WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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FILEGOPY

STATE OF WISCONSIN BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

93 NUR 184

MARY MARIE HOOVER, L.P.N.,

RESPONDENT

ORDER 0001683

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

:

Mary Marie Hoover Rural Route 5, Box 20 Winona, MN 55987

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. Mary Marie Hoover, L.P.N. (D.O.B. 08/17/45) is duly licensed as a practical nurse in the state of Wisconsin (license #31431). This license was first granted on October 27, 1992.
- 2. Ms. Hoover's most recent address on file with the Wisconsin Board of Nursing is Rural Route 5, Box 20, Winona, MN 55987.
- 3. On or about July 29, 1993, The Minnesota Board of Nursing imposed discipline against the Minnesota license of Ms. Hoover. True and correct copies of the Minnesota Stipulation and Consent Order are attached to this Order as Exhibit A. Exhibit A is incorporated by reference into this Final Decision and Order.
- 4. In resolution of this matter, Ms. Hoover consents to entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

By the conduct described above, Mary Marie Hoover is subject to disciplinary action against her license to practice as a practical nurse in the state of Wisconsin, pursuant to Wis. Stats. §441.07(1); and Wis. Adm. Code §§N7.03(1) and 7.04(7) and (15).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that

- A. The license of Mary Marie Hoover to practice as a practical nurse in the state of Wisconsin is LIMITED as follows:
 - 1. Upon request of the Board, Ms. Hoover shall provide the Board with current releases complying with state and federal laws, authorizing release of her Minnesota licensure records and employment records.
 - 2. Ms. Hoover shall work as a nurse in Wisconsin only in a work setting approved by the Board of Nursing. Ms. Hoover shall obtain approval prior to the commencement of nursing duties. A request for approval of a work setting shall be initiated by notifying Michelle Neverman, the Department of Regulation and Licensing Program Assistant assigned to monitor disciplinary orders of the Board. Requests for work setting approval shall be evaluated in reference to the following criteria:
 - a. Ms. Hoover shall practice only in settings where she works under supervision by another nurse or other licensed health care professional 1) who works the same shift as Ms. Hoover, 2) who is assigned to the same building in which Ms. Hoover works, and 3) who is designated as Ms. Hoover's supervisor; and
 - b. Ms. Hoover shall refrain from nursing employment as a pool nurse, or as a visiting nurse [or other home care provider].
 - 3. Ms. Hoover shall provide any current or prospective Wisconsin nursing employers with a copy of this Final Decision and Order immediately upon issuance of this Order, and upon any change of employment during the time in which the terms of this Order are in effect.
 - 4. Ms. Hoover shall arrange for quarterly reports to the Wisconsin Board of Nursing from her Wisconsin nursing employer(s) evaluating her work performance.
 - 5. Ms. Hoover shall maintain compliance with all terms of the Minnesota Board of Nursing Order in effect against her Minnesota license. Violation of any of the terms of the Minnesota Order shall constitute a violation of this Order. Violation of any of the terms of the Minnesota Order shall therefore constitute a basis for the imposition of additional discipline in the state of Wisconsin.

- 6. Ms. Hoover shall arrange for quarterly reports to the Wisconsin Board of Nursing from the Minnesota Board of Nursing. These reports shall include copies of all current reports submitted to the Minnesota Board under the terms of its Order, together with a statement from Board staff affirming the status of Ms. Hoover's compliance with the terms of the Minnesota Order in effect against Ms. Hoover's license.
- 7. Ms. Hoover shall be responsible for all expenses incurred in conjunction with reports required under this Order.
- 8. Ms. Hoover 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.
- B. Ms. Hoover may submit a petition to revise or remove any of the terms or conditions at any time following eighteen (18) months after the effective date of this order. In conjunction with any petition under this paragraph, Ms. Hoover shall submit a report from the Minnesota Board of Nursing 1) certifying the status of her license in that state; and 2) evaluating her compliance with the terms and conditions imposed against Ms. Hoover's Minnesota license.

Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. §§227.01(3) and 227.42.

- C. 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. Hoover license; the Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order.
- D. This Order shall become effective upon the date of its signing.

BOARD OF NURSING

Member of the Board

Johnsvel RN MS

11-5-93

BEFORE THE MINNESOTA

EXHIBIT

BOARD OF NURSING

In the Matter of Mary M. Hoover, LPN License No. 9710-7

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by Mary M. Hoover, LPN (hereinafter "Licensee") and the Minnesota Board of Nursing (hereinafter "Board") that without trial or adjudication of any issue of fact or law herein and without any evidence or admission by any party with respect to any such issue:

- 1. On May 13, 1993, a Notice of Conference With Board of Nursing Review Panel was duly served upon Licensee, receipt of which is hereby acknowledged by Licensee;
- 2. On June 7, 1993, Licensee and her attorney, Karl W. Sonneman, appeared before the Board Review Panel composed of Nancy Malmon, Board member, and Rene Panelli, Assistant Director of the Board, to discuss allegations made in the notice referenced above. Penny Troolin, Special Assistant Attorney General, represented the Board at the conference. Also present at the conference were Jim Hoover, husband of Licensee, and Joyce M. Schowalter, Executive Director of the Board;
- 3. Licensee expressly waives the formal hearing and all other procedures before the Board to which she may be entitled under the Minnesota and/or United States constitutions, statutes, or rules;
- 4. This Stipulation and Consent Order shall constitute the entire record herein and shall be filed with the Board prior to its next meeting;
- 5. In the event the Board in its discretion does not approve this settlement or a lesser remedy than indicated in this settlement, this stipulation is withdrawn and shall be of

no evidentiary value and shall not be relied upon nor introduced by either party. Licensee agrees that if the Board rejects this stipulation and this case proceeds to hearing, Licensee will assert no claim that the Board was prejudiced by its review and discussion of this stipulation or of any records relating hereto;

- 6. Licensee does not contest the facts referred to below and grants that the Board may, for the purpose of reviewing the record referenced in paragraph 4 above, consider the following as true without prejudice to her in any current or future proceeding of the Board with regard to these or other allegations:
- a. Resident FM was diagnosed with psycho-motor epilepsy, had episodes of chest pains, and had a myocardial infraction. Resident FM's health had been declining during the preceding two to three months. On May 12, 1992, resident FM's care plan reflected a change in status with comfort care instructions which included oral care, bed/sponge baths to be completed, and that resident FM should be kept reclining whenever possible. On May 21, 1992, resident FM began being laid on his mattress in the dining room on the floor or in a geri-chair because of his health condition. While resident FM was in the dining room, he could be observed from the nursing station. On May 24, 1992, resident FM became gray and unresponsive while staff was getting him up to use the toilet. When staff laid him down, he became responsive. Also, on May 24, 1992, resident FM became flaccid and ashen in color when staff was placing him up in a geri-chair. When staff laid him down, his condition improved. At this time, a nursing decision was made to leave resident FM flat or reclined at all times;

On May 27, 1992, Licensee was assigned to direct patient care in the unit where resident FM resided. Licensee decided to give resident FM a bath in the whirlpool. Staff told Licensee they did not think a bath would be a good idea and they did not think resident FM could tolerate what it would take to give him a whirlpool bath. Licensee decided to proceed with the bath. Upon transferring resident FM from the geri-chair to the bath chair, resident FM began shallow breathing. Even though resident FM was having

a hard time breathing, Licensee left the tub room to have a physician sign an order for another resident. Within a minute of Licensee's return to the tub room, Licensee could not obtain a blood pressure reading or a pulse from resident FM. Resident FM had gradually stopped breathing and died. Resident FM was never actually placed in the tub.

During an investigation of the incident, staff stated that Licensee does not accept it very well when other people tell her what to do and if she decides to do something she will do it no matter what and that Licensee was aware that resident FM was dying and that he was receiving comfort care and receiving bed baths.

KWS MEM

At the conference, Licensee stated that she knew resident FM was on "comfort cares," but does not recall seeing anything in the nurse's notes about his episodes of apnea, nor was she aware that he was to receive only sponge baths. Licensee further stated that when she came to work on resident FM's unit on May 27, no one informed her of the decision made on May 24 to keep this resident flat or reclined at all times. She stated that this information may have been on the 24-hour board, but that it would have been there only for 24 hours, and she had been off work for three days.

Licensee also stated at the conference that her decision to take resident FM to the whirlpool was based on the fact that the resident was soiled with stool and needed a sponge bath, but since his mattress was on the floor of the dining room rather than on his bed, she would sponge him off next to the whirlpool.

- 7. Licensee acknowledges and admits that proof at hearing of any one or more of the allegations set forth in the notice, including proof by the Boards's introduction of admissions made by Licensee at the conference, would empower the Board to revoke or take other action against Licensee's license under Minn. Stat. § 148.261;
- 8. This stipulation shall not in any way or manner limit or affect the authority of the Board to proceed against Licensee by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Licensee justifying

disciplinary action which occurred before or after the date of this stipulation and which is not directly related to the specific facts and circumstances set forth herein;

- 9. Upon this stipulation and record, as set forth in paragraph 4 above, and without any further notice of proceedings, the Board LIMITS Licensee's license inasmuch as Licensee must be supervised by a professional nurse who works the same shift and is assigned to the same building in which Licensee works, and who is designated as Licensee's supervisor;
- 10. Licensee shall surrender to the Board her current nursing registration renewal certificate so that a "limited" certificate can be issued. Surrender shall be accomplished by delivering said certificate personally or by certified mail to the Minnesota Board of Nursing, c/o Joyce M. Schowalter, Executive Director, Suite 108, 2700 University Avenue West, St. Paul, Minnesota 55114, within five days after receipt by Licensee of an order issued by the Board;
- 11. The limitation placed upon Licensee's license pursuant to paragraph 9 above shall automatically terminate upon Licensee's completion of 1,000 hours of employment as a practical nurse and upon the Board's written notification of Licensee that the limitation has been removed;
- 12. Upon this stipulation and record, as set forth in paragraph 4 above, and without any further notice of proceedings, the Board also places Licensee's license in a CONDITIONAL status. Licensee's retention of her license is conditional upon her demonstrating that she is capable of conducting herself in a fit and competent manner in the practice of practical nursing. In order to sustain her burden of proof, Licensee shall submit or cause to be submitted at least the following:
- a. Evidence of having successfully completed at least 12 contact hours of continuing education. These classes shall be approved in advance by the professional staff of the Board and shall consist of the following:
 - 1) Effective interpersonal communication: six hours;

2) Charting/documentation: six hours.

To evidence Licensee's successful completion of these classes, Licensee shall provide the following documentation for each class: measurable learning objectives, qualifications of instructor, and verification of participation;

- b. Reports from Licensee's professional nurse supervisor, if Licensee is employed in nursing. A report shall be submitted every three months and at the time Licensee petitions to have the conditions removed from her license as outlined in paragraph 14 below. Each report shall provide and/or address:
- 1) In the first report, evidence that Licensee's supervisor has received a copy of this Stipulation and Consent Order;
 - 2) Licensee's attendance and reliability;
- 3) Licensee's ability to carry out her assigned functions including following established policies and procedures;
- 4) Licensee's ability to communicate effectively with co-workers, physicians and patients;
 - 5) Licensee's compliance with the limitation while in effect;
 - 6) The method by which supervision was conducted;
- 7) The number of hours Licensee worked during the reporting period;
- 8) Any other information which the supervisor believes would assist the Board in its ultimate review of this matter.
- c. Reports from Licensee's employer, if not employed in nursing. This report shall be submitted every three months and at the time Licensee petitions to have the conditions removed from her license as outlined in paragraph 14 below. Each report shall provide and/or address:
 - 1) Licensee's ability to perform assigned tasks;
 - 2) Licensee's attendance and reliability;

- 3) Any other information which the employer believes would assist the Board in its ultimate review of this matter.
- d. Reports from Licensee herself. A report shall be submitted every three months and at the time Licensee petitions to have the conditions removed from her license as outlined in paragraph 14 below. Each report shall provide and/or address:
 - 1) Type of nursing in which Licensee has been involved;
 - 2) Licensee's work schedule;
- 3) How Licensee has applied the information she has gained from the classes to her nursing practice;
 - 4) Licensee's future plans in nursing;
- 5) Any other information which Licensee believes would assist the Board in its ultimate review of this matter.
- e. A three-to-five page typewritten paper shall be submitted every three months and at the time Licensee petitions to have the conditions removed from her license as outlined in paragraph 14 below. Each paper shall be approved in advance and signed by Licensee's professional nurse supervisor before being submitted to the Board. Each paper shall provide and/or address:
- 1) How Licensee obtains information on five of her most difficult patients after she has been off duty for a period of 24 hours or more;
- 2) How Licensee applies this information in the care she provides to her patients.
- 13. All reports shall cover the entire reporting period and provide the basis upon which conclusions were drawn;
- 14. Licensee may petition the Board to have the conditions removed from her license at any regularly scheduled Board meeting following 2,000 hours of employment as a practical nurse following removal of the limitation referenced above. The burden of proof shall be upon Licensee to demonstrate by clear and convincing evidence that she is capable

of conducting herself in a fit and competent manner in the practice of practical nursing and has completed the coursework required above. In order to sustain her burden of proof, Licensee shall submit or cause to be submitted at least the evidence specified in paragraph 12 above;

- 15. The Board may, at any regularly scheduled meeting at which Licensee has petitioned pursuant to paragraph 14 above, take any of the following actions:
 - a. Remove the conditions attached to the license of Licensee;
 - b. Amend the conditions attached to the license of Licensee;
 - c. Continue the conditions attached to the license of Licensee upon her failure to meet the burden of proof.
- 16. Licensee's violation of this Stipulation and Consent Order shall be considered a violation of Minn. Stat. § 148.261 and constitute grounds for further disciplinary action;
- 17. Any appropriate court may, upon application of the Board, enter its decree enforcing the order of the Board;
- 18. Licensee hereby acknowledges that she has read, understands, and agrees to this Stipulation and Consent Order and has freely and voluntarily signed the stipulation without threat or promise by the Board or any of its members, employees, or agents. When signing the stipulation, Licensee acknowledges that she is fully aware that the Stipulation and Consent Order must be approved by the Board. The Board may either approve the stipulation and/or order as proposed, approve the order subject to specified change, or reject it. If the changes are acceptable to Licensee, the stipulation will take effect and the order as modified will be issued. If the changes are unacceptable to Licensee or the Board rejects the stipulation, it will be of no effect except as specified herein;
- 19. If the Board receives evidence that Licensee has violated the terms of the Stipulation and Consent Order, has made misrepresentations to the Board or to those required to submit reports to the Board, and/or engaged in acts or omissions which would be a violation of Minn. Stat. § 148.261, the Board shall so notify Licensee in writing at her

last known address filed with the Board. Licensee shall have the opportunity to contest the allegations by submitting a written request to so contest within 30 days after service of the Notice of Opportunity to Contest Allegations:

- a. If Licensee does not submit a written request to contest the allegations within 30 days of service of the notice, the issues set forth in the notice may be taken as true or deemed proven without further evidence. Upon a report to the Board of such allegations and of Licensee's failure to contest, the Board may either impose additional disciplinary action, including revocation, or deny any petition submitted by Licensee. Any Board order issued under this paragraph shall be final and binding upon Licensee and shall not be subject to judicial or administrative review or to a judicial stay pending any attempts to seek such review;
- b. If Licensee submits a written request to contest the allegations, the Board may initiate either a proceeding conducted pursuant to Minn. Stat. ch. 214 (1992) or a contested case hearing pursuant to Minn. Stat. ch. 14 (1992) to determine whether Licensee can show cause as to why additional disciplinary action should not be imposed. In any such proceeding, the Board shall have the burden of going forward to provide a sufficient factual basis supporting the allegations. The Board shall provide sufficient evidence to meet the substantial evidence standard used by appellate courts in reviewing administrative actions, that is, evidence demonstrating that the Board is not acting unreasonably, arbitrarily, or capriciously, and that some reasonable evidence exists to support the allegations. Upon such a showing by the Board, the burden of proof as to why additional disciplinary action should not be imposed or why any petition for reinstatement should not be denied shall be upon Licensee.

20. This stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this stipulation.

CONSENT:

LICENSEE

BOARD OF NURSING

REVIEW PANEL

Licensee

Dated: $\frac{1}{2} - \frac{1}{2}$, 1993

KARL SONNEMAN Attorney for Licensee

Dated: $7/\xi$, 1993

NANCY MALMON Board Member

Dated: July 29, 1993

PENNY TROOLIN Attorney for Board

Dated: 8-3, 1993

Upon consideration of this stipulation and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the license of Licensee is placed in a LIMITED and CONDITIONAL status and that all other terms of this stipulation are adopted and implemented by the Board this 29th day of July, 1993.

MINNESOTA BOARD

OF NURSING

JOYCE M. SCHOWALTER

Executive Director



IN THE MATTER OF :

DISCIPLINARY PROCEEDINGS AGAINST : STIPULATION MARY MARIE HOOVER, L.P.N., : 93 NUR 184

RESPONDENT :

It is hereby stipulated between Mary Marie Hoover, personally on her own behalf and Steven M. Gloe, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

- 1. This Stipulation is entered into as a result of a pending investigation of Ms. Hoover's licensure by the Division of Enforcement (93 NUR 184). Ms. Hoover consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
- 2. Ms. Hoover understands that by the signing of this Stipulation she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance 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. Ms. Hoover is aware of her right to seek legal representation and has been provided an opportunity to obtain legal advice prior to signing this stipulation.
- 4. Ms. Hoover agrees to the adoption of the attached Final Decision and Order by the Board of Nursing. 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. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.
- 5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this 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.
- 6. The parties to this stipulation agree that the attorney for the Division of Enforcement and the member of the Board of Nursing assigned as an advisor in this investigation 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.

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

May Marie Hoover

Date

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Steven M. Gloe
Division of Enforcement

Date

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.

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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 November 9, 1993.



PDF: DE0000001590-19931105

Order Dates:

NOV 05, 1993

Respondent Names:

HOOVER, MARY MARIE, LPN

Complaint IDs: 93NUR184

Profession:

LICENSED PRACTICAL NURSE

Boards:

NUR

Short Description:

LIMITED.

Case Summary:

ON OR ABOUT JULY 29, 1993, THE MINNESOTA BOARD OF NURSING IMPOSED DISCIPLINE AGAINST HER LICENSE.