

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

NORA L. LEE, R.N.,
RESPONDENT.

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FINAL DECISION
AND ORDER
LS9304191NUR

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 Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

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 10 day of September, 1993.

Jaqueline Johnson RN MS

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

NORA L. LEE, R.N.,
RESPONDENT.

PROPOSED DECISION

(Case No. LS9304191NUR)

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

Nora L. Lee
Route 1
P O. Box 89
Brownsville, MN 55919

Board of Nursing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

A hearing was held in the above-captioned matter on June 30, 1993. The complainant appeared by attorney, Steven M. Gloe, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. The respondent, Nora L. Lee, did not appear nor was anyone present to represent her.

Based upon the record herein, the administrative law judge recommends that the Board of Nursing adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Nora L. Lee, R.N. (D.O.B. 2/10/66; hereinafter referred to as "respondent") is duly licensed as a registered nurse in the state of Wisconsin pursuant to license #97066. This license was first granted on September 4, 1987.

2. Respondent's most recent known address is Route 1, P.O. Box 89, Brownsville, Minnesota 55919

3. At all times relevant to this proceeding, respondent was working as a registered nurse for Hillview Health Care Center, 3501 Park Lane Drive, La Crosse, Wisconsin.

4. Beginning at least on or about April 2, 1992 and continuing on through April 9, 1992, respondent diverted quantities of controlled substances from the patient supplies of her employer.

5. Respondent failed to accurately chart administration of controlled substances to patient's assigned to her care during the time period referred to in paragraph 4, above

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this proceeding pursuant to Sec. 441.07, Stats.

2. The respondent is in default in this proceeding due to her failure to file an Answer to the Complaint or appear at the hearing. Accordingly, the Board of Nursing may make findings and enter an order on the basis of the Complaint and other evidence, pursuant to Sec. RL 2.14, Wis. Adm. Code.

3. By her diversion of controlled substances and failure to accurately maintain medication charting for patients assigned to her care, respondent is subject to disciplinary action against her license, pursuant to Sec. 441.07(1), Stats., and Secs. N 7.03 and N 7.04, Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Nora L. Lee, R.N., to practice as a registered nurse in the state of Wisconsin shall be, and hereby is, revoked, effective the date of the Final Decision and Order of the Board of Nursing.

FURTHERMORE, IT IS ORDERED that the assessable costs of this proceeding be imposed against Nora L. Lee, R.N., pursuant to Sec. 440.22, Stats.

OPINION

The respondent, Nora L. Lee, was charged with diverting controlled substances from the patient supplies of her employer and failing to accurately chart the administration of controlled substances to patients under her care. She did not file a written Answer to these allegations nor appear at the evidentiary hearing, although she had received a copy of the Complaint and notice of the hearing. (Exhibit 1). Accordingly, complainant's attorney requested that respondent be found in default under Sec. RL 2.14, Wis. Adm. Code. This request was granted upon the submission of evidence supporting the allegations within the Complaint.

Steven A. Rohland testified regarding the results of his investigation on behalf of the department in this case. Simply stated, an audit conducted by respondent's employer discovered shortages of various controlled substances in the facility, during times when only respondent had access to those supplies. Missing during the time period concerned--April 2, 1992 through April 9, 1992--were units of Tylenol #3, Darvon and Darvocet. Also, there appears to have been instances of discrepancies in the charting of patient medications by respondent during this time period.

Given respondent's failure to file an Answer or appear at the hearing, the allegations within the Complaint are accepted as true. Accordingly, it is found that respondent both diverted controlled substances and failed to accurately chart the administration of medications to patients.

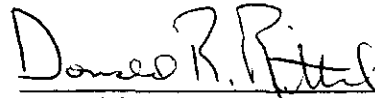
The primary issue here is the appropriate discipline, if any, to be imposed against respondent's license to practice as a registered nurse. In this regard, it must be recognized that the interrelated purposes for applying disciplinary measures are: 1) to promote the rehabilitation of the licensee, 2) to protect the public, and 3) to deter other licensees from engaging in similar misconduct. State v. Aldrich, 71 Wis.2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. State v. MacIntyre, 41 Wis.2d 481, 485 (1969).

The failure of respondent to acknowledge this proceeding through either a written response or participation in the hearing results in the record being barren of any mitigating circumstances such as might justify a discipline other than revocation. The presence of either a defense to the allegations or extenuating circumstances may not be presumed. Nor is the seriousness of diverting controlled substances and inaccurate charting of medications administered to patients diminished by respondent's absence.

Under these circumstances, a revocation is necessary in order to assure that the above-cited disciplinary purposes will be fulfilled to the extent possible. The effect of the revocation will also permit respondent to apply for reinstatement of her license after one year. See, Sec. 441.07(2), Stats.

Dated: July 6, 1993.

Respectfully submitted,



Donald R. Rittel
Administrative Law Judge

BDLS2-3353

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 13, 1993.

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

NORA L. LEE, R.N.,
RESPONDENT.

AFFIDAVIT OF COSTS
OFFICE OF BOARD LEGAL SERVICES
(Case No. LS9304191NUR)

STATE OF WISCONSIN)
COUNTY OF DANE) ss.

Donald R. Rittel, being first duly sworn on oath, deposes and says that

1. Your affiant is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.

2. In the course of his employment, your affiant was assigned as the administrative law judge in the above-captioned matter:

3. Set out below are the actual costs of proceeding for the Office of Board Legal Services in this matter:

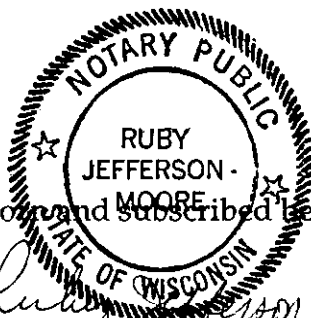
<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME</u>
6/30/93	Conducted Hearing	15 min.
6/30/93	Draft Proposed Decision	2 hr.
7/1/93	Draft Proposed Decision	30 min.
TOTAL TIME:		2 hr. 45 min.

Administrative Law Judge cost: 2.75 hr @ \$40.50: \$111.37

Court reporter cost: (None)

TOTAL ASSESSABLE COSTS, OFFICE OF BOARD LEGAL SERVICES: \$111.37

Sworn and subscribed before me this 14th day of September, 1993.


Notary Public
My Commission is Permanent.


Donald R. Rittel

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

NORA L. LEE, R.N.,
RESPONDENT.

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AFFIDAVIT IN SUPPORT
OF MOTION FOR COSTS

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Steven M. Gloe, being duly sworn, deposes and states as follows:

1. That he is an attorney licensed in the state of Wisconsin and is employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement:
2. That in the course of those duties he was assigned as a prosecutor in the above captioned matter; and
3. That set out below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

PROSECUTING ATTORNEY EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
03/29/93	Review investigative file and draft documents	1 hour
04/02/93	Review correspondence; telephone conversation	30 min.
04/19/93	Correspondence	15 min.
06/02/93	Draft correspondence and subpoenas	30 min.
06/30/93	Hearing preparation and presentation	1 hour
TOTAL HOURS		<u>3 hours 15 min.</u>

Total attorney expense for
3 hours and 15 minutes at \$30.00 per hour
(based upon average salary and benefits
for Division of Enforcement attorneys) equals:

\$ 97.50

Lee Affidavit of Costs
Page 2 of 2

INVESTIGATOR EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
06/17/92	Initial review	10 min.
07/09/92	Phone call; letter	15 min.
08/20/92	Phone call	10 min
09/15/92	Review materials received; letter	35 min.
10/07/92	Interview of Respondent in MN; travel time	8 hours
10/09/92	Draft memorandum	30 min.
10/10/92	Phone call; memo	30 min.
11/30/92	Letter	25 min.
01/04/93	Case conference; letter	25 min.
02/11/93	Phone call; memo	20 min.
03/25/93	Prepare case summary	40 min.

TOTAL HOURS

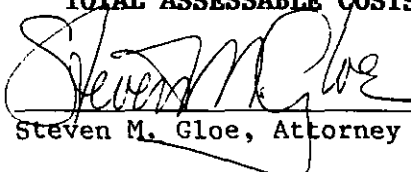
12 hours 0 min.

Total investigator expense for
12 hours and 00 minutes at \$18.00 per hour
(based upon average salary and benefits
for Division of Enforcement investigators) equals:

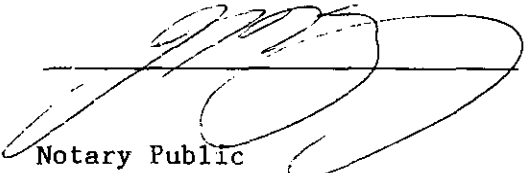
\$ 216.00

TOTAL ASSESSABLE COSTS

\$ 313.50


Steven M. Gloe, Attorney

Subscribed and sworn to before me this 16 day of September, 1993.


Notary Public
My commission is permanent.