

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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# FILE COPY

STATE OF WISCONSIN  
BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

JUDY EILEEN LOEPER, L.P.N.,  
RESPONDENT.

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FINAL DECISION  
AND ORDER  
LS9404212NUR

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 8 day of July, 1994.

*negligence & unprofessional conduct*  
*failure to carry out*  
*ordered patient services*  
*leaving b/a end of shift*  
*Jacqueline Johnson RN MS*

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS  
AGAINST  
JUDY EILEEN LOEPER, L.P.N.,  
RESPONDENT.

**PROPOSED DECISION**  
Case No. LS-9404212-NUR  
(93 NUR 023)

**PARTIES**

The parties in this matter under § 227.44, Stats. and § RL 2.037, Wis. Admin. Code, and for purposes of review under § 227.53, Stats. are:

**Complainant:**

Division of Enforcement  
Department of Regulation and Licensing  
Madison, WI 53708-8935

**Respondent:**

Judy Eileen Loeper  
address unknown;  
last address on file with Department:  
c/o General Delivery  
Phelm Post Office  
Phelm, CA 92317  
last address on file with the Board of Nursing:  
Route 1, Box 130  
Hancock, WI 54943

**Disciplinary Authority**

Board of Nursing  
1400 East Washington Ave.  
Madison, WI 53703

**PROCEDURAL HISTORY**

A. This case was initiated by the filing of a complaint with the Board of Nursing on April 21, 1994. A disciplinary proceeding (hearing) was scheduled for June 21, 1994. Notice of the hearing was sent by certified mail to Judy Elaine [sic] Loeper at both of the above addresses. Both notices were returned unclaimed.

B. All time limits and service requirements having been met, the hearing was held as scheduled. Ms. Loeper did not appear. The Board of Nursing was represented by Attorney Steven Gloe of the Department's Division of Enforcement. Mr. Gloe moved that Ms. Loeper be found in default under RL 2.14, Wis. Admin. Code, and the motion was granted. The hearing was recorded, but no transcript has been prepared. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

### **FINDINGS OF FACT**

1. The respondent, Judy Eileen Loeper, is a licensed practical nurse in the state of Wisconsin, under license number 23029, and she has held that license continuously since it was originally granted on September 25, 1980.
2. Notice was sent to Ms. Loeper at the last addresses on file with the Department and the Board of Nursing. Both notices were returned. A reasonable inference is that Ms. Loeper changed her address and failed to notify the department and the board.
3. On August 9, 1992, Ms. Loeper charted that she did not supply acid mantle cream to patient LM as ordered, without further follow-up or reporting to subsequent shifts.
4. Patient RD's medical orders required a blood pressure measurement at 0600 hours, with administration of Nifedipine if the blood pressure was elevated. On 8-9-92, 8-12-92, 8-16-92, and 8-24-92, Ms. Loeper failed to take and record the 0600 hours blood pressure for patient RD.
5. On August 23, 1992, Ms. Loeper charted administration of two tablets of acetaminophen with codeine to patient RW at 0105 and 0600 hours; the patient reported receiving only one administration of pain medication.
6. Also on August 23, 1992, Ms. Loeper charted administration of two tablets of Tylox and Vistaril to patient SK at 0105 hours; the patient reported receiving only one pill for pain.
7. On January 31, 1993, Ms. Loeper left her employment at River Pines Nursing and Rehabilitation Center, 1800 Sherman Ave., Stevens Point, Wisconsin, prior to the conclusion of her shift and without authorization from her employer.

### **CONCLUSIONS OF LAW**

- I. The Board of Nursing is the legal authority responsible for issuing and controlling credentials for nurses, under ch. 441, Stats. The Board has jurisdiction over Judy Eileen Loeper's license.
- II. The Board of Nursing has personal jurisdiction over Judy Eileen Loeper based on service as defined in sec. 801.04 (2), Stats., sec. 801.11 (1)(d), Stats., sec. 440.11 (2), Stats., and sec. RL 2.08 (1), Wis. Admin. Code. Notice to the respondent was satisfied by mailing the Notice of Hearing to the respondent's last-known address on file with the Department.

III. The Board of Nursing has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 441.07, Stats., and sec. N 6.05, Wis. Admin. Code.

IV. The respondent, Judy Eileen Loeper, violated sec. 440.11 (1), Stats. by failing to inform the department of a change of address.

V. The Respondent, Judy Eileen Loeper, is in default under sec. 2.14, Wis. Admin. Code, which means that the Board of Nursing may make findings of fact and enter a disciplinary order on the basis of the complaint and the evidence presented at the hearing.

VI. The violations in findings of fact 3 and 4 above constitute professional negligence, under sec. N 7.03 (1), Wis. Admin. Code, and discipline is appropriate under sec. 441.07 (1)(c), Stats.

VII. The violations in findings of fact 5 and 6 above constitute professional negligence under sec. N 7.03 (1), Wis. Admin. Code, and also "misconduct or unprofessional conduct" under sec. N 7.04 (6), Wis. Admin. Code, and discipline is appropriate under sec. 441.07 (1)(c) and (d), Stats.

VIII. The violation in finding of fact 7 above constitutes "misconduct or unprofessional conduct" under sec. N 7.04, Wis. Admin. Code, and discipline is appropriate under sec. 441.07 (1)(d), Stats.

### **ORDER**

THEREFORE, IT IS ORDERED that the license issued to Judy Eileen Loeper be revoked, effective on the date this order is signed on behalf of the Board of Nursing.

IT IS FURTHER ORDERED that Judy Eileen Loeper pay a forfeiture of \$50 for violating sec. 440.11 (1), Stats., as authorized by sec. 440.11 (3), Stats.

IT IS FURTHER ORDERED that Judy Eileen Loeper pay the costs of this proceeding, as authorized by § 440.22(2), Wis. Stats. and § RL 2.18, Wis. Admin. Code.

### **OPINION**

Ms. Loeper did not receive the complaint and notice of hearing in this case because she did not keep the board and the department informed of her current address. Sec. 440.11 (1), Stats. requires a credential-holder to notify the department in writing within thirty days of any such change. Sec. 440.11 (2), Stats. authorizes the department to serve notice of a hearing on a credential-holder by mailing it to the last-known address in the department's records. By her failure, Ms. Loeper lost her voice in this proceeding. Upon such a default, the department is authorized by RL 2.14, Wis. Admin. Code to proceed on the basis of the complaint and any other evidence.

The allegations in the complaint are accepted as true, and they establish that on numerous occasions in August of 1992, and again on January 31, 1993, Ms. Loeper was guilty of negligence, contrary to sec. N 7.03 (1), Wis. Admin. Code, or unprofessional conduct, contrary to sec. N 7.04 (6), or both.

On the other hand, the facts are insufficient to prove that she violated sec. N 7.04 (2): "administering, supplying or obtaining any drug other than in the course of legitimate practice ..." Consequently, the facts also do not prove that she violated sec. N 7.04(1): "violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing." Nor do I find this an appropriate case for the charge in sec. N 7.04(15): "violating any rule of the board."


#### Discipline.

The purposes of professional discipline have been set forth in the Wisconsin Supreme Court Rules and in various attorney discipline cases, and they can be reduced to the single goal of protecting the public. Discipline is to be imposed to protect individuals who might seek the professional services of the disciplined professional and others in the profession, and to protect the institutions of society. To accomplish that goal, the discipline must affect future behavior by the disciplined individual and by other members of the profession, and it must ensure to the extent possible that neither this individual nor any other member of the profession will repeat the behavior for which the professional is being disciplined. Ms. Loeper's violations certainly merit discipline. Depending on the circumstances of her offenses and her present circumstances, revocation, suspension or limitation might be appropriate. However, because Ms. Loeper is silent here, no assumptions can be safely made. In fact, the only evidence regarding Ms. Loeper's situation since January 31, 1993 is contained in exhibit 1, the letter she sent to the Department on January 18, 1994. In that letter she states "Someone is writing my words for me because I am incapacitated at this time." and "Not working at present time since accident of January 1993." The only prudent course for the Board of Nursing is to revoke her license. She may apply for reinstatement after one year, under sec. 441.07 (2), Stats.

#### Costs.

The assessment of costs against a disciplined professional is authorized by § 440.22(2), Wis. Stats. and § RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed. One approach is routinely to impose the costs of investigating and prosecuting unprofessional conduct on the disciplined individual rather than on the profession as a whole. Another approach is to use costs as an incentive to encourage respondents to cooperate with the process, and thus to impose costs only if the respondent is uncooperative or dilatory. I prefer the latter approach, and by failing to inform the board and the department of her current address, Ms. Loeper foreclosed any possibility of a negotiated settlement. It is true that by her default she relieved the Division of Enforcement of presenting extensive evidence in the hearing, but this will be reflected in a lower cost. An order for costs is appropriate.

Dated and signed: June 21, 1994

  
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John N. Schweitzer  
Administrative Law Judge  
Department of Regulation and Licensing

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## NOTICE OF APPEAL INFORMATION

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**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:**

JULY 14, 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.)

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS

AGAINST  
JUDY EILEEN LOEPER, L.P.N.,  
RESPONDENT.

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**AFFIDAVIT OF COSTS OF**  
**OFFICE OF BOARD LEGAL SERVICES**  
Case No. LS-9404212-NUR

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

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

2. In the course of my employment, I was assigned as the administrative law judge in the above-captioned matter.

3. The expenses for the Office of Board Legal Services are set out below:

a. Administrative Law Judge Expense @ \$23.99/hour.

6/15/94 Prepare proposed decision	2 hours
6/21/94 Conduct hearing, complete and file proposed decision	1 hour
	= <u>\$71.97</u>

b. Reporter Expense	
Attendance, 6/21/94	= <u>\$60.00</u>

**Total allocable costs for Office of Board Legal Services** = **\$131.97**

  
\_\_\_\_\_  
John N. Schweitzer  
Administrative Law Judge

Sworn to and signed before me this 2<sup>d</sup> day of August 1994.

James E. Pleski, Notary Public, State of Wisconsin.

My commission is permanent.



STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	AFFIDAVIT OF COSTS
JUDY EILEEN LOEPER, L.P.N.,	:	93 NUR 023
RESPONDENT	:	

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STATE OF WISCONSIN    )  
                              ) ss.  
COUNTY OF DANE        )

Steven M. Gloe, 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>
01/14/94	Review file; draft stipulation	45 min.
04/21/94	Draft complaint and Notice of Hearing Schedule Hearing date	30 min.
06/21/94	Hearing preparation and attend hearing	30 min.
TOTAL HOURS		1 hour 45 min.

Total attorney expense for  
1 hour and 45 minutes at \$30.00 per hour  
(based upon average salary and benefits  
for Division of Enforcement attorneys) equals:                   \$   52.50

INVESTIGATOR EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
03/09/93	Initial review of case file	10 min.
07/01/93	File review	15 min.


08/18/93	Letter to complainant	30 min.
09/23/93	Correspondence	10 min.
10/11/93	Correspondence	1 hour
12/14/93	Correspondence	15 min.
12/27/93	Review response and records from complainant	15 min.
01/24/94	Review response from respondent	15 min.
01/26/94	Conversation with Board advisor	15 min.
02/3/94	Submit for PIC	5 min.
6/21/94	Hearing preparation and attend hearing	30 min.
TOTAL HOURS		<u>3 hours 40 min.</u>

Total investigator expense for  
3 hours and 40 minutes at \$18.00 per hour  
(based upon average salary and benefits  
for Division of Enforcement investigators) equals:


\$ 66.00

**TOTAL ASSESSABLE COSTS**

**\$ 118.50**

  
Steven M. Gloe  
Attorney  
Division of Enforcement

Subscribed and sworn to before me this 11<sup>th</sup> day of July, 1994.

  
Notary Public  
My Commission is Permanent.