

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN

BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

MAURI LYNN FOWLER, LPN,

FINAL DECISION AND ORDER

RESPONDENT

LS0001181NUR

Division of Enforcement Case File # 99 NUR 323

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

*Mauri Lynn Fowler
2429 W. Locust Street
Milwaukee, WI 53206*

*Mauri Lynn Fowler
101 East Mifflin Street
Madison, WI 53703*

*Wisconsin Board of Nursing
PO Box 8935
Madison, WI 53708-8935*

*Department of Regulation and Licensing
Division of Enforcement
PO Box 8935
Madison, WI 53708-8935*

The parties in this matter agree to the terms and conditions of the attached Stipulation as the Final Decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Mauri Lynn Fowler (D.O.B. 09/01/52) is duly licensed in the state of Wisconsin to practice as a practical nurse (license #19341). This license was first granted on December 9, 1977.
2. Ms. Fowler's latest address on file with the Department of Regulation and Licensing is 2429 W. Locust Street, Milwaukee, WI 53206.
3. On May 14, 1999, the Wisconsin Board of Nursing imposed disciplinary action against the license of Ms. Fowler. This Order was based upon 1) a 1992 conviction for felony forgery (theft of three checks from a patient); 2) a 1998 conviction for misdemeanor theft (patient jewelry) and a post employment offer drug screen that was positive for cocaine. A true and correct copy of the Board's May 14, 1999 Order is attached and incorporated by reference into this document as Exhibit A.
4. On or about August 16, 1999, Ms. Fowler submitted an application for employment as a licensed practical nurse at the State of Wisconsin Central Wisconsin Center for the Developmentally Disabled, 317 Knutson Drive, Madison, Wisconsin.
6. In conjunction with the application referred to in paragraph 5, above, Ms. Fowler failed to disclose the existence of the disciplinary order in affect against her nursing license.

7. In conjunction with the application referred to in paragraph 5, above and related background check, Ms. Fowler falsely indicated that she had no conviction record, and that she had no disciplinary history against her license.

8. In September 1999 Ms Fowler was hired to work at the Central Wisconsin Center.

9. Ms. Fowler failed to inform the Department Monitor of her employment at the Central Wisconsin Center, failed to obtain Board approval of her work setting, and failed to inform her employer of the need for supervision and work reports, all in violation of the Board's May 14, 1999 Order.

10. In August 1999 Ms Fowler was hired to work as a LPN charge nurse at Manorcare, 801 Braxton Street, Madison, Wisconsin.

11. Ms. Fowler failed to inform the Department Monitor of her employment at HRC Manorcare, failed to obtain Board approval of her work setting, and failed to inform her employer of the need for supervision and work reports, all in violation of the Board's May 14, 1999 Order.

12. Ms. Fowler further violated the terms of the Board's May 14, 1999 Order in that she failed to supply random drug screens and arrange for reports of their results, as required by Order paragraphs f to s.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction to act in this matter pursuant to §441.07, Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

2. The conduct described above constitutes a violation of sections 441.07(1)(b) and (d) of the Wisconsin statutes and Wisconsin Administrative Code §§N 7.04(13), (14) and (15). Furthermore, the Findings of Fact set forth in paragraph 3 above constitute an agency finding of misappropriation within the meaning of secs. 48.685 and 50.065, Stats.

ORDER

A. NOW, THEREFORE, IT IS HEREBY ORDERED, that

1. The attached Stipulation is accepted.

2. Effective on the date of this Order, Respondent Wisconsin nursing license is SUSPENDED for an indefinite period of time.

3. Respondent may at any time apply for consecutive three (3) month stays of this suspension, conditioned upon compliance with the conditions and limitations outlined below. In conjunction with her petition for an original stay, Respondent must present documentation of: return of her current licensure cards and certificate to the Department Monitor, as well as successful completion of a Rehabilitation Review with the Department of Health and Family Services.

a. Three-(3)-month extensions of the stay of suspension shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the respondent for rehabilitation and practice during the prior three-(3)-month period.

b. The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in ch. RL 1, Wis. Adm. Code upon timely receipt of a request for hearing.

c. Upon full, complete and continuous compliance with the terms of this order for a period of two [2] years, Respondent may petition for a return to full and unrestricted licensure.

B. IT IS FURTHER ORDERED, that Respondent's license is LIMITED as follows:

4. Respondent shall not engage in the practice of nursing in any capacity unless in full compliance with the rehabilitation and treatment programs specified and approved under this Order. Respondent shall surrender all indicia of registration to the Department by mail or in person, and the Department shall then issue limited registration credentials to respondent. Respondent shall also surrender all indicia of registration to any agent of the Department who requests them.

MONITORING

Sobriety

5. Respondent shall abstain from all personal use of controlled substances as defined in §961.01(4), Stats. except when necessitated by a legitimate medical condition.

6. Respondent shall abstain from all personal use of alcohol.

7. Respondent shall in addition refrain from the consumption of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, or which may create false positive screening results, or which may interfere with respondent's monitoring.

Department Monitor

8. The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all reports and petitions, and requesting additional monitoring and surveillance. The Department Monitor may be reached as follows:

Department Monitor

Department of Regulation Division of Enforcement

PO Box 8935

Madison, WI 53708-8935

FAX (608) 266-2264

TEL. (608) 261-7938

Releases

9. Respondent shall provide and keep on file with all treatment facilities and personnel, laboratories and collections sites current releases which comply with state and federal laws authorizing release of all urine, blood and hair specimen screen results and medical and treatment records and reports to, and permitting the Monitoring facility and all treating physicians and therapists to disclose and discuss the progress of respondent's treatment and rehabilitation with the Board or any member thereof, or with any employee of the Department of Regulation and Licensing acting under the authority of the Board. Copies of these releases shall be filed simultaneously with the Department Monitor.

Drug and Alcohol Screens

10. Respondent shall supply on at least a twice per month basis, random monitored urine, blood or hair specimens. The monitoring facility (or designee) shall request the specimens from Respondent and these requests shall be random with respect to the hour of the day and the day of the week. In addition, the Board or its designee may at any time request a random monitored urine, blood or hair specimen from Respondent by directing the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement to contact Respondent and request Respondent provide a specimen.

11. Respondent shall keep the Monitoring facility informed of Respondent's location and shall be available for contact by the Monitoring facility at all times.

12. All requested urine, blood or hair specimens shall be provided by Respondent within five (5) hours of the request for the specimen. All urine specimen collections shall be a split sample accomplished by dividing urine from a single void into two specimen bottles. The total volume of the split sample shall be at least 45 ml. of urine. All split sample urine specimens, blood specimens and hair specimens shall be collected, monitored and chain of custody maintained in conformity with the collection, monitoring and chain of custody procedures set forth in 49 CFR Part 40. Urine specimen collections shall be by direct observation if:

- a. The Respondent must provide an additional specimen because Respondent's initial specimen was outside of the normal temperature range (32.5 - 37.7 C/90.5 - 99.8 F) and respondent refuses to have an oral body temperature measurement or respondent does provide an oral body temperature measurement and the reading varies by more than 1 C/1.8 F from the temperature of the urine specimen;
- b. Respondent's last provided specimen was determined by the laboratory to have a specific gravity of less than 1.003 and creatinine concentration below 0.2 g/l;
- c. The collection site person observes Respondent acting in such a manner to provide reason to believe that Respondent may have attempted or may attempt to substitute or adulterate the specimen. The collection site person, if he or she believes that the initial urine specimen may have been adulterated or a substitution made, shall direct Respondent to provide an additional observed urine specimen;
- d. The last provided specimen resulted in a positive or suspected positive test result for the presence of controlled substances; or
- e. The Board (or any member of the Board), the Department Monitor, or Respondent's Monitoring facility directs that the urine specimen collection be by direct observation.

If either of the above conditions (a) or (c) requires collection of an additional observed urine specimen, the collection of the subsequent specimen shall be accomplished within the required five (5) hours of the request for the initial specimen; the collection of the initial specimen shall not satisfy the requirement that the urine specimen be collected within five (5) hours of the request for the initial specimen.

13. The drug and alcohol treatment program in which Respondent is enrolled shall at all times utilize a United States Department of Health and Human Services certified laboratory for the analysis of all specimens collected from Respondent.

14. The drug screen program in which Respondent is enrolled shall utilize only those urine, blood and hair specimen collection sites for collection of Respondent's urine, blood or hair specimens as comply with the United States Department of Transportation collection and chain of custody procedures set forth in 49 CFR Part 40.

15. The monitoring facility, laboratory and collection site shall maintain a complete and fully documented chain of custody for each urine, blood or hair specimen collected from Respondent.

16. Every urine specimen collected from Respondent shall be analyzed at the time of collection for tampering by measurement of the temperature of the specimen and the oral temperature of Respondent. Every urine specimen collected from Respondent shall be further analyzed at the laboratory for tampering by measuring the creatinine concentration and the specific gravity of the specimen. The laboratory may at its discretion or at the direction of a Monitoring facility or the Board or any member thereof conduct additional tests to evaluate the urine specimen for tampering including, but not limited to, pH, color and odor.

17. Every urine, blood or hair specimen collected from Respondent shall be analyzed for alcohol, amphetamine, cocaine, opiates, phencyclidine, marijuana, methadone, propoxyphene, methaqualone, barbiturates, benzodiazepines, synthetic opiates (oxycodone, hydromorphone, fentanyl, hydrocodone, and meperidine), or the metabolites thereof. The Board or its designated agent may at any time direct that screens for additional substances and their metabolites be conducted by scientific methods and instruments appropriate to detect the presence of these substances. The laboratory shall conduct confirmatory tests of positive or suspected positive test results by appropriate scientific methods and instruments including, but not limited to, gas chromatography and mass spectrometry.

18. All urine, blood or hair specimens remaining after testing shall be maintained in a manner necessary to preserve the integrity of the specimens for at least seven (7) days; and all positive or suspected positive urine, blood or hair specimens remaining after testing shall be so maintained for a period of at least one (1) year. The Monitoring facility or the Board or any member thereof may direct that the urine, blood or hair specimens be maintained for a longer period of time.

19. For the purpose of further actions affecting Respondent's license under this Order, it shall be presumed that all confirmed positive reports are valid. Respondent shall have the burden of proof to establish that the positive report was erroneous and that the respondent's specimen sample did not contain alcohol or controlled substances or their metabolites.

20. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Monitoring facility shall determine to be appropriate to clarify or confirm the positive or suspected positive urine, blood or hair specimen test results.

Required Reporting by Monitoring facility and laboratories

21. The Monitoring facility shall report immediately to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement by FAX or telephonic communication: any failure of Respondent to provide a urine, blood or hair specimen within five (5) hours from the time it was requested; or of any inability to locate Respondent to request a specimen. The laboratory shall immediately report all urine specimens suspected to have been tampered with and all urine, blood or hair specimens that are positive or suspected positive for controlled substances or alcohol to the Department Monitor.

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

23. The Monitoring facility shall submit formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, PO Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall summarize the results of the urine, blood or hair specimen analyses. The Monitoring facility shall report immediately to the Department Monitor [Division of Enforcement, PO Box 8935, Madison, Wisconsin 53708-8935, FAX (608) 266-2264, telephone no. (608) 267-7139] any violation or suspected violation of the Board's Final Decision and Order.

Required reporting by Respondent

24. Respondent is responsible for compliance with all of the terms and conditions of this Final Decision and Order. It is the responsibility of Respondent to promptly notify the Department Monitor, of any suspected violations of any of the terms and conditions of this Order, including any failures of the Monitoring facility, laboratory or collection sites to conform to the terms and conditions of this Order.

Facility approval

25. If the Board determines that the Monitoring facility laboratory or collection sites have failed to satisfy the terms and conditions of this Final Decision and Order, the Board may, at its sole discretion, direct that Respondent continue monitoring under the direction of another facility, laboratory or collection site which will conform to the terms and conditions of this Final Decision and Order.

PETITIONS FOR MODIFICATION OF TERMS

26. Respondent may petition the Board for modification of the terms of this limited license at any time following one year from the effective date of this Order. Denial of the petition in whole or in part shall not be considered a denial of a license within the meaning of §227.01(3)(a), Stats. and Respondent shall not have a right to any further hearings or proceedings on any denial in whole or in part of the petition for modification of the limited license.

After two (2) years of continuous active professional practice under this Order and without evidence of any positive drug screens or other misconduct, respondent may petition the Board for a termination of all limitations on the license, and restoration of an unlimited license. Such restoration shall be in the sole discretion of the Board and denial of the petition in whole or in part shall not be considered a denial of a license within the meaning of §227.01(3)(a), Stats. and Respondent shall not have a right to any further hearings or proceedings on any denial in whole or in part of the petition for termination of the limitations and restoration of unlimited licensure.

EXPENSES OF TREATMENT AND MONITORING

27. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order.

PRACTICE LIMITATIONS

28. Respondent shall practice nursing only at pre-approved work sites and only under the general supervision of a licensed professional nurse or other licensed health care professional approved by the Board or its designated agent.

Reporting Required

29. Respondent shall arrange for employer to provide formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, PO Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance.

Change in Address or Work Status

30. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

31. Respondent shall furnish a copy of this Order to all present employers immediately upon issuance of this Order, and to any prospective employer when respondent applies for employment as a health care provider.

SUMMARY SUSPENSION

C. IT IS FURTHER ORDERED THAT

31. In the event Respondent fails to timely submit any reports required above, the license of Ms. Fowler (#19341) **SHALL BE SUSPENDED**, without further notice or hearing, until otherwise ordered by the Board.

32. Violation of any of the terms of this Order or the conditions imposed as a result of this Order shall be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Ms. Fowler's license; the Board in its discretion may in the alternative impose additional conditions and limitations other additional discipline for a violation of any of the terms of this Order.

WISCONSIN BOARD OF NURSING

By:

Ann Brewer

A member of the Board

March 3, 2000

Date