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FILE COPY

Sept.
1981

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE APPLICATION :
FOR RENEWAL OF THE LICENSE OF :

MARY JO BERNACKI, T.P.N., :
RESPONDENT. :

FINAL DECISION
AND ORDER

ORDER 0001613

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. Let a copy of this order be served on the respondent by certified mail.

Dated this 6 day of March, 1981.

Marjorie Lundquist

017-552

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE APPLICATION
FOR RENEWAL OF THE LICENSE OF

MARY JO BERNACKI, T.P.N.
RESPONDENT

PROPOSED DECISION

A prehearing conference was held in the above-captioned matter on January 6, 1981 commencing at 1:30 p.m. in Room 288A, 1400 East Washington Avenue, Madison, Wisconsin. Appearing at the conference were respondent Mary Jo Bernacki, and Attorney Wayne R. Austin on behalf of complainant.

The parties reached a tentative agreement as to the factual issues in this matter at the conference and agreed to continue discussions concerning a resolution of all issues in this proceeding.

The Hearing Examiner has received a stipulation executed by the parties setting forth the terms of the proposed settlement. A copy of the stipulation is attached hereto.

Based on the pleadings and stipulation on file herein, the Hearing Examiner recommends that the Board of Nursing adopt as its final decision in the case the following Findings of Fact, Conclusions of Law, and Order, which are the terms agreed upon and stipulated to by the parties.

FINDINGS OF FACT

1. Mary Jo Bernacki (Bernacki), also known as Mary Jo Frost, was licensed to practice as a trained practical nurse in Wisconsin on September 27, 1971 (license no. T11372).
2. Bernacki's address is Route 1, Box 186, Balsam Lake, Wisconsin 54810.
3. On July 1, 1972, Bernacki permitted her Wisconsin license to lapse.
4. On October 6, 1980, Bernacki orally requested renewal of her Wisconsin license.
5. At all times relevant to this complaint, and until March 27, 1980, Bernacki was licensed as a licensed practical nurse by the State of Minnesota Board of Nursing.
6. On March 27, 1980, the Minnesota nursing board ordered that Bernacki's license as a practical nurse in the State of Minnesota be suspended for an indefinite time period.

7. The basis for the Minnesota board's order was a stipulation between Bernacki and the Minnesota board, which stipulation is attached hereto and made a part hereof.

8. From July 28, 1979, through September 7, 1979, Bernacki was hospitalized at Miller Dwan Hospital, Duluth, Minnesota, for chemical dependency treatment. Following her inpatient treatment, Bernacki has continued treatment and counseling as an outpatient at the Miller Dwan Chemical Dependency Unit, Alcoholics Anonymous, and Douglas County (Wisconsin) Chemical Dependency Services.

9. From September 17, 1979 until her voluntary termination on June 30, 1980, Bernacki was successfully employed as a nursing assistant at St. Francis Home, Inc., Superior, Wisconsin. From August 5, 1980 through the date hereof, Bernacki has been successfully employed as a chemical dependency technician at Saint Croix Valley Memorial Hospital.

10. On September 1, 1980, Bernacki petitioned the Minnesota Board of Nursing for reinstatement of her license and she appeared before the Minnesota board on October 2, 1980, to testify and present evidence in favor of her petition.

11. In support of her petition for reinstatement, Bernacki submitted to the Minnesota board certain documents demonstrating rehabilitation and employment. Those documents are identified as follows:

- (a) Letter from Greg Anderson, dated August 21, 1980;
- (b) Letter from Gladys Vereecken, dated August 20, 1980;
- (c) Letter from Colleen Birt, dated August 21, 1980;
- (d) Letter from Fran Bernstein, dated September 4, 1980;
- (e) Letter from Frank LeDuc, dated September 5, 1980;
- (f) Letter from Cheri Klein, dated August 22, 1980;
- (g) Letter from Mary Broberg, dated September 9, 1980.

Copies of the cited documents are attached hereto and made a part hereof.

12. The Minnesota Board of Nursing acted favorably on Bernacki's petition for reinstatement and, on December 11, 1980, issued an order reinstating Bernacki's license with conditions. A copy of the Minnesota board's order setting forth the conditions imposed is attached hereto and made a part hereof.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction to take disciplinary action in this proceeding pursuant to Section 227.07(5) and Section 441.07, Wis. Stats.

2. The suspension of Bernacki's nursing license by the Minnesota nursing board constitutes grounds for revocation, limitation, suspension or refusal to renew Bernacki's license, or for reprimand by the Wisconsin Board of Nursing, pursuant to Section N 11.03(3)(d), Wis. Adm. Code, and Section 441.07, Wis. Stats.

ORDER

1. NOW, THEREFORE, IT IS ORDERED that Mary Jo Bernacki's license to practice as a trained practical nurse be, and hereby is, reinstated, provided, however, that said license shall be limited for an indefinite period of not less than one (1) year from the date hereof. Bernacki's retention of her license is conditioned upon her submitting or causing to be submitted to the Wisconsin Board of Nursing reports as listed below:

(a) Reports every three months from Bernacki if she accepts employment as a trained practical nurse in a position which requires the handling of controlled substances during the time her license is in a limited status. The report shall be co-signed by Bernacki's nursing supervisor and shall describe her method of handling controlled substances including recording, accuracy, and accounting for medications.

(b) Reports from Bernacki's Alcoholics Anonymous squad leader or sponsor every three months during the time her license is in a limited status. The reports shall address Bernacki's sobriety, her consistent and regular attendance at a support group including the dates on which she attended Alcoholics Anonymous meetings, an example of Bernacki's participation in the meeting, and the dates on which Bernacki and her sponsor, if the sponsor is the reporter, communicated and the method of communication (i.e., telephone, mail, or in person).

(c) Bernacki shall notify the board in writing of the names and addresses of each and every employer during the time her license is in a limited status including the name of Bernacki's supervisor and a description of Bernacki's actual or anticipated duties and functions.

2. It is further ordered that Bernacki may submit the reports specified in paragraph 1, above, contemporaneous to the submission of any similar reports required to be submitted to the Minnesota Board of Nursing, provided that in no circumstances shall more than three months elapse before the first submittal to the Wisconsin board and no more than three months shall elapse between submittals to the Wisconsin board.

3. It is further ordered that not sooner than one year from the date hereof, Bernacki may apply to the Wisconsin Board of Nursing to have the limitations removed from her license. The burden of proof shall be upon Bernacki to demonstrate that she is capable of conducting herself in a fit and competent manner in the practice of practical nursing, is successfully participating in a program of chemical rehabilitation, and has maintained sobriety during the twelve months immediately preceding her petition. In order to sustain her burden of proof, Bernacki shall submit or cause to be submitted at least the reports or information indicated in paragraph 1, above.

4. It is further ordered that the Wisconsin Board of Nursing may, at any regularly scheduled meeting at which Bernacki has made a timely petition, take any of the following actions:

(a) Remove the limitations attached to Bernacki's license upon her written request together with a presentation by Bernacki of evidence satisfactory to the board that she is capable of conducting herself in a fit and competent manner in the practice of practical nursing, which evidence shall include at least the reports as indicated in paragraph 1, above.

(b) Amend the limitations attached to Bernacki's license upon her written request and upon the evidence as specified in paragraph 3, above.

(c) Continue the limitations attached upon Bernacki's failure to meet her burden of proof.

In the event that the Board of Nursing does not accept this proposed decision as its final decision in this matter, the case shall be returned to the Hearing Examiner for further proceedings with a statement from the Board as to why the proposed decision was not approved.

Dated at Madison, Wisconsin this 18th day of February, 1981.

Respectfully submitted,



Donald R. Rittel

Hearing Examiner

BEFORE THE
STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF THE APPLICATION :
FOR RENEWAL OF THE LICENSE OF :

MARY JO BERNACKI, T.P.N., :
RESPONDENT. :

STIPULATION

On November 25, 1980, a complaint was filed in the above-entitled matter, the gravamen of which was that on March 27, 1980, the State of Minnesota had suspended for an indefinite period respondent Bernacki's license as a trained practical nurse in the State of Minnesota, and that the basis for such suspension was a stipulation between respondent and the Minnesota board in which respondent agreed not to contest alleged facts relating to diversion of certain controlled substances.

On the same date the complaint was filed, a hearing was ordered pursuant to Chapter 441, Wis. Stats., and Chapter RL 2, Wis. Adm. Code, for the purpose of considering the allegations of the complaint. Thereafter, on December 18, 1980, Attorney Donald R. Rittel, designated Hearing Examiner, requested the parties to appear at a prehearing conference to be held on January 6, 1981. On that date, complainant John L. Kitslaar, III, appeared by his attorney, Wayne R. Austin, and respondent appeared in person and without counsel. As a result of discussions taking place at that conference, the named parties reached agreement on disposition of the matter, which agreement is intended as a full disposition of all complaints presently pending against respondent and is further intended as a recommended basis for the final decision of the Board of Nursing.

ACCORDINGLY, John L. Kitslaar, III, by his attorney, and Mary Jo Bernacki, in consideration of the terms and conditions of this stipulation and in consideration and upon condition of acceptance of the terms and conditions of this stipulation by the Board of Nursing, do hereby stipulate:

1. That respondent freely and voluntarily waives her rights to a public hearing and to be represented by legal counsel in this cause.
2. That respondent admits the factual allegations of the complaint filed in this matter.
3. That respondent admits that the suspension of her nursing license in the State of Minnesota constitutes grounds for disciplinary action by the State of Wisconsin Board of Nursing.
4. That commencing in July, 1979 and continuing to the date hereof, respondent has successfully participated in rehabilitative programs undertaken to permit her to safely practice as a trained practical nurse.
5. That respondent has been successfully and continuously employed in nursing related areas since September 17, 1979.

FILED 2/16/81 DRR
Dept. of Reg. & Lic.
Hearing Examiner

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Dept. of Regulation & Licensing
Div. of Consumer Complaints

6. That based upon respondent's rehabilitative efforts, her license to practice as a trained practical nurse in the State of Minnesota was reinstated with conditions by the Minnesota Board of Nursing on December 11, 1980.

7. That pursuant to respondent's admission to the allegations of the complaint filed in this matter, as summarized in paragraphs 2 and 3, above, and based upon the events summarized in paragraphs 4 through 6, above, the parties agree to the adoption by the Board of Nursing of findings of fact, conclusions of law and order as attached hereto and made a part hereof.

Dated at Balsam Lake, Wisconsin this 4 day of February, 1981.

Wayne R. Austin
Wayne R. Austin, Attorney
Division of Enforcement

Mary Jo Bernacki
Mary Jo Bernacki

Subscribed and sworn to before me this 4th day of FEBR, 1981.

Gaye A. McKenzie
Notary Public
My Commission Expires 2/6/83.

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Dept. of Regulation & Licensing
Div. of Consumer Complaints

BEFORE THE
STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF THE APPLICATION :
FOR RENEWAL OF THE LICENSE OF :
 : STIPULATED FINDINGS OF
 : FACT, CONCLUSIONS OF LAW
MARY JO BERNACKI, T.P.N., : AND ORDER
RESPONDENT. :

FINDINGS OF FACT

1. That Mary Jo Bernacki, also known as Mary Jo Frost, hereinafter referred to as respondent, was licensed to practice as a trained practical nurse in Wisconsin on September 27, 1971 (license no. T11372).
2. That respondent's address is Route 1, Box 186, Balsam Lake, Wisconsin 54810.
3. That on July 1, 1972, respondent permitted her Wisconsin license to lapse.
4. That on October 6, 1980, respondent orally requested renewal of her Wisconsin license.
5. That at all times relevant to this complaint, and until March 27, 1980, respondent was licensed as a licensed practical nurse by the State of Minnesota Board of Nursing.
6. That on March 27, 1980, the Minnesota nursing board ordered that respondent's license as a practical nurse in the State of Minnesota be suspended for an indefinite time period.
7. That the basis for the Minnesota board's order was a stipulation between respondent and the Minnesota board; which stipulation is attached hereto and made a part hereof.
8. That from July 28, 1979, through September 7, 1979, respondent was hospitalized at Miller Dwan Hospital, Duluth, Minnesota, for chemical dependency treatment; and that following her inpatient treatment, respondent has continued treatment and counseling as an outpatient at the Miller Dwan Chemical Dependency Unit, Alcoholics Anonymous, and Douglas County (Wisconsin) Chemical Dependency Services.
9. That from September 17, 1979 until her voluntary termination on June 30, 1980, respondent was successfully employed as a nursing assistant at St. Francis Home, Inc., Superior, Wisconsin; and that from August 5, 1980 through the date hereof, respondent has been successfully employed as a chemical dependency technician at Saint Croix Valley Memorial Hospital.
10. That on September 1, 1980, respondent petitioned the Minnesota Board of Nursing for reinstatement of her license and that she appeared before the Minnesota board on October 2, 1980, to testify and to present evidence in favor of her petition.

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11. That in support of her petition for reinstatement, respondent submitted to the Minnesota board certain documents demonstrating rehabilitation and employment. Those documents are identified as follows:

- (a) Letter from Greg Anderson, dated August 21, 1980;
- (b) Letter from Gladys Vereecken, dated August 20, 1980;
- (c) Letter from Colleen Birt, dated August 21, 1980;
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- (e) Letter from Frank LeDuc, dated September 5, 1980;
- (f) Letter from Cheri Klein, dated August 22, 1980;
- (g) Letter from Mary Broberg, dated September 9, 1980.

Copies of the cited documents are attached hereto and made a part hereof.

12. That the Minnesota Board of Nursing acted favorably on respondent's petition for reinstatement and, on December 11, 1980, issued an order reinstating respondent's license with conditions. A copy of the Minnesota board's order setting forth the conditions imposed is attached hereto and made a part hereof.

CONCLUSIONS OF LAW

13. That the Board of Nursing has jurisdiction to take disciplinary action in this proceeding pursuant to Section 227.07(5) and Section 441.07, Wis. Stats.

14. That suspension of respondent's nursing license by the Minnesota nursing board constitutes grounds for revocation, limitation, suspension or refusal to renew respondent's license, or for reprimand by the Wisconsin Board of Nursing, pursuant to Section N 11.03(3)(d), Wis. Adm. Code, and Section 441.07, Wis. Stats.

ORDER

15. NOW, THEREFORE, IT IS ORDERED that Mary Jo Bernacki's license to practice as a trained practical nurse be, and hereby is, reinstated, provided, however, that said license shall be limited for an indefinite period of not less than one year from the date hereof. Respondent's retention of her license is conditioned upon her submitting or causing to be submitted to the Wisconsin Board of Nursing reports as listed below:

- (a) Reports every three months from respondent if she accepts employment as a trained practical nurse in a position which requires the handling of controlled substances during the time her license is in a limited status. The report shall be co-signed by respondent's nursing supervisor and shall describe her method of handling controlled substances including recording, accuracy, and accounting for medications.

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(b) Reports from respondent's Alcoholics Anonymous squad leader or sponsor every three months during the time her license is in a limited status. The reports shall address respondent's sobriety, her consistent and regular attendance at a support group including the dates on which she attended Alcoholics Anonymous meetings, an example of respondent's participation in the meeting, and the dates on which respondent and her sponsor, if the sponsor is the reporter, communicated and the method of communication (i.e., telephone, mail, or in person).

(c) Respondent shall notify the board in writing of the names and addresses of each and every employer during the time her license is in a limited status including the name of respondent's supervisor and a description of licensee's actual or anticipated duties and functions.

16. It is further ordered that respondent may submit the reports specified in paragraph 15, above, contemporaneous to the submission of any similar reports required to be submitted to the Minnesota Board of Nursing, provided that in no circumstances shall more than three months elapse before the first submittal to the Wisconsin board and no more than three months shall elapse between submittals to the Wisconsin board.

17. It is further ordered that not sooner than one year from the date hereof, respondent may apply to the Wisconsin Board of Nursing to have the limitations removed from her license. The burden of proof shall be upon respondent to demonstrate that she is capable of conducting herself in a fit and competent manner in the practice of practical nursing, is successfully participating in a program of chemical rehabilitation, and has maintained sobriety during the twelve months immediately preceding her petition. In order to sustain her burden of proof, licensee shall submit or cause to be submitted at least the reports or information indicated in paragraph 15, above.

18. It is further ordered that the Wisconsin Board of Nursing may, at any regularly scheduled meeting at which licensee has made a timely petition, take any of the following actions:

(a) Remove the limitations attached to respondent's license upon her written request together with a presentation by respondent of evidence satisfactory to the board that she is capable of conducting herself in a fit and competent manner in the practice of practical nursing, which evidence shall include at least the reports as indicated in paragraph 15, above.

(b) Amend the limitations attached to respondent's license upon her written request and upon the evidence as specified in paragraph 17, above.

(c) Continue the limitations attached upon respondent's failure to meet her burden of proof.