

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

LORI M. CUENE, RN

Respondent

ORDER GRANTING STAY

On November 3, 1995, the Board of Nursing issued its Final Decision and Order in the above-captioned matter. By the terms of the board's order, respondent's license to practice as a registered nurse was suspended for an indefinite period, with provision for successive three-month stays of the suspension conditioned upon compliance with certain conditions and limitations on the license. Among these were that respondent participate in a recognized program for the treatment of chemical dependency, that she participate in therapy a minimum of four times each month, that she submit to random urine screens for the presence of alcohol and controlled substances, and that she provide for quarterly written reports from her employer, her therapist and the monitoring program.

By its Order dated April 1, 1996, the board suspended the license based upon respondent's failure to comply with the terms and conditions of her limited license.

On August 8, 2003, Ms. Cuene appeared before the board in support of her request for reinstatement of her license. Based on that appearance, the board and Ms. Cuene entered into a Stipulation by which the board agreed to issue, and Ms. Cuene agreed to accept, a limited license to practice as a professional nurse. Based upon the Stipulation, it was ordered that Ms. Cuene be granted a limited license to practice as a professional nurse in Wisconsin imposing the following terms and conditions:

1. Ms. Cuene's practice under the license shall be initially restricted to participation in a nurse refresher course. Upon successful completion of the nurse refresher course, respondent may resume the practice of professional nursing in any approved setting.
2. Ms. Cuene may not resume the regular practice of nursing until submission to the board of satisfactory evidence of compliance with the terms and conditions set forth herein for a period of three months.
3. The term of the license shall be for a period of three months. Respondent may apply for consecutive three (3) month renewals of the license, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations set forth in the board's Order adopting this Stipulation.
4. The Board may without hearing deny an application for a renewal of the license, or commence

other appropriate action, upon receipt of information that respondent has violated any of the terms or conditions of the board's 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.

Treatment Required

5. Ms. Cuene shall continue successful participation in all components of a drug and alcohol and mental health treatment program at a treatment facility acceptable to the Board as Ms. Cuene's Supervising Health Care Provider shall determine to be appropriate for Ms. Cuene's rehabilitation.

6. The rehabilitation program shall include, and Ms. Cuene shall participate in individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the supervising physician or therapist, but not less than once weekly. 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, 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.

7. Ms. Cuene shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but not less than one meeting per week. Attendance of Ms. Cuene at such meetings shall be verified and reported monthly to the supervising physician or therapist.

Sobriety

8. Ms. Cuene shall abstain from all personal use of controlled substances as defined in Sec. 161.01(4), Stats. except when necessitated by a legitimate medical condition and then only with the prior approval of the Supervising Health Care Provider. Ms. Cuene shall maintain a single prescribing physician and shall obtain prescription and controlled drugs from a single pharmacy.

9. Ms. Cuene shall abstain from all personal use of alcohol.

10. Ms. Cuene shall in addition refrain from the consumption of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, or which may create false positive screening results, or which may interfere with Ms. Cuene's treatment and rehabilitation. Ms. Cuene shall report all medications and drugs, over-the-counter or prescription, taken by Ms. Cuene to the Supervising Health Care Provider within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Within 24 hours of a request by the Supervising Health Care Provider or the Board or its designee, Ms. Cuene shall provide releases which comply with state and federal laws authorizing release of all health care records by the person who prescribed, dispensed, administered or ordered this medication for Ms. Cuene. These releases shall also authorize the Supervising Health Care Provider, the Board or its designee to discuss Ms. Cuene's health care with the person who prescribed, dispensed, administered or ordered this medication. The terms of this paragraph shall not be deemed to modify or negate Ms. Cuene's obligations as set forth in this Order.

Department Monitor

11. 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) 267-3817

Releases

12. Ms. Cuene shall provide and keep on file with the Supervising Health Care Provider, all treatment facilities and personnel, laboratories and collections sites current releases which comply with state and federal laws authorizing release of all urine, blood and hair specimen screen results and 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 Ms. Cuene's treatment and rehabilitation 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.

Drug and Alcohol Monitoring

13. Within thirty (30) days from the date hereof, Ms. Cuene shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the department pursuant to Wis. Admin. Code § RL 7.11, ("Approved Program").

- a. The Department Monitor, Board or Board designee shall provide to the Ms. Cuene a list of Approved Programs, however, Ms. Cuene is solely responsible for timely enrollment in any such Approved Program.
- b. Unless otherwise ordered by the Board, the Approved Program shall require the testing of urine specimens at a frequency of not less than 14 screens per quarter.
- c. The Department Monitor, Board or Board designee shall determine the tests to be performed upon the urine specimens.
- d. Ms. Cuene shall comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program, including but not limited to;

(1) contact with the Approved Program as directed on a daily basis, including weekends and holidays, and;

(2) production of a urine specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.

- e. The Board in its discretion without a hearing and without further notice to Ms. Cuene may modify this Order to require the submission of hair or breath specimens or that any urine or hair specimen be

furnished in a directly witnessed manner.

f. All expenses of enrollment and participation in the Approved Program shall be borne by Ms. Cuene. Ms. Cuene shall keep any account for such payments current in all respects.

g. For purposes of further Board action under this Order it is rebuttably presumed that all confirmed positive test results are valid. Ms. Cuene has the burden of proof to establish by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody which causes an invalid confirmed positive test result.

14. Ms. Cuene shall keep the Supervising Health Care Provider informed of Ms. Cuene'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, and laboratories

15. 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 Ms. Cuene to provide a urine, blood or hair specimen within five (5) hours from the time it was requested; or of any inability to locate Ms. Cuene to request a specimen. The laboratory shall immediately report all urine specimens suspected to have been tampered with and all urine, blood or hair specimens which are positive or suspected positive for controlled substances or alcohol to the Department Monitor, and to the Supervising Health Care Provider.

16. The laboratory shall within 48 hours of completion of each drug or alcohol analysis mail the report from **all** specimens requested of Ms. Cuene under this Order to the Department Monitor (regardless of whether the laboratory analysis of the specimen was positive or negative for controlled substances, their metabolites or alcohol). Each report shall state the date and time the specimen was requested; the date and time the specimen was collected; the results of the tests performed to detect tampering; and the results of the laboratory analysis for the presence of controlled substances and alcohol.

17. 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 Ms. Cuene's progress in the drug and alcohol treatment program and summarize the results of the urine, blood or hair specimen analyses. 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)267-3817] any violation or suspected violation of the Board's Final Decision and Order.

Required reporting by Ms. Cuene

18. Ms. Cuene is responsible for compliance with all of the terms and conditions of the Board's Order. It is the responsibility of Ms. Cuene to promptly notify the Department Monitor, of any suspected violation: of any of the terms and conditions of this Order, including any failures of the Supervising Health Care Provider, treatment facility, laboratory or collection sites to conform to the terms and conditions of this Order.

Facility approval

19. If the Board determines that the Supervising Health Care Provider, treatment facility, laboratory or collection sites have failed to satisfy the terms and conditions of this Final Decision and Order, the Board may, at its sole discretion, direct that Ms. Cuene continue treatment and rehabilitation under the direction of another Supervising Health Care Provider, treatment facility, laboratory or collection site which will conform to the terms and conditions of the Board's order.

Petitions for Modification of Terms

20. Ms. Cuene may petition the Board for modification of the terms of the limited license. Any such petition shall be accompanied by a written recommendation from Ms. Cuene'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 Ms. Cuene 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.

21. After five years of continuous active professional practice under this order and without relapse, and upon recommendation of the Supervising Health Care Provider, Ms. Cuene 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 Ms. Cuene 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

22. Ms. Cuene 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

23. Ms. Cuene shall practice only under the general 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

24. Ms. Cuene 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 Ms. Cuene's work performance.

Change in Address or Work Status

25. Ms. Cuene 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.

26. Ms. Cuene shall furnish a copy of the Board's order to all present employers immediately upon issuance of the Order, and to any prospective employer when Ms. Cuene applies for employment as a health care provider.

On November 7, 2003, the board considered Ms. Cuene's request for a further three month stay of the suspension and her further requests that she be relieved from the requirement that she attend therapy on a weekly basis, and that she not be required to provide a copy of her order to her non-nursing employer. Based upon all information on record herein, it is ordered as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that Ms. Cuene's license is hereby renewed for a further period of three months

IT IS FURTHER ORDERED that because Ms. Cuene's therapist did not support Ms. Cuene's request that the therapy requirement be terminated, Ms. Cuene's request in that regard is denied.

IT IS FURTHER ORDERED that the requirement that Ms. Cuene provide a copy of her order to her employer(s) is limited to her nursing employers and to the administrator of the refresher course.

IT IS FURTHER ORDERED that upon completion of the refresher course, Ms. Cuene must demonstrate at least three months of compliance with the terms and conditions of the board's Order, and must submit a satisfactory therapy report establishing her fitness to practice, prior to petitioning for a termination of the current practice limitation on her license.

Dated this 11th day of November, 2003.

STATE OF WISCONSIN

BOARD OF NURSING

Linda M. Sanner, RN

Chair