

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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# FILE COPY

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

CAROL ANN FITZGERALD, L.P.N.,  
RESPONDENT

:  
:  
:  
:  
:

FINAL DECISION AND ORDER  
93 NUR 228

ORDER 0001674

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

Carol Ann Fitzgerald  
559 East Second Street  
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. Carol Ann Fitzgerald (D.O.B. 04/30/46) is duly licensed in the state of Wisconsin to practice as a practical nurse (license #29726). This license was first granted on April 14, 1989.

2. Ms. Fitzgerald's latest address on file with the Department of Regulation and Licensing is 559 East Second Street, Winona, MN 55987.

3. On or about September 30, 1993 the Minnesota Board of Nursing issued an order imposing discipline upon Ms. Fitzgerald's license to practice as a nurse in Minnesota. A true and correct copy of the Minnesota Stipulation and Consent Order is attached to this Order as Exhibit A.

4. In resolution of this matter, Ms. Fitzgerald consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

Carol Ann Fitzgerald 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)(a) and (b) and N7.04(7) and (15).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the State of Wisconsin Board of Nursing accepts the VOLUNTARY SURRENDER of the license of Carol Ann Fitzgerald (#29726).

IT IS FURTHER ORDERED that should Ms. Fitzgerald reapply for Wisconsin licensure, the Board may in its sole discretion determine whether, and under what terms and conditions, this license may be reissued.

This Order shall become effective upon the date of its signing.

BOARD OF NURSING

By: Jacqueline Johnson RN MS 1/28/94  
A Member of the Board Date



STATE OF MINNESOTA  
**BOARD OF NURSING**

2700 University Avenue West • Suite 108 • St. Paul, Minnesota 55114 • (612) 642-0567

MN Relay Service for Hearing/Speech Impaired: (612) 297-5353 or 1-800-627-3529

I, Joyce M. Schowalter, Executive Director of the Minnesota Board of Nursing, do hereby certify that I am the Custodian of the Records of the Minnesota Board of Nursing and that the attached documents in the matter of Carol Fitzgerald, LPN, are true and correct copies of said documents as they appear among the files and records in the Minnesota Board of Nursing office. The documents are kept in the regular course of business of the Minnesota Board of Nursing and were prepared as a matter of routine business practice of the Board.

WITNESS, my hand and seal of the Minnesota Board of Nursing this 2nd day of November, 1993.

MINNESOTA BOARD OF NURSING

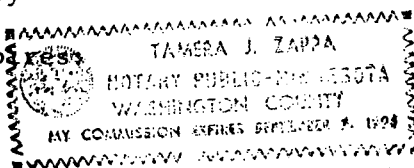
By: Joyce M. Schowalter  
Joyce M. Schowalter  
Executive Director

S E A L

Subscribed and sworn to before me this  
2nd day of November, 1993.

Tamera J. Zappa  
Signature - Notary

My commission expires



**BEFORE THE MINNESOTA  
BOARD OF NURSING**

In the Matter of  
Carol A. Fitzgerald, L.P.N.  
License No. 38841-8

**STIPULATION AND  
CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by Carol A. Fitzgerald, L.P.N. ("Licensee") and the Minnesota Board of Nursing ("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 August 5, 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 September 16, 1993, Licensee appeared before the Board Review Panel composed of Steve Swonder, Board Member, and Shirley Brekken, Associate Executive Director of the Board, to discuss allegations made in the notice referenced above. Tracey Burton, Assistant Attorney General, represented the Board at the conference;
3. Licensee expressly waives the formal hearing and all other procedures before the Board to which she may be entitled under the Minnesota and United States constitutions, statutes, or rules. Although Licensee was reminded of her right to counsel, she voluntarily waived such right stating that she understood her right and her waiver;
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 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. While Licensee was employed as a practical nurse at St. Michael's Lutheran Home for the Aged, Fountain City, Wisconsin, the following occurred:

1) On December 5, 1990, Licensee was given a written warning for calling another employee and telling her that the Director of Nursing said that the employee had to work either December 24 or December 25, 1990. Licensee had already been scheduled to work those days. At the conference, Licensee denied that she told the employee that she had to work on the above referenced dates;

2) On December 18, 1990, Licensee was given a written warning for telling a resident that he had to take a Halcion tablet when he said he did not want to take the medication. Licensee stated that she encouraged the resident to take the medication so that he could feel better;

3) On May 27, 1991, Licensee failed to give resident FM insulin at 2100 after the 1700 insulin had been held. At the conference, Licensee was unable to explain the consequences of not administering the insulin nor was she able to describe the different types of insulin and compare their effects;

4) On June 16, 1991, Licensee failed to administer his 1800 Macrochantin to resident GM;

5) On August 1, 1991, Licensee charted, but failed to administer Lanoxin to resident BK;

6) On August 20, 1991, Licensee failed to apply a medicated disc to resident ET;

7) On September 8, 1991, it was noted that resident ET had a nitro patch on his chest instead of a Catapress patch as ordered. The nitro patch was signed by Licensee. Under the nitro patch was a Catapress TTS-1 patch. At the conference, Licensee was unable to explain the difference between the nitro patch and a Catapress patch;

8) On September 3, 1991, Licensee administered one tablet of Tylenol to resident LF instead of two tablets as ordered;

9) On September 10, 1991, staff discussed the many medication errors with Licensee. Licensee's performance was to be evaluated every week for the next two weeks;

10) On November 19, 1991, Licensee administered Lanoxin to resident EH even though it was to be held;

11) On November 22, 1991, Licensee was asked to take and successfully pass a medication class or refresher class in order for Licensee to continue with her employment at the facility. Licensee stated that she took a two week class that required four hours per night of study. She also stated that she passed the class with a score of 84 out of 100 possible points;

12) On January 15, 1992, Licensee administered 300 cc. of Ensure to resident JH instead of 300 cc. of Glucerna;

13) On February 28, 1992, Licensee administered two 10 mg. tablets of Moban to resident HC instead of one 10 mg. tablet as ordered;

14) On April 15, 1992, Licensee administered two tablets of Mellaril 10 mg. to resident HG instead of three tablets as ordered;

15) On April 24, 1992, Licensee administered one tablet of Haldol to resident AW instead of two tablets as ordered;

16) On May 28, 1992, Licensee failed to administer the 2200 dose of Isosorbide to resident AW;

17) On July 2, 1992, Licensee administered 40 mg. of Lasix to resident HM instead of 80 mg. as ordered;

b. On July 18, 1992, Licensee was asked to resign from her position as a practical nurse;

c. Licensee stated that she is currently working as a certified nursing assistant at St. Michael's Lutheran Home in Fountain City, Wisconsin and does not plan to practice practical nursing in Minnesota at this time.

d. At the conference, Licensee acknowledged that she made the above-referenced medication errors and attributed these errors to personal stress in her life at that time. She stated that she should have taken a personal leave from her job as a result of two traumatic personal incidents that occurred in May, 1991 and October, 1991. Moreover, she stated that she worked three jobs during the period of the medication errors referenced herein. Licensee indicated that if she were ever to experience that level of stress again she would seek professional counseling.

7. Licensee admits and acknowledges that the facts and conduct specified in paragraph 6 above constitute a violation of Minn. Stat. § 148.261 (1992) and justify revocation of or other disciplinary action against her license and constitute a reasonable basis in law and fact to justify the disciplinary action provided for in the order;

8. 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 Board'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 (1992);

9. 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;



10. Upon this stipulation and record, as set forth in paragraph 4 above, and without any further notice of proceedings, the Board may, in its discretion, accept the VOLUNTARY SURRENDER of Licensee's current registration certificate to practice practical nursing in the State of Minnesota;

11. Licensee shall cease and desist from practicing practical nursing in any manner in the State of Minnesota and shall neither offer nor provide any practical nursing services of any nature within the state of Minnesota until such time as the full Board has completed a review of any allegations pending against her at the administrative level through a conference or hearing initiated pursuant to the Administrative Procedure Act;

12. Licensee shall not petition for reregistration of her license to practice practical nursing until such time as she meets with a Board Review Panel to determine what evidence Licensee must present to the Board upon petitioning for reinstatement of her license. The evidence may include, but is not limited to, the following:

a. Evidence of successful completion of at least six contact hours of continuing education in the area of diabetes and six hours in the area of the administration of medications. These classes shall be approved in advance by Board staff. To evidence successful completion, Licensee shall provide the following written documentation for each class: a concise description and official verification of successful completion;

b. Reports in support of Licensee's petition from the following persons:

1) A report from Licensee herself. The report shall provide and/or address:

a) Type of nursing in which Licensee has been involved, places of employment and work assignment;

b) Licensee's position and job responsibilities;

c) Licensee's work schedule, including the number of hours worked;

d) Licensee's ability to recognize and cope with stress;

e) How Licensee has applied, or intends to apply, the information she has gained from her continuing education classes to her nursing practice;

f) Licensee's future plans in nursing, including information regarding her intent to practice nursing in Minnesota;

g) Any other information which Licensee believes would assist the Board in its ultimate review of this matter;

2) A report from Licensee's work supervisor. The report shall provide and/or address:

a) Type of nursing in which Licensee has been involved, places of employment and work assignment;

b) Licensee's position and job responsibilities;

c) Licensee's work schedule, including the number of hours worked;

d) Licensee's ability to recognize and cope with stress.

c. Licensee shall also meet any other re-registration requirements.

13. The Board may, at any regularly scheduled meeting following Licensee's petition for reinstatement, take any of the following actions:

a. Reissue a registration certificate to Licensee;

b. Reissue a registration certificate to Licensee conditional upon further reports to the Board and/or restrictions placed upon the scope of Licensee's practice;

c. Deny Licensee's request for reissuance of a registration certificate based upon her failure to meet the burden of proof.

14. Any appropriate court may, upon application of the Board, enter its decree enforcing the order of the Board;

15. Licensee's noncompliance with this order shall be considered a violation of Minn. Stat. § 148.261 (1992) and constitute grounds for further disciplinary action;

16. 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;

17. If the Board receives evidence that Licensee has violated the terms of the 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 (1992), 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.

18. This stipulation and consent order shall be classified as public data pursuant to Minn. Stat. § 13.41, subd. 4 (1992);

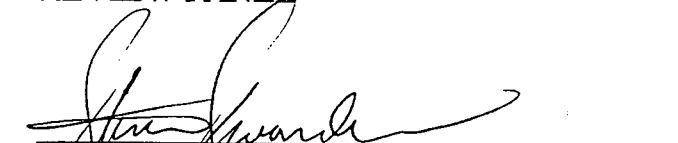
19. This stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this stipulation.

CONSENT:

BOARD OF NURSING

REVIEW PANEL

  
CAROL A. FITZGERALD, L.P.N.  
Licensee

  
STEVE SWONDER  
Board Member

Dated: Sept 26th, 1993

Dated: Sept 30, 1993

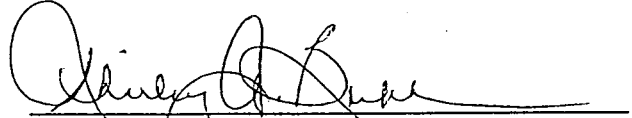
Upon consideration of this stipulation and all the files, records, and proceedings herein,

1. IT IS HEREBY ORDERED that the Board accepts Licensee's SURRENDER of her registration certificate to practice practical nursing in the State of Minnesota;

2. IT IS FURTHER ORDERED that all other terms of this stipulation are adopted and implemented by the Board this 1st day of October, 1993.

MINNESOTA BOARD

OF NURSING

A handwritten signature in cursive script, appearing to read "Shirley A. Brekken", is written over a horizontal line.

SHIRLEY A. BREKKEN  
Associate Executive Director

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
CAROL ANN FITZGERALD, L.P.N.,	:	93 NUR 228
RESPONDENT	:	

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It is hereby stipulated between Carol Ann Fitzgerald, 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. Fitzgerald's licensure by the Division of Enforcement (93 NUR 228). Ms. Fitzgerald consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Ms. Fitzgerald 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. Fitzgerald is aware of her right to seek legal representation and has been provided the opportunity to seek legal advice prior to signing this stipulation.

4. Ms. Fitzgerald 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.

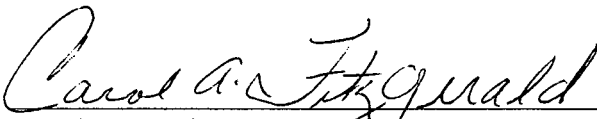
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

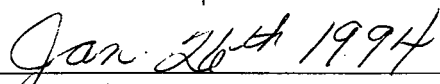
6. Attached to this Stipulation is the current licensure card of Carol Ann Fitzgerald. If the Board accepts the Stipulation, Ms. Fitzgerald's license shall be reissued only in accordance with the terms of the attached Final Decision and Order. If the Board does not accept this Stipulation, the

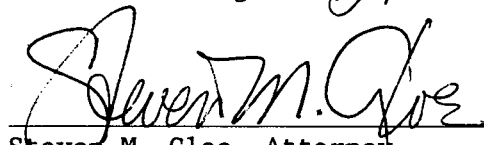
Final Decision and Order. If the Board does not accept this Stipulation, the license of Ms. Fitzgerald shall be returned to her with a notice of the Board's decision not to accept the Stipulation.

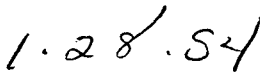
7. The parties to this stipulation agree that the attorney for the Division of Enforcement and the member of the Board of Nursing assigned as an advisor in this investigation may appear before the Board of Nursing for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

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

  
Carol Ann Fitzgerald, L.P.N.

  
Date

  
Steven M. Gloe, Attorney  
Division of Enforcement

  
Date

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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:**

FEBRUARY 1, 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.)





PDF: DE00000001603-19940128

Order Dates:

JAN 28, 1994

Respondent Names:

FITZGERALD, CAROL ANN, LPN

Complaint IDs:

93NUR228

Profession:

LICENSED PRACTICAL NURSE

Boards:

NUR

Short Description:

VOLUNTARY SURRENDER.

Case Summary:

MINNESOTA BOARD OF NURSING ISSUED AN ORDER IMPOSING DISCIPLINE.

