

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
: FINAL DECISION AND ORDER  
JESSE J. BARRY, R.N., : LS0911051NUR  
RESPONDENT. :

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[Division of Enforcement Case # 09 NUR 113]

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

Jesse J. Barry, R.N.

2213 Portage Road  
Madison, WI 53704

Division of Enforcement  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

Wisconsin Board of Nursing  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

PROCEDURAL HISTORY

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 of Nursing. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Jesse J. Barry, R.N., Respondent, date of birth November 23, 1971, was licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 122097, which was first granted February 21, 1996.

2. Respondent did not renew his license as a registered nurse when it expired on February 29, 2008, but could renew it pursuant to Wis. Stat. § 440.08(3)(a) by paying the required fees.

3. Respondent's last address of record with the Department of Regulation and Licensing is 2213 Portage Road Madison, WI 53704.

4. On November 13, 2006, in Dane County Circuit Court, Case No. 06CF1114, Respondent was convicted of a felony, operating a motor vehicle without owner's consent, with threat of use of a weapon, in violation of Wis. Stat. § 943.23(1g). On January 23, 2007, the court withheld sentence and placed Respondent on probation for four years. Respondent was ordered to undergo a psychological evaluation and treatment as deemed appropriate by his probation agent.

5. The conviction was the result of an incident in which Respondent, accompanied by a salesperson, took a vehicle for a test-drive. Respondent drove to an interstate highway, then pulled over to the shoulder of the road. Respondent told the salesperson he had a knife and that he intended to take the truck. He then instructed the salesperson to get out of the vehicle threatening to use the knife if necessary. The salesperson grabbed the keys from the vehicle and fled on foot through interstate.

traffic. Police ultimately took Respondent into custody and as they booked him, Respondent indicated he wished to harm or kill his father-in-law and then identified him by name.

6. A subsequent psychological evaluation of Respondent indicated he was of superior intelligence, but had difficulty handling emotions and stress:

Mr. Barry is a logical and intelligent individual, who is generally friendly and caring. However, he is also somewhat impatient and has difficulty dealing with highly stressful situations. When he feels overwhelmed, he responds with aggression. He recognizes that he does not handle very stressful situations well and tries to maintain a lower overall stress level. In rare situations, when stress and emotions are high, based on his past behavior he may well react in an inappropriate manner. Overall, the aggression risk is low, but in overwhelming situations, the risk increases to the moderate to high range.

7. Respondent participated in individual counseling from August 16, 2006 through January 19, 2007. The treatment provider opined that, at the time Respondent was last seen, the treater “had no reservations about his functioning in a work setting.” On February 18, 2009, Respondent successfully completed his period of probation supervision.

8. Respondent now explains that the incident was the result of high stress he experienced in anticipation of an upcoming missionary trip to Brazil. He says he planned to take the truck and drive to the ocean as a type of emotional suicide.

9. Since June of 2006, Respondent has been employed by the Lions Eye Bank of Wisconsin in a non-nursing capacity. Respondent reports that between 1997 and 2005, he had been terminated from three nursing positions for attendance-related issues.

10. Respondent did not report his conviction to the Board until March 31, 2009, and says he misunderstood that he had to report the conviction even though he was not employed as a nurse when the conviction occurred.

11. In 1999, Respondent committed domestic violence against his spouse. He took anger management classes and completed a first offender deferred prosecution program.

12. Respondent has indicated that he may attempt to embark on a missionary trip in 2012.

13. The practice of nursing can be demanding and is potentially stressful.

### CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and authority to enter into this stipulated resolution pursuant to Wis. Stat. § 227.44(5).

2. Respondent’s conduct, as set out above, reflects an impaired ability to safely or reliably perform duties as a registered nurse, as defined by Wis. Adm. Code § N 7.03(3) and subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(c).

3. Respondent, by failing to report his November 13, 2006 conviction, has violated Wis. Adm. Code § NR 4.09(2), which is misconduct pursuant to Wis. Adm. Code § NR 7.04(14), and he is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, effective the date of this Order:

### SUSPENSION

A.1. The license of Jesse J. Barry, R.N, to practice as a registered nurse in the State of Wisconsin is SUSPENDED for an indefinite period.

- A.2. The privilege of Jesse J. Barry, R.N., to practice as registered nurse in the State of Wisconsin under the authority of another state license pursuant to the Nurse Licensure Compact is also SUSPENDED for an indefinite period.
- A.3. During the pendency of this Order and any subsequent related orders, Respondent may not practice in another state pursuant to the Nurse Licensure Compact Regulation under the authority of the Wisconsin license, unless Respondent receives prior written authorization to do so from both the Wisconsin Board of Nursing and the regulatory board in the other state.
- A.4. Respondent shall mail or physically deliver all indicia of nursing licensure to the Department Monitor within 14 days of the effective date of this Order.
- A.5. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active nursing for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D.4. for return of full licensure.
- A.6. The Board may, on its own motion or at the request of the Department Monitor, grant full licensure at any time.

#### STAY OF SUSPENSION

- B.1. The suspension is hereby stayed based upon Respondent having provided proof, which has been determined by the Board or its designee to be sufficient, that Respondent is in compliance with the provisions of Sections C and D of this Order.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. Repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Board may, in conjunction with any removal of any stay, prohibit Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
  - (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
  - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. RL 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

#### CONDITIONS AND LIMITATIONS

##### Treatment Required

- C.1. Respondent shall enter into, and shall continue, mental health counseling with an approved treatment provider (Treater) acceptable to the Board or its designee. Respondent shall participate in, cooperate with, and follow all treatments recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall immediately report: any evidence that Respondent's stability is in question; that he presents any danger to self or others; that he has in the past or is likely at any point to violate any of the terms and conditions of this Order; and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. This rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater, but not less than twice per month for the first year. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.

- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in identifying and dealing with stressors in his life. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

#### Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

#### Practice Limitations

- C.7. Respondent shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee and only in a work setting pre-approved by the Board or its designee. Respondent may not work in a home health care, hospice, pool nursing, or agency setting.
- C.8. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future.
- C.9. It is Respondent's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that quarter.
- C.10. 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.

#### MISCELLANEOUS

##### Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor  
Wisconsin Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935  
Fax: (608) 266-2264  
Telephone: (608) 267-3817

##### Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with his current address and home telephone number.

##### Change of Treater or Approved Program by Board

- D.3. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

##### Petitions for Modification of Limitations or Termination of Order

- D.4. Respondent may petition the Board for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than one year from the date of this Order and no such petition for termination shall

occur other than in compliance with paragraph A.5. Any such petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a) and Respondent shall not have a right to any further hearings or proceedings on the denial.

#### Costs of Compliance

D.5. Respondent shall be responsible for all costs and expenses incurred in conjunction with the treatment and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

#### Costs of Proceeding

D.6. Respondent shall pay costs of \$625.00 the Department of Regulation and Licensing within 120 days of this Order. In the event Respondent fails to timely submit any payment of costs, Respondent's license SHALL BE SUSPENDED without further notice or hearing, until Respondent has complied with the terms of this Order.

#### Additional Discipline

D.7. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 441.07.

Wisconsin Board of Nursing

By: Kathleen Sullivan  
A Member of the Board

11/5/09  
Date

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 :  
JESSE J. BARRY, R.N., : STIPULATION  
RESPONDENT. : LS \_\_\_\_\_ NUR

[Division of Enforcement Case # 09 NUR 113]

It is hereby stipulated and agreed, by and between Jesse J. Barry, R.N., Respondent; and Sandra L. Nowack, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of pending investigations of Respondent’s licensure by the Division of Enforcement (file 09 NUR 113). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Respondent understands that by signing this Stipulation, he voluntarily and knowingly waives his rights, including the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.
3. Respondent has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Administrative Law Judge for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or his attorney, if any, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board’s deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
7. Respondent is informed that should the Board adopt this Stipulation, the Board’s Final Decision and Order is public record and will be published in accordance with standard Department procedure.
8. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

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Jesse J. Barry, R.N.  
Respondent  
2213 Portage Road  
Madison, WI 53704

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Date

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Sandra L. Nowack  
Attorney for Complainant  
Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935

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Date