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**STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING**

**IN THE MATTER OF APPLICATION FOR
LICENSURE AS A PRACTICAL NURSE
OF**

BECKY L. RIISER, APPLICANT

00032 20

**FINAL DECISION AND ORDER
WITH VARIANCE**

DHA Case No. SPS-14-0027
DSLCase No. 11 MED 315

PROCEDURAL HISTORY

On December 18, 2013, a hearing was held before Jennifer E. Nashold, Administrative Law Judge (ALJ), State of Wisconsin, Division of Hearings and Appeals, on the denial of Becky L. Riiser's (Applicant) application to sit for the nursing examination for licensure as a practical nurse. On March 25, 2014, the ALJ issued a Proposed Decision and Order (PDO) in the above matter. Objections to the PDO were filed by Attorney Kim Kluck, Department of Safety and Professional Services, Division of Legal Services and Compliance. A response to those objections was subsequently filed by Attorney Ashley Richter, Relles & Milliken, LLP, on behalf of the Applicant. The Board of Nursing (Board) considered the PDO, the objections and response, at its meeting on June 12, 2014. After deliberation the Board voted to adopt the Findings of Fact, but vary the Conclusions of Law and Order contained in the PDO to reflect that current relevant law renders this issue moot. The PDO is incorporated in its entirety into this Final Decision and Order with Variance.

DECISION AND EXPLANATION OF VARIANCE

Pursuant to Wis. Stat. §§ 440.035(1) and 441.07(1g), the Board is the regulatory authority and final decision maker governing application for a credential issued by the Board, including authorization to sit for the relevant examinations. The pending matter is a class 1 proceeding

pursuant to Wis. Stat. § 227.01(3). The Board may make modifications to a PDO, a class 1 proceeding, pursuant to Wis. Stat. § 227.46(3)(c).

In the present case, the Board adopts the **FINDINGS OF FACTS** as set forth in the PDO but varies the **CONCLUSIONS OF LAW AND ORDER** to reflect the current law with regard to the application to sit for examination as a practical nurse.

At the time of the initial denial of applicant's request to sit for the examination, her subsequent request for hearing and the hearing proceedings, Wis. Stat. § 441.10(1) (2011-2012) required the Board to consider whether the Applicant's convictions were substantially related to practice as a practical nurse. If so, Applicant would be denied the right to sit for the required examination.

On December 21, 2013, 2013 Wisconsin Act 114 went into effect. 2013 Wisconsin Act 114 renumbered Wis. Stats. § 441.10(1), which contained the prerequisites for applicants to sit for the practical nursing examination, as Wis. Stat. sec. 441.10(3)(a) and removed all reference to examination. This change effectively removed the prerequisites for applicants to sit for the examination as a practical nurse. (The only remaining reference is contained in sec. 441.10 (3) (a) (6) which states that an applicant may not take the examination before receiving a diploma unless the applicant obtains a certificate of approval to take the examination from the school of nursing the applicant attends and provides that certificate to the Board prior to the examination.. That provision is not relevant to the matter currently before the Board.)

At the time the Board considered the PDO in this matter applicants were no longer prohibited from taking the practical nursing examination based upon a conviction substantially related to practice as a practical nurse. Since the Applicant would simply need to reapply to be permitted to sit for the examination this matter is essentially moot. The prerequisites for

examination in effect at the time of application allowed the Board to deny Applicant the right to sit for the examination based upon a determination that her convictions were substantially related to practice as a practical nurse. The law in effect at the time the Board considered this matter after the hearing no longer allows denial based on this rationale. The Board therefore finds this matter moot. The Board makes no decision with regard to whether the convictions are substantially related to practice as a practical nurse for purposes of licensure.

On the basis of the above, the Board varies the Conclusions of Law and Order as follows:

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has retained jurisdiction to act in this matter pursuant to Wis. Stat. § 441.10(1) (2011-2012) which was in effect at the time of the application to sit for the examination as a practical nurse.

2. Pursuant to 2013 Wis. Act 114, the Wisconsin Board of Nursing no longer has authority to apply any prerequisites for examination as a practical nurse with the limited exception of Wis. Stat. sec. 441.06(1)(e) which is not applicable to this matter.

ORDER

NOW, THEREFORE, it is hereby ordered that this matter is moot and the denial of Applicant's right to sit for the examination is rescinded.

This Final Decision and Order is effective on the date it is signed.

Dated at Madison Wisconsin this 30th day of June, 2014.

STATE OF WISCONSIN
BOARD OF NURSING


A Member of the Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

00032 00

In the Matter of the Application for Licensure as a
Practical Nurse of **BECKY L. RIISER**, Applicant

PROPOSED DECISION AND ORDER
DHA Case No. SPS-13-0030

Division of Legal Services and Compliance Case No. 13 NUR 326

The parties to this proceeding for purposes of Wis. Stat. §§ 227.47(1) and 227.53 are:

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PROCEDURAL HISTORY

Applicant Becky Riiser submitted an application, dated February 15, 2013, to the Wisconsin Department of Safety and Professional Services (Department) to sit for the licensed practical nursing licensure examination. (Resp. Ex. 1) On the application, Ms. Riiser responded "yes" to a question regarding whether she had ever been convicted of a misdemeanor or felony. (*Id.*) She also submitted a Convictions and Pending Charges form, dated February 14, 2013, to the Department in which she listed three convictions from April 21, 2011 in Wausau, Wisconsin. (Resp. Ex. 2) Ms. Riiser explained in a March 27, 2013 email to the Department that the three convictions were class B misdemeanors for disorderly conduct, all three relating to an incident in which she put Ex-Lax in chocolate chip cookies that she baked for one of her professors. (Resp. Ex. 3)

The Wisconsin Board of Nursing (Board) denied Ms. Riiser's request to take the practical nursing examination. (July 11, 2013 Notice of Hearing) The Notice of Denial contained the following reason for the denial: "Applicant/Respondent has convictions that are substantially related to the practice of nursing." (*Id.*)

A prehearing conference was held on September 4, 2013, at which time the undersigned administrative law judge (ALJ) set the matter for a contested case hearing on December 18, 2013 in Madison, Wisconsin. The hearing was commenced and completed on December 18, 2013. Post-hearing briefs were submitted, with the final submission due on February 24, 2014.

FINDINGS OF FACT

1. Applicant Becky L. Riiser is a forty year-old single mother from Wausau, Wisconsin. (Hrg. Tr. pp. 13-14)

2. Approximately ten years ago, Ms. Riiser went back to school, after having received her associate's degree in arts and science. After some time as a part-time student, she went to full-time status in the nursing program. In spring of 2009, Ms. Riiser was certified as a certified nursing assistant. (App. Ex. 112; Hrg. Tr., p. 15)

3. During the 2009 fall semester, Ms. Riiser was enrolled in a microbiology course at the University of Wisconsin - Marathon County. During this time, Ms. Riiser was struggling with some depression and, in September of 2009, began counseling with Ms. Gwendolyn Martell-Williams. (App. Ex. 109; Hrg. Tr., pp. 18-19)

4. Ms. Riiser's microbiology course was taught by Professor APD.¹ Ms. Riiser found the semester in APD's class "very frustrating." She and her classmates in APD's class formed a voluntary study group to "self-teach," as they believed they were not being appropriately taught by the professor. Ms. Riiser and her fellow students complained about APD to the Dean; however, no changes were made to the course or further action taken. (Hrg. Tr., pp. 19, 34)

5. APD was aware of these complaints and asked a senior professor at the school to observe her microbiology class and inform APD whether improvements could be made. The senior professor concluded there were no problems with APD's presentation and only stated that Professor APD could have spent more time discussing two slides that were presented, but did not make any substantial recommendations to change her teaching. (Hrg. Tr., pp. 95-97)

6. During the study sessions, Ms. Riiser and her classmates often "vented" about APD's microbiology course, and classmates discussed that someone had put Ex-Lax into another person's cookies with no consequences. (Hrg. Tr., pp. 19-20)

7. On December 18, 2009, the day of the final examination in APD's microbiology course, Ms. Riiser decided to bake two dozen cookies from a pre-made mix, adding half a box of Ex-Lax to the mix. She put the cookies into a tin and left them outside Professor APD's door.

¹ The professor in this case requested that her name not be used in these proceedings due to the embarrassing circumstances surrounding the incident at issue. There was no objection, and the professor's request was granted. Thus, the professor is referred to in this decision by either her title, her initials, "APD," or both.

Ms. Riiser claims that she immediately regretted her actions and contemplated going back to get them but that others were showing up and she feared the professor already had them. Ms. Riiser stated that she did not fully think through possible consequences of her actions and that she viewed her actions as a "practical joke." She stated she did not intend any serious harm to APD and assumed that the only possible side effect would be loose stools. (App. Ex. 100; Hrg. Tr., pp. 20-21)

8. Ms. Riiser characterized her conduct as a spur-of-the-moment decision and something she decided to do impulsively on the morning of the final examination. However, the process of baking the cookies containing the Ex-Lax, driving to the school and delivering the cookies to the professor's office door took at least a half-hour. (App. Ex. 100; Hrg. Tr., pp. 30-31)

9. APD was traveling by airplane the day following the final examination to visit her husband in South Carolina. Her students were aware of this trip. (App. Ex. 109; Hrg. Tr., pp. 97-98)

10. On the date of the incident, APD came to school to proctor the final examination for the microbiology class. When she arrived at her office, she found the tin of cookies left by her door. She brought the cookies into the office, but did not eat any at that time because she had to rush to the examination. The cookie tin did not contain any information as to who had given them to APD. APD then left her office to proctor and monitor the examination. (Hrg. Tr., pp. 99, 101)

11. When APD returned to her office, she ate one of the cookies. A student then came to her office and observed that she was eating a cookie. The student then quickly left. A few minutes after the student left, another student called APD and informed her that the cookies had been tainted with Ex-Lax. APD ate only one cookie and suffered no physical effects. That same day, APD reported the incident to the police. (App. Ex. 109; Hrg. Tr., pp. 99-100, 102-104)

12. APD testified that she felt saddened by Ms. Riiser's conduct because she believed she had taken time to privately tutor Ms. Riiser during the semester on microbiology slides. APD also felt "really scared" and threatened by Ms. Riiser's actions. In fact, she later resigned her position at the school due to personal safety concerns, particularly when she returned from winter break and learned that Ms. Riiser was still enrolled in the school and would be taking a course right next to APD's office. (Hrg. Tr., pp. 102-104)

13. When contacted by law enforcement on January 7, 2010, Ms. Riiser initially denied any knowledge or involvement. However, the following day, Ms. Riiser's attorney contacted law enforcement, stating that Ms. Riiser wanted to meet with the police, that she wanted to be honest, and that she was remorseful. During a meeting at the Wausau Police Department on January 12, 2010, Ms. Riiser admitted that she had made the cookies containing Ex-Lax. The officer who interviewed Ms. Riiser noted that she showed remorse for what she had done throughout the interview. Ms. Riiser sent a letter to APD dated January 15, 2010, apologizing for what she had done. (App. Exs. 100, 109)

14. On May 27, 2010, Ms. Riiser was charged by the Marathon County District Attorney's Office with one felony count of placing a foreign object in an edible. However, the charges were later amended and, on April 21, 2011, Ms. Riiser pled no contest to three

misdemeanor charges of disorderly conduct. She was sentenced to pay a fine and court costs. (Resp. Exs. 2, 4)

15. At sentencing, the judge stated that although Ms. Riiser's actions were cruel, demeaning to the professor and unexpected from someone of Ms. Riiser's maturity level, he did not believe any jail time would be appropriate given Ms. Riiser's lack of any previous criminal history, wide support group, two children, public humiliation and her continuation of voluntary counseling. He did not impose any probation or additional conditions other than the fines and costs, stating that Ms. Riiser would be a "model probationer" and that "I doubt very much that we'll ever see you in court again." (App. Ex. 101, Hrg. Tr., p. 2)

16. Ms. Riiser has had no criminal charge or convictions since that time. These were the only criminal convictions in her life. (Resp. Exs. 1, 2; App. Ex. 101)

17. Approximately two years ago, Ms. Riiser decided that she wanted to be a licensed practical nurse (LPN) and enrolled in the LPN program at Northcentral Technical College. During her LPN coursework, Ms. Riiser was required to participate in clinical experiences. Clinical sites included Wausau Manor nursing home, Aspirus and St. Clare's Hospital. Ms. Riiser fully disclosed her convictions to the employers and background checks were also required for her clinical experiences. Disclosure of the convictions did not impede Ms. Riiser's participation in the clinical programs. (App. Exs. 103; 112; Hrg. Tr., pp. 14-16, 25, 82)

18. Ms. Riiser completed her LPN coursework in December of 2012. During the application process to take the licensure examination for an LPN license, Ms. Riiser continued in her studies toward becoming a registered nurse (RN). She has since completed her RN coursework, including additional clinical experiences and volunteer work. Ms. Riiser has been employed with Opportunity Incorporated, a respite care center for disabled individuals in home and at facilities. Her duties include transportation, meal preparation, medicine administration, guidance and redirection. Ms. Riiser's RN clinical experiences also include time at Aspirus in the cardiac unit, ortho neuro and rehabilitation, as well as at North Central Health Care Center in the mental health unit. (App. Exs. 112, 113; Hrg. Tr., pp. 17-18, 24-26, 113)

19. During her clinical rotations, Ms. Riiser was responsible for administering laxatives, blood pressure medications, narcotics and insulin injections. Ms. Riiser acknowledged that the administration of medications to patients is an integral part of the duties of a practical nurse. (App. Exs. 105, 107; Hrg. Tr., p. 29)

20. Ms. Riiser testified at hearing that she felt humiliated by her conduct, that it was a huge mistake, a lapse of judgment, and cruel and inhumane. She no longer thought of her conduct as a practical joke and it was something she has learned from and would never think of doing again. She further stated that as a nurse, she would not have any such incidents of poor judgment or risky behavior. (Hrg. Tr., pp. 22-23, 26-27)

21. Ms. Riiser has voluntarily continued to see her counselor, Gwendolyn Martell-Williams, who she first started seeing on September 9, 2009. Ms. Martell-Williams has a bachelor's degree in special education from UW-Madison and a master's degree in social work from UW-Milwaukee, which she received in 1998. She also has a certificate in alcohol and drug abuse counseling and in trauma counseling. (Hrg. Tr., pp. 54-55)

22. Several individuals wrote letters on Ms. Riiser's behalf, noting her positive attributes, and several of those who wrote letters also testified on Ms. Riiser's behalf at the December 18, 2013 hearing. (App. Exs. 102-108)

23. Ms. Martell-Williams wrote a letter and testified on Ms. Riiser's behalf. In Ms. Martell-Williams opinion, Ms. Riiser is not a danger to any future patients and there is no reason to limit her nursing career. (App. Ex. 108; Hrg. Tr., p. 59)

24. Ms. Martell-Williams stated that Ms. Riiser has learned to appropriately deal with life stressors like those that led to the conduct at issue in 2009 and that Ms. Riiser has gone above and beyond in her commitment to counseling. Although she acknowledged that it was not "humanly possible" to "guarantee" how anyone, including Ms. Riiser, would act in a stressful or frustrating situation with a patient, Ms. Martell-Williams testified that if Ms. Riiser was in a professional caregiver role as a nurse, she would "definitely not" behave in the way she did during the December 18, 2009 incident. (Hrg. Tr., pp. 57-60, 65-66, 69)

25. Ms. Martell-Williams distinguished the circumstances surrounding the 2009 incident from Ms. Riiser's potential role as a caregiver, stating that as a professional in health care, one has a duty to provide service and to do no harm, whereas as a student, one is in a place of learning, looking to and paying a professional to meet one's needs. She believed Ms. Riiser's needs in the classroom were not being met by her instructor. In fact, Ms. Martell-Williams also contacted the University regarding what she viewed as APD's "unprofessional behavior." (Hrg. Tr., pp. 62, 64-65)

26. Her belief that Ms. Riiser did not pose a threat to patients was also based on the fact that Ms. Riiser had learned from the experience with the cookies and the consequences stemming from it, that in her years of knowing Ms. Riiser, she has "never seen her or known her at any time, in any way, to be aggressive in any kind of action, even when she knew that Ms. Riiser was faced with challenges," that there was some degree of peer approval of Ms. Riiser's conduct and that, unlike in her role as a microbiology student, as a nurse, Ms. Riiser would be providing care. Ms. Martell-Williams further stated that she has seen Ms. Riiser willing and able to learn and to take steps to solve problems rather than to engage in impulsive behavior. (Hrg. Tr., pp. 64-66)

27. Ann Marie Peters wrote a letter and testified at the hearing on Ms. Riiser's behalf. Ms. Peters is a public health nurse who currently goes to people's homes, primarily providing care to pregnant women, mothers and babies, and children with special health care needs. She has been a registered nurse for the past 16 years, has been friends with Ms. Riiser for 25-30 years, and describes Ms. Riiser as a "very caring" person. When Ms. Riiser told Ms. Peters what she had done, it appeared that Ms. Riiser "felt awful" about what had happened. Ms. Peters has never known Ms. Riiser to try to hurt someone, has absolutely no concerns about Ms. Riiser being a nurse, believes Ms. Riiser would do an excellent job and would have Ms. Riiser care for any of her family members or friends. She stated that she does not think Ms. Riiser would harm a patient, even an abusive one, and that she has seen Ms. Riiser in abusive relationships where Ms. Riiser could retaliate but never has. (App. Ex. 107; Hrg. Tr., pp. 46-51)

28. Linda Kent wrote a letter and testified at hearing on Ms. Riiser's behalf. She is a nursing instructor at Northcentral Technical College and has a master's degree in nursing. She had Ms. Riiser in one of her courses in the fall of 2012 and stated that Ms. Riiser was a pleasure

to have in the group, made good clinical decisions in the care of her patients, had outstanding communication skills, and would make an excellent nurse. (App. Ex. 104; Hrg. Tr., pp. 74-77)

29. Marlene Roberts wrote a letter and testified at the hearing on Ms. Riiser's behalf. She is a nursing instructor at Northcentral Technical College and has a master's of science in nursing. She had Ms. Riiser in an intermediate clinical course and listed 12 competencies which Ms. Riiser performed well. These competencies include "[d]emonstrate Professional Behaviors," "[p]articipate in making complex clinical decisions," "[a]dhere to principles of safety," and "[a]dminister medications safely." She also worked with Ms. Riiser in a flu clinic and describes her as a professional with good communication skills. (App. Ex. 105; Hrg. Tr., pp. 80-82)

30. Reverend Phillip Schneider wrote a letter and testified at the hearing on Ms. Riiser's behalf. Reverend Schneider is a senior minister at St. Paul's United Church of Christ and has known Ms. Riiser for five years. He described Ms. Riiser as reliable, dependable, compassionate and kind, and as one of the church's go-to people for Christian education. He stated that she works really well with children and that if he needs a job done, he knows he can go to Ms. Riiser and it will be done, and done on time and well. During the past year, Ms. Riiser co-chaired the church picnic for the thousand-member congregation and the picnic usually has about 400 attendees. She also works with the anniversary committee and on Christian education events. (App. Ex. 106; Hrg. Tr., pp. 85-86, 88)

31. Reverend Schneider was aware of the 2009 incident involving the cookies. There was a lot of media attention in the area about the incident and he reached out to Ms. Riiser with a personal note. He described Ms. Riiser as "shocked" by what she had done. He had never seen her do anything like that in the past and the "dumb mistake" she made did not change his opinion of her. He trusts her, gives her responsibility, has no concerns about her being a nurse and would not hesitate to have her do anything. (Hrg. Tr., pp. 86-89)

DISCUSSION AND CONCLUSIONS OF LAW

Burden of Proof

An applicant's burden of proof in an administrative proceeding is set forth in Wis. Admin. Code § SPS 1.08(4):

(4) BURDEN OF PROOF. The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential. The office of examinations has the burden of proof to show by a preponderance of the evidence that the applicant cheated on an examination or breached examination security.

Ms. Riiser's convictions for disorderly conduct are not substantially related to the position of a practical nurse.

Wisconsin Stat. § 441.10(1) (2011-2012) and Wis. Admin. Code § N 2.04(2)(a) set forth the prerequisites for an applicant to take the examination to become a practical nurse. Among other prerequisites, an applicant may take the examination if the applicant "[d]oes not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats." Wis. Stat. §

441.10(1) (2011-2012); Wis. Admin. Code § N 2.04(2)(a). Wisconsin Stat. §§ 111.321, 111.322, and 111.335 prohibit a licensing agency from refusing to license an applicant on the basis of an arrest or conviction record unless the circumstances of the offense “substantially relate to the circumstances of the particular job or licensed activity.” Wis. Stat. § 111.335(c)(1).

The Supreme Court has stated that, in creating the “substantially related” test, the legislature clearly intended to balance two interests: (1) rehabilitating someone who has been convicted of a crime and protecting him or her from being discriminated against in the area of employment because employment is an integral part of the rehabilitation process; and (2) protecting citizens from unreasonable risk that a convicted person will commit another similar crime when placed in employment offering temptations or similar opportunities for criminal activity as those present in the crimes for which he or she was convicted. *County of Milwaukee v. LIRC*, 139 Wis. 2d 805, 822, 407 N.W.2d 908 (1987).

The Court has further stated that “[t]his law should be liberally construed to effect its purpose of providing jobs for those who have been convicted of crime and at the same time not forcing employers to assume the risks of repeat conduct by those whose conviction records show them to have the ‘propensity’ to commit similar crimes. . . .” *Id.* at 823.

The purpose of the substantially related test is to assess whether the “tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed.” *Id.* at 824. “It is the circumstances which fostered the criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person.” *Id.*

Based on all of the evidence presented in this matter, I cannot conclude that the conduct Ms. Riiser exhibited toward her professor in 2009 while a student is likely to reappear in the context of Ms. Riiser working with patients as a licensed practical nurse. The testimony of Ms. Martell-Williams is particularly persuasive on this point. In her professional opinion, based on her years of professional training and experience and her counseling of Ms. Riiser for several years, Ms. Riiser would not pose a threat to patients as a practical nurse. Ms. Martell-Williams’ professional opinion was that Ms. Riiser’s inappropriate behavior while a student in 2009 was a unique situation and not transferable to a professional setting as a nurse, that Ms. Riiser had not demonstrated a tendency to act in an aggressive way in any other circumstances, and that in her years of counseling, Ms. Riiser has learned and applied mechanisms to cope with stressful situations that would preclude such conduct in the future.

Other evidence also indicates that Ms. Riiser’s conduct is not likely to be repeated in a future role as a practical nurse or in any other context. This evidence includes the circuit court judge’s sentencing statements that he did not anticipate that Ms. Riiser would ever be in a courtroom again, that she had made efforts in self-improvement by voluntarily going to counseling, that she had a support network, and that she had already experienced very negative outcomes as a result of her conduct, including publicity. The evidence also showed that Ms. Riiser has been working with patients and vulnerable members of the public, including disabled individuals and children, and has received very positive feedback from those who are charged with assessing her performance and has also earned their trust. Those who testified and wrote

letters on Ms. Riiser's behalf indicated that her 2009 conduct was an aberration from her characteristically kind and caring personality. Also demonstrating that Ms. Riiser is not likely to repeat her 2009 conduct is the fact that she has taken full responsibility for her actions and has continually expressed remorse for her conduct, including during her testimony, which appeared sincere and credible.

The result of this decision does not in any way negate the seriousness of Ms. Riiser's 2009 conduct. The conduct was inexcusable, and APD's resulting emotional pain and fear was real and justified. Nevertheless, applying the "substantially related" test as interpreted in *County of Milwaukee*, I conclude that denying Ms. Riiser the opportunity to practice her chosen profession of practical nursing as a result of this one-time event over four years ago is not warranted under the circumstances of this case.


ORDER

Based on the foregoing, it is hereby ORDERED:

1. The Board shall allow Applicant Becky Riiser to take the licensure examination for licensed practical nurse.
2. The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on March 25, 2014.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 
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Administrative Law Judge