

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

**State Of Wisconsin
Before The Wisconsin Board Of Nursing**

In The Matter Of Disciplinary Proceedings Against

JANINA M. KENNEBECK, L.P.N.,
Respondent.

FINAL DECISION AND ORDER

Case LS9809176 NUR

Division of Enforcement Case #96 NUR 088

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

Janina M. Kennebeck, L.P.N.
4335 West Seventh Street
Winona, MN 55987

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 Wisconsin Board of Nursing received a Stipulation submitted by the parties to the above-captioned matter. The Stipulation, a copy of which is attached hereto, was executed by Janina M. Kennebeck, L.P.N., personally and by her attorney, Robert M. Hesslink, Jr., and by Claudia Berry Miran, attorney for the Department of Regulation and Licensing, Division of Enforcement. Based upon the Stipulation of the parties, the Wisconsin Board of Nursing makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Janina M. Kennebeck, L.P.N., was born January 6, 1949. Ms. Kennebeck's latest address on file with the Department of Regulation and Licensing is 4335 West Seventh Street, Winona, MN 55987.
2. Ms. Kennebeck is licensed to practice in the state of Wisconsin as a licensed practical nurse pursuant to license #32990, which was first granted on April 3, 1995. Ms. Kennebeck's license expired on April 30, 1997, and has not been renewed.
3. On March 30, 1996, Ms. Kennebeck was working at St. Michael's Lutheran Home in Fountain City, Wisconsin. Patient EB was in the wing in which Ms. Kennebeck was working, had been suffering with gastrointestinal problems which included diarrhea.

4. It is alleged that at approximately 7:15 p.m., a certified nursing assistant reported to Ms. Kennebeck that EB was having difficulties breathing. Ms. Kennebeck assumed that this was a result of the resident's recent bedding and clothing change, and finished her medication pass before checking on EB. This resulted in a delay of between 25 minutes and one hour. Pursuant to the stipulation of the parties, Ms. Kennebeck has chosen not to contest these allegations for the purpose of this proceeding only.
5. When Ms. Kennebeck did check on EB, she found her dead in a pool of bloody emesis; the cause of death is listed as acute gastrointestinal hemorrhage.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to § 441.07 (1), Stats.
2. The Board of Nursing has the authority to resolve this disciplinary proceeding by Stipulation without an evidentiary hearing pursuant to § 227.44 (5), Stats.
3. Ms. Kennebeck's failure to assess patient EB promptly after receiving the report of respiratory distress constitutes unprofessional conduct under Wis. Stats. § 441.07 (1) (d) and Wis. Adm. Code § N 7.04 (4).

ORDER

NOW, THEREFORE, IT IS ORDERED that the stipulation of the parties is approved.

IT IS FURTHER ORDERED that:

1. Janina M. Kennebeck, L.P.N., is hereby REPRIMANDED.
2. Ms. Kennebeck shall, not later than sixty (60) days following the effective date of this order, pay to the Department \$200 toward the costs of the investigation, pursuant to § 440.22, Stats.
3. Ms. Kennebeck shall, within twelve (12) months of the date of this order, submit documentation acceptable to the Board showing successful completion of continuing education in the following areas:
 - a) workload management, 8 hours; and
 - b) assessment, 8 hours.
4. Ms. Kennebeck shall obtain pre-approval of one or more courses from the Board or its designated agent before she takes the course(s) in fulfillment of this requirement.

5. The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including pre-approval of continuing education and receipt of all reports. The Department Monitor may be reached as follows:

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

The rights of a party aggrieved by this Final Decision and Order to petition the Wisconsin Board of Nursing for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information."

This Order shall become effective on the date of its signing.

By:  17 SEP 98
A Member of the Board Date

cbm

State Of Wisconsin
Before The Wisconsin Board of Nursing

RECEIVED
SEP 01 1998

In The Matter Of Disciplinary Proceedings Against

JANINA M. KENNEBECK, L.P.N.
Respondent.

STIPULATION
Case _____
HESSLINK LAW OFFICES, S.C.

Division of Enforcement Case #96 NUR 088

It is hereby stipulated between Janina M. Kennebeck, L.P.N., personally and by her attorney, Robert M. Hesslink, Jr., and Claudia Berry Miran, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. Janina M. Kennebeck, L.P.N., was born January 6, 1949. Ms. Kennebeck's latest address on file with the Department of Regulation and Licensing is 4335 West Seventh Street, Winona, MN 55987.
2. Ms. Kennebeck is licensed to practice in the state of Wisconsin as a licensed practical nurse pursuant to license #32990, which was first granted on April 3, 1995. Ms. Kennebeck's license expired on April 30, 1997, and has not been renewed.
3. This Stipulation is entered into as a result of a pending investigation by the Division of Enforcement into Ms. Kennebeck's license and the parties' desire to avoid the costs and uncertainties of litigation.
4. Ms. Kennebeck consents to the entry of a Final Decision and Order, a copy of which is attached hereto and incorporated herein, as the full and final resolution of this matter, without the issuance of a formal complaint.
5. Ms. Kennebeck is aware of and understands each of 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.

6. Ms. Kennebeck understands that, while she denies the allegations made against her, by signing this stipulation she has chosen not to contest the proposed findings of fact, conclusions of law, and order, for purposes of this proceeding only, and she voluntarily and knowingly waives the rights enumerated in paragraph 5 above. She is aware of her right to seek legal representation and has done so.
7. Ms. Kennebeck agrees to pay \$200 toward the costs of the investigation.
8. The parties to the Stipulation and the Case Advisor, Marilynn Panka, L.P.N., may appear before the Board for the purpose of speaking in favor of this agreement and answering questions that the members of the Board may have in connection with their deliberation on the Stipulation. Any appearance by any party pursuant to this paragraph shall be preceded by proper and timely notice to all parties to this proceeding.
9. This Stipulation is subject to approval by the Case Advisor and acceptance by the Wisconsin Board of Nursing. If any term of this stipulation is not approved by the Case Advisor and accepted by the Board, then no term of this Stipulation or the Final Decision and Order will be binding in any manner on any party, 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.

Jamima M. Kennebeck L.P.N.
Jamima M. Kennebeck, L.P.N.

9-4-98
Date

Robert M. Hesslink Jr.
Robert M. Hesslink, Jr.
Attorney for Ms. Kennebeck
State Bar #1013876

9-8-98
Date

Claudia Berry Miran
Claudia Berry Miran
Attorney, Division of Enforcement
State Bar #1015184

9/14/98
Date

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, unpaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On September 17, 1998, 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: \$200.00 Case #: LS9809176NUR

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of \$200.00

The costs and/or forfeitures are due: November 16, 1998

NAME: Janina M. Kennebeck LICENSE NUMBER: 32900

STREET ADDRESS: 4335 West Seventh Street

CITY: Winona STATE: MN ZIP CODE: 55987

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

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

G:\BDLSFM2145.DOC

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

In the Matter of Disciplinary Proceedings Against

Janina M. Kennebeck, L.P.N.,

AFFIDAVIT OF MAILING

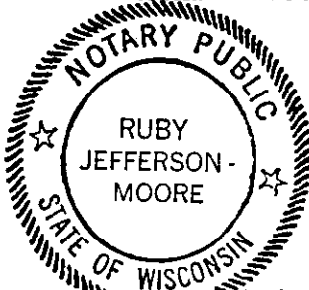
Respondent.

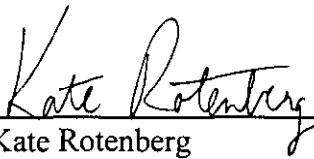
STATE OF WISCONSIN)
)
COUNTY OF DANE)

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 September 21, 1998, I served the Final Decision and Order dated September 17, 1998, and Guidelines for Payment of Costs and/or Forfeitures, LS9809176NUR, upon the Respondent Janina M. Kennebeck's attorney by enclosing true and accurate copies of the above-described documents 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 233 819 812.

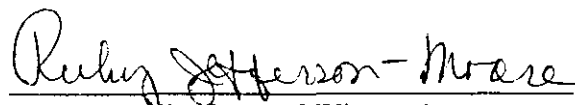
Robert M. Hesslink, Jr., Attorney
200 Enterprise Drive
P.O. Box 930005
Verona WI 53593-0005




Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 21ST day of September, 1998.


Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: ROBERT M HESSLINK JR ATTY

You have been issued an Order. For purposes of service the date of mailing of this Order is 9/21/98. 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 Order 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 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 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 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 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