

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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- 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>.
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FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
MICHAEL DANE DEVINE, JR.,	:	LS9606041NUR
RESPONDENT.	:	

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
filed pursuant to the foregoing paragraph
to the Division of Enforcement and Administration

The rights of a party aggrieved by
petition for judicial review are set forth in

affidavits of costs
copy thereof

ing and the
"

Dated this 12th day

1996.

*Disciplined
in another
state*

Margaret J. Evans, Clerk

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS
AGAINST
MICHAEL DANE DEVINE, JR.,
RESPONDENT.

B. No answer was filed by Mr. Devine.

C. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on June 25, 1996. Mr. Devine did not appear. The Board of Nursing was represented by Attorney Steven Gloe of the Department's Division of Enforcement. The hearing was recorded. No transcript was prepared.

D. Mr. Gloe moved that Mr. Devine be found in default under sec. RL 2.14, Wis. Admin. Code, and the motion was granted. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. The respondent, Michael Dane Devine, Jr., is licensed to practice nursing in the state of Wisconsin, under license number 120629.
2. Mr. Devine's most recent address on file with the Department of Regulation and Licensing is 820 Calvert Drive, Paducah, Kentucky 42003. Notice of this disciplinary action was mailed to Mr. Devine at that address at least 20 days prior to the hearing.
3. On or about May 3 , 1995 , the Board of Nurse Examiners for the state of Texas accepted the voluntary surrender of Mr. Devine's license to practice nursing in the state of Texas. A copy of the Order of the Board of Nurse Examiners for the state of Texas is attached to the complaint as Exhibit A.
4. On or about September 20, 1995, the Arkansas State Board of Nursing issued an Order and Notice of Hearing based upon the Texas action and the allegation that Mr. Devine falsified an R.N. application. A copy of the Order and Notice of Hearing of the Arkansas State Board of Nursing is attached to the complaint as Exhibit B.
5. On or about October 1, 1995, Mr. Devine voluntarily surrendered his license to practice nursing in the state of Arkansas. A copy of Mr. Devine's voluntary surrender statement is attached to the complaint as Exhibit C.

CONCLUSIONS OF LAW

- I. The Board of Nursing has personal jurisdiction over Mr. Devine, based on his holding a credential issued by the board, which is a substantial contact with the state of Wisconsin, regardless of whether he is physically present in the state.. The Board of Nursing also has personal jurisdiction under sec. 801.04 (2), Stats., based on notice; notice to Mr. Devine was satisfied by mailing the Notice of Hearing to the respondent's last-known address on file with the Department, under sec. RL 2.08, Wis. Admin. Code.

II. The Board of Nursing is the legal authority responsible for issuing and controlling credentials for nurses, under ch. 441, Stats. The Board of Nursing also has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 441.07, Stats., ch. N 7, Wis. Admin. Code, and sec. N 6.05, Wis. Admin. Code.

III. The respondent, Michael Dane Devine, Jr., is in default under sec. RL 2.14, Wis. Admin. Code, which means that the Board of Nursing may make findings of fact and enter a disciplinary order on the basis of the complaint and the evidence presented at the hearing.

IV. The violations in Findings of Fact 3 and 4 constitute unprofessional conduct, under sec. N 7.04 (7), Wis. Admin. Code, and discipline is appropriate, under sec. 441.07, Stats.

ORDER

THEREFORE, IT IS ORDERED that the license issued to the respondent, Michael Dane Devine, Jr., to practice nursing in the state of Wisconsin is hereby revoked.

IT IS FURTHER ORDERED that Michael Dane Devine pay the costs of this proceeding, as authorized by sec. 440.22 (2), Stats., and sec. RL 2.18, Wis. Admin. Code.

OPINION

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the Board of Nursing alleging that the respondent, Michael Dane Devine, Jr., committed misconduct or unprofessional conduct by having disciplinary action through final board adjudication taken against his license in another jurisdiction.

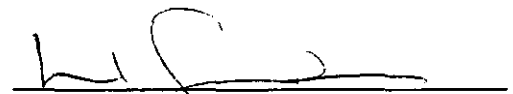
Although verification from the U.S. Post Office had not been received by the time of the hearing, to tell whether Mr. Devine received or ignored the certified mailing of the disciplinary complaint in this matter, he did not file an answer to the complaint, nor did he appear for the hearing. Under other circumstances, I might have rescheduled the hearing to make sure that Mr. Devine had an opportunity to respond, but Mr. Gloe stated that approximately two months ago he mailed a proposed stipulation to Mr. Devine, which was returned unclaimed. In this situation, it is appropriate to find Mr. Devine to be in default, and to proceed as if he had notice of the hearing, as authorized by sec. RL 2.14, Wis. Admin. Code. RL 2.14 also provides that "the disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter", but the burden is on Mr. Devine to explain his non-response.

Based on the allegations in the complaint and the supporting documents, which are referred to as exhibits A, B, and C in the complaint, I find that disciplinary action through final board adjudication was taken against nursing licenses held by Mr. Devine in Texas and Arkansas, and that this is an appropriate basis for discipline in this state.

The purposes of professional discipline have been set forth in Wisconsin Supreme Court Rule SCR 21.03(5) and in various attorney discipline cases, including Disciplinary Proc. Against Kelsay, 155 Wis.2d 480, 455 N.W.2d 871 (1990). In that case the Wisconsin Supreme Court stated "discipline for lawyer misconduct is not intended as punishment for wrongdoing; it is for the protection of the public, the courts and the legal profession from further misconduct by the offending attorney, to deter other attorneys from engaging in similar misconduct and to foster the attorney's rehabilitation." That reasoning has been extended by regulatory agencies to disciplinary proceedings for other professions. In the absence of any defense or mitigation presented by Mr. Devine, the most appropriate discipline is that imposed in the other jurisdictions, and especially since Texas and Arkansas viewed Mr. Devine's situation seriously enough to revoke his license, the only safe action to ensure the protection of the public in this state is also revocation. Under sec. 441.07 (2), Stats., Mr. Devine may petition the board for reinstatement after one year.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed. One approach is routinely to impose the costs of investigating and prosecuting unprofessional conduct on the disciplined individual rather than on the profession as a whole. Another approach is to use costs as an incentive to encourage respondents to cooperate with the process, and thus to impose costs only if the respondent is uncooperative or dilatory. I prefer the latter approach. In this case, the department attempted to settle the case without a hearing, but Mr. Devine not only failed to agree to the proposed stipulation, he failed to accept the certified mailing. An order for costs is appropriate.

Dated and signed: June 25, 1996



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

BEFORE THE STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

MICHAEL DANE DEVINE, JR.,
RESPONDENT.

AFFIDAVIT OF SERVICE

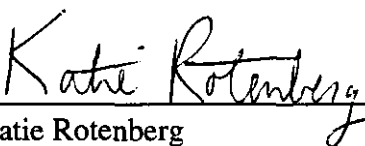
Katie Rotenberg, being first duly sworn on oath deposes and states that she is in the employ of the Department of Regulation and Licensing, and that on September 16, 1996, she served the following upon the respondent:

Final Decision and Order dated September 12, 1996, LS9606041NUR

by mailing a true and accurate copy of the above-described document, which is attached hereto, by certified mail with a return receipt requested in an envelope properly addressed to the above-named respondent at:

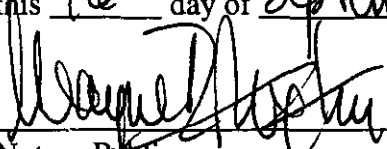
820 Calvert Drive
Paducah, KY 42003
Certified P 213 148 293

an address which appears in the files and records of the Board of Nursing as the respondent's last known address.


Katie Rotenberg
Department of Regulation and Licensing

Subscribed and sworn to before me

this 16th day of September, 1996.


Notary Public
Dane County, Wisconsin
My Commission is Permanent



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P O BOX 8935
MADISON, WISCONSIN 53708-8935
(608) 266-2112

September 27, 1996

MICHAEL DANE DEVINE, JR.
820 CALVERT DRIVE
PADUCAH KY 42003

RE: In The Matter of Disciplinary Proceedings Against Michael Dane Devine, Jr.,
Respondent, LS9606041NUR, Assessment of Costs

Dear Mr. Devine:

On September 12, 1996, the Board of Nursing issued an order involving your license to practice nursing. The order requires payment of the costs of the proceedings.

Enclosed please find the Affidavits of Costs of the Office of Board Legal Services and the Division of Enforcement in the above captioned matter. The total amount of the costs of the proceedings is \$265.87.

Under sec. RL 2.18, Wis. Adm. Code, objections to the affidavits of costs shall be filed in writing. Your objections must be received at the office of the Board of Nursing, Room 174, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before October 12, 1996. After reviewing the objections, if any, the Board of Nursing will issue an Order Fixing Costs. Under sec. 440.23, Wis. Stats., the board may not restore or renew a credential until the holder has made payment to the department in the full amount assessed.

Thank you.

Sincerely,

Pamela A. Haack
Administrative Assistant
Office of Board Legal Services

Enclosures

cc: Board of Nursing
Department Monitor

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	ORDER FIXING COSTS
	:	Case #LS9606041NUR
MICHAEL DANE DEVINE, JR.,	:	
RESPONDENT.	:	

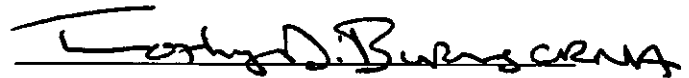
On September 12, 1996, the Board of Nursing filed its Final Decision and Order in the above-captioned matter by which the board ordered that pursuant to sec. 440.22, Wis. Stats., 100% of the costs of this proceeding be assessed against respondent. Pursuant to sec. RL 2.18 (4), Wis. Adm. Code, on or about September 23, 1996, the board received the *Affidavit of Costs* in the amount of \$187.00, filed by Attorney Steven M. Gloe. On or about September 17, 1996, the board received the *Affidavit of Costs of Office of Board Legal Services* in the amount of \$78.87, filed by Administrative Law Judge John N. Schweitzer. The board considered the affidavits on November 8, 1996, and orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to sec. 440.22, Wis. Stats., the costs of this proceeding in the amount of \$265.87, which is 100% of the costs set forth in the affidavits of costs of John N. Schweitzer and Steven M. Gloe, which are attached hereto and made a part hereof, are hereby assessed against Michael Dane Devine, Jr., and shall be payable by him/her to the Department of Regulation and Licensing. **Failure of respondent to make payment on or before December 19, 1996, which is the deadline for payment established by the board, shall constitute a violation of the Order unless respondent petitions for and the board grants a different deadline.** Under sec. 440.22 (3), Wis. Stats., the department or board may not restore, renew or otherwise issue any credential to the respondent until respondent has made payment to the department in the full amount assessed.

To ensure that payments for assessed costs are correctly receipted, the attached "*Guidelines for Payment of Costs and/or Forfeitures*" should be enclosed with the payment.

Dated this 19 day of Nov., 1996



Department of Regulation & Licensing

State of Wisconsin

P O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529, impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On November 19, 1996, the Board of Nursing
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: \$265.87 Case #: LS9606041NUR

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of \$ 265.87

The costs and/or forfeitures are due: December 19, 1996

NAME: Michael Dane Devine, Jr. LICENSE NUMBER: 120629

STREET ADDRESS: 820 Calvert Drive

CITY: Paducah STATE: KY ZIP CODE: 42003

Check whether the payment is for costs or for a forfeiture or both:

X COSTS _____ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL _____ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

**DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935**

For Receipting Use Only

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

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Committed to Equal Opportunity in Employment and Licensing+

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

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS
AGAINST
MICHAEL DANE DEVINE, JR.,
RESPONDENT.

AFFIDAVIT OF COSTS
Case No. LS-9606041-NUR
(96 NUR 002)

John N. Schweitzer affirms the following before a notary public for use in this action,
subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

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

2. In the course of my employment, I was assigned as the administrative law judge in the
above-captioned matter.

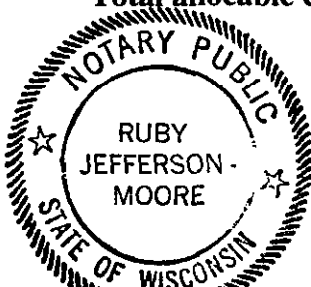
3. The expenses for the Office of Board Legal Services are set out below:


a. Administrative Law Judge Expense @ \$26.29/hour.

6-4-96	Receive complaint, read, open file	--
6-24-96	Prepare decision in outline	2 hrs.
6-25-96	Conduct hearing	1/4 hr.
6-25-96	Complete proposed decision	3/4 hr.

Total: 3 hrs. = \$78.87


Total allocable costs for Office of Board Legal Services = \$78.87





John N. Schweitzer
Administrative Law Judge

Sworn and signed before me this 17 day of September 1996.

 Notary Public, State of Wisconsin.

My commission is permanent.

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

MICHAEL DANE DEVINE, JR., RN,
RESPONDENT.

:
:
:
:
:

AFFIDAVIT OF COSTS
96 NUR 002

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 is 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>
March 29, 1996	Review file and stipulation	0 hour 15 minutes
May 29, 1996	Review and sign Notice of Hearing and Complaint	0 hour 30 minutes
February 20, 1996	Hearing preparation; attend Hearing	1 hour 15 minutes
TOTAL HOURS		<hr/> 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

EXPENSE FOR LEGAL ASSISTANT

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
March 27, 1996	Review file; Draft Stipulation offer	2 hours 15 minutes

March 29, 1996	Finalize Stipulation offer; Obtain attorney signature; locate, copy and mark exhibits, copy and mail offer	0 hour 45 minutes
May 22, 1996	Draft Complaint	0 hour 45 minutes
May 29, 1996	Finalize Complaint; Copy exhibits; Draft Notice of Hearing; Obtain Hearing Date; Prepare Complaint Checklist; Obtain attorney signature; Obtain supervisor approval; Copy and Forward Complaint and Notice of Hearing for service	1 hour 30 minutes

TOTAL HOURS

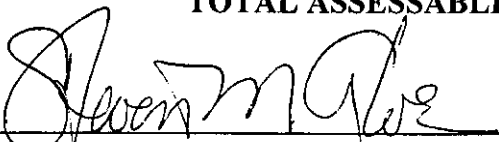
5 Hours 15 Min.

Total expense for 5 hours and 15 minutes at
\$20.00 per hour (based upon average salary and benefits)
equals:

\$105.00

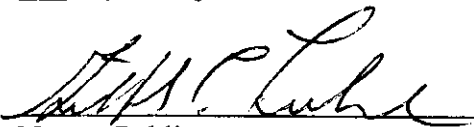
TOTAL ASSESSABLE COSTS

\$187.00



Steven M. Gloe, Attorney

Subscribed and sworn to before me this
33 day of September, 1996



Notary Public

My Commission is permanent.

G:\HBX\DEV\DEV COST DOC

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:

September 16, 1996

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.)