

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

CHERYL ANN MCKUNE, L.P.N.,
RESPONDENT.

:
:
:
:
:

FINAL DECISION
AND ORDER
LS9203112NUR

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 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 26 day of June 26, 1992.

Jacqueline Johnson MS

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	LS 9203112 NUR
CHERYL ANN MCKUNE, L.P.N.,	:	
RESPONDENT.	:	

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

Cheryl Ann McKune
511 5th Street
Prairie du Sac WI 53578

Wisconsin Board of Nursing
Department of Regulation and Licensing
P.O. Box 8935
Madison WI 53708

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

A hearing was held in this matter on May 13, 1992. There was no appearance by or on behalf of Ms. McKune, and no answer was filed by or on her behalf. The Division of Enforcement appeared by its counsel, Steven M. Gloe.

On Ms. McKune's failure to file an answer or to appear at the hearing, service of the notice of hearing and complaint having previously been made upon her, the Division moved for a judgment of default pursuant to s. RL 2.14, Wis. Admin. Code. Pursuant to the terms of s. RL 2.14, Wis. Admin. Code, Ms. McKune's failure to answer the complaint or to appear at the hearing permits the Board to make findings and enter an Order on the basis of the complaint.

On the basis of the entire record of this proceeding, the Administrative Law Judge recommends that the Board of Nursing adopt the following Findings of Fact, Conclusions of Law, Order and Opinion as its Final Decision in this matter.

FINDINGS OF FACT

1. Cheryl Ann McKune is duly licensed as a practical nurse in the state of Wisconsin, and has been since September 11, 1986.

2. Ms. McKune's most recent address known to the Department of Regulation and Licensing and the Board of Nursing is 511 5th Street, Prairie du Sac, Wisconsin 53578.

3. On September 6, 1991, the Wisconsin Board of Nursing took disciplinary action against Ms. McKune's license to practice as a practical nurse in the state of Wisconsin. Among other details, the Board's Order of that date required Ms. McKune to provide documentation to the Board from a mental health care provider acceptable to the Board that she had undergone a current assessment demonstrating that she could safely practice nursing, and that the person performing the assessment had been provided with a copy of the Board's Order of September 6, 1991. Ms. McKune was to provide documentation of the assessment to the Board on or before October 6, 1991.

4. Ms. McKune had not complied with that term of the September 6, 1991, Order, by March 11, 1992.

5. On August 5, 1991, September 23, 1991, and September 30, 1991, Ms. McKune was charged with the misdemeanor crime of disorderly conduct. On each occasion, the disorderly conduct alleged involved her spouse, who was also charged in the second and third incidents. The evidence in this proceeding tends to show that Ms. McKune has not been convicted of any offense arising out of the conduct alleged in the complaints, and that the responsible authorities may indeed dismiss the complaints entirely.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to s. 441.07(1), Stats.

2. By failing to comply with the terms of the Board's Order of September 6, 1991, to provide the Board with documentation by October 6, 1991, from a mental health care provider acceptable to the Board that she had undergone a current assessment demonstrating that she could safely practice nursing, Ms. McKune violated s. 441.07(1)(d), Stats., and s. N 7.04(14), Wis. Admin. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license previously granted to Cheryl Ann McKune to practice as a practical nurse is REVOKED for a minimum of one year, pursuant to s. 441.07(2), Stats.

It is further ORDERED that any petition for re-licensure by Ms. McKune must be accompanied by a psychological evaluation performed by a licensed mental health care provider acceptable to the Board demonstrating that Ms. McKune can safely practice nursing.

OPINION

By failing to file an answer or appear at the hearing in this matter, Ms. McKune permits the Board to make findings and enter an order on the basis of the complaint and other evidence. On the basis of the complaint and the single exhibit offered at the hearing, it is indisputable that Ms. McKune did not comply with the terms of the September 6, 1991, Order of the Board.

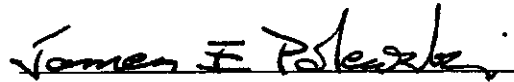
The exhibit, a letter from Frank Wenc, ACSW, Director of Clinic Services for Pathway Center of Prairie du Sac, indicates that Ms. McKune is not entirely to blame for the failure to timely file the current assessment by a mental health care professional, but it is unclear at what point Mr. Wenc himself is to blame for the delay. The letter continues, and is in fact an assessment of Ms. McKune's emotional and psychological condition, dated April 20, 1992. The evaluation presented is that Ms. McKune has had a very difficult life, is currently experiencing a number of emotional and psychological problems which Mr. Wenc traces to previous and on-going difficulties, and that he does not believe that Ms. McKune should practice in any health related field until she has had a chance to benefit from counseling and a respite from the underlying causes of her condition.

The criminal complaints which were attached to the complaint in this proceeding, and portions of the assessment by Mr. Wenc, provide some information which may be useful in understanding some of the stresses to which Ms. McKune has been subjected. The criminal complaints are not, however, evidence of any violation of the Board rules, since they are no more than allegations of conduct, and the Board rules require a certified copy of a judgment of conviction as prima facie evidence of a violation of s. N7.04(1), Wis. Admin. Code. There is no evidence that Ms. McKune has been convicted of any of the offenses alleged, but not proven, by the criminal complaints. There is evidence, in the assessment by Mr. Wenc, that Ms. McKune is in a deferred prosecution program which would indicate that she may never be prosecuted for the alleged offenses. There is no basis to find that Ms. McKune has violated s. N7.04(1), Wis. Admin. Code, and it is multiplicitous to base a finding of violation of s. N7.04(15), Wis. Admin. Code, on the finding of a violation of s. N7.04(14), Wis. Admin. Code.

Nonetheless, it is clear that Ms. McKune did not comply with a Board Order founded on a lively concern for her ability to function as a practical nurse with safety to the patients with whom she came in contact. The assessment of her condition prepared by Mr. Wenc, and offered in evidence by the Division, provides further grounds for continued concern, and a suggestion by a professional counselor that it would be best if Ms. McKune did not return to the practice of nursing for some time. It is apparent from the tenor of the assessment that the suggestion is based both on concern for Ms. McKune's well-being and the well-being of patients with whom she would come in contact. The assessment is as clearly directed at the goals of rehabilitation of Ms. McKune and the protection of the public as one could wish. There being no other evidence presented in this matter, it is appropriate to use this assessment as a basis, together with the previous disciplinary action, for the findings and Order in this proceeding.

I do not believe that it is appropriate to assess the costs of this proceeding against Ms. McKune, given that it is readily apparent that this violation of a Board Order was not an intentional flouting of the Board's authority but rather the result of conditions beyond Ms. McKune's control.

Dated this ¹⁵~~14~~th day of May, 1992.



James E. Polewski
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)**

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 1, 1992.