

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

FILE COPY

IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST

ETHELYN M. BROWN, L.P.N.,  
RESPONDENT

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FINAL DECISION AND ORDER  
90 NUR 143  
90 NUR 18  
88 NUR 136

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

Ethelyn M. Brown  
c/o Ken Rottier  
200 E. Wisconsin  
Seymour, WI 54165

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. Respondent Ethelyn M. Brown (D.O.B. 04/19/44) is a licensed practical nurse licensed in the State of Wisconsin pursuant to license # 5295, having been so licensed since May 22, 1964.

2. Respondent's latest address on file with the Department of Regulation and Licensing is 1756 West Lake Drive, Shawano, WI 54166 and her latest address on file with the Brown County Probation Office is 134 1/2 E. Main Apt. D, Little Chute, WI 54140.

3. Since approximately 1973, Respondent has been treated for mental health problems and has suffered from problems of prescription drugs dependency.

4. By its Final Decision and Order (# 82 NUR 42) dated January 19, 1984,

the Wisconsin Board of Nursing, upon Respondent's stipulation, reprimanded her at a time when she was licensed as a trained practical nurse for violation of sec. N 11.03(3)(b), Wis. Adm. Code, in that she obtained a drug in a manner prohibited by law.

5. On or about November 12 and 13, 1989, while in the employ of Cottonwood Center ("Cottonwood"), Green Bay, WI, Respondent stole quantities of Tylenol #3 intended for patient use.

6. In criminal matter based on the facts set forth in par. 5 above, before the Brown County Circuit Court, Respondent was found guilty on her plea of no contest to the felony charge of obtaining a controlled substance by subterfuge, in violation of sec. 161.43(1)(a), Wis. Stats, was convicted as found guilty, and was placed on probation for 3 years.

7. During treatment received from DePaul Hospital, Inc. between February and June, 1990, Respondent screened positive for chemical substances, and at the time of her discharge from treatment was classified as "not improved."

#### CONCLUSIONS OF LAW

By the conduct described above, Ethelyn M. Brown is subject to disciplinary action against her license to practice as a licensed practical nurse in the State of Wisconsin, pursuant to Wis. Stats. sec. 441.07(1)(c) and (d).

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Ethelyn M. Brown shall be SUSPENDED for a period of not less than two (2) years.

IT IS FURTHER ORDERED that 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. Ethelyn M. Brown 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. Brown's practice during the prior three (3) month period.

ii. If the Board denies a petition by Ms. Brown 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 Ms. Brown 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. Brown for return of full licensure.

iv. In consideration of Ms. Brown's regime of treatment set forth above, the Board reduces the two (2) year compliance period by 0 months.

#### (b) CONDITIONS OF STAY

i. Ms. Brown must continue successful participation in a program for the treatment of chemical dependency at a health care facility acceptable to the

Board. As a part of treatment, Ms. Brown must attend therapy on a schedule as recommended by her therapist; attendance, however, shall be required at least four (4) times per month. In addition, Ms. Brown must attend Alcoholics or Narcotics Anonymous at least one (1) time per week.

ii. Ms. Brown will undergo counseling or other treatment for the care of any mental health problems as recommended by her health care providers.

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

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

v. Ms. Brown 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. Brown shall submit to such additional screens.

Ms. Brown 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. The facility must agree to maintain a custody record of all specimens, and to confirm positive test results with gas chromatography or mass spectrometry. It shall further agree to file an immediate report directly with the Board of Nursing upon such failures to participate as: if Ms. Brown fails to appear upon request; or if a drug or alcohol screen proves positive; or if Ms. Brown refuses to give a specimen for analysis upon a request authorized under the terms of this Order.

vi. Ms. Brown shall refrain from access to or the administration of controlled substances in her work setting until such time as access or administration is approved by the Board.

vii. Ms. Brown 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 her therapist or other health care provider evaluating Ms. Brown's attendance and progress in therapy, as well as evaluating her level of participation at NA/AA meetings.

viii. Ms. Brown 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. Brown 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. Brown'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

Jaqueline Johnson, RN/CP  
A Member of the Board

Date

June 28, 1991

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
	:	90 NUR 143
ETHELYN M. BROWN, L.P.N.,	:	90 NUR 18
RESPONDENT	:	88 NUR 136
	:	

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It is hereby stipulated between Ethelyn M. Brown ("Respondent"), personally on her own behalf and the Department of Regulation and Licensing, Division of Enforcement, by its attorney Richard M. Castelnuovo, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary action against Respondent by the Division of Enforcement. Respondent consents to the resolution of this action without further proceedings by submission to this Stipulation directly to the Board of Nursing.

2. Respondent is aware and understands her rights with respect to disciplinary proceedings, including the right to a statement of the allegations against her; the right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel attendance of witnesses 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. Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

4. Respondent is aware of her right to seek legal representation and has obtained legal advice prior to execution of this Stipulation.

5. With respect to the attached Final Decision and Order, Respondent does not contest this matter, and agrees that the Board may find the facts set forth in the Findings of Fact, reach the conclusions set forth in the Conclusions of Law and enter the Order suspending her license and staying the suspension with limitations. Respondent specifically agrees that the Board in their discretion may credit her for treatment received and may complete the Final Decision and Order accordingly.

6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of

Enforcement for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. 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.

8. Attached to this Stipulation is the current licensure card of Respondent Ethelyn M. Brown. If the Board accepts the Stipulation, Respondent'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 Respondent's license shall be returned to him with a notice of the Board's decision not to accept the Stipulation.

9. 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.

10. Also attached to this Stipulation are copies of Respondent's health care records for review by the Board in conjunction with their consideration of the attached Final Decision and Order.


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

Ethelyn M. Brown  
Ethelyn M. Brown, L.P.N.

5/20/91  
Date

Richard M. Castelnovo  
Richard M. Castelnovo, Attorney  
Division of Enforcement

June 12, 1991  
Date

		<b>State of Wisconsin</b> DEPARTMENT OF REGULATION AND LICENSING COMMITTED TO EQUAL OPPORTUNITY IN EMPLOYMENT AND LICENSING	
		Activity <b>LICENSED PRACTICAL NURSE</b>	
No	<b>5295</b>	Expires	<b>04/30/93</b>
<b>ETHELYN M BROWN</b> <b>134 1/2 E MAIN ST</b> <b>LITTLE CHUTE WI 54140</b>			
The person whose name appears on this document has complied with the provisions of the Wisconsin Statutes and is hereby authorized to engage in the practice indicated			

## **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 July 9, 1991.**



**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 employee 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) 1. 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. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. 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.

3. 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) A copy 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 each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(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 affirmation, 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.