

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

Joan Cler, LPN
Respondent

LS 9811054NUR

FINAL DECISION AND ORDER

The parties to this proceeding for purposes of s. 227.53, Stats., are:

Joan Cler, LPN
27995 Jackson Dr.
Muscodia, WI 53573

Wisconsin Board of Nursing
Department of Regulation and Licensing
P.O. Box 8935
Madison WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison WI 53708

The parties having agreed to the attached stipulation, the Board makes the following:

FINDINGS OF FACT

1. Joan Cler, LPN (Respondent), was born on November 17, 1931 and is licensed to practice nursing in the State of Wisconsin pursuant to license #31-25368. This license was first granted on November 24, 1982.
2. An investigation, 94 NUR 137, is pending before the Wisconsin Board of Nursing. Respondent disputes any claims of negligence or unprofessional conduct.
3. Ms. Cler, in consideration of her retirement from the practice of nursing, has agreed to surrender her license to practice nursing in Wisconsin effective immediately.

CONCLUSION OF LAW

1. The Wisconsin Board of Nursing has jurisdiction in this matter pursuant to s. 441.07 Stats.

DOE 94 NUR 137

2. The Wisconsin Board of Nursing is authorized to enter into the attached stipulation pursuant to s. 227.44(5) Stats.

ORDER

NOW, THEREFORE, IS ORDERED that Joan Cler, LPN, shall SURRENDER her license to practice as a licensed practical nurse in the State of Wisconsin, effective immediately.

IT IS FURTHER ORDERED Respondent shall not attempt to re-instate her license to practice nursing in the State of Wisconsin.

IT IS FURTHER ORDERED that the pending investigation, 94 NUR 137, shall be closed without further proceedings.

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

Wisconsin Board of Nursing.

By:  5 Nov 98
A Member of the Board Date

State of Wisconsin
Before the Board of Nursing

In the Matter of Disciplinary Proceedings Against

Joan Cler, LPN
Respondent

Stipulation

It is hereby stipulated between Joan Cler, personally and on her own behalf, and James E. Polewski, Attorney for the Division of Enforcement, Department of Regulation and Licensing, as follows:

1. This stipulation is entered in resolution of the pending matter concerning Respondent's license. The Stipulation and the proposed Final Decision and Order shall be presented directly to the Board for its consideration and adoption.
2. In resolution of these proceedings, Respondent consents to the entry of the attached Final Decision and Order.
3. Respondent is aware of and understands each of her rights, including:
 - the right to a hearing on the allegations against her, at which the state would have the burden of proving the 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 own 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,
 - the right to be represented at every stage of the proceeding, including the making of any stipulation, by an attorney of her choosing, at her own expense,
 - all other rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.
4. Respondent is aware and understands that by signing this stipulation she voluntarily and knowingly waives the rights set forth in paragraph 3 above, and does voluntarily and knowingly waive those rights.
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. 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 purpose of speaking in favor of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

7. 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.

Joan Cler
Joan Cler, LPN

September 18, 1998
Date

James E. Polewski
James E. Polewski
Attorney
Division of Enforcement

September 14, 1998
Date

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

In the Matter of the Disciplinary Proceedings Against

Joan Cler, LPN,

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 November 6, 1998, I served the Final Decision and Order dated November 5, 1998, LS9811054NUR, upon the Respondent Joan Cler, LPN 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 Z 233 819 940.

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:

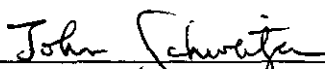
Joan Cler, LPN
27995 Jackson Drive
Muscodia WI 53573



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 9th day of November, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: JOAN CLER LPN

You have been issued an Order. For purposes of service the date of mailing of this Order is 11/6/98. 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