

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER
97 NUR 075

NANCY J. GAUGER, R.N.,
RESPONDENT.

: LS9805086NUR

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

Nancy J. Gauger
218 Strangeway Avenue
P.O. Box 154
Lodi, WI 53555

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 the Stipulation and considers it acceptable. Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Nancy J. Gauger (D.O.B. 9/04/54) is duly licensed as a registered nurse in the state of Wisconsin (lic #113853). This license was first granted on September 24, 1993.
2. Respondent's most recent address on file with the Department of Regulation and Licensing is 218 Strangeway Avenue, P.O. Box 154, Lodi, WI 53555.
3. During the period of April, 1997, while employed as a registered nurse at the Shorehaven Health Care Center, Oconomowoc, Wisconsin, Respondent diverted controlled substances from her place of employment for her personal use.

4. Respondent has been convicted in the Waukesha County Circuit Court in Case 97 CM 2496 of the illegal possession of a controlled substance.
5. Respondent failed to complete an AODA assessment of her condition and is not in any treatment program.
6. Respondent is not currently practicing as a nurse, and tenders the voluntary surrender of her license to practice as a nurse in the state of Wisconsin.

CONCLUSIONS OF LAW

By the conduct described above, Nancy J. Gauger is subject to disciplinary action against her license to practice as a registered nurse in the state of Wisconsin, pursuant to Wis. Stats. sec. 441.07(c) and (d) and Wis. Adm. Code sec. N 7.03(2) and N 7.04(1), (2) and (15).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The stipulation of the parties is accepted.
2. The VOLUNTARY SURRENDER by Nancy J. Gauger of her license to practice as a registered nurse in the state of Wisconsin is accepted.
3. In the event Respondent shall ever re-apply for a license to practice as a nurse in the state of Wisconsin, she shall, in addition to all other requirements for licensure, demonstrate to the satisfaction of the Board of Nursing that she does not have a chemical dependence, and that she can safely and reliably perform nursing functions.
4. This Order shall become effective upon the date of its signing.

Wisconsin Board of Nursing

By: Ruth E. Lindgren (mmf) Vice Chair May 8, 1998
Vice Chair Date

jh

STATE OF WISCONSIN

BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

NANCY J. GAUGER, R.N., :
RESPONDENT. :

STIPULATION
97 NUR 075

It is hereby stipulated between Nancy J. Gauger, personally on her own behalf, and James W. Harris, 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 Respondent's licensure by the Division of Enforcement. Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint. Respondent hereby tenders the voluntary surrender of her license to practice as a nurse in the state of Wisconsin.
2. Respondent 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 herself; 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. Respondent is aware of her right to seek legal representation and has been provided the opportunity to seek legal advice prior to signing this Stipulation.
4. Respondent 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 Respondent.
7. The parties to this Stipulation agree that the attorney for the Division of Enforcement may appear before the Board of Nursing 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 respondent in recommending the Board of Nursing adopt this Stipulation and issue the attached Final Decision and Order.

Nancy J. Gauger
Nancy J. Gauger, R.N.

4/16/98
Date

James W. Harris
James W. Harris, Attorney
Division of Enforcement

April 21, 1998
Date

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

In the Matter of the Disciplinary Proceedings Against

Nancy J. Gauger, R.N.,

AFFIDAVIT OF MAILING

Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

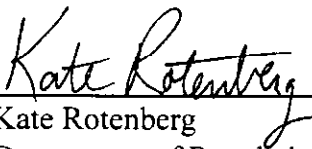
I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

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

2. On May 15, 1998, I served the Final Decision and Order dated May 8, 1998, LS9805086NUR, upon the Respondent Nancy J. Gauger, R.N. by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent 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 P 221 158 896.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

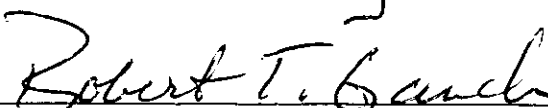
Nancy J. Gauger, R.N.
218 Strangeway Avenue
P.O. Box 154
Lodi WI 53555



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 15th day of May, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: NANCY J GAUGER RN

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 5/15/98. 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