

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov



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

In the Matter of Disciplinary Proceedings Against
Kimberly E. Jackson, L.P.N., Respondent

FINAL DECISION AND ORDER

Order No. **0005331**

Division of Legal Services and Compliance Case No. 15 NUR 636

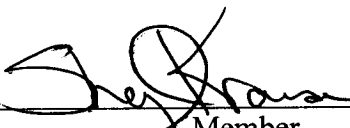
The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Board of Nursing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 8 day of June, 2017.



Member
Board of Nursing



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Disciplinary Proceedings Against
Kimberly E. Jackson, L.P.N., Respondent

DHA Case No. SPS-17-0003
DLSC Case No. 15 NUR 636

PROPOSED DECISION AND ORDER

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

Kimberly E. Jackson
3679 Morning Side Drive
Hopkinsville, KY 42240

Wisconsin Board of Nursing
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Amanda L. Florek
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Kimberly E. Jackson, L.P.N., alleging that Respondent engaged in two counts of unprofessional conduct;¹ one count in violation of Wis. Admin. Code § N 7.03² and one count in violation of Wis. Stat. § 441.07 (2011-2012).³

¹ The two counts are as follows: (1) "Violating, or aiding and abetting in any law substantially related to the practice of professional or practical nursing," in violation of Wis. Admin. Code § N 7.04(1); and (2) "[O]btaining any drug other than in the course of legitimate practice or as otherwise prohibited by law," in violation of Wis. Admin. Code § N 7.04(2). All references to Wis. Admin. Code § N 7.04 refer to the Code as it existed before August 1, 2014.

² Wisconsin Admin. Code § N 7.03(5)(g) prohibits "submitting false information in the course of an investigation."

³ Wisconsin Stat. § 441.07(1)(a) (2011-2012) prohibits "[l]ying on an application for licensure."

The Division served Respondent on January 30, 2017, by sending a copy of the Notice of Hearing and Complaint to her last known address on file with the Department via certified and regular mail. Respondent failed to file an Answer to the Division's Complaint.

On February 20, 2017, the undersigned Administrative Law Judge (ALJ) issued a Notice of Telephone Prehearing Conference which set a telephone hearing conference for March 6, 2017. Respondent failed to appear at the telephone prehearing conference, whereupon the Division moved for default judgment based on Respondent's failure to appear and failure to file an Answer to the Complaint.

On March 6, 2017, the ALJ issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order. On March 17, 2017, the Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-38 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Kimberly E. Jackson, L.P.N., is licensed in the State of Wisconsin to practice nursing, having license number 316750-31, which was first issued on March 11, 2013, and was current through April 30, 2017.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 3679 Morning Side Drive, Hopkinsville, Kentucky 42240.

3. Between September 10, 2011, and September 18, 2011, Respondent was working as an aide for a home health agency and providing in-home care for Patient L.J., a severely disabled woman.

4. Patient L.J. lived with her two elderly parents, D.J. and C.J., in Indiana.

5. On or about September 20, 2011, Respondent attempted to use Patient L.J.'s social security number to apply for a line of credit through Wells Fargo.

6. Respondent used her Indiana address on the Wells Fargo credit application.

7. On September 25, 2011, Respondent charged \$50.00 on D.J.'s MasterCard, without her authorization, to pay a Comcast bill.

8. Between September 25, 2011, and October 21, 2011, Respondent charged six unauthorized charges on D.J.'s MasterCard to Donato's Pizza. These six charges totaled \$236.02.

9. From September 27, 2011, to November 9, 2011, Respondent made eight unauthorized Amazon.com purchases from D.J.'s checking account. These eight charges totaled \$657.51.

10. On December 6, 2011, Respondent charged \$119.07 on C.J.'s checking account to pay an Indiana Power & Light (IPL) bill.

11. The address on the IPL account belonged to Respondent.

12. On April 10, 2012, Indianapolis police detectives interviewed Respondent.

13. During the April 10, 2012 interview, Respondent admitted to obtaining personal information that belonged to Patient L.J., D.J. and C.J. while providing care to Patient L.J. and using the information to personally and financially benefit herself.

14. On April 11, 2012, Respondent was charged in Marion Superior Court, Indiana, with two felony counts of forgery; two felony counts of theft, receiving stolen property; and one felony count of fraud.

15. Indiana Code Title § 35-33-7-2 states:

(a) At or before the initial hearing of a person arrested without a warrant for a crime, the facts upon which the arrest was made shall be submitted to the judicial officer, ex parte, in a **probable cause affidavit**. . . (emphasis added).

16. Based on Indiana Title § 35-33-7-2, Respondent was charged in Marion Superior Court by filing the affidavit of probable cause and charging information. Together, the affidavit of probable cause and charging information outline the criminal allegations, nature of the crime and facts.

17. On August 7, 2012, Respondent was convicted of one count of forgery, a felony, and sentenced to two years in prison, stayed, with two years of probation.

18. Indiana Code Title § 35-38-1-31 states:

(a) If a court imposes on a person convicted of a felony a sentence that involves a commitment to the department of correction, **the court shall complete an abstract of judgment** in an electronic format approved by the department of correction and the division of state court administration (emphasis added).

19. An abstract of judgment is the term used in Indiana for a judgment of conviction.

20. On October 31, 2012, while on probation, Respondent tested positive for marijuana.

21. On December 4, 2012, while on probation, Respondent tested positive for marijuana.

22. On December 15, 2012, Respondent applied for a nursing license in Wisconsin.

23. On the application, Respondent checked "no" to the following questions:

a. Have you ever been convicted of a misdemeanor or felony?

b. Are you incarcerated, on probation or on parole for any conviction?

24. On March 11, 2013, Respondent was granted a State of Wisconsin nursing license.

25. On July 9, 2013, while on probation, Respondent tested positive for marijuana.

26. On July 12, 2013, Respondent's probation was revoked due to her failure to comply with her probation rules and she was sentenced to 362 days in jail.

27. On or about December 2, 2015, the director of nursing (DON) at a nursing and rehabilitation facility in Kentucky contacted the Department because the facility had conducted a background check on Respondent, a current employee, and discovered the 2012 convictions.

28. Respondent was working in Kentucky under her State of Wisconsin nursing license pursuant to the Nurse Licensure Compact which is why the DON contacted the Department.

29. On January 8, 2016, a Department investigator emailed Respondent regarding the case that was opened against her State of Wisconsin nursing license.

30. Respondent called the investigator the same day.

31. During the phone call, Respondent denied ever being convicted of a felony but stated she had been the victim of identity theft in the past.

32. The investigator gave Respondent a reasonable amount of time to contact Indiana to sort out the identity issues.

33. On April 14, 2016, the Department investigator had not heard from Respondent and sent her an email requesting an update.

34. On April 15, 2016, Respondent sent the Department investigator an email in which she admitted to lying on her application for licensure and lying in the previous call regarding her conviction.

35. On April 15, 2016, the Department investigator replied to Respondent's email thanking her for her honesty and asking for a drug history based on the marijuana use.

36. Respondent's response was due no later than April 29, 2016.

37. On May 13, 2016, the Department investigator had not received a response to the April 15, 2016 email and sent a follow up email to Respondent.

38. On May 27, 2016, Respondent responded to the Department investigator's questions stating that:

- a. Respondent worked for Maxim Health as an aide while attending nursing school;

- b. During her employment with Maxim, Respondent provided care to Patient L.J.;
- c. D.J. and C.J. were the parents of Patient L.J.;
- d. Respondent forged a check for groceries. The check belonged to D.J. and C.J.; and
- e. Respondent admitted to occasionally smoking marijuana to relax when she was under a lot of stress.

Facts Related to Default

39. The Complaint and Notice of Hearing in this matter were served on Respondent on January 30, 2017, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing instructed Respondent: “If you do not provide a proper Answer within twenty (20) days, you will be found in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.”

40. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

41. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for March 6, 2017. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which she could be reached for the conference no later than March 1, 2017. The Notice instructed Respondent: “The Respondent’s failure to appear at the scheduled conference or hearing may result in default judgment being entered against the Respondent.” Respondent failed to provide a telephone number.

42. On March 6, 2017, the prehearing conference was held. Respondent could not be reached for the prehearing conference. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). The ALJ granted the motion for default.

43. On March 6, 2017, the ALJ issued a Notice of Default and Order which required the Division to file and serve, no later than March 20, 2017, a recommended proposed decision and order.

44. The Division timely filed its recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the March 6, 2017 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the telephone conference held on March 6, 2017. As a result, an order may be entered against her on the basis of the Complaint

and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violations of Wisconsin Statute and Administrative Code

Following an investigation and disciplinary hearing, if the Board determines that a practical nurse has violated Chapter 441, subchapter I, of the Wisconsin Statutes or any rule adopted by the Board under the authority of that subchapter, or that the nurse has committed unprofessional conduct, it may revoke, limit, or suspend the nurse's license or may reprimand the nurse. Wis. Stat. §§ 441.07(1g)(b) and (d), respectively.

Respondent violated Wis. Admin. Code § N 7.04(1), which prohibits that "violating, or aiding and abetting a violation of law substantially related to the practice of professional or practical nursing." Respondent was convicted of forgery, a felony. The circumstances surrounding this conviction are substantially related to the practice of nursing. Respondent used her employment while working as a nurse to obtain the personal information of her patient as well as personal information of the patient's family members. Respondent was entrusted to enter the patient's home to provide her care. Respondent violated that trust when she used her access for an unlawful purpose and for her personal financial gain. Respondent stole the personal information of her patient, who relied on her for care, and also stole personal information of her patient's elderly parents. All three of Respondent's victims are vulnerable people who trusted Respondent because of her position in the healthcare field. Therefore, Respondent's felony conviction is substantially related to her practice as a practical nurse, and her conduct violates Wis. Admin. Code § N 7.04(1).

Respondent also violated Wis. Admin. Code § N 7.04(2), which prohibits "obtaining any drug other than in the course of legitimate practice of otherwise prohibited by law." Respondent tested positive for marijuana several times while on probation. One of these positive drug screens occurred on July 9, 2013, which was after Respondent was licensed as a nurse in the State of Wisconsin. Due to this positive drug screen, Respondent's probation was revoked. Marijuana contains THC, which is an illicit substance, and Respondent did not have lawful authority to obtain, possess or ingest marijuana. Therefore, Respondent's positive drug screen for marijuana while she was licensed as a practical nurse in the State of Wisconsin violates Wis. Admin. Code § N 7.04(2).

Further, Respondent violated Wis. Admin. Code § N 7.03(5)(g), which prohibits "submitting false information in the course of an investigation." On January 8, 2016, Respondent contacted the Department investigator and denied that she had been convicted of a felony. Respondent stated she had been the victim of identity theft. The investigation later revealed that Respondent was convicted of a felony in Indiana and that she lied to the investigator. On April 15, 2016, Respondent admitted that she lied to the investigator on January 8, 2016. Therefore, Respondent's intentional lie to the investigator during the course of investigation violates Wis. Admin. Code § 7.03(5)(g).

Lastly, Respondent violated Wis. Stat. § 441.07(1)(a) (2011-2012), which prohibits "lying on application for licensure." On August 7, 2012, Respondent was convicted of forgery, a felony, and sentenced to probation. On December 15, 2012, Respondent submitted her nursing application to the State of Wisconsin. On her application, Respondent checked "no" to the following questions: "Have you ever been convicted of a misdemeanor or felony?" and "Are you

incarcerated, on probation or on parole for any convictions?” Respondent intentionally checked “no” to both of these questions despite her conviction and being on probation at the time. By checking “no” to these questions, she did not put the Board on notice of her crimes and was granted an unrestricted nursing license. Respondent’s intentional lie on her nursing application violates Wis. Stat. § 441.07(1)(a).

Discipline

The three purposes of discipline are “(1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct.” *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division requests that Respondent’s practical nursing license (license number 316750-31) and that her privilege to practice nursing in Wisconsin pursuant to the Nurse Licensure Compact be revoked. At the time that the Division requested this discipline, Respondent’s license was still active. However, as stated in Finding of Fact No. 1, above, Respondent’s license was only active through April 30, 2017. The record does not indicate whether Respondent has sought to renew her license. In the event she has not done so, the order in this case includes language regarding her right to renew her license.

The Division argues that Respondent’s conduct is so egregious that there is no manner of rehabilitation or license limitations that will protect the public. I agree that it is appropriate to revoke Respondent’s nursing license, her right to renew her license, and her right to practice under the pursuant to the Nurse Licensure Compact. Respondent’s conduct demonstrates that she cannot be trusted with patients’ belongings or valuables. Respondent used her patient’s personal information to obtain a credit card, used a credit card stolen from her patient’s parent, and used the patient’s parents’ checking accounts to pay personal bills, obtain food and purchase items online. In all work sites, Respondent would have access to personal information via electronic patient records. Even in work sites with supervision, such as hospitals and clinics, Respondent would have access to patients’ charts that contain personal information and patients’ personal belongings. Respondent’s access would include when patients are sleeping, at appointments or otherwise unable to protect their property from her.

Respondent also ingests illicit substances. While on probation, Respondent tested positive for marijuana twice. Because Respondent failed to participate in these proceedings, it is not known if Respondent has a dependency on illicit substances.

By failing to participate in these proceedings and to comply with the law, Respondent has shown a blatant disregard for the law and the rules governing her profession. Even after Respondent was convicted of crimes in Indiana, she continued to engage in unlawful conduct by ingesting marijuana in violation of her probation conditions. Respondent further showed disregard for the law when she lied on her application to obtain a Wisconsin practical nursing license. Finally, during the investigation of this case, Respondent failed to take responsibility for her actions and lied to the investigator. The Board does not have any proof that Respondent is safe to practice, has been rehabilitated or can be trusted. Patients are vulnerable when they are in need of care. Respondent has a criminal history of preying on vulnerable people.

In addition, revocation will serve to deter other nurses from violating the law and taking advantage of patients. Finally, revocation is consistent with prior Board decisions.

For example, in *In the Matter of the Disciplinary Proceedings Against Stephanie Y. Gaines, L.P.N.*, Order No., 0004686 (April 29, 2016),⁴ the Board revoked a nurse's license. In that case, the nurse gained access to a patient's residence while he was in the hospital and obtained personal information and checks from the patient, without his consent. She used the checks and personal information to open a credit card, pay her bills and buy goods. The nurse was convicted of forgery-uttering, a felony; unauthorized use of personal identifying information to obtain money, a felony; and possession of narcotic drugs, a felony. The Board revoked her license to practice. This is similar to the current case in that both nurses fraud to obtain financial gain from vulnerable patients whom they were tasked to care for.

In *In the Matter of the Disciplinary Proceedings Against Jodi A. DeBacco, R.N.*, Order No. LS0701172NUR (July 24, 2008),⁵ a nurse altered prescriptions to obtain controlled substances and was criminally convicted. She then applied for license in Arkansas and lied on her application for licensure. The Board revoked her license. This is similar to the current case in that both nurses committed fraud and lied on applications for licensure.

In *In the Matter of Disciplinary Proceedings Against Laura J. Feichtner, R.N.*, Order No. LS09120315NUR (Dec. 3, 2009),⁶ a nurse committed fraud while trying to obtain controlled substances, and while obtaining controlled substances. She was convicted of obtaining a prescription drug by fraud. During the course of the Board's investigation, she provided false information to the Board. The Board revoked her license to practice nursing. This is similar to the current case in that both nurses committed fraud and provided false information to the Board.

Based on the facts of this case, the criteria of *Aldrich* and the Board's prior decisions, revocation is warranted.

Costs

The Department is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. See Wis. Stat. § 440.22(2). In exercising such discretion, the Department must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. The Department has also, in numerous previous orders, considered many factors when determining if all or part of the costs should be assessed against a Respondent. Factors have included: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the prosecutor; (4) the cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. See e.g. *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, LS 0802183 CHI (Aug. 14, 2008). It is within the Department's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

⁴ A copy of that order can be found at <https://online.drl.wi.gov/decisions/2016/ORDER0004686-00012624.pdf>.

⁵ A copy of that order can be found at <https://online.drl.wi.gov/decisions/2008/ls0701172nur-00077994.pdf>.

⁶ A copy of that order can be found at <https://online.drl.wi.gov/decisions/2009/ls09120315nur-00077869.pdf>.

Respondent's failure to participate in these proceedings negates any mitigation of imposing the full costs of this matter. Respondent's conduct is of a serious nature. The factual allegations were deemed admitted and there is no argument to indicate any factual findings or litigation were unnecessary. The Division has proven all counts alleged. The Division is seeking, and has been granted, revocation of Respondent's nursing license, the most severe form of discipline available. Respondent has failed to cooperate with the disciplinary process. By nature of being in default, Respondent has made no argument concerning whether costs should be assessed against her. Furthermore, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings.

ORDER

Accordingly, IT IS ORDERED that Respondent Kimberly E. Jackson's practical nursing license (license number 316750-31), the right to renew her license, and her privilege to practice nursing in the State of Wisconsin pursuant to the Nurse Licensure Compact are REVOKED.

IT IS FURTHER ORDERED that Respondent may not petition for reinstatement of her practical nursing license pursuant to Wis. Stat. § 441.07(2), earlier than one year from the date of revocation.

IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

IT IS FURTHER ORDERED that the terms of this Order are effective the date of the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin on May 8, 2017.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: 

Jennifer E. Nashold
Administrative Law Judge

NOTICE OF RIGHTS OF APPEAL

TO: Kimberly E. Jackson, L.P.N.

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is **June 9, 2017**. 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 Final Decision is shown above.

The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for rehearing must be served upon the respondent at the address listed 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. The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law. 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, the proceedings shall be in the county where the dispute arose. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and 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 final Decision and 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 30 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 Final Decision and 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 Final Decision and 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:

WISCONSIN BOARD OF NURSING
1400 East Washington Avenue
P.O. Box 8366
Madison, WI 53708-8366

227.49 Petitions for rehearing in contested cases.

(1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.53 Parties and proceedings for review.

(1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review of the decision as provided in this chapter and subject to all of the following procedural requirements:

(a)

1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board, the credit union review board, or the savings institutions review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1. to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review of contested cases shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review under this

subdivision shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this subdivision commences on the day after personal service or mailing of the decision by the agency.

227.57 Scope of review.

(1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, testimony thereon may be taken in the court and, if leave is granted to take such testimony, depositions and written interrogatories may be taken prior to the date set for hearing as provided in ch. 804 if proper cause is shown therefor.

(2) Unless the court finds a ground for setting aside, modifying, remanding or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency's action.

(3) The court shall separately treat disputed issues of agency procedure, interpretations of law, determinations of fact or policy within the agency's exercise of delegated discretion.

(4) The court shall remand the case to the agency for further action if it finds that either the fairness of the proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure.

(5) The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.

(6) If the agency's action depends on any fact found by the agency in a contested case proceeding, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by substantial evidence in the record.

(7) If the agency's action depends on facts determined without a hearing, the court shall set aside, modify or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility.

(8) The court shall reverse or remand the case to the agency if it finds that the agency's exercise of discretion is outside the range of discretion delegated to the agency by law; is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained to the satisfaction of the court by the agency; or is otherwise in violation of a constitutional or statutory provision; but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(9) The court's decision shall provide whatever relief is appropriate irrespective of the original form of the petition. If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as it finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(10) Upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it. The right of the appellant to challenge the constitutionality of any act or of its application to the appellant shall not be foreclosed or impaired by the fact that the appellant has applied for or holds a license, permit or privilege under such act.