

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

PENELOPE RAE D'AMATO, RN,
RESPONDENT

FINAL DECISION AND ORDER
94 NUR 167

ORDER 0001763

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

Penelope Rae D'Amato, RN
N20 W5315 Pine Court
Cedarburg, WI 53012

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. Penelope Rae D'Amato, R.N. (D.O.B. 08/19/54) is duly licensed as a registered nurse in the state of Wisconsin (license #70167). This license was first granted on March 30, 1978.
2. Ms. D'Amato's most recent address on file with the Wisconsin Board of Nursing is N20 W5315 Pierce Court, Cedarburg, WI 53012.
3. On or about January 18, 1994, Ms. D'Amato was found guilty on a plea of no contest to violation of §§346.63(1)(a) and 346.65(2)(b), Wis. Stats (operation of motor vehicle while intoxicated.) In addition on January 18, 1994, the court deferred judgment on charges against Ms. D'Amato for possession of marijuana and placed her on 12 months of probation. True and correct copies of the criminal complaint and judgment of conviction in this matter are attached to this Order as Exhibit A. Exhibit A accurately reflects the facts and circumstances surrounding Ms. D'Amato's conviction, and the Exhibit is incorporated by reference into this Order.

W
new name possession
sd order

4. In resolution of this matter, Ms. D'Amato consents to the entry of the following Conclusions of Law and Order as a reasonable accommodation to allow her an opportunity to continue her nursing career, in light of the facts and circumstances of this case.

CONCLUSIONS OF LAW

By the conduct described above, Penelope Rae D'Amato is subject to disciplinary action against her license to practice as a registered nurse in the state of Wisconsin, pursuant to Wis. Stats. §441.07(1) and Wis. Adm. Code §§N7.03(2) and N7.04(1), (2) and (15).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Penelope Rae D'Amato to practice as a registered nurse in the state of Wisconsin (#70167) shall be SUSPENDED for an INDEFINITE PERIOD of time.

IT IS FURTHER ORDERED that

(a) The SUSPENSION shall be STAYED for a period of three (3) months, conditioned upon compliance with the conditions and limitations outlined in paragraph (b), below.

i. Penelope Rae D'Amato may apply for consecutive extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed upon Ms. D'Amato's practice during the prior three (3) month period. Each extension of the stay shall be for a three (3) month period.

ii. If the Board denies the petition by Ms. D'Amato for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

iii. Upon a showing by Ms. D'Amato of complete, successful and continuous compliance for a period of two (2) years with the terms of paragraph (b), below, Ms. D'Amato may petition for a removal of the indefinite suspension imposed under this Order. The Board may, in its discretion, require: 1) that Ms. D'Amato complete at least six (6) months of nursing employment monitored under the conditions of paragraph (b) prior to the Board's removal of the suspension order.

iv. The Board has reviewed materials submitted by Ms. D'Amato from her probation officer and from her treatment provider. After consideration of this documentation, the Board reduces the two (2) year compliance period by 2 months.

(b) CONDITIONS OF STAY

- i. Ms. D'Amato shall maintain successful participation in a program for the treatment of chemical dependency (and other therapy as needed) at a health care facility acceptable to the Board. As a part of treatment, Ms. D'Amato must attend therapy on a schedule as recommended by her therapist; attendance, however, shall be required at least four (4) times per month. In addition, Ms. D'Amato must attend a self-help group, such as Alcoholics or Narcotics Anonymous, at least one (1) time per week.

If her treatment provider recommends work restrictions in the field of nursing in addition to the restrictions included in this order, Ms. D'Amato shall restrict her practice in accordance with such recommendations.

- ii Upon request of the Board, Ms. D'Amato shall provide the Board with current releases complying with state and federal laws, authorizing release of counseling, treatment, monitoring and employment records.
- iii Ms. D'Amato shall remain free of alcohol, prescription drugs and controlled substances not prescribed for valid medical purposes during the period of limitation.
- iv Ms. D'Amato must participate in a program of random witnessed monitoring for controlled substances and alcohol in her blood and/or urine on a frequency of not less than four (4) times per month. The Board or its designated agent may alter this frequency in conjunction with the granting of a petition for a stay of suspension. If the physician or therapist supervising her plan of care, or her employer deems that additional blood or urine screens are warranted, Ms. D'Amato shall submit to such additional screens.

Ms. D'Amato shall be responsible for obtaining a monitoring facility and reporting system acceptable to the Board, as well as for all costs incurred in conjunction with the monitoring and reporting required.

To be an acceptable program, the monitoring facility shall agree to provide random and witnessed gatherings of specimens for evaluation. All urine screens shall include testing and reporting of the specific gravity of the urine specimen. The facility must agree to maintain a custody record of all specimens, and to confirm positive test results with gas chromatography or mass spectrometry. It shall further agree to file an immediate report directly with the Board of Nursing upon such failures to participate as: if Ms. D'Amato fails to appear upon request; or if a drug or alcohol screen proves positive; or if the specific gravity of a urine specimen is below 1.008; or if Ms. D'Amato refuses to give a specimen for analysis upon a request authorized under the terms of this Order.

Ms. D'Amato shall appear and provide a specimen not later than five

(5) hours following a request for a specimen, but in no event later than the same calendar date that the request was made. The random drug and alcohol screening program shall include weekends and holidays for collection of specimens.

Ms. D'Amato understands and agrees that the accuracy of the monitoring obtained is her responsibility. For the purposes of further actions affecting Ms. D'Amato's license, it shall be presumed that all confirmed positive reports are valid. Ms. D'Amato shall have the burden of proof to establish an error in testing or fault in chain of custody regarding a positive monitoring report.

- v Ms. D'Amato shall provide any current or prospective nursing employers with a copy of this Final Decision and Order immediately upon issuance of a stay of suspension under this Order, and upon any change of employment during the time in which a stay of suspension is in effect. In addition, Ms. D'Amato shall provide her employer with a copy of any order granting an extension of stay under this Order within five (5) days of Ms. D'Amato's receipt of an order granting a stay.

Ms. D'Amato shall immediately provide her employer with a copy of any denial of an extension of stay under this Order.

- vi Ms. D'Amato shall arrange for quarterly reports to the nursing Examining Board from her nursing employer(s) evaluating her work performance; from the monitoring facility providing the dates and results of the screenings performed; and (if applicable) from her counselor evaluating Ms. D'Amato's attendance and progress in therapy as well as evaluating her level of participation at NA/AA meetings.

- vii The Board at this time imposes no restriction regarding Ms. D'Amato's access to controlled substances in her work place. The Board reserves its right, however, to restrict Ms. D'Amato from access to or the administration of controlled substances in her work setting, if it receives a verified report of irregularities in Ms. D'Amato's handling or dispensing of controlled substances. If Ms. D'Amato's employer deems that a blood or urine screen for the presence of controlled substances is warranted from Ms. D'Amato in conjunction with a suspected irregularity, Ms. D'Amato shall submit to such screens, and Ms. D'Amato's employer shall report the results of any such screens immediately to the Board of Nursing.

- viii Ms. D'Amato shall report to the Board any change in employment status, change of residence address or phone number, within five (5) days of any such change.

(c) Ms. D'Amato 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. §§227.01(3) and 227.42.

(d) Violation of any of the terms of this Order shall be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Ms. D'Amato's license; the Board in its discretion may in the alternative deny an extension of the stay of suspension or impose additional conditions and limitations other additional discipline for a violation of any of the terms of this Order.

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

BOARD OF NURSING

By: Pamela A. Mason 3/3/95
A Member of the Board Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
PENELOPE RAE D'AMATO, RN,	:	94 NUR 167
RESPONDENT	:	

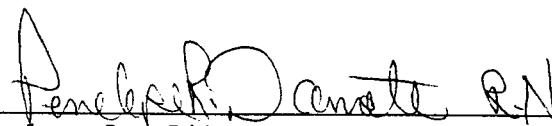
It is hereby stipulated between Penelope Rae D'Amato, personally on her own behalf and Steven M. Gloe, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of Ms. D'Amato's licensure by the Division of Enforcement. Ms. D'Amato consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Ms. D'Amato 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 her; 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. D'Amato is aware of her right to seek legal representation and has obtained legal advice prior to signing this stipulation.
4. Ms. D'Amato 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 Penelope Rae D'Amato. If the Board accepts the Stipulation, Ms. D'Amato's license shall be reissued in accordance with the terms of the attached Final Decision and Order. If the Board does not accept this Stipulation, the


license of Ms. D'Amato 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 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. D'Amato in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.


Penelope Rae D'Amato, RN

1/25/95
Date


Steven M. Gloe, Attorney
Division of Enforcement

1/31/95
Date

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:

MARCH 8, 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.)



PDF: DE00000001859-19950303

Order Dates:

MAR 03, 1995

Respondent Names:

D'AMATO, PENELOPE RAE, RN

Complaint IDs:

94NUR167

Profession:

REGISTERED NURSE

Boards:

NUR

Short Description:

SUSPEND INDEFINITELY; STAYED 3 MONTHS.

Case Summary:

FOUND GUILTY ON A PLEA OF NO CONTEST TO OPERATION OF MOTOR
VEHICLE WHILE INTOXICATED. DEFERRED JUDGMENT ON CHARGES OF
POSSESSION OF MARIJUANA.

