FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
SANDRA L. CURTIS, L.P.N., RESPONDENT.	:	LS9506201NUR

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, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

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 14TH day of MAY 1996.

Pamela A. Maxson, RN, Chair/C.J.
BOARD OF NURSING

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST:	:	PROPOSED DECISION
	:	[Case No. LS 9506201NUR]
SANDRA L. CURTIS, RESPONDENT.	:	

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

Sandra L. Curtis
4320 North 39th Street
Milwaukee, WI 53218

Wisconsin Board of Nursing
P.O. Box 8935
Madison, Wisconsin 53708

Wisconsin Department of Regulation & Licensing
P.O. Box 8935
Madison, Wisconsin 53708

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on June 20, 1995, scheduling a hearing for August 16, 1995. The Respondent failed to file an answer or any other response to the complaint with either the Administrative Law Judge or the Division of Enforcement. The hearing was held as scheduled on August 16, 1995, commencing at approximately 9:35 a.m., although because of a conflict, the hearing was held in another room in the building, room 187 rather than room 131 as noticed in the Notice of Hearing. The hearing was tape recorded. At the time of hearing, Respondent Sandra L. Curtis did not appear, nor could be located within the building by Division of Enforcement personnel. The Division of Enforcement appeared by attorney James Harris. Based upon the failure of the Respondent to file an Answer or other response to the Complaint, and her absence at the time of hearing, the Division of Enforcement moved for a default judgment pursuant to the terms of RL 2.14, Wis. Adm. Code. The motion was granted and the Division proceeded to present a prima facie case in support of the allegations of the complaint and the hearing was concluded. Thereafter, at approximately 10:10 a.m., the Respondent appeared and maintained that she was in the building since 9:00 a.m. The hearing was reconvened at that time. The Respondent was apprised of the proceeding that had taken place earlier in her absence and was provided the opportunity to listen to the tape recording of the hearing. On the record, Mr. Harris advised the ALJ that the Division

of Enforcement would maintain its motion for default, although it would not object to Ms. Curtis presenting testimony or other evidence in response to the allegations of the Complaint. Thereupon, the hearing continued with presentation of testimony by the Respondent.

Based upon the entire record in this matter, the 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. The respondent, Sandra L. Curtis (DOB 2-22-55) is a licensed practical nurse in the State of Wisconsin, license # 23098. Her most recent address on record with the department is 4320 North 39th Street, Milwaukee, Wisconsin 53218.

2. On June 20, 1995 the Notice of Hearing and Complaint in the above captioned matter were filed and served upon the Respondent Sandra L. Curtis in accordance with RL 2.08(1), Wis. Adm. Code.

3. Sandra L. Curtis failed to file an answer to the complaint as required by sec. RL 2.09 (4), Wis. Adm. Code, nor any other response to the Complaint.

4. On May 6, 1994, an Order was entered by the Board of Nursing in case 93 NUR 012, a copy of which is attached hereto, which imposed a reprimand and limitations on the license of Sandra L. Curtis to practice as a practical nurse. The Order imposed the following limitations pertinent here upon the Respondent:

> "2. a. "Respondent shall practice as a practical nurse only under direct supervision for a period of six months following the date of this Order. During this six month period, Respondent's employer shall submit quarterly performance reports to the Board of Nursing." and
>
> "2. c. "Within six months of the date of this Order, Respondent shall certify to the Board of Nursing the successful completion of an approved course of training in the management of difficult patients. Within two months of the date of this Order Respondent shall submit to the Board an outline for the required training which shall list the name of the institution providing the instruction, the name of the instructor, and the course content."

5. As of the time of hearing, Respondent had not submitted a proposed course outline, obtained approval from the Board of Nursing for, nor completed a course of training in the management of difficult patients.

6. Respondent has not worked in the capacity of a licensed practical nurse since about October, 1992, the time of the incident that was the subject of the Board of Nursing Order

dated May 6, 1994. In the six months prior to hearing, Respondent has worked as a program director for a child care center in the Milwaukee area.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to sec. 441.07 and 441.10, Wis. Stats., and Ch. N 7, Wis. Adm. Code.

2. Respondent having failed to file an answer to the complaint in this matter is in default pursuant to the terms of sec. RL 2.14, Wis. Adm. Code.

3. Respondent having failed to comply with the requirements of filing with the Board for its approval within two months of the date of the May 5, 1994 Order an outline for a proposed course of training in the management of difficult patients, and having failed to certify to the Board successful completion of such course within six months of the May 6, 1994 Order, has violated sec. 441.07(1)(b) and (d), Wis. Stats., and sec. N7.04(14), Wis. Adm. Code, and is therefore subject to discipline pursuant to sec. 441.07(1), Wis. Stats.

ORDER

NOW THEREFORE, IT IS ORDERED that the license to practice as a licensed practical nurse of Respondent Sandra L. Curtis, license #23098, is hereby SUSPENDED indefinitely, until such time as she has fulfilled the terms of paragraph 2.c. of the Board of Nursing Order dated May 6, 1994. It is further ordered that upon any petition by Sandra L. Curtis for reinstatement of license, the Board of Nursing may impose the limitations and conditions contained in paragraphs 2.a. and b. of the Board of Nursing Order dated May 6, 1994, and any other terms and conditions that the Board deems appropriate in the circumstances.

IT IS FURTHER ORDERED that pursuant to sec. 440.22, Wis. Stats., the costs of this proceeding shall be assessed against Respondent, and shall be payable by her to the Department of Regulation and Licensing.

OPINION

A preliminary issue in this matter is the disposition of the motion by the Division of Enforcement for default on the part of Ms. Curtis. As noted in the Findings of Fact, Ms. Curtis failed to file an answer or any other response to the complaint with the Administrative Law Judge or the Division of Enforcement, as required by sec. RL 2.09(4), Wis. Adm. Code. Also, at the time of the scheduled hearing, Ms. Curtis was not present, and the hearing was held on a motion for default. Under sec. RL 2.14, Wis. Adm. Code, failure to file an answer to the complaint, or failure to appear for the hearing, are independent and sufficient grounds for a finding of default. Accordingly, the motion was granted and the Division presented its prima facie case supporting the allegations of the complaint. After the close of the hearing, Ms. Curtis

appeared, and the hearing was reconvened. Ms. Curtis was afforded the opportunity to listen to the tape of the proceedings held before her arrival. The Division elected to maintain its motion for default rather than withdraw it, in spite of Ms. Curtis's appearance, although late and after the hearing was concluded. However, the Division declined to object to receipt into the record of testimony on behalf of Ms. Curtis. Based upon this record, the Division is entitled to a default judgment based upon the complaint and other evidence presented. The testimony offered by Ms. Curtis is considered as mitigation testimony and goes to the issue of appropriate discipline.

Ms. Sandra L. Curtis was subject to a May 6, 1996 disciplinary order which imposed license limitations including a requirement that she complete a course of training in management of difficult patients within six months of the date of the Order. The Order further required that within two months of the date of the order Ms. Curtis submit for approval by the Board of Nursing an outline of the proposed course of training and additional information concerning the institution and instructor offering the course and the course content.

The Division's proof at the hearing was the testimony of the investigator in the case, Ms. Sherrie Johnson, and a copy of the May 6, 1994 disciplinary order against Ms. Curtis. Ms. Johnson testified that in her position and function as investigator in this case, she has access to and had reviewed the disciplinary monitoring file for Ms. Curtis, which file is maintained in the department. The Department Monitor has the function and responsibility of monitoring compliance by licensees with the terms and conditions of disciplinary orders issued by the department and licensing boards attached thereto. Ms. Johnson testified that following the issuance of the disciplinary order against Ms. Curtis, the Department Monitor had sent three letters to Ms. Curtis, dated August 5, 1994, November 10, 1994, and March 15, 1995, reminding her of the requirements of the disciplinary order, which included the quarterly reports from Ms. Curtis's employment supervisor and completion of the course of training in management of difficult patients. Ms. Johnson testified that the compliance file showed no response by Ms. Curtis to these reminder letters sent by the Department Monitor.

The testimony presented by Ms. Curtis did not contest in any substantial way the charges that Ms. Curtis failed to comply with paragraph 2.c. of the May 6, 1994 Order, requiring the completion of the course of training in management of difficult patients. Ms. Curtis did however testify that she had difficulty in locating any available courses in the Milwaukee area that would satisfy the requirements of the order, and that she had telephoned the Department Monitor several times in this regard, and had also written several letters to the Department Monitor explaining such difficulties. However, Ms. Curtis did not provide any corroborative proof of this, such as phone records, copies of correspondence or other documentary proof. Finally, Ms. Curtis testified that in the several months prior to the date of hearing, she had finally located an instructor with an organization called Bartz Association and on the date prior to the hearing had arranged for a course of training to meet the requirements of the May 6, 1994 Order. Ms. Curtis testified that a "confirmation" of this was to have been sent by fax to the department on August 15, 1995, however, it had not been sent, and Ms. Curtis again had no corroborative proof to support this contention. Even assuming that these arrangements had been made as testified to by Ms. Curtis, it was still a year and a month past the deadline imposed by the order, and does not relieve Ms. Curtis from the fact that she did not comply with the terms of the order.

Furthermore, based upon Ms. Curtis's presentation, it does not appear that she made a concerted effort to locate an appropriate course, obtain approval and complete the course within the time period specified by the Order. Considering Ms. Curtis's contentions fairly, unsupported as by any corroborative proof, at best, it appears that Ms. Curtis attempted to undertake compliance with the order virtually on the eve of the hearing in this matter. It should be noted that to date, the ALJ has not received any further information from Ms. Curtis or the Division as to whether Ms. Curtis has completed the course of training as ordered by the Board.

With regard to the requirement of paragraph 2.a. of the May 6, 1994 Order for quarterly performance reports from Ms. Curtis's employer, Ms. Curtis testified that since the incident in October 1992 she has not worked in a nursing capacity. This testimony was not contested or rebutted in any way at the hearing by the Division. Applying a reasonable interpretation to the terms paragraph 2.a. of the may 6, 1994 Order, the quarterly reporting requirement from Ms. Curtis's employer appears to be premised upon Ms. Curtis working as a nurse. Since Ms. Curtis did not work as a nurse since October 1992, it cannot be said that such reports were required to be submitted, and accordingly, failure to submit the reports should not be found to be a violation of the Order.

As to the issue of discipline, the Division of Enforcement recommended an indefinite suspension of Ms. Curtis's license to practice as a practical nurse until such time as she has demonstrated compliance with the terms of the May 6, 1994 Order. On the other hand, Ms. Curtis of course wishes to retain her license. Based upon the record made in this case, the Division's recommendation of discipline is both warranted and appropriate, given the three purposes of discipline--protection of the public, rehabilitation of the licensee and deterrence.

First, consideration should be given to the facts underlying the May 6, 1994 Order, not to assess additional discipline with respect to Ms. Curtis's conduct in that matter, but to assess the weight to be given to the concerns for protection of the public and the related interests in rehabilitation of Ms. Curtis, both of which the May 6, 1994 Order sought to accomplish, and which Ms. Curtis has not fulfilled. In the October 1992 incident, Ms. Curtis had used forceful and inappropriate measures to restrain an agitated nursing home resident, resulting in cyanosis of the patient and requiring CPR assistance and hospital evaluation. As a result of this conduct on the part of Ms. Curtis, the 1994 Order required her to undertake a course of training in management of difficult patients, among other limitations on her practice, to reeducate and train Ms. Curtis to minimize the likelihood that such an incident would occur again in her subsequent practice as a nurse. However, as demonstrated in this case, Ms. Curtis has not undertaken the required course of training to fulfill the objectives of protection of the public and her own reeducation and rehabilitation. Under these circumstances, the public, more specifically potential patients that Ms. Curtis may be called upon to provide nursing services for, and who she may be called upon to restrain in any given set of circumstances, remain at risk in the absence of the training the Board has ordered.

Under the 1994 Order, Ms. Curtis was allowed to retain her licensure under certain limitations while she was to undertake the training ordered therein. At this time, Ms. Curtis's retains a currently active limited license, and while at the time of hearing she was not practicing

as a nurse, she may at any time resume nursing practice. Having failed to fulfill the training ordered by the Board, the interests of public protection demand that before Ms. Curtis practices as a nurse again, she shall have completed that training. The only way to assure this is a suspension of her license until such time as the training is certified as having been completed as required by the 1994 Order. Rehabilitation of the licensee is also accomplished by this measure. And finally, the interests in deterrence of similar conduct, i.e., failure to comply with a board order are also served by suspension of license.

The remaining issue to be addressed is the request by the Division of Enforcement that costs of this proceeding be assessed against Ms. Curtis. Under the terms of sec. 440.22, Wis. Stats., the Board may assess costs in this case if it imposes discipline. The decision is discretionary with the Board whether to impose all, part, or even any costs of the proceeding. Based upon the entire record in this matter, assessment of costs against Ms. Curtis would be appropriate. This proceeding was occasioned by her failure to comply with the Board's 1994 Order, and the costs of this disciplinary action should be borne by her as the offending licensee, rather than by the profession as a whole through license fees.

Based upon the record herein, the Administrative Law Judge recommends that the Board of Nursing adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin, this 4th day of April, 1996.

Robert T. Ganch

Robert T. Ganch
Administrative Law Judge

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:

May 15, 1996

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.)

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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST:	:	
	:	Case No. LS 9506201NUR
SANDRA L. CURTIS, RESPONDENT.	:	

AFFIDAVIT OF COSTS
OFFICE OF BOARD LEGAL SERVICES
(SEC. 440.22, STATS.)

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Robert T. Ganch, being first duly sworn on oath, deposes and states as follows:

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

2. In the course of his employment, your affiant was assigned as administrative law judge in the above-captioned matter.

3. Set out below are the time and actual costs of the proceeding for the Office of Board Legal Services in this matter.

ADMINISTRATIVE LAW JUDGE EXPENSE
Robert T. Ganch

DATE & TIME SPENT	ACTIVITY
8/16/95 10 minutes	Review ALJ hearing file, complaint
8/16/95 1 hours, 10 minutes	Conduct Hearing

4/3/96 Prepare Proposed Decision
2 hours

4/4/96 Prepare Proposed Decision
3 hours

Total Time Spent.....6 hours 20 minutes

Total administrative law judge expense for Robert T. Ganch:
5 hours, 20 minutes @ $36.44, salary and benefits:.....$230.66

REPORTER EXPENSE
-0-

DATE & TIME SPENT | ACTIVITY

-0-

TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES: $230.66

Robert T. Ganch

Robert T. Ganch
Administrative Law Judge

Sworn to and subscribed before me this 29th day of May, 1996.

Jacqueline B. Roth

Notary Public, State of Wisconsin
My commission is permanent

rtg:

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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	AFFIDAVIT OF COSTS
SANDRA L. CURTIS, L.P.N., RESPONDENT.	:	LS9506201NUR

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

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

1. That I am an attorney licensed in the state of Wisconsin, employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement:

2. That in the course of those duties I was assigned as a prosecutor in the above-captioned matter; and

3. That set out 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

Date	Activity	Time Spent
4/4/95	Case review	1 hour
6/12/95	Prepare complaint, notice, trans.	1 hour
8/16/95	trial prep, hearing	2 hours
4/4/96	review proposed decision	0.5 hour
Total Hours: 4.5 X $ 41.00 per hour:		$ 184.50

INVESTIGATOR EXPENSE

Date	Activity	Time Spent
3/15/95	file review,letters Resp.,Atty,B.A.	1.5 hours
3/20/95	conference respondent	0.5 hour
3/22/95	review letter from respondent	0.3 hour
3/29/95	conference, board advisor	0.3 hour
4/4/95	case review with attorney, letters, memo	3.0 hour
8/16/95	trial prep and testimony	1.0 hour

Total Hours: 6.6 X $ 20.00 per hour: $ 132.00

TOTAL ASSESSABLE COSTS: $ 316.50

James W. Harris, Attorney
Division of Enforcement
Department of Regulation and Licensing

Subscribed and sworn to before me this
21st day of May, 1996.

Charles Howden, Notary Public
My Commission Permanent