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2004

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

<p>In The Matter Of Disciplinary Proceedings Against</p> <p style="text-align: center;">JOYCE CLEAVENGER, R.N., Respondent.</p>	<p style="text-align: center;">FINAL DECISION AND ORDER Case <u>0306252NUR</u></p>
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Division of Enforcement Case #99 NUR 176

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

Joyce Cleavenger, R.N.
21 Red Coulee Rd.
Belt, MT 59412

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 Joyce Cleavenger, R.N., personally, 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. Joyce Cleavenger, R.N., was born August 29, 1957. Ms. Cleavenger's latest address on file with the Department of Regulation and Licensing is 242 W. Tyler Ave., Eau Claire, WI 54701. Respondent is currently residing at the following address: 21 Red Coulee Rd., Belt, MT 59412.
2. Ms. Cleavenger is licensed to practice in the state of Wisconsin as a registered nurse pursuant to license #118764, which was first granted on February 13, 1995.
3. During the period from November 13, 1998, and February 20, 1999, Ms. Cleavenger worked night shifts at the home of patient AB, (birthdate 12/19/96) providing private duty nursing services for Northwest Wisconsin HomeCare.

4. Apria Health Care provided Respondent with ventilator training in the patient's home on October 23, 1998.
5. Patient AB's Plan of Treatment included an order to use increase to a CPAP (another term for PEEP) of 10 if unable to maintain oxygen saturations above 93% with 40% oxygen.
6. On or about January 23, 1999, Respondent worked the 10:00 p.m. to 7 a.m. shift at Patient AB'S home.
7. While Respondent was preparing Patient AB to go on the ventilator, the ventilator's alarm sounded. Patient AB's mother asked Respondent to check the settings and the PEEP valve to see if that was the problem.
8. The ventilator's alarm continued to sound. Respondent indicated to patient AB's mother that the PEEP valve settings were correct.
9. Patient AB's mother checked the settings herself and found the setting to be incorrect. The mother corrected the settings.
10. Respondent's conduct created an unacceptable risk to the patient by not knowing how to problem solve the ventilator nor how to increase the PEEP in an emergency situation.

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. Respondent Joyce Cleavenger has violated Wis. Adm. Codes § N 7.03 (1) (a), § N 7.04 (intro) and § N 6.03(2)(b), and Wis. Stats. § 441.07(1)(c) and § 441.07(1)(d) by engaging in conduct which tended to constitute a danger to the health safety or welfare of a patient, and by not accepting only those delegated medical acts for which she is competent to perform based on her nursing education, training or experience.

ORDER

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

IT IS FURTHER ORDERED that:

- 1) Joyce Cleavenger is hereby REPRIMANDED.
- 2) Ms. Cleavenger shall pay to the Department of Regulation and Licensing ONE THOUSAND dollars (\$1,000.00) toward the costs of the

investigation, pursuant to § 440.22, Stats.). A payment of \$ 100.00 shall be paid within 30 days from the date of this Order and payments of \$100.00 will be due on the first of every consecutive month thereafter until the full \$1,000.00 is paid. Payments shall be made by **certified check or money order**, payable to the Wisconsin Department of Regulation and Licensing and sent to: **Department Monitor, Division of Enforcement, Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935.**

- 3) Ms. Cleavenger shall, within six (6) months of the date of this order, submit documentation acceptable to the Board showing successful completion of sixteen (16) hours of continuing education in Care of a Patient on a Ventilator.
- 4) Ms. Cleavenger 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 the requirement in paragraph 4.
- 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) 261-7938

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: Jacqueline A Johnson RN MS 3/4/04
A Member of the Board Date

cbm

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

In The Matter Of Disciplinary Proceedings Against

JOYCE CLEAVENGER, R.N.,
Respondent.

STIPULATION

Case _____

Division of Enforcement Case #99 NUR 176

1. This Stipulation is entered into for the purpose of resolving a pending investigation relating to JOYCE CLEAVENGER R.N., ("Respondent"), by the Division of Enforcement (99 NUR 176). Respondent consents to the resolution of this matter pursuant to the terms of this Stipulation and the attached Final Decision and Order.

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 Division of Enforcement 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 regarding these matters and the legal implications of this Stipulation and has been provided the opportunity to seek legal advice prior to signing this Stipulation.

4. Respondent agrees to the adoption on 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 or the proposed Final Decision and Order. The matter shall then be returned to the Division of Enforcement for further proceedings, which may include the filing of a formal administrative disciplinary complaint. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the members of the Board have been prejudiced or biased in any manner by the consideration of this attempted resolution.

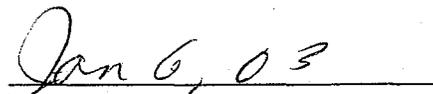
6. The parties to the Stipulation agree that the attorney for the Division of Enforcement and the Case Advisor, may appear before the Board of Nursing for the purpose of speaking in favor of this agreement and answering questions that the members of the Board may have in connection with their deliberation on the Stipulation.

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 Department. This is the standard Department procedure and in no way is specially directed at Respondent.

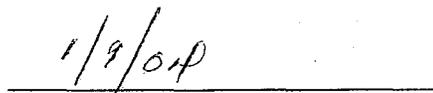
8. Respondent is further informed and understands the violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license pursuant to the procedures set forth in Wis. Admin. Code RL Ch. 6. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order.

9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.


JOYCE CLEAVENGER, R.N.


Date


Claudia Berry Miran
Attorney
Division of Enforcement


Date

NOTICE OF RIGHTS OF APPEAL

TO: *Joyce Cleavenger*

You have been issued an Order. For purposes of service the date of mailing of this Order is *March 8, 2004*. 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:

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