

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

PETER DAVID DUNCAN, L.P.N.,  
RESPONDENT.

FINAL DECISION  
AND ORDER  
LS9305271NUR

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 department 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.

*Jacqueline Johnson RN M.*

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
PETER DAVID DUNCAN, L.P.N.,	:	LS 9305271 NUR
RESPONDENT.	:	

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

Peter David Duncan  
197 W. Lafayette  
Fayetteville AR 72701

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

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

A hearing was held in this matter on August 3, 1993, at 1400 East Washington Avenue, Madison, Wisconsin. The Complainant Division of Enforcement was represented by Attorney James W. Harris. There was no appearance by or for the Respondent, Peter Duncan, nor was any answer filed on Respondent's behalf. Mr. Harris noted that there had been neither an answer nor an appearance entered for or by Mr. Duncan, and moved for a finding that Mr. Duncan was in default, pursuant to s. RL 2.14, Wis. Admin. Code. The motion was granted.

Mr. Harris presented documents and testimony to prove the allegations of the complaint. On the basis of the entire record, the Administrative Law Judge recommends that the Board of Nursing adopt the following Findings of Fact, Conclusions of Law and Order as its Final Decision in this matter.

FINDINGS OF FACT

1. The respondent is Peter David Duncan (D.O.B. 1/16/63) and is licensed as a licensed practical nurse in the State of Wisconsin, license # 30880. Respondent's most recent address on

file with the Department of Regulation and Licensing is 197 W. LaFayette, Fayetteville AR 72701. However, Respondent has used the following addresses during times relevant to this action: 2407 N. Springdale Road # 5B, Waukesha, WI 53188 and W271 N7590 Oakwood Court, Hartland, WI 53029. Respondent may be in the State of California, and has left the State of Wisconsin in circumstances which support the conclusion that he fled the state to avoid criminal prosecution.

2. Demerol, Meperidine and Morphine are controlled substances listed in Wis. Stats. sec. 161.14(3) and 161.16(3).

3. While employed at St. Mary's Hospital, Milwaukee, Wisconsin as a licensed practical nurse, Respondent engaged in the following conduct:

a) on 6/6/92 Respondent signed out 600 mg of Demerol to patient RN, diverting at least 400 mg. of the medication for his own use;

b) on 6/6/92 Respondent signed out 100 mg of Demerol to patient DH (who had been discharged from the hospital the previous day), which Respondent diverted for his own use.

4. While employed at Waukesha Memorial Hospital, Waukesha, Wisconsin as a licensed practical nurse, Respondent engaged in the following conduct:

a) on 10/12/92 and 10/13/92 Respondent obtained Morphine 15 mg injectable tubules for his own use by entering a false order on the record of patient DP, and entering a false nurse's signature;

b) on 11/20/92 and 11/21/92 Respondent obtained injectable Demerol for his own use by entering a false order on the record of patient EH, and entering a false nurse's signature;

c) on 11/25/92 Respondent obtained Meperidine, 100 mg injectable tubules by entering a false order on the record of patient AN, and entering a false nurse's signature.

5. When confronted by supervisory staff of St. Mary's Hospital, Respondent admitted that he had diverted Demerol for his own use by making false entries on patient charts.

6. When confronted by a police officer for the City of Waukesha regarding irregularities in medication records at Waukesha Memorial Hospital, Respondent admitted forging the signature of a nurse to obtain controlled substances for his own use. Respondent was interviewed by the Waukesha police officer at a treatment facility specializing in alcohol and other drug abuse conditions, and agreed to present himself at the Waukesha Police Department for initial processing of a criminal arrest when released from the treatment facility. Respondent failed to present himself as agreed, but left the treatment facility and the state of Wisconsin.

### CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to s. 441.07(1).
2. By diverting controlled substances from hospital supplies for his own use, and by making false entries in patient charts and in hospital pharmaceutical supply records, Respondent has violated s. 441.07(1)(b), (c), and (d), Stats., and ss. N 7.03(1)(a) and N7.04(1), (2), and (6).

### ORDER

NOW, THEREFORE, IT IS ORDERED that the license previously issued to Peter David Duncan to practice as a licensed practical nurse be and hereby is REVOKED.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be assessed against Respondent, pursuant to s. 440.22, Stats.

### OPINION

The Division of Enforcement attempted to locate Mr. Duncan in time for him to participate in this hearing; Mr. Duncan has taken steps to make that task difficult, and the Division has done more than the Wisconsin Administrative Code requires of it to make service upon Mr. Duncan.

Mr. Duncan has clearly violated the statutes and code relating to the practice of practical nursing. His desire to avoid the consequences of his violations of the statutes and code is not calculated to persuade that he is a fit person to hold a license as a practical nurse, no matter what limitations may be imposed on the license. His failure to accept the consequences of the violations indicates that rehabilitation has not yet occurred. There is no basis to conclude that Mr. Duncan's apparent substance abuse problem has been adequately addressed. I conclude that he recognizes there is a problem, given that he was in a treatment facility when contacted by the City of Waukesha detective who interviewed him. Whether he has obtained treatment in his travels since leaving the state is another question entirely. Deterrence of similar conduct by others, and specific public protection from similar acts by Mr. Duncan, require that he be removed from the practice of nursing at least until he has demonstrated recovery from the substance abuse problem. An indefinite suspension of his license is inappropriate, given the serious nature of the behavior and the failure to address the consequences when the behavior came to light.

<sup>9th</sup>  
Dated this 8th day of August, 1993.



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 September 13, 1993.**

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

PETER DAVID DUNCAN, L.P.N.,  
RESPONDENT.

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AFFIDAVIT OF COSTS  
OFFICE OF BOARD LEGAL SERVICES  
LS 9305271 NUR

STATE OF WISCONSIN  
COUNTY OF DANE, ss.

James E. Polewski, being first duly sworn on oath, deposes and says that he is an attorney, licensed to practice in the state of Wisconsin, and employed by the Office of Board Legal Services, Division of Legal Services and Examinations, Department of Regulation and Licensing;

and that in the course of that employment he was assigned to preside as Administrative Law Judge in the above captioned matter;

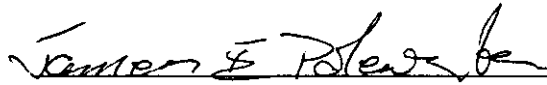
and that in the course of that assignment, he expended the following amounts of time and committed the Department to the payment of the following expenses:

<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME</u>
8/3/93	Preside at hearing	45 minutes
8/5/93	Draft decision	1 hr. 15 min.
8/6/93	Draft decision	<u>30 min.</u>
TOTAL TIME:		2 hr. 30 min.

Administrative Law Judge expense, 2.5 hours @ \$32.89: \$82.22

Reporter expense: .75 hr. @ \$18.19: \$13.64

TOTAL ASSESSABLE COSTS, BOARD LEGAL SERVICES: \$95.86

  
James E. Polewski

Sworn to and subscribed before me this 9th day of August, 1993.

  
Notary Public

My Commission is Permanent.

WILLIAM DUSSO  
NOTARY PUBLIC  
STATE OF WISCONSIN

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

PETER DAVID DUNCAN, L.P.N.,  
RESPONDENT.

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AFFIDAVIT OF COSTS  
LS9305271NUR

STATE OF WISCONSIN )  
                              ) ss.  
COUNTY OF DANE        )

James W. Harris, being duly sworn, deposes and states as follows:

1. That I am an attorney licensed in the state of Wisconsin and am employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement:

2. That in the course of those duties I 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>
3/29/93	file review PIC (92 NUR 106)	60 minutes
4/30/93	file review PIC (93 NUR 009)	60 minutes
5/18/93	review police reports/witness statements	60 minutes
5/19/93	prep and file complaint and notice	60 minutes
7/09/93	prep and serve subpoenas	60 minutes
7/19/93	prep and file affidavit of default	60 minutes
7/28/93	contact Bureau re nursing status	20 minutes
7/30/93	telconf. witnesses/ hearing prep	60 minutes
8/03/93	attend disciplinary hearing	120 minutes
8/24/93	review respondent letter	15 minutes
9/14/93	prep motion/affidavit re costs	60 minutes

Total attorney expense of 10.5 hours a \$30.00 per hour  
(based upon average salary and benefits).....\$ 315.00



# INVESTIGATOR EXPENSE (Rohland)

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
8/11/92	file review/conf BA, letters	25 minutes
9/09/92	draft records request	15 minutes
10/13/92	conference attorney	10 minutes
10/14/92	prep memo & letters	15 minutes
11/16/92	prep memo	15 minutes
12/11/92	conference Boyd	10 minutes
12/15/92	conference Boyd	10 minutes
1/28/93	prep letter	15 minutes
2/26/93	file review/ telconf	15 minutes
3/02/93	telconf P.D.; prep memo	20 minutes
3/25/93	prep case summary	30 minutes

Total Investigator expense of 3 hours at \$ 18.00 per hour  
(based upon average salary and benefits)..... \$ 54.00

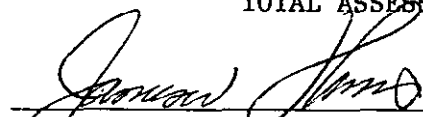
## WITNESS FEES

8/03/93	Alicia Boyd	\$ 5.00
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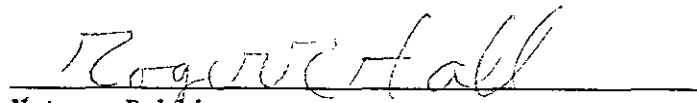
## MISCELLANEOUS

postage	\$ 4.00
certified mail	\$ 16.39

TOTAL ASSESSABLE COSTS:	<u>\$394.39</u>
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James W. Harris, Attorney  
Division of Enforcement

Subscribed and sworn to before me this 14  
day of September, 1993.

  
Notary Public  
My Commission Permanent