. Suffice it to say that the professed basis for the motion was that the complainant and the assistant attorney general defending the court action have apparently agreed that it is not be possible for complainant to carry his burden of proof in the disciplinary matter, and that in itself is sufficient basis for dismissal of these proceedings.

While respondent does not oppose the dismissal, he did, by Attorney Axelrod, express concern that the order be drafted to make clear that the effect of dismissing the matter with prejudice is to preclude any future action to deny respondent's application for renewal of his license based on

the events and conduct alleged in the Complaint. That proposition is probably indisputable. As stated in 46 Am Jur 2d, Judgments, § 609,

> The term "with prejudice," expressed in a judgment of dismissal, has a well-recognized legal import; and it indicates an adjudication on the merits, operating as res judicata, concluding the rights of the parties, terminating the right of action, and precluding subsequent litigation of the same cause of action, to the same extent as if the action had been prosecuted to a final adjudication adverse to the plaintiff. Accordingly, a judgment so rendered operates, in a subsequent action on the same cause of action, so as to conclusively settle not only all matters litigated in the earlier proceedings, but also all matters which might have been litigated. (cites omitted)

Dated this 28th day of August, 1995.

Respectfully submitted,

Wayne R. Austin
Administrative Law Judge

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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 NURSING HOME ADMINISTRATOR EXAMINING BOARD

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

The Date of Mailing this Decision is:

OCTOBER 19, 1995

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.)