

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

SHIRLEY A. CABALLERO, R.N.,
RESPONDENT.

FINAL DECISION AND ORDER
Case LS9803312NUR

97 NUR 166

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

Shirley A. Caballero
4821 N. 22nd Street, Apt. 1410
Milwaukee, WI 53209

Wisconsin 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. Shirley A. Caballero (dob:5/15/51) is and was at all times relevant to the facts set forth herein a registered nurse licensed in the State of Wisconsin pursuant to license # 91308 . This license was first granted August 31, 1985.
2. Respondent was the subject of a disciplinary order in case 92 NUR 108 due to an impaired ability to safely and reliably practice as a nurse because of a bipolar affective disorder. The Board granted Respondent an unlimited license on February 4, 1994.
3. During the period September 28, 1997, through October 10, 1997, Respondent became impaired while working as a registered nurse at Silver Spring Health and Rehabilitation Center, Milwaukee, Wisconsin.
4. On October 3, 1997, and on December 23, 1997, Respondent required hospitalization for inpatient treatment of her condition which was diagnosed at St. Lukes Hospital, Racine, Wisconsin, and Froedtert Memorial Lutheran Hospital, Milwaukee, as schizoaffective disorder, bipolar affective disorder, manic, severe.

5. By Order dated rendered April 3, 1998, the Board summarily suspended the license of Respondent to practice as a nurse.

6. An evaluation of Respondent's condition by the Medical College of Wisconsin conducted on April 14, 1998, confirmed the diagnosis and reported that Respondent's condition was stable with slight improvement.

7. Respondent has participated in ongoing treatment of her condition with the Medical College of Wisconsin.

8. Respondent is not currently employed as a nurse.

CONCLUSIONS OF LAW

9. The Wisconsin Board of Nursing has jurisdiction to act in this matter pursuant to §441.07(1)(b) and (c) Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

10. The conduct described in paragraphs 2 through 5, above, violated § N 7.03(3) and N 7.04 (15) Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, as a reasonable accommodation of the condition of the Respondent, that effective on the date of this Order, the license of Shirley A. Caballero to practice as a registered nurse in the state of Wisconsin is **SUSPENDED** for an **INDEFINITE PERIOD**.

Respondent may apply to the Board for a stay of suspension for a period of three months, conditioned upon compliance with the conditions and limitations outlined below. Respondent must submit with her petition a current evaluation of her condition, proof of continuous satisfactory participation in a treatment program acceptable to the Board, and proof to the satisfaction of the Board that she is capable of safely and reliably performing the functions of a professional nurse.

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

b. The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the 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 hearing.

c. Upon a showing by respondent of successful compliance for a period of not less than five years of active practice with the terms of this order and compliance with all other terms of this Order, the Board may grant a petition by the Respondent for return of full licensure. (See ¶ 11, below.)

IT IS FURTHER ORDERED, that the license to practice of respondent shall be LIMITED as follows:

MONITORING AND TREATMENT

Treatment Required

2. Respondent shall continue successful participation in all components of a treatment program at a treatment facility acceptable to the Board as respondent's Supervising Health Care Provider shall determine to be appropriate. Dr. J. P. Mullooly and the Medical College of Wisconsin Campus Clinic Psychiatry are acceptable treatment providers.

Therapy. Respondent shall participate in individual and/or group therapy sessions for the first year of the suspension upon a schedule as recommended by the supervising physician or therapist, but not less than twice monthly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of suspension, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the license under §§ 227.01(3) or 227.42, Wis. Stats., or ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

Medication

3. Respondent shall remain in compliance with the medication regimen established by her supervising health care provider and as necessitated by her condition.

Department Monitor

4. The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all reports and petitions, and requesting additional monitoring and surveillance. The Department Monitor may be reached as follows:

Department Monitor
Department of Regulation Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
FAX (608) 266-2264
TEL. (608) 267-7139

Releases

5. Respondent shall provide and keep on file with the Supervising Health Care Provider, all treatment facilities and personnel, current releases which comply with state and federal laws authorizing release of all medical and treatment records and reports to, and permitting the Supervising Health Care Provider and all treating physicians and therapists to disclose and discuss the progress of respondent's treatment with the Board or any member thereof, or with any employee of the Department of Regulation and Licensing acting under the authority of the Board. Copies of these releases shall be filed simultaneously with the Department Monitor.

6. Respondent shall keep the Supervising Health Care Provider informed of Respondent's location and shall be available for contact by the Supervising Health Care Provider at all reasonable times.

Required Reporting by Supervising Health Care Provider

7. The Supervising Health Care Provider shall report immediately to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement by FAX or telephonic communication: any failure of Respondent to follow treatment recommendations including failure by the Respondent to comply with the medication regimen; or of any inability to locate Respondent ; or of any indication of active psychosis which may affect the ability of the Respondent to safely and reliably practice as a nurse.

8. The Supervising Health Care Provider shall submit formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress and compliance in her treatment program. The Supervising Health Care Provider shall report immediately to the Department Monitor [Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935, FAX (608)266-2264, telephone no. (608)267-7139] any violation or suspected violation of the Board's Final Decision and Order.

Required reporting by Respondent

9. Respondent is responsible for compliance with all of the terms and conditions of this Final Decision and Order. It is the responsibility of Respondent to promptly notify the Department Monitor, of any suspected violations of any of the terms and conditions of this Order, including any failures of the Supervising Health Care Provider or treatment facility to conform to the terms and conditions of this Order.

Facility approval

10. If the Board determines that the Supervising Health Care Provider or treatment facility have failed to satisfy the terms and conditions of this Final Decision and Order, the Board may, at its sole discretion, direct that Respondent continue treatment under the direction of another

Supervising Health Care Provider or treatment facility which will conform to the terms and conditions of this Final Decision and Order.

PETITIONS FOR MODIFICATION OF TERMS

11. Respondent may petition the Board for modification of the terms of this limited license . Any such petition shall be accompanied by a written recommendation from respondent's Supervising Health Care Provider expressly supporting the specific modifications sought. Denial of the petition in whole or in part shall not be considered a denial of a license within the meaning of Sec. 227.01(3)(a), Stats. and Respondent shall not have a right to any further hearings or proceedings on any denial in whole or in part of the petition for modification of the limited license.

After five years of continuous active professional practice under this Order and without relapse, and upon recommendation of the Supervising Health Care Provider , respondent may petition the Board for a termination of all limitations on the license, and restoration of an unlimited license. Such restoration shall be in the sole discretion of the Board, and denial of the petition in whole or in part shall not be considered a denial of a license within the meaning of Sec. 227.01(3)(a), Stats. and Respondent shall not have a right to any further hearings or proceedings on any denial in whole or in part of the petition for termination of the limitations and restoration of unlimited licensure.

EXPENSES OF TREATMENT AND MONITORING

12. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order.

PRACTICE LIMITATIONS

13. Respondent shall practice only under the direct supervision of a licensed professional nurse or other licensed health care professional approved by the Board or in a work setting pre-approved by the Board or its designated agent.

Reporting Required

14. Respondent shall arrange for her employer to provide formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance.

Change in Address or Work Status


15. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

- 16. Respondent shall furnish a copy of this Order to all present employers immediately upon issuance of this Order, and to any prospective employer when respondent applies for employment as a health care provider.
- 17. This Order shall supercede the Order of Summary Suspension entered by the Board in case LS9803312NUR.

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 Respondent's license; the Board in its discretion may in the alternative deny a stay of suspension of the license or impose additional conditions and limitations or other discipline.

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

WISCONSIN BOARD OF NURSING

by:  a member of the Board
July 9, '98 Date

jh
nurstp

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :
SHIRLEY A. CABALLERO, R.N.. : STIPULATION
RESPONDENT. : 97 NUR 166

It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, as follows:

1. This Stipulation is entered in resolution of a pending proceeding concerning the licensure of Respondent. This Stipulation and Order shall be presented directly to the Board of Nursing for its consideration for adoption.

2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; 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 respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has been provided the opportunity to seek legal advice before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties 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 or the proposed Final Decision and Order, 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. The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

7. The Board Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and view of the case acquired during the investigation.

8. This stipulation is subject to approval by the Division of Enforcement's attorney-supervisor. If approved by the supervisor, the Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. Respondent is informed that should the Board adopt this stipulation, the Board's final decision and order is a public record and will be published in the monthly *Report of Decisions* issued by the department. A summary of the order will be published in the *Wisconsin Regulatory Digest* issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent.

Shirley A. Caballero 6/2/98
Respondent Date

Paul J. Weber 6/2/98
Respondent's Attorney Date

James Harris June 17, 1998
Prosecuting Attorney Date
Division of Enforcement

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE BOARD OF NURSING

In the Matter of Disciplinary Proceedings Against

Shirley A. Caballero, R.N.,

AFFIDAVIT OF MAILING

Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On July 14, 1998, I served the Final Decision and Order dated July 9, 1998, LS9803312NUR, upon the Respondent Shirley A. Caballero's attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is Z 233 819 556.

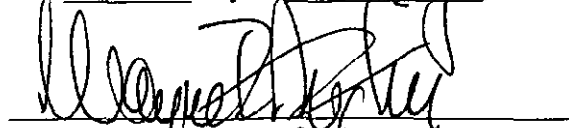
Ronald Shikora, Attorney
161 W. Wisconsin Avenue, Suite 3032
Milwaukee WI 53203



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 15th day of July, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: RONALD SHIKORA ATTY

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 7/14/98 Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. 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 section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order 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. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN BOARD OF NURSING

1400 East Washington Avenue
P.O. Box 8935
Madison WI 53708-8935