

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JOSEPH A. SAMMARTANO, L.P.N.,
RESPONDENT.

FINAL DECISION
AND ORDER
LS9505111NUR

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 3 day of November, 1995.

Pamela D. McFarland

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

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

**PROPOSED DECISION
Case No. LS-9505111-NUR**

**JOSEPH A. SAMMARTANO, L.P.N.,
RESPONDENT.**

PARTIES

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

Joseph A. Sammartano
410 McLean
Tomah, WI 54660

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 May 11, 1995. A hearing was held in the above-captioned matter on July 12, 1995. Atty. Steven M. Gloe appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The respondent, Joseph A. Sammartano did not appear at the hearing.

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. Joseph Sammartano (d.o.b., 06/21/41), 410 McLean, Tomah, WI, is licensed as a practical nurse in the State of Wisconsin, license #31981, first granted on September 23, 1993.
2. At least as of April, 21, 1994, respondent was licensed as a practical nurse in the State of Florida.

3. On April 21, 1994, the Florida Board of Nursing issued a disciplinary order placing the respondent on probation for one year, subject to certain conditions, which included, but are not limited to, the following:

- (a) Refrain from violating state and federal laws relating to the practice of nursing;
- (b) Report any change in address, employment or any arrests to the Board;
- (c) Submit quarterly reports providing current address, employer's name and address and description of job duties;
- (d) Provide employer with copy of Board Order and assure submission of quarterly reports by employer to the Board;
- (e) If enrolled in a nursing program, provide Program Director with a copy of the Board Order;
- (f) Complete courses in legal aspects of nursing and administration of medications;
- (g) Work in a setting under direct supervision and only on a regularly assigned unit. Licensee may not be employed by a nurse registry, temporary nurse employment agency or home health agency. Multiple employers are prohibited. Licensee may not be self-employed as a nurse, and
- (h) Pay an administrative fine in the amount of \$500.00.

4. The Final Order issued by the Florida Board of Nursing is based upon the findings of fact set forth in the Administrative Complaint filed with that Board, which included, but are not limited to, the following:

- 3. On or about February 24, 1993, Respondent, while working in his capacity as a practical nurse at Oak Manor Nursing Center, did fail, on at least 4 occasions, to administer medications to patients.
- 4. Documentation provided by the facility confirms that the medications were not administered. Respondent freely admitted not administering the medications and was, therefore, terminated from his employment at the facility.

5. At least as of March 9, 1995, respondent had not complied with the conditions of probation set forth in the Final Order issued by the Florida Board of Nursing on April 21, 1994.

6. Respondent did not file an Answer to the Complaint filed in this matter, and did not appear at the hearing held in this matter.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to s. 441.07 (1), Stats., and ch. N 7, Wis. Adm. Code.

2. By having engaged in conduct as described in Findings of Fact 3 and 4, herein, respondent violated ss. N 7.04 (1), (7) and (15), Wis. Adm. Code.

3. By failing to file an Answer to the Complaint and failing to appear at the hearing held in this matter, respondent is in default under s. RL 2.14 Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Joseph Sammartano to practice as a licensed practical nurse be, and hereby is, **SUSPENDED** for an **INDEFINITE PERIOD** of time.

IT IS FURTHER ORDERED that:

(1) **Petition for Stay**. Mr. Sammartano may petition the Board at any time for a stay of the suspension of his licensure. In conjunction with such petition, Mr. Sammartano shall submit documentation of his fitness to safely and competently resume practice as a licensed practical nurse.

(2) **Board Action**. Upon its determination that Mr. Sammartano can safely and competently return to practice as a licensed practical nurse, the Board may stay the suspension for a period of three (3) months, conditioned upon his compliance with the conditions and limitations set forth in paragraph (3).

(a) Respondent may apply for consecutive three (3) months extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed upon respondent's practice during the prior three (3) month period.

(b) If the Board denies the petition by respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in ch. RL 1, Wis. Adm. Code, upon timely receipt of a request for a hearing.

(c) Upon a showing by respondent of complete, successful and continuous compliance for a period of one (1) year with the terms of paragraph (3), below, the Board may grant a petition by respondent for return of full licensure if it determines that respondent may safely and competently engage in practice as a licensed practical nurse.

(3) **Conditions of Stay**

(a) Within six (6) months of the date of the initial Board Order granting stay of suspension, respondent shall certify to the Board of Nursing the successful completion of an approved course of education in medication administration and documentation. Respondent shall submit course outlines for approval by a Board designee within two (2) months of the date of the stay Order. The course outlines shall include the name of the institution providing the instruction, the name of the instructor, and the course content.

(b) Until filing of certification of successful completion of the required training, as provided in paragraph (a) above, respondent shall not engage in medication administration except under the direct supervision of a registered nurse.

(c) Respondent shall be responsible for all costs associated with the education coursework and reporting required under the terms of the stay Order.

(d) Respondent shall provide all current and prospective nursing employers with a copy of this Final Decision and Order and any subsequent stay Orders; arrange for submission of quarterly reports to the Board of Nursing from his nursing employer(s) reporting the terms and conditions of his employment and evaluating his work performance, and report to the Board any change in his employment status within five (5) days of such change.

(4) **Petition for Modification of Terms**

Respondent may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions. Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. S. 227.01 (3) and 227.42.

IT IS FURTHER ORDERED that pursuant to s. 440.22, Wis. 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 May 11, 1995. A hearing was held on July 12, 1995. Atty. Steven M. Gloe appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The respondent, Joseph Sammartano, did not file an Answer to the Complaint filed in this matter and did not appear at the hearing.

The evidence presented in this case establishes that the respondent violated numerous provisions of ch. N 7 Wis. Adm. Code. Having found that Mr. Sammartano violated laws governing the practice of nursing in Wisconsin, 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 licensed practical nurse or limit, suspend or revoke the license of a licensed practical nurse if it finds that the individual has violated ch. 441, Stats., or any rule adopted by the Board under the statutes.

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 Mr. Sammartano's license to practice as a licensed practical nurse be suspended for an indefinite period of time. This measure is designed primarily to assure protection of the public.

Mr. Sammartano was first granted a license to practice as a licensed practical nurse in Wisconsin in September, 1993. In April, 1994, the Florida Board of Nursing issued a disciplinary order placing him on probation for a period of one year subject to compliance with certain conditions. Some of the findings adopted by the Florida Board of Nursing in its Final Order are set forth herein in the proposed Findings of Fact (Finding #4). Based upon these findings, the evidence establishes that Mr. Sammartano is not capable of practicing as a nurse in a manner which safeguards the interests of the public.

Upon receipt of a petition for a stay of the order of suspension and documentation of fitness to safely and competently resume practice as a licensed practical nurse, it is recommended that Mr. Sammartano be permitted to return to active practice subject to compliance with certain conditions as set forth in the proposed Order. The requirement that he complete educational coursework in medication administration and documentation prior to be allowed to return to full licensure is designed to provide an additional measure of protection to the public.

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 22nd day of August, 1995

Respectfully submitted,

Ruby Jefferson-Moore

Ruby Jefferson-Moore
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

JOSEPH A. SAMMARTANO, L.P.N.,
RESPONDENT.

AFFIDAVIT OF COSTS
LS9505111NUR

STATE OF WISCONSIN
COUNTY OF DANE

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

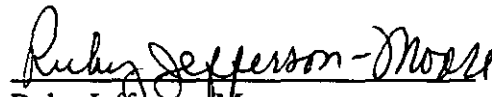
1. That affiant is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.
2. That in the course of affiant's employment she was appointed administrative law judge in the above-captioned matter. 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	07/12/95	30 min.
Review record/law/draft decision	08/22/95	1 hr.


Total costs for Administrative Law Judge: \$40.50.

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: \$40.50.


Ruby Jefferson-Moore
Administrative Law Judge

Sworn to and subscribed to before me
this 17th day of November, 1995


Notary Public:
My Commission: is Permanent

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

JOSEPH A. SAMMARTANO, L.P.N.,
RESPONDENT

AFFIDAVIT OF COSTS
94 NUR 182

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>
04/05/95	Review file; case conference	15 min.
05/08/95	Draft complaint and Notice of Hearing Schedule Hearing date	30 min.
07/12/95	Hearing preparation and attend hearing	1 hour 15 min.
TOTAL HOURS		2 hours 00 min.

Total attorney expense for
2 hours and 00 minutes at \$41.00 per hour
(based upon average salary and benefits
for Division of Enforcement attorneys) equals: \$ 82.00


INVESTIGATOR EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
09/23/94	Initial review of case file	15 min.


02/15/95	Draft letter	15 min.
03/15/95	Draft letter	20 min.
04/05/94	Reviewed file; case conference with attorney	15 min.
TOTAL HOURS		<u>1 hour 05 min.</u>

Total investigator expense for
 1 hour and 05 minutes at \$21.00 per hour
 (based upon average salary and benefits
 for Division of Enforcement investigators) equals: \$ 23.10

TOTAL ASSESSABLE COSTS \$ 105.10


 Steven M. Gloe
 Attorney
 Division of Enforcement

Subscribed and sworn to before me this 17th day of November, 1995.


 Notary Public
 My Commission is permanent.

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:

STATE OF WISCONSIN BOARD OF NURSING

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

November 7, 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.)