

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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**FILE COPY**

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
: FINAL DECISION AND ORDER  
JANICE E. QUALE, L.P.N., :  
RESPONDENT :

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The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Janice E. Quale  
617 South Whitewater  
Jefferson, WI 53549

Board of Nursing  
P.O. Box 8935  
Madison, WI 53708-8935

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

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. 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. Janice E. Quale, L.P.N. (D.O.B. 08/19/37) is duly licensed as a practical nurse in the state of Wisconsin (license # 3143). This license was first granted on September 11, 1959.
2. Ms. Quale's most recent address on file with the Wisconsin Board of Nursing is 617 South Whitewater, Jefferson, WI 53549.
3. At all times relevant to this action, Ms. Quale was working as a licensed practice nurse at Wellbourne Hall, 1301 East Main Street, Watertown, Wisconsin.
4. On or about March 24, 1989, Ms. Quale diverted for her personal use thirty (30) tablets of tylenol #3 (acetaminophen with codeine) from patient supplies at Wellbourne Hall.

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### CONCLUSIONS OF LAW

By the conduct described above, Janice E. Quale is subject to disciplinary action against her license to practice as a practical nurse in the state of Wisconsin, pursuant to Wis. Stats. sec. 441.07(1)(c) and (d), and Wis. Adm. Code secs. N7.03(2) and 7.04(1),(2), (12) and (15).

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Janice E. Quale shall be SUSPENDED for a indefinite period of time.

(a) Upon demonstration by Ms. Quale that she has participated in a chemical dependency assessment which indicates that Ms. Quale can safely return to nursing practice, the SUSPENSION shall be STAYED for a period of three (3) months, conditioned upon compliance with the conditions and limitations outlined in paragraph (b), below.

i. Janice E. Quale may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed upon Ms. Quale's practice during the prior three (3) month period.

ii. If the Board denies the petition by Ms. Quale for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

iii. Upon a showing by Respondent of successful compliance for a period of two (2) years with the terms of paragraph (b), below, the Board shall grant a petition by Ms. Quale for return of full licensure.

iv. The Board may, at its discretion, reduce the two year compliance period in consideration of participation by Ms. Quale in a program of treatment beginning prior to her request for relicensure.

#### (b) CONDITIONS OF STAY

i. Ms. Quale must successfully complete an assessment for chemical dependency at a health care facility acceptable to the Board. The facility shall submit a written report of its findings to the Board, including: a diagnosis of Ms. Quale's condition; recommendations (if any) for treatment; an evaluation of Ms. Quale's level of cooperation in the assessment process; work restriction recommendations (if any); and Ms. Quale's prognosis. Ms. Quale shall provide the assessor with a copy of this order prior to the assessment process.

If the assessment reveals a need for treatment, Ms. Quale must enter and remain in a program acceptable to the Board for the treatment of alcohol and chemical dependency. As a part of treatment, Ms. Quale must attend therapy on a schedule as recommended by her therapist; the Board, however, may require a minimum attendance in addition to the recommendation of the therapist.

If the assessment reveals treatment is not required, Ms. Quale shall not be required to participate in treatment. The following conditions, however, shall apply whether or not treatment is recommended:

ii. Upon request of the Board, Ms. Quale shall provide the Board with current releases complying with state and federal laws, authorizing release of counseling, treatment and monitoring records, and employment records.

iii. Ms. Quale shall remain free of alcohol, prescription drugs and controlled substances not prescribed for valid medical purposes during the period of limitation.

iv. Ms. Quale must participate in a program of random witnessed monitoring for controlled substances and alcohol in her blood and/or urine on a frequency of not less than four (4) times per month. If the physician or therapist supervising her plan of care or her employer deems that additional blood or urine screens are warranted, Ms. Quale shall submit to such additional screens.

Ms. Quale shall be responsible for obtaining a monitoring facility and reporting system acceptable to the Board, as well as for all costs incurred in conjunction with the monitoring and reporting required.

To be an acceptable program, the monitoring facility shall agree to provide random and witnessed gatherings of specimens for evaluation. It shall further agree to file an immediate report directly with the Board of Nursing upon such failures to participate as: if Ms. Quale fails to appear upon request; or if a drug or alcohol screen proves positive; or if Ms. Quale refuses to give a specimen for analysis upon a request authorized under the terms of this Order.

v. Ms. Quale shall refrain from the handling of controlled substances in her work setting until such time as the handling of such medications is approved by her therapist (if applicable) and employer.

vi. Ms. Quale shall arrange for quarterly reports to the Board of Nursing from her employer evaluating her work performance; from the monitoring facility providing the dates and results of the screenings performed; and from the counselor evaluating Ms. Quale's attendance and progress in therapy as well as evaluating her level of participation at NA/AA meetings.

vii. Ms. Quale shall report to the Board any change in employment status, change of residence address or phone number, within five (5) days of any such change.

(c) Ms. Quale may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions.

(d) Violation of any of the terms of this Order may result in a summary suspension of Ms. Quale's license; the denial of an extension of the stay of

suspension; the imposition of additional conditions and limitations; or the imposition of other additional discipline.

e. This Order shall become effective upon the date of its signing.

BOARD OF NURSING

By:     *Jacqueline J. Asrud*      
A Member of the Board (r)

    3-12-90      
Date

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
JANICE E. QUALE, L.P.N.,	:	
RESPONDENT.	:	

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It is hereby stipulated between Janice E. Quale, personally on her own behalf and Steven M. Gloe, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into in resolution of the above-captioned proceedings against Ms. Quale's licensure by the Division of Enforcement. This stipulation and Final Decision and Order shall be presented directly to the Board of Nursing as the final decision-maker in this case.

2. Ms. Quale understands that by the signing of 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 clear, satisfactory and convincing 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, and the Wisconsin Administrative Code.

3. Ms. Quale agrees to the adoption of the attached Final Decision and Order by the Board of Nursing.

4. 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.

5. If the Board accepts the terms of this Stipulation, 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.

6. The parties to this stipulation agree that the attorney for the Division of Enforcement may appear before the Board of Nursing for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

7. Attached to this Stipulation is the current licensure card of Ms. Quale. If the Board accepts the Stipulation, Ms. Quale's license shall be reissued in accordance with the terms of the attached Final Decision and Order. If the Board does not accept this Stipulation, the license of Ms. Quale shall be returned to her with a notice of the Board's decision not to accept the Stipulation.

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

Janice E. Quale  
Janice E. Quale, L.P.N.

2/2/90  
Date

Steven M. Gloe  
Steven M. Gloe, Attorney  
Division of Enforcement

2/12/90  
Date



## 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 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 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: State of Wisconsin Board of Nursing.

The date of mailing of this decision is March 14, 1990.

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**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 as possible 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.