

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

LEE ANN S. WAGNER, R.N.,
RESPONDENT.

:
:
:
:
:

FINAL DECISION
AND ORDER
92 NUR 073

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

Lee Ann S. Wagner, R.N.
1637 Charles Street
La Crosse, WI 54603

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. Lee Ann S. Wagner (DOB 8/17/57), has been duly licensed in the State of Wisconsin as a registered nurse (license #030 0075576). This license was first granted on April 11, 1980.

2. Ms. Wagner's latest address on file with the Department of Regulation and Licensing is 1637 Charles Street, La Crosse, Wisconsin 54603.

3. On September 6, 1991 in case 90 NUR 104 and 91 NUR 100, a Final Decision and Order was entered by the Board of Nursing, which required, among other things, as follows:

- v. Ms. Wagner 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 2 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. Wagner shall submit to such additional screens. ...

4. As of April 30, 1992 Ms. Wagner had not submitted evidence to the Board of having complied in any respect with paragraph (b)v of the conditions of stay set forth in the order of the Board of September 6, 1991, requiring that the Respondent participate in a program of random witnessed monitoring of her blood or urine for controlled substances and alcohol on a frequency of not less than twice per month.

5. As a result of the failure of Ms. Wagner to comply with the order of the Board the stay of suspension of the license of Ms. Wagner was terminated and her license was suspended effective May 12, 1992.

6. The Final Decision and Order of the Board dated September 6, 1991 was duly served Upon Ms. Wagner, and she has complied with other provisions of that order.

CONCLUSIONS OF LAW

By the conduct described above, Lee Ann S. Wagner is subject to disciplinary action against her license to practice as a registered nurse in the State of Wisconsin, pursuant to Wis. Stats. sec. 441.07(1)(d) and N 7.04(15).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the license of Lee Ann S. Wagner shall be suspended for a period of not less than 2 years.

IT IS FURTHER ORDERED, that upon Ms. Wagner providing to the Board evidence of successful completion of at least 60 days following the date of this order of a program of random witnessed monitoring for controlled substances and alcohol in her blood and/or urine on a frequency of not less than 4 times per month at an approved monitoring facility, then the suspension shall be stayed for a period of 3 months in accordance with the procedures outlined in paragraph (a), conditioned upon compliance with the conditions and limitations outlined in paragraph (b).

(a) PROCEDURES FOR STAY

- i. Ms. Wagner may apply for consecutive 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. Wagner's practice during the prior 3-month period.
- ii. If the Board denies a petition by Ms. Wagner 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. Wagner of successful compliance for a period of 2 years with the terms of paragraph (b), the Board shall grant a petition by Ms. Wagner for return of full licensure.

(b) CONDITIONS OF STAY

- i. Ms. Wagner must continue successful participation in a program for the treatment of her eating and related disorders at a health care facility acceptable to the Board. As a part of treatment, Ms. Wagner must attend therapy on a schedule as recommended by her therapist, and must take any medications prescribed for management of her condition.
- ii. Ms. Wagner must participate in a program for the treatment of chemical dependency and attend Alcoholics or Narcotics Anonymous only, as recommended by her therapist or other health care provider.
- iii. Upon request of the Board, Ms. Wagner 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. Wagner shall remain free of alcohol, prescription drugs, and controlled substances not prescribed for valid medical purposes.
- v. Upon her return to nursing practice, Ms. Wagner 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 2 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. Wagner shall submit to such additional screens.

Ms. Wagner 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: failure to appear upon request, positive drug or alcohol screen, refusal to give a specimen for analysis upon a request authorized under the terms of this order. Ms. Wagner understands and agrees that the accuracy of the monitoring obtained is her responsibility. For the purpose of further actions affecting Ms. Wagner's license, it shall be presumed that all confirmed positive reports are valid. Ms. Wagner shall have the burden of proof to establish an error in testing or fault in the chain of custody regarding a positive monitoring report.

v. Ms. Wagner shall provide her employer and any prospective employer with a copy of this Final Decision and Order, and any Order granting an extension of stay under this Order immediately upon

issuance of this Order, and upon any change of employment. In addition Ms. Wagner shall immediately provide her employer with a copy of any denial of an extension of stay under this Order.

- vi. Ms. Wagner 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 counselor evaluating Ms. Wagner's attendance and progress in therapy as well as an evaluation of her level of participation at NA/AA meetings.
- vii. Ms. Wagner shall report to the Board any change in employment status, change of residence address or phone number, within 5 days of any such change.

6 Ms. Wagner may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions. Denial in whole or in part of a petition under this sub-paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. sec. 227.01(3) and 227.42.

Violation of any of the terms of this Order shall be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Ms. Wagner's license; the Board in its discretion may in the alternative deny an extension of the stay of suspension or impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order.

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

BOARD OF NURSING

By: Jacqueline Johnson RN MS 8/28/92
A Member of the Board Date

JH:kcb
ATY-2093

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

LEE ANN S. WAGNER, R.N.,
RESPONDENT.

STIPULATION
92 NUR 073

It is hereby stipulated between Lee Ann S. Wagner, the Respondent, personally on her own behalf, and by her attorney, David Blackey, and James W. Harris, attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a suspension of Respondent's license by the Board of Nursing and subsequent investigation by the Division of Enforcement. Respondent consents to the resolution of this action without a formal hearing.
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 been provided the opportunity to obtain legal advice prior to the execution of this Stipulation.
5. With respect to the attached Final Decision and Order, Respondent admits the facts set forth in the Findings of Fact, and further agrees that the Board may reach the conclusions set forth in the Conclusions of Law and enter the Order suspending her license and staying the suspension with limitations.
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 the Respondent, Lee Ann S. Wagner. If the Board accepts the Stipulation the 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 her 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 the consideration of the attached Final decision and Order.

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

7-8-92
Date

Lee Ann S. Wagner, RN
Lee Ann S. Wagner, R.N.

July 14, 1992
Date

David Blackey
David Blackey
Attorney for Respondent

August 6, 1992
Date

James W. Harris
James W. Harris, Attorney
Division of Enforcement

JWH:kcb
ATY-2094

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 September, 3 1992.


STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE PETITION FOR	:	
AN EXTENSION OF STAY OF SUSPENSION OF	:	PROPOSED ORDER
LEE ANN S. WAGNER,	:	Case No. LS-9206041-NUR
APPLICANT.	:	(92 NUR 073)

Attorney Harris has informed the undersigned administrative law judge that he and Ms. Wagner's attorney, David Blackey, have reached a stipulated agreement to resolve this matter without a hearing, and that Mr. Blackey withdraws Ms. Wagner's request for a hearing.

IT IS THEREFORE ORDERED that the hearing scheduled for July 1, 1992 be cancelled and this case be dismissed. However, if the stipulation is not accepted by the Board and this order is not signed as a final order by the Board, the matter will be rescheduled for hearing.

Dated June 25, 1992.



John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing
Madison, WI 53708-8935

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FINAL ORDER

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The Board of Nursing has reviewed this Proposed Order and approves it as a Final Order.

Dated August 28, 1992.



For the Board of Nursing

cc: Attorney David Blackey
King on Fifth Street
P.O. Box 966
La Crosse, WI 54602

Attorney James Harris
Department of Regulation & Licensing
Division of Enforcement
Madison, WI 53708-8935