

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
: :
CHERYL ANN BURNETT-CALKINS, RN, :
RESPONDENT. :

FINAL DECISION
AND ORDER
LS9501261NUR

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 board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 7 day of July 1995.

Samuel A. Mason

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**STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

**PROPOSED DECISION
Case No. LS-9501261-NUR**

**CHERYL ANN BURNETT-CALKINS, R.N.,
RESPONDENT.**

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Cheryl Ann Burnett-Calkins
c/o Robert E. Ellsworth Correctional Center
21425-A Spring Street
Union Grove, Wisconsin 53182

Board of Nursing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

This matter was commenced by the filing of a Notice of Hearing and Complaint on January 26, 1995. A hearing was held in the above-captioned matter on March 9, 1995. Atty. James W. Harris appeared on behalf of the Division of Enforcement. Cheryl Ann Burnett-Calkins appeared by telephone.

Based upon the record herein, the Administrative Law Judge recommends that the Board of Nursing adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Cheryl Ann Burnett-Calkins (d.o.b. 3/23/55), is licensed as a registered nurse in the State of Wisconsin, license #68998. Respondent's most recent address on file with the Department of Regulation and Licensing is: Robert E. Ellsworth Correctional Center, 21425-A Spring Street, Union Grove, Wisconsin 53182.

2. On January 4, 1993, the respondent was convicted in Rock County, Wisconsin of three misdemeanor counts of "financial transaction card crime" in violation of s. 943.41 (3) (a), Stats, and two misdemeanor counts of "fraudulent use of a credit card", in violation of s. 943.41 (5), Stats. The crimes were committed by respondent during the time period between October 1, 1992, and October 26, 1992. Sentence was withheld and respondent was placed on probation on January 4, 1993, for three years concurrent.

3. On March 19, 1993, respondent was convicted in Dane County, Wisconsin, of one count of felony forgery in violation of s. 943.38 (2), Stats. The crime was committed by respondent on October 6, 1992. Sentence was withheld and respondent was placed on probation on May 28, 1993, for three years.

4. Based upon respondent's conduct as described in Findings of Fact #2 and 3 above, the Board of Nursing issued a Final Decision and Order on July 8, 1994, suspending respondent's license to practice as a registered nurse for a period of not less than two years. The Board further ordered that after one year from the date of the order the suspension be stayed for a period of three months, conditioned upon compliance with numerous conditions and limitations set forth in the order.

5. On September 14, 1994, respondent was convicted in Rock County of one felony count of "forgery-uttering", in violation of s. 943.38 (2), Stats. The crime was committed by respondent on May 29, 1994. Respondent was sentenced to prison on November 28, 1994, for five years, concurrent.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to s. 441.07, Stats., and s. N 7.04, Wis. Adm. Code.

2. Respondent by having engaged in conduct as described in Findings of Fact #5 herein, violated s. 441.07 (1) (b) and (d), Stats., and s. N 7.04 (1) and (15), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Cheryl Ann Burnett-Calkins (#68998) to practice as a registered nurse be, and hereby is, revoked.

IT IS FURTHER ORDERED that pursuant to s. 440.22, Stats., the cost of this proceeding shall be assessed against respondent, and shall be payable to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed by a designee of the Board of Nursing.

OPINION

This matter was commenced by the filing of a Notice of Hearing and Complaint on January 26, 1995. A hearing was held on March 9, 1995. Atty. James W. Harris appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Ms. Burnett-Calkins appeared by telephone.

The evidence presented in this case establishes that by having been convicted of forgery on September 14, 1994, Ms. Burnett-Calkins violated s. 441.07 (1) (b) and (d), Stats., and s. N 7.04 (1) and (15), Wis. Adm. Code.

Having found that Ms. Burnett-Calkins engaged in unprofessional conduct, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Board of Nursing is authorized under s. 441.07 (1), Stats., to reprimand a registered nurse or limit, suspend or revoke the license of a registered nurse if it finds that the individual has engaged in unprofessional conduct.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1969).

The Administrative Law Judge recommends that Ms. Burnett-Calkins' license to practice as a registered nurse be revoked. This measure is designed primarily to assure protection of the public and to deter other licensees from engaging in similar misconduct.

Ms. Burnett-Calkins was convicted in Rock County in January 1993, of three counts of "financial transaction card crimes", and two counts of "fraudulent use of a credit card". All of the crimes were committed in October of 1992. The crimes involved the "acquisition" of a Visa card from a patient (Hansen) at a hospital where the respondent was employed, and the acquisition and use of a Visa and a Discover card belonging to a second patient (Thalacker) at the hospital. She was placed on probation for 3 years to run concurrently. In March 1993, she was convicted in Dane County of one count of felony forgery. This crime was also committed in October of 1992, and involved the use of the Visa card acquired from one of the hospital patients (Hansen) identified in the Rock County conviction. She was placed on probation for three years. These two convictions formed the basis for the Final Decision and Order issued by the Board of Nursing on July 9, 1994. In rendering its decision, the Board accepted the Stipulation signed by Ms. Burnett-Calkins, dated May 25, 1994. *Exhibits #2, 3 and 4.*

On May 29, 1994, four days after signing the Stipulation submitted to the Board, she committed another act of forgery for which she was convicted on November 23, 1994. She pled no contest and was sentenced to 5 years in prison. According to the criminal "Information", the May 29, 1994, forgery involved a \$625.92, payroll check which she endorsed as "Julie Sandmann". The Information also contains two additional counts involving conduct which occurred after the respondent signed the Stipulation submitted to the Board. One count relates to forgery of a signature on a charge card receipt at JC Penny's in June 1994, in the amount of \$700.70, endorsed as "Sophie Washburn", and the other count relates to forgery of a signature on a charge card at Bergner's on July 5, 1994, in the amount of \$1,065.31, endorsed as "Sophie Washburn". She was not convicted of these two counts. *Exhibits #5 and #6.*

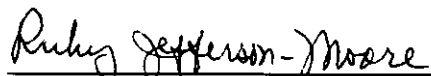
In reference to rehabilitation, the Board provided Ms. Burnett-Calkins with ample opportunity to seek rehabilitation in its order dated July 8, 1994. The Board permitted her to resume practice after a one year suspension period subject to compliance with certain conditions and limitations. In her Answer to the Complaint filed in this matter, she stated that since her incarceration she has "actively participated in any classes, treatment programs and educational opportunities that have been made available" to her. *Exhibits #1 and 4.* Following the completion of her prison term, she may seek reinstatement of her license upon submission of satisfactory evidence to the Board of successful rehabilitation.

Public trust is essential to the practice of a registered nurse. Ms. Burnett-Calkins has shown by her conduct that she is dishonest and untrustworthy and that she is incapable of practicing in a manner which safeguards the interest of the public. At this time, revocation of her license is the only viable measure available to assure protection of the public and to deter other licensees from engaging in similar misconduct.

Based upon the record herein, the Administrative Law Judge recommends that the Board of Nursing adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 16th day of May, 1995

Respectfully submitted,



Ruby Jefferson-Moore
Administrative Law Judge

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:

JULY 12, 1995.

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 THE DISCIPLINARY
PROCEEDINGS AGAINST

CHERYL ANN BURNETT- CALKINS, R.N.,
RESPONDENT.

AFFIDAVIT OF COSTS
LS9501261NUR

STATE OF WISCONSIN
COUNTY OF DANE

Ruby Jefferson-Moore, being first duly sworn on oath deposes and states:

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

2. That in the course of affiant's employment she was appointed administrative law judge in the above-captioned matter. That to the best of affiant's knowledge and belief, the costs for services provided by affiant are as follows:

<u>ACTIVITY</u>	<u>DATE</u>	<u>TIME</u>
Preparation and Hearing	03/09/95	1 hr.
Review record/law/draft decision	05/16/95	2 hrs.

Total costs for Administrative Law Judge \$81.45

3. That upon information and belief, the total cost for court reporting services provided by Magne-Script is as follows: N/A

Total costs for Office of Board Legal Services: \$81.45

Ruby Jefferson-Moore
Ruby Jefferson-Moore
Administrative Law Judge

Sworn to and subscribed to before me
this 1st day of August, 1995

Donna R. Rittel
Notary Public
My Commission: is Permanent

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	AFFIDAVIT OF COSTS
CHERYL ANN BURNETT-CALKINS, R.N.,	:	LS9501261NUR:
RESPONDENT.	:	

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

James W. Harris, 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>
1/11/95	Review file 92 NUR 220 & orders	1.0
1/11/95	Review Rock County Criminal file record	1.0
1/11/95	Review Illinois Board of Nursing record	0.5
1/19/95	Prepare formal complaint	1.0
1/23/95	Prepare Notice of Hearing/Schedule Hearing	1.0
3/03/95	Pre-Hearing Conference	0.5
3/09/95	Prepare and attend administrative hearing	1.0
	TOTAL HOURS	6.0

Total attorney expense for James Harris
at \$ 41.00 per hour

\$ 246.00

INVESTIGATOR EXPENSE FOR STEVE ROHLAND

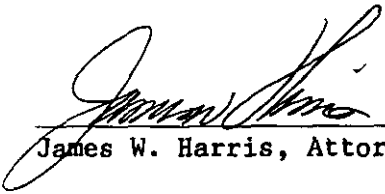
<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
9/31/94	Review Complaint, prepare record request	0.5
11/17/94	prepare sentencing record request	0.25
1/09/95	prepare case summary/transmittal	0.5
TOTAL HOURS		<hr/> 1.25 hours

Total investigator expense for Steve Rohland
hours and minutes at \$20.00 per hour
(based upon average salary and benefits
for Division of Enforcement investigators) equals:

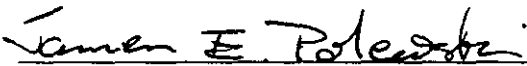
\$ 25.50

TOTAL ASSESSABLE COSTS

\$ 271.50


James W. Harris, Attorney

Subscribed and sworn to before me this
22nd day of August, 1995.


Notary Public
My Commission Permanent