

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

LESTER L. TRACY, R.N.,
RESPONDENT

FINAL DECISION AND ORDER
92 NUR 115

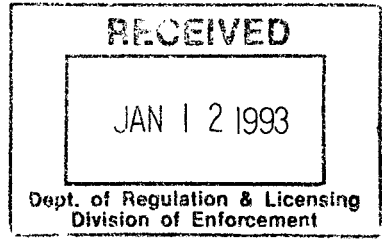
ORDER 01880

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

Lester L. Tracy
630 North Main
Cadott, WI 54727

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. Lester L. Tracy, R.N. (D.O.B. 02/22/44) is duly licensed as a registered nurse in the state of Wisconsin (license #104031). This license was first granted on March 16, 1990.
2. Mr. Tracy's most recent address on file with the Wisconsin Board of Nursing is 630 North Main, Cadott, WI 54727.
3. On or about October 28, 1992, Mr. Tracy was convicted of abuse of a nursing home resident. Attached to this Order as Exhibit A is a copy of the criminal complaint and judgment of conviction, which accurately portray the facts and circumstances of Mr. Tracy's conduct relative to this conviction. Exhibit A is incorporated by reference into this Order.
4. In resolution of these proceedings, Mr. Tracy consents to the entry of the following Conclusions of Law and Order.

STATE OF WISCONSIN

EAU CLAIRE COUNTY - 18

MINUTES

CASE NUMBER(S)

92 CF 323

CASE NAME: STATE OF WISCONSIN vs <i>Lester L. Tracy</i>		CLERK <i>Phyllis</i>	
ACTIVITY:		CODE <i>91</i>	JUDGE HEARING ACTIVITY <i>Thomas Barland</i>
CASE TRANSFERRED TO JUDGE		CODE	SPECIAL STATUS OR CONTINUANCE
			CODE <i>148</i>
			DATE <i>11-9-92</i>

APPEARANCES

10:34

[] No Appearance by Defendant

Defendant appeared - With Counsel [] Without Counsel

Counsel *Russell Falkenberg* State *Richard White, ADA*

Waive Complaint-Read [] Defendant was advised of his right to consult an Attorney and referred to Public Defender's Office if claiming indigency.

PLEA- [] GUILTY [] NOT GUILTY NO CONTEST [] SPECIAL APP. ENTERED [] WARRANT QUASHED
both etc.

Advised of his Constitutional Rights Court accepts plea and finds it *freely and knowingly* voluntary and intelligently made understandingly

PreTrial Date _____ Preliminary Date _____ Time _____

Court finds Defendant guilty

Bond \$ *1000.00* [] Cash Signature [] Other

Conditions: No contact with *Julie A. Pientok*
Def. to notify the following of address change within _____
Def. to be fingerprinted and photographed _____
Other _____

Fine \$ _____ Pay by _____

Prelis waived, Inform not filed - chp. the same as complaint.

P.S.I. ordered.

Sentencing set for: 12-1-92 @ 10:30

Court may consider as read-in re: Julie Pientok.

STATE OF WISCONSIN
STATE OF WISCONSIN.

CIRCUIT COURT

EAU CLAIRE COUNTY

FILED
Plaintiff
CIRCUIT COURT
EAU CLAIRE COUNTY

Criminal Complaint

v.

LESTER L. TRACY
630 North Main Street
Cadott, WI 54727
DOB: 02/22/44.

NOV 5 - 1992

92CF323

DIANA J. MILLER
CLERK OF CIRCUIT COURT
Defendant

Joseph Barnier, being first duly sworn on oath, states that in the City of Altoona and County of Eau Claire, Wisconsin, the defendant did:

COUNT ONE: ABUSE OF NURSING HOME RESIDENT 940.29

on or about November, 1991, feloniously as an employee of a nursing home, abuse or ill treat a resident of such facility, to-wit: JAP, DOB: 07/12/62, contrary to Section 940.29(7) of the Wisconsin Statutes.

MAXIMUM PENALTY: Upon conviction of this charge, a Class E Felony, is a fine of not more than \$10,000 or imprisonment for not more than 2 years, or both.

COUNT TWO: ABUSE OF NURSING HOME RESIDENT 940.29

on or about March, 1992, feloniously as an employee of a nursing home, abuse or ill treat a resident of such facility, to-wit: JAP, DOB: 07/12/62, contrary to Section 940.29(7) of the Wisconsin Statutes.

MAXIMUM PENALTY: Upon conviction of this charge, a Class E Felony, is a fine of not more than \$10,000 or imprisonment for not more than 2 years, or both.

PROBABLE CAUSE: The complainant is in possession of police reports by Fellow Officer Anger, Altoona Police Department, which forms the basis for this complaint.

Officer Anger reports that on July 16, 1992 he was detailed to the Oakwood Villa Nursing Home located on New Pine Drive in the City of Altoona, County of Eau Claire, Wisconsin reference sexual assault allegations against one of the employees. Upon arrival at that location he met and spoke with Oakwood Villa employees who informed him that a resident of the facility, Julie A. Pientok, DOB: 07/12/62 had reported being sexually assaulted by a nursing home employee. That employee was identified as the defendant, LESTER L. TRACY, a nurse at Oakwood Villa.

Officer Anger further reports that on July 17, 1992 he met and spoke with Julie A. Pientok. During said conversation Ms. Pientok informed Officer Anger, through an interpreter, of a variety of assaultive behaviors the defendant had directed at her while she was a resident at Oakwood Villa. She described the first incident as

occurring in November, 1991. She further described telling the defendant no, before he engaged in his conduct towards her but he did not listen. She described the conduct as the defendant kissing her, touching her on her breast and vagina and rubbing these areas both with and without clothes. In addition, on occasion the defendant made her touch him on his penis by taking her hand and placing it on his penis. When this occurred the defendant took his pants down to his ankles or unbuttoned his zipper. In addition, during the occasions the defendant was touching her he, on occasion, placed his finger in her vagina. On one or more occasions the defendant attempted to have sexual intercourse with her but stopped after climbing on top of her unclothed because he was afraid someone would step in on him. All of the conduct occurred in Ms. Pientok's room at the Oakwood Villa Nursing Home and occurred while the defendant was working as a nurse for that facility with responsibilities towards Ms. Pientok. After the first incident of November, 1991, this behavior next occurred in February or March of 1992 and then continued on a regular basis until Ms. Pientok told other employees of Oakwood Villa in July of 1992.

Officer Anger further reports that on August 21, 1992 he conducted an interview with the defendant Lester L. Tracy. During this interview and in a subsequent written statement, the defendant admitted engaging in a course of sexual conduct with Julie A. Pientok, a resident of the Oakwood Villa Nursing Home. The defendant further admitted that this conduct occurred while he was a nurse at that facility with patient responsibilities for Ms. Pientok. The defendant went on and stated that he recalled touching Ms. Pientok in the breast area in a sexual manner approximately 4 times. He further stated that he believed the incidents occurred between February and June of 1992, and that on at least one occasion in February of 1992 he did touch Ms. Pientok's vagina area. He further stated that on at least one occasion he did have oral sex with Ms. Pientok.

Joseph M. Bannier
Complainant

Subscribed and sworn to before me and approved for filing

Dated 9/30/92

Kent Jones
Assistant District Attorney

RLP#01016681/mlr 09/30/92, 09/30/92

State of Wisconsin } ss
County of Eau Claire

This document is a full, true and correct copy of the original on file and of record in my office and has been compared by me.

Attest: 11-24, 1992

Jul Wayne, Deputy Clerk
Clerk

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
LESTER L. TRACY, R.N.,	:	92 NUR 115
RESPONDENT	:	

It is hereby stipulated between Lester L. Tracy, 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 Mr. Tracy's licensure by the Division of Enforcement (92 NUR 115). Mr. Tracy consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Mr. Tracy understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, 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 him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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 him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Mr. Tracy is aware of his right to seek legal representation and has had an opportunity to obtain legal advice prior to signing this stipulation.

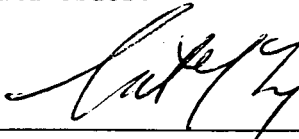
4. Mr. Tracy agrees to the adoption of the attached Final Decision and Order by the Board of Nursing. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any 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. Attached to this Stipulation is the current licensure card of Lester L. Tracy. If the Board does not accept this Stipulation, the license of Mr. Tracy shall be returned to him with a notice of the Board's decision not to accept the Stipulation.

7. The parties to this stipulation agree that the attorney for the Division of Enforcement and the board member assigned as advisor to this case 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.

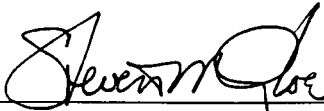
8. The Division of Enforcement joins Mr. Tracy in recommending the Board of Nursing adopt this Stipulation and issue the attached Final Decision and Order.



Lester L. Tracy

12-8-92

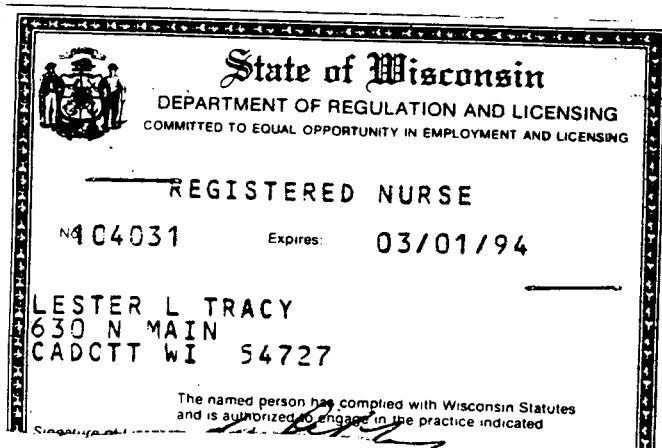
Date



Steven M. Glog, Attorney
Division of Enforcement

12.10.92

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.

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 January 12, 1993.