

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

DENISE L. SCHERER, R.N.,
RESPONDENT

: AMENDED FINAL DECISION AND ORDER

~~91 NUR 95~~
91 NUR 95

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

Denise L. Scherer, R.N.
4320 North Ardmore Avenue
Shorewood, WI 53211

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. Denise L. Scherer, R.N. (D.O.B. 10/06/47) is duly licensed as a registered nurse in the state of Wisconsin (license # 97951). This license was first granted on September 4, 1987.

2. On May 7, 1993, the Board entered an order which required, among other things, that respondent "shall refrain from access to" all controlled substances in the workplace until such access was approved by the Board.

3. From May 13, 1993 to May 31, 1993, respondent was a nursing supervisor at Audobon Health Care Center, Bayside, Wisconsin. During this period of time, respondent had keys to the controlled substance cabinet. There is no evidence that she used these keys, and the parties have requested that the Board clarify the meaning of the previous order.

CONCLUSIONS OF LAW

The board has jurisdiction to enter this Amended Final Decision and Order.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that the license of Denise L. Scherer is **SUSPENDED** for a period of not less than **THIRTY (30) MONTHS** from May 7, 1993.

(A) Upon demonstration by Ms. Scherer that she has participated in a chemical dependency assessment which indicates that Ms. Scherer can safely return to the practice of nursing, the **SUSPENSION** shall be **STAYED** for a period of three (3) months, conditioned upon compliance with the conditions and limitations outlined in paragraph (B), below.

- 1 Denise L. Scherer may apply for consecutive three (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. Scherer's practice during the prior three (3) month period.
2. If the Board denies a petition by Ms. Scherer 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
- 3 Upon a showing by Ms. Scherer of successful compliance for a period of thirty months with the terms of paragraph (b), below, the Board shall grant a petition by Ms. Scherer for return of full licensure.

(B) CONDITIONS OF STAY

1. Ms. Scherer, at her own expense, must complete an assessment for chemical dependency at a health care facility acceptable to the Board. Ms. Scherer shall arrange for the facility to submit a written report of its findings to the Board, including: a diagnosis of Ms. Scherer's condition, recommendations (if any) for treatment; an evaluation of whether Ms. Scherer is competent to safely and competently practice nursing, including what (if any) work restrictions should be imposed on Ms. Scherer in her nursing practice; an evaluation of Ms. Scherer's cooperation in the assessment process; and Ms. Scherer's prognosis. Ms. Scherer will provide the assessor with a copy of this order prior to the assessment process. In addition, the assessor shall be provided with copies of the Division of Enforcement's investigative file materials in conjunction with the assessment.

2. If the assessment reveals a need for treatment,

- a. Ms. Scherer must enter and remain in a program for the treatment of alcohol and chemical dependency acceptable to the Board. As a part of treatment, Ms. Scherer must attend therapy on a schedule as recommended by her therapist; however, the Board may require a minimum attendance in addition to the recommendation of the therapist
- b. Ms. Scherer 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 four (4) 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. Scherer shall submit to such additional screens.

c. The Board may, in addition and at its discretion: 1) require AA or NA participation; and 2) establish work restrictions for Ms. Scherer based on its evaluation of the assessment report

3 If the assessment reveals that treatment is not required, Ms. Scherer shall not be required to participate in treatment. **The following conditions shall apply whether or not treatment is recommended:**

4 Ms Scherer shall remain free of alcohol, prescription drugs and controlled substances not prescribed for valid medical purposes during the period of limitation.

5 Respondent shall provide the Board with current releases complying with state and federal laws, authorizing release of counseling, treatment and monitoring records, and employment records

6 Respondent shall give a complete copy of this Stipulation and Final Order to each and every employer, before commencing employment (and to her current employer(s) upon receipt of this Order) Employer means both a healthcare facility or agency for which she works and any employment service with which she contracts or through which she provides nursing services. If any employer deems that blood or urine screens are warranted to ascertain Ms. Scherer's compliance with the terms of this order, Ms. Scherer shall submit to such screens. To be acceptable under the terms of this order, any provision of specimens for monitoring under the terms of this paragraph must be witnessed.

7 Ms. Scherer is 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 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: if Ms. Scherer fails to appear upon request; or if a drug or alcohol screen proves positive; or if Ms. Scherer refuses to give a specimen for analysis upon a request authorized under the terms of this Order.

8. Ms. Scherer shall refrain from having the means to have access to, or administering, controlled substances in her work setting until such time as access or administration is approved by the Board.

9. Ms. Scherer shall arrange for quarterly reports to the Board of Nursing from her employer(s) evaluating her work performance, from the monitoring facility (if applicable) providing the dates and results of the screenings performed; and from her counselor (if applicable) evaluating Ms. Scherer's attendance and progress in therapy as well as evaluating her level of participation at NA/AA meetings.

10 Ms. Scherer shall report to the Board any change in employment status and change of residence address or phone number, within five (5) calendar days of any such change.

(C) Ms. Scherer may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions

(D) Violation of any of the terms of this Order may result in a summary suspension of Ms. Scherer's license; the denial of an extension of the stay of suspension; the imposition of additional conditions and limitations; or the imposition of other additional discipline.

Dated this January 28, 1994

BOARD OF NURSING by:

Jacqueline Johnson RN MS
A Member of the Board

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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
DENISE L. SCHERER, R.N.,	:	91 NUR 95
RESPONDENT	:	

It is hereby stipulated between Denise L. Scherer, personally on her own behalf, and the Department of Regulation and Licensing, Division of Enforcement:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a 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 respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; 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 respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has been provided the opportunity to seek legal advice before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties 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 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 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.

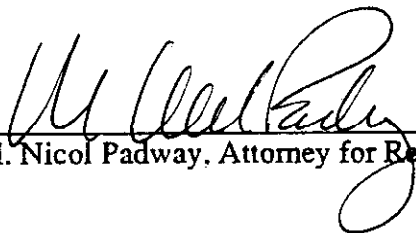
6. The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.


7. The Board Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and view of the case acquired during the investigation.

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

9. Respondent is informed that should the Board adopt this stipulation, the Board's final decision and order is a public record and will be published in the Monthly Disciplinary Report issued by the department. A summary of the order will be published in the Wisconsin Regulatory Digest issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent.


Denise L. Scherey, R.N. 1/3/94 Date


M. Nicol Padway, Attorney for Respondent 1/5/94 Date


Arthur Thexton, Prosecuting Attorney
Division of Enforcement 1/7/94 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.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN BOARD OF NURSING

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

JANUARY 31, 1994.

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)