

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

**STATE OF WISCONSIN
BEFORE THE NURSING HOME ADMINISTRATOR EXAMINING BOARD**

**In The Matter Of The Application For A
License As A Nursing Home Administrator of**

**FINAL DECISION AND ORDER
Case No. LS-9411181-NHA**

**EUGENE A. KVAPIL,
Applicant.**

PARTIES

The parties in this matter under § 227.44, Stats., and § RL 1.04, Wis. Adm. Code, and for purposes of review under § 227.53, Stats., are:

Eugene A. Kvapil
700 North Riverside Drive
Cornell, WI 54732

Nursing Home Administrator Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

- A. The applicant, Eugene A. Kvapil, applied to take the examination for licensure as a nursing home administrator on May 27, 1994.
- B. Mr. Kvapil's application was reviewed and denied by the Nursing Home Administrator Examining Board on August 31, 1994. Written notice of the denial was sent to Mr. Kvapil on September 19, 1994.
- C. On October 18, 1994, Mr. Kvapil filed a request for a hearing on the denial, which was scheduled for December 14, 1994.
- D. The hearing was held as scheduled. Mr. Kvapil appeared in person without legal counsel. The board was represented by Attorney Henry Sanders of the department's Division of Enforcement. The hearing was recorded. The testimony and exhibits entered into evidence at the hearing form the basis of the Administrative Law Judge's proposed decision.
- E. The Administrative Law Judge filed a proposed decision in this matter on December 19, 1994. The proposed decision was considered by the Board on February 16, 1995.

FINDINGS OF FACT

1. To be qualified to sit for the nursing home administrator's examination, an applicant must:
 - pay a fee,
 - be 18 years of age,
 - complete a course of study which the board considers adequate preparation for nursing home administration, and
 - not have an arrest or conviction record, subject to the Fair Employment Act.
2. The applicant, Eugene A. Kvapil, satisfies the first three requirements, but he has a conviction record.
3. The Fair Employment Act (sections 111.31 through 111.395 of the Wisconsin Statutes) prohibits employment discrimination based on conviction record unless the circumstances of the conviction are substantially related to the circumstances of the job or activity.
4. On September 5, 1990, Mr. Kvapil was convicted in Chippewa County of misdemeanor theft for an offense which occurred on August 6, 1990. Mr. Kvapil stole a gas grill from a rectory garage. When questioned by the police, Mr. Kvapil admitted his offense and later agreed to plead no contest to the charge.
5. Mr. Kvapil was found guilty and sentenced on September 5, 1990. He was placed on probation for one year and ordered to pay a fine and court costs totalling \$180, perform 150 hours of community service, and make a written apology to the victim. Mr. Kvapil complied with all the orders, satisfied all the conditions of probation, and was released from probation three months early. Exhibit 3 is a letter of recommendation from his probation officer.
6. Mr. Kvapil is 27 years old, is married with a family, is active in community service activities, and has no other criminal record.
7. Mr. Kvapil has been employed since February 1992 as an accountant at Cornell Care Center in or near Chippewa Falls, Wisconsin. In that position he has been responsible for "hundreds of thousands of dollars" monthly. His employer, George Samardich, commended his work and supports his application to be a nursing home administrator.

CONCLUSIONS OF LAW

1. The Nursing Home Administrator Examining Board is the legal authority responsible for issuing and controlling credentials for nursing home administrators under ch. 456, Stats. The Nursing Home Administrator Examining Board has both personal and subject-matter jurisdiction over this appeal.

2. The circumstances of Mr. Kvapil's conviction for misdemeanor theft are substantially related to the practice of nursing home administration. A conviction for theft raises significant questions about the offender's honesty, trustworthiness, and respect for others' property, and a substantial relationship may be found between the conviction and nursing home administration. Given the information available to it at the time, the Nursing Home Administrator Examining Board's action in denying Mr. Kvapil's application was not an abuse of discretion.

3. Evidence of Mr. Kvapil's rehabilitation is strong, and it is sufficient to justify a discretionary decision to grant Mr. Kvapil's application.

ORDER

THEREFORE, IT IS ORDERED that Eugene A. Kvapil's application is approved, and Mr. Kvapil will be allowed to take the examination for licensure as a nursing home administrator.

EXPLANATION OF VARIANCE

A hearing was conducted in the above-captioned matter on December 14, 1994. A proposed decision was filed by the Administrative Law Judge (ALJ), on December 19, 1994. The Board considered the proposed decision on February 16, 1995. The Board adopts the Findings of Fact, Conclusions of Law and the Order as set forth in the proposed decision, except as noted below.

Findings of Fact

The ALJ states in Findings of Fact #5, that Mr. Kvapil was found guilty and convicted on "September 5, 1994". The record reflects that Mr. Kvapil was found guilty and convicted on "September 5, 1990". The Finding has been modified to reflect the date contained in the record. In this case, the length of the rehabilitative period was a significant factor in the Board's decision to allow Mr. Kvapil to sit for the examination.

Dated 2/21 1995.

Nursing Home Administrator Examining Board

Shirley P. Keller
By: Shirley P. Keller, Chair

STATE OF WISCONSIN
BEFORE THE NURSING HOME ADMINISTRATOR EXAMINING BOARD

IN THE MATTER OF THE APPLICATION :
FOR A LICENSE TO PRACTICE AS A :
NURSING HOME ADMINISTRATOR OF :

EUGENE A. KVAPIL,
APPLICANT.

NOTICE OF FILING
PROPOSED DECISION
LS9411181NHA

TO: Eugene A. Kvapil
700 North Riverside Drive
Cornell, WI 54732
Certified P 205 985 994

Henry Sanders, Attorney
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

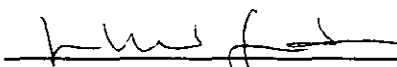
PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Nursing Home Administrator Examining Board by the Administrative Law Judge, John N. Schweitzer. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Nursing Home Administrator Examining Board, Room 290, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before January 3, 1995. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Nursing Home Administrator Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, together with any objections and arguments filed, the Nursing Home Administrator Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 19th day of December, 1994.


John N. Schweitzer
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE NURSING HOME ADMINISTRATOR EXAMINING BOARD

IN THE MATTER OF THE APPLICATION
FOR A LICENSE TO PRACTICE AS A
NURSING HOME ADMINISTRATOR OF
EUGENE A. KVAPIL,
APPLICANT.

PROPOSED DECISION
Case No. LS-9411181-NHA
(94 NHA 021)

PARTIES

The parties in this matter under § 227.44, Stats., and § RL 1.04, Wis. Admin. Code, and for purposes of review under § 227.53, Stats., are:

Applicant:

Eugene A. Kvapil
700 North Riverside Drive
Cornell, WI 54732

Credential-Issuing Authority

Nursing Home Administrator Examining Board
Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53703

PROCEDURAL HISTORY

A. The applicant, Eugene A. Kvapil, applied to take the examination for licensure as a nursing home administrator on May 27, 1994.

B. Mr. Kvapil's application was reviewed and denied by the Nursing Home Administrator Examining Board on August 31, 1994. Written notice of the denial was sent to Mr. Kvapil on September 19, 1994.

C. On October 18, 1994 Mr. Kvapil filed a request for a hearing on the denial, which was scheduled for December 14, 1994.

D. The hearing was held as scheduled. Mr. Kvapil appeared in person without legal counsel. The board was represented by Attorney Henry Sanders of the department's Division of Enforcement. The hearing was recorded. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. To be qualified to sit for the nursing home administrator's examination, an applicant must
 - pay a fee,
 - be 18 years of age,
 - complete a course of study which the board considers adequate preparation for nursing home administration, and
 - not have an arrest or conviction record, subject to the Fair Employment Act.
2. The applicant, Eugene A. Kvapil, satisfies the first three requirements, but he has a conviction record.
3. The Fair Employment Act (sections 111.31 through 111.395 of the Wisconsin Statutes) prohibits employment discrimination based on conviction record unless the circumstances of the conviction are substantially related to the circumstances of the job or activity.
4. On September 5, 1990, Mr. Kvapil was convicted in Chippewa County of misdemeanor theft for an offense which occurred on August 6, 1990. Mr. Kvapil stole a gas grill from a rectory garage. When questioned by the police, Mr. Kvapil admitted his offense and later agreed to plead no contest to the charge.
5. Mr. Kvapil was found guilty and sentenced on September 5, 1994. He was placed on probation for one year and ordered to pay a fine and court costs totalling \$180, perform 150 hours of community service, and make a written apology to the victim. Mr. Kvapil complied with all the orders, satisfied all the conditions of probation, and was released from probation three months early. Exhibit 3 is a letter of recommendation from his probation officer.
6. Mr. Kvapil is 27 years old, is married with a family, is active in community service activities, and has no other criminal record.
7. Mr. Kvapil has been employed since February 1992 as an accountant at Cornell Care Center in or near Chippewa Falls, Wisconsin. In that position he has been responsible for "hundreds of thousands of dollars" monthly. His employer, George Samardich, commended his work and supports his application to be a nursing home administrator.

CONCLUSIONS OF LAW

- I. The Nursing Home Administrator Examining Board is the legal authority responsible for issuing and controlling credentials for nursing home administrators, under ch. 456, Stats. The Nursing Home Administrator Examining Board has both personal and subject-matter jurisdiction over this appeal.
- II. The circumstances of Mr. Kvapil's conviction for misdemeanor theft are substantially related to the practice of nursing home administration. A conviction for theft raises significant questions about the offender's honesty, trustworthiness, and respect for others' property, and a substantial relationship may

be found between the conviction and nursing home administration. Given the information available to it at the time, the Nursing Home Administrator Examining Board's action in denying Mr. Kvapil's application was not an abuse of discretion.

III. Evidence of Mr. Kvapil's rehabilitation is strong, and it is sufficient to justify a discretionary decision to grant Mr. Kvapil's application.

ORDER

THEREFORE, IT IS ORDERED that Eugene A. Kvapil's application is approved, and Mr. Kvapil will be allowed to take the examination for licensure as a nursing home administrator.

OPINION

This case is a review of the Nursing Home Administrator Examining Board's decision to deny Eugene A. Kvapil's application to take the examination for licensure as a nursing home administrator. It is a "class 1" hearing, in which the burden is on the applicant to show that the board's decision was an abuse of discretion. Mr. Kvapil did not show that the board's decision was wrong or an abuse of discretion, especially given the information available to it at the time, but he did present additional information regarding his offense and his rehabilitation which leads me to recommend that the board in its discretion approve Mr. Kvapil's application.


Section 111.321, Stats. generally prohibits employment discrimination (defined in section 111.322 to include refusing to license an individual) on the basis of conviction record. An exception exists in section 111.335, which says "notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to suspend from employment or licensing, any individual who: 1. has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity"

The earliest cases interpreting section 111.335 stated that an employer (or a board) was only obliged to consider the "circumstances of the conviction" or the "elements of the offense". Law Enforce. Stds. Bd. v. Lyndon Station, 101 Wis.2d 472, 305 N.W.2d 89 (1981); Gibson v. Transp. Comm., 106 Wis.2d 22, 315 N.W.2d 346 (1982). If the inquiry went no further than that, I would simply find that Mr. Kvapil's theft of property is substantially related to the practice of nursing home administration, and I would recommend that the board's decision be affirmed.

However, the most recent major case interpreting section 111.335 stated the test in a way which permits a more subtle inquiry, and that is whether the tendencies and inclinations to behave in a certain way as demonstrated by the crime are likely to reappear in the employment in question. County of Milwaukee v. LIRC, 139 Wis.2d 805, 407 N.W.2d 908 (1987). The testimony and documentary evidence presented at the hearing answer this query in the negative. Mr. Kvapil testified that the theft

of property is his only criminal offense and that it occurred during a time of unemployment, family stress, and personal desperation. He also presented substantial evidence of his rehabilitation since his offense, with a letter from his probation officer which describes his adjustment and reputation now as "excellent". Finally, he presented testimony from his employer which shows that for nearly three years he has held a position of significant responsibility as an accountant in a nursing home. I am convinced that whatever "tendencies and inclinations" he may have demonstrated by his theft are not likely to appear again, and that his application to sit for the examination should be approved. At the end of the hearing, attorney Sanders stated that he would agree with such a recommendation.

Dated and signed: December 19, 1994



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