

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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

In the Matter of Disciplinary Proceedings Against
Mary E. Akins, Respondent

FINAL DECISION AND ORDER

Order No. 0006156

Division of Legal Services and Compliance Case No. 17 NUR 001

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 29 day of May, 2019.

Member
Board of Nursing



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

In the Matter of Disciplinary Proceedings
Against Mary E. Akins, Respondent

DHA Case No. SPS-18-0048
DLSC Case No. 17 NUR 001

PROPOSED DECISION AND ORDER

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

Mary E. Akins, R.N.
1705 11th Avenue
Apartment 2E
Moline, IL 61265¹

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 Joost Kap
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 on November 20, 2018, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Mary E. Akins, R.N. (Respondent), alleging that Respondent engaged in unprofessional conduct as follows: by failing to cooperate in a timely manner, after a request from the Wisconsin Board of Nursing (Board), with the Board's investigation of a complaint filed against her, in violation of Wis. Admin. Code § N 7.03(1)(c); by

¹According to the Department, Respondent's address of record with the Department is Post Office Box 8094, Janesville, Wisconsin 53547. However, mail to that address has been returned as "undeliverable" and Respondent has confirmed this address above in Moline, Illinois is correct.

practicing nursing without an active license, in violation of Wis. Admin. Code § N 7.03(1)(d); by violating any term, provision, or condition of any order of the Board, in violation of Wis. Admin. Code § N 7.03(1)(g); by failing to notify the Board of a felony or misdemeanor in writing within 48 hours after the entry of the judgment of conviction, including the date, place, and nature of the conviction or finding, in violation of Wis. Admin. Code § N 7.03(1)(h); and by violating or aiding and abetting a violation of any law substantially related to the practice of nursing, specifically Wis. Stat. § 440.11, which requires credential holders to notify the Department in writing of any change to the name or address provided to the Department within 30 days of the change, in violation of Wis. Admin. Code § N 7.03(2).

This matter is before the undersigned administrative law judge (ALJ) on a motion for default filed by the Division for Respondent's failure to file an Answer to the Complaint and failure to appear for the telephone prehearing conference.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-18 are taken from the Division's Complaint in this matter.

1. Respondent is licensed in the State of Wisconsin as a registered nurse, having license number 224002-30, first issued on July 1, 2015, and suspended since June 16, 2016.

2. Respondent's most recent address on file with the Department is Post Office Box 8094, Janesville, Wisconsin 53547-0894.

3. On June 10, 2016, the Wisconsin Board suspended Respondent's license indefinitely based on her violation of an order issued by the Iowa Board of Nursing (Iowa Order).

4. The Iowa Order required drug screening and was based on Respondent's conduct while practicing nursing in the State of Iowa, specifically, violations of applicable Iowa law for failing to properly waste controlled substances.

5. Respondent failed a drug screen and failed to submit to subsequent testing.

6. Since June 10, 2016, the suspension of Respondent's license to practice nursing in Wisconsin has continued without interruption.

7. On June 28, 2016, while her nursing license was suspended, Respondent began working as a registered nurse at a nursing home and rehabilitation center in Madison, Wisconsin (Center).

8. On January 1, 2017, the Center's Director of Nursing received an anonymous tip that Respondent was practicing nursing with a suspended license.

9. The Center terminated Respondent's employment and filed a complaint with the Department.

10. On January 4, 2017, the Department opened Division of Legal Services and Compliance Case No. 17 NUR 001 to investigate the allegations that Respondent engaged in the practice of nursing without an active license.

11. On June 8, 2017, as part of the investigation of 17 NUR 001, the Department, on behalf of the Board, sent a letter to Respondent's address of record with the Department, requesting a written response to the allegations of practicing without an active license.

12. Respondent failed to reply to the Department's June 8, 2017 letter.

13. On August 1, 2017, as part of the investigation of 17 NUR 001, the Department, on behalf of the Board, sent Respondent another letter to her address of record requesting a written response to the allegations of practicing without an active license.

14. The Department's August 1, 2017 letter was returned as "undeliverable."

15. On August 23, 2017, as part of the investigation of 17 NUR 001, the Department, on behalf of the Board, sent a letter addressed to Respondent at the Scott County, Iowa Jail, where Respondent was believed to be incarcerated, again requesting a written response to the allegations of practicing without an active license.

16. The Department's August 23, 2017 letter was returned because Respondent was no longer incarcerated at the Scott County, Iowa Jail.

17. Respondent never reported any felony and/or misdemeanor conviction, including the date, place, and nature of the conviction resulting in her incarceration in the Scott County, Iowa Jail.

18. On November 20, 2017, the Department called Respondent's phone number on record with the Department and found that the line had been disconnected.

Facts Related to Default

19. The Notice of Hearing and Complaint in this matter were served on Respondent on November 20, 2018, by sending a copy of the Notice of Hearing and Complaint to her address on file with the Department, Post Office Box 8094, Janesville, Wisconsin 53547, via certified and regular mail. On December 3, 2018, the documents sent via certified mail were returned to the Division as undeliverable. On December 4, 2018, Respondent was again served the Notice of Hearing and Complaint by sending them via certified mail to an address in Moline, Illinois, which the Division found using a public records search. The documents were not returned to the Division.

20. The Notice of Hearing instructed Respondent: "If you do not provide a proper Answer within 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."

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

22. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for December 20, 2018. Notice of this prehearing conference was sent to the Division and to Respondent at both her former Janesville, Wisconsin address and also her Moline, Illinois address. The Notice instructed Respondent to provide the ALJ with a telephone number at which she could be reached for the conference, and further advised: "The Respondent's failure to appear at the scheduled conference or hearing may result in default judgment being entered against the Respondent."

23. On December 18, 2018, Respondent contacted the Division of Hearings and Appeals (DHA), asking to reschedule the prehearing conference and stating that she was no longer practicing nursing and was pursuing an engineering degree. DHA staff informed Division Attorney Joost Kap of this communication, and Attorney Kap objected to the rescheduling request in an email dated December 19, 2018 sent to both the ALJ and Respondent. The ALJ then emailed the parties, asking Respondent for the grounds of her rescheduling request. Respondent did not respond.

24. On December 20, 2018, the ALJ attempted to contact Respondent at several numbers and eventually received a call back from someone assumed to be Respondent. Respondent denied receiving the Notice of Hearing and Complaint or the Notice of Prehearing Conference and claimed to have no knowledge or understanding of the charges alleged in the Division's Complaint. Respondent became agitated during the call and eventually stated she was not Respondent but was "Monique Akins," before abruptly hanging up the phone. The Division then moved for default judgment based upon Respondent's failure to answer the Complaint and failure to participate in the prehearing conference.

25. On December 21, 2018, Respondent contacted the ALJ's office and stated that the person the ALJ and Division spoke with on December 20 was not her, and that Monique was her sister. Respondent and the ALJ attempted to contact Attorney Kap but was unable to reach him. When the ALJ's office subsequently contacted Respondent to reschedule a prehearing conference, Respondent indicated she was not interested in rescheduling and did not care if default was entered against her.

26. On December 21, 2018, the ALJ issued a Notice of Default and Order which required the Division to file and serve, no later than January 11, 2019, a recommended proposed decision and order.

27. Respondent did not file a response to the Notice of Default and Order.

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

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the December 21, 2018 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 prehearing

conference held on December 20, 2018 and refusing to reschedule the conference. As a result, an order may be entered against Respondent 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 opportunity for hearing, the Board may revoke, limit or suspend the license of a registered nurse or may reprimand the nurse if the Board finds that the nurse engaged in “[o]ne or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter” or has engaged in “misconduct or unprofessional conduct.” Wis. Stat. § 441.07(1g)(b) and (d), respectively.

On June 28, 2016, while her nursing license was suspended, Respondent began working as a registered nurse at a nursing home and rehabilitation center in Madison, Wisconsin. On January 1, 2017, the Center’s Director of Nursing received an anonymous tip that Respondent was practicing nursing with a suspended license. The Center terminated Respondent’s employment and filed a complaint with the Department. By engaging in this conduct, Respondent violated Wis. Admin. Code § N 7.03(1)(d), by practicing nursing without an active license, and Wis. Admin. Code § N 7.03(1)(g), by violating a term, provision, or condition of an order from the Board.

On June 8, 2017, the Department, on behalf of the Board, sent a written request to Respondent’s address of record seeking a response to allegations that she practiced without an active license. Respondent failed to respond. Respondent also failed to respond to the Department’s written request dated August 1, 2017, also sent to her address of record with the Department. The Department’s August 1, 2017 letter was returned as “undeliverable.” Respondent likewise failed to respond to the Department’s written request dated August 23, 2017, sent to Respondent at the Scott County, Iowa jail, where Respondent was thought to be incarcerated. By such conduct, Respondent violated Wis. Admin. Code § N 7.03(1)(c), by failing to cooperate in a timely manner, after a request from the Board, with the Board’s investigation of a complaint filed against a license holder. In addition, Respondent never reported any felony and/or misdemeanor conviction to the Department, including the date, place, and nature of the conviction resulting in her incarceration in the Scott County, Iowa Jail, in violation of Wis. Admin. Code § N 7.03(1)(h), which requires such reporting within 48 hours after the entry of the judgment of conviction.

Finally, Respondent’s conduct was contrary to Wis. Admin. Code § N 7.03(2), which prohibits violating or aiding and abetting a violation of any law substantially related to the practice of nursing. Specifically, Respondent violated Wis. Stat. § 440.11, which requires credential holders to notify the Department in writing of any change to the name or address provided to the Department within 30 days of the change.

As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d).

Discipline

The three purposes of discipline in professional misconduct cases are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct;

and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent's license to practice as a registered nurse in the State of Wisconsin and her privilege to practice nursing in Wisconsin pursuant to the Nurse Licensure Compact and Enhanced Nurse Licensure Compact be revoked.

Based on the criteria set forth in *Aldrich* and the facts of this case, the Division's recommended discipline is warranted. Respondent was disciplined in Iowa for misconduct related to controlled substances, failing a drug test, and failing to comply with ongoing testing, thereby endangering patients and the public. Respondent also failed to inform the Department of the circumstances surrounding a conviction which resulted in her serving time in jail, also contrary to Department rules and public welfare. After having her license suspended in Wisconsin as a result of this conduct, Respondent knowingly worked in Wisconsin with a suspended license, which deceived and endangered patients and the public.

Respondent also failed to cooperate with the Division's investigation into Respondent's practice of nursing without an active license and likewise failed to cooperate with these disciplinary proceedings. Respondent has been evasive, contentious, and unwilling to participate in mandatory appearances before the ALJ. Respondent also stated she does not care if default judgment is entered against her. All of these facts support the revocation requested in this matter.

Costs

The Board 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 Board 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 385.² In previous orders, Boards have considered the following factors when determining if all or part of the costs should be assessed against a Respondent: (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 *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, LS 0802183 CHI (Aug. 14, 2008). It is within the Board'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.

² The Division's recommended proposed decision and order contains a lengthy, three-paragraph block quote from *Noesen*, seen in many other submissions by the Division. It is perplexing that the Division includes this language from *Noesen*. The main crux of the quoted excerpt is that the Board in that case failed to exercise its discretion in imposing costs because it failed to consider all of the facts and, instead, imposed full costs based solely on the fact that costs not borne by the licensee would be borne by other members of the profession. The *Noesen* court's critique of the Board in the quoted excerpt does not appear to warrant the Division's heavy reliance on it. Moreover, this tribunal does not reflexively award full costs, but instead, analyzes all of the facts in each case, as required by *Noesen*.

The following facts are particularly relevant to the instant case. By virtue of Respondent's default, the factual allegations were deemed admitted in this matter, the Division has proven all counts alleged, and there is no argument to indicate any litigation in this proceeding was unnecessary. Additionally, Respondent's conduct and violations are serious, as is the discipline requested and imposed. Moreover, Respondent has failed to cooperate with the disciplinary process and has made no argument concerning whether costs should be assessed against her. Finally, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. Accordingly, fairness weighs heavily in favor of requiring Respondent to pay the costs of this proceeding which resulted in significant discipline rather than spreading the costs among all licensees.

ORDER

Accordingly, IT IS ORDERED that the registered nursing license (license number 224002-30) of Respondent Mary E. Akins, R.N., and her privilege to practice nursing in the State of Wisconsin pursuant to the Nurse Licensure Compact and Enhanced Nurse Licensure Compact are REVOKED.

IT IS FURTHER ORDERED that if Respondent ever seeks a future credential with the Department under Wis. Stat. chs. 440-480, she shall, as a prerequisite to application, pay COSTS of this matter in an amount to be established,³ pursuant to Wis. Admin. Code § SPS 2.18, prior to the Department's consideration of any such application.

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 February 21, 2019.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____

Jennifer E. Nashold
Administrative Law Judge

³ In the order section of the Division's recommended proposed decision and order, the Division recommends costs in the amount of \$1,375. Presumably, costs had not yet been determined at the point the Division filed its submission. Moreover, the Division offers no information as to how that figure was arrived at. Therefore, this tribunal assumes the figure was included in error.

NOTICE OF RIGHTS OF APPEAL

TO: Mary Akins
1705 11th Avenue, Apt. 2E
Moline, IL 61265

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is **May 10, 2019**. 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
4822 Madison Yards Way
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.