

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

SHERRY LEE BAYER, L.P.N.,
RESPONDENT

FINAL DECISION AND ORDER
94 NUR 195

ORDER 0001632

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

Sherry Lee Bayer
243 MacArthur Avenue
Brillion, WI 54110

Board of Nursing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. 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. Sherry Lee Bayer (D.O.B. 1/17/53) is duly licensed in the state of Wisconsin as a licensed practical nurse in the state of Wisconsin (license # 031-0016445). This license was first granted on May 28, 1975.
2. Respondent's latest address on file with the Department of Regulation and Licensing is 243 MacArthur Avenue, Brillion, WI 54110.
3. Over a period of at least seven months extending to September 13, 1994, while employed as a licensed practical nurse at Willowdale Nursing and Rehabilitation Center, New Holstein, Wisconsin, Respondent diverted for her own use at least 800 tablets of Tylenol with codeine and Darvocet from medication drawers. When confronted, Respondent initially denied but later admitted the diversion and drug use. a criminal investigation is pending.
4. On September 20, 1994, Respondent began outpatient therapy with Theda Clark Medical Center. Respondent was diagnosed as opioid dependent.

*Diversion Opioid
Pitman after 6 mos.
show parties then
J.D. Orde*

CONCLUSIONS OF LAW

By the conduct described above, Sherry Lee Bayer is subject to disciplinary action against her license to practice as a licensed practical nurse in the state of Wisconsin, pursuant to Wis. Stats. sec. 441.07(1)(c) and (d), and Wis. Adm. Code secs. N7.03(2) and 7.04(1),(2) and (15).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of the Respondent, SHERRY LEE BAYER, shall be SUSPENDED for an INDEFINITE PERIOD of time.

(A) STAY OF SUSPENSION

IT IS FURTHER ORDERED that after October 31, 1995, Respondent may petition the Board at any time for a stay of the suspension of her licensure. In conjunction with a petition by Respondent, the Board shall require documentation of Respondent's rehabilitation, such as: 1) documentation of continuous abstinence from the consumption of alcohol and controlled substances [unless prescribed for a legitimate medical purpose] by Respondent for a period of at least 90 days immediately prior to submission of the petition; 2) documentation of successful participation in a program from a health care provider acceptable to the Board for the treatment of chemical dependency to the completion of recommended therapy, or for a period of at least three months immediately prior to the submission of the petition; and 3) submission of a current chemical dependency assessment from a health care provider acceptable to the Board certifying that Respondent is fit to safely return to practice as a nurse. To be considered current, the assessment shall occur within thirty (30) days from the date of its submission.

Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. §§227.01(3) and 227.42.

i. Respondent may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed upon Respondent's practice during the prior three (3) month period.

ii. If the Board denies the petition by Respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

iii. Upon a showing by Respondent of complete, successful and continuous compliance for a period of two (2) years with the terms of paragraph (b), below, the Board shall grant a petition by Respondent for return of full licensure. The Board may, in its discretion, require that Respondent complete at least six (6) months of nursing employment monitored under the conditions of paragraph (b) prior to the Board's issuance of a complete and unrestricted license.

(B) CONDITIONS OF STAY

REHABILITATION, MONITORING AND TREATMENT

Treatment Required

1. Respondent shall continue successful participation in all components of a drug and alcohol treatment program at a treatment facility acceptable to the Board. As a part of treatment, Respondent must attend therapy on a schedule as recommended by her supervising health care provider; attendance however, shall be required at least four (4) times per month. In addition, Respondent must attend Alcoholics or Narcotics Anonymous or another self-help group acceptable to the Board at least one (1) time per week.

Sobriety

2. Respondent shall remain free of alcohol and prescription drugs and controlled substances not prescribed for valid medical purposes during the period of limitation.
3. Respondent shall in addition refrain from the consumption of over-the-counter medications or other substances which may mask consumption of controlled substances or create false positive screening results, or which may interfere with respondent's treatment and rehabilitation.

Respondent shall report all medications and drugs, over-the-counter or prescription, taken by respondent to her supervising health care provider within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs for the respondent. Within 24 hours of a request by her supervising health care provider or the Board of Nursing or its designee, Respondent shall provide releases which comply with state and federal laws authorizing release of her health care records by the person who prescribed, dispensed, administered or ordered this medication for the respondent. These releases shall also authorize the supervising health care provider and the Board of Nursing (or its designee) to discuss the Respondent's health care with the person who prescribed, dispensed, administered or ordered this medication. The terms of this paragraph shall not be deemed to modify or negate Respondent's obligation to maintain sobriety as set forth in this Order.

Department monitor

4. 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
P.O. Box 8935
Madison, WI 53708-8935
FAX (608) 266-2264
TEL. (608) 267-7139

Releases

5. 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 of Respondent's urine, blood and hair specimen screen results and her medical and treatment records and reports to, and permitting her treating physicians and therapists to disclose and discuss the progress of her treatment and rehabilitation with the Board of Nursing or any member thereof, or with any employee of the Department of Regulation and Licensing acting under the authority of the Board of Nursing. Copies of these releases shall be filed simultaneously with the Department Monitor.

Drug and alcohol screens

6. Respondent must participate in a program of random witnessed monitoring for controlled substances and alcohol in her urine, blood and/or hair on a frequency acceptable to the Board. The Board, via its designated agent, shall determine an acceptable minimum frequency of screens. [It is anticipated that the Board will set an initial minimum frequency of screens of not less than four (4) times per month.] If the Board, the physician or therapist supervising her plan of care, or her employer deems that blood or urine screens are warranted in addition to the base frequency established under this paragraph, Respondent shall submit to such additional screens.
7. Respondent shall be responsible for obtaining a monitoring facility and reporting system acceptable to the Board, as well as for all costs incurred in conjunction with the monitoring and reporting required and any other expenses associated with compliance with this Order.
8. Respondent shall keep her supervising health care provider and monitoring facility informed of Respondent's location and shall be available for contact by her supervising health care provider at all times.
9. To be acceptable, specimen requests shall be random with respect to the hour of the day and the day of the week. In addition, the Board of Nursing 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.
- 10 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 she refuses to have an oral body temperature measurement; or she 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 of Nursing (or any member of the Board), the Department Monitor, or Respondent's supervising health care provider 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.

- 11 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.
- 12 The drug and alcohol treatment 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.
- 13 The supervising health care provider, treatment 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.
- 14 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 supervising health care provider or the Board of Nursing or any member thereof conduct additional tests to evaluate the urine specimen for tampering including, but not limited to, pH, color and odor.

- 15 Every urine, blood or hair specimen collected from Respondent shall be analyzed for alcohol, amphetamine, cocaine, opiates, phencyclidine, marijuana, methadone, propoxyphene, methaqualone, barbiturates, benzodiazepines, codeine phosphate or the metabolites of these substances. The Board of Nursing 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.
- 16 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 supervising health care provider or the Board of Nursing or any member thereof may direct that the urine, blood or hair specimens be maintained for a longer period of time.
- 17 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.
- 18 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 supervising health care provider shall determine to be appropriate to clarify or confirm the positive or suspected positive urine, blood or hair specimen test results.

Required reporting

- 19 The supervising health care provider and 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 which are positive or suspected positive for controlled substances or alcohol to the Department Monitor, and to the supervising health care provider.

- 20 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.
- 21 The supervising health care provider shall submit formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in her drug and alcohol treatment program, evaluate the respondent's level of participation at NA/AA meetings, and summarize the results of the urine, blood or hair specimen analyses. The supervising health care provider shall report immediately to the Department Monitor [Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935, FAX (608)266-2264, telephone no. (608)267-7139] any violation or suspected violation of the Board of Nursing's Final Decision and Order.
- 22 The Monitoring Facility shall submit formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. 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, P.O. Box 8935, Madison, Wisconsin 53708-8935, FAX (608)266-2264, telephone no. (608)267-7139] any violation or suspected violation of the Board of Nursing's Final Decision and Order.

Reporting by respondent

- 23 Respondent shall be 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 supervising health care provider, treatment facility, laboratory or collection sites to conform to the terms and conditions of this Order.

Facility approval

- 24 If the Board of Nursing determines that the supervising health care provider, treatment facility, 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 her treatment and rehabilitation program under the direction of another supervising health care provider, treatment facility, laboratory or collection site which will conform to the terms and conditions of this Final Decision and Order.

SCOPE OF PRACTICE: LIMITATIONS AND CONDITIONS

Disclosure

- 25 Respondent shall provide any current or prospective nursing employers with a copy of this Final Decision and Order immediately upon issuance of a stay of suspension under this Order, and upon any change of employment during the time in which a stay of suspension is in effect. In addition, Respondent shall provide her employer with a copy of any order granting an extension of stay under this Order within five (5) days of Respondent's receipt of an order granting a stay.

Respondent shall immediately provide her employer with a copy of any denial of an extension of stay under this Order.

Required reporting

- 26 Respondent shall arrange for quarterly reports from her nursing employer(s) reporting the terms and conditions of her employment and evaluating her work performance. These reports shall be submitted to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a schedule as directed by the Department Monitor. An employer shall report **immediately** to the Department Monitor [Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935, FAX (608)266-2264, telephone no. (608)267-7139] any violation or suspected violation of the Board of Nursing's Final Decision and Order.
- 27 Respondent shall report to the Board any change in employment status, change of residence address or phone number, within five (5) days of any such change.

Practice restrictions

- 28 Respondent shall refrain from access to or the administration of controlled substances in her work setting until such time as access or administration is approved by the Board.
- 29 If respondent's supervising health care provider recommends work restrictions in the field of nursing in addition to the restrictions included in this order, Respondent shall restrict her practice in accordance with such recommendations.

(C) PETITIONS FOR MODIFICATION OF TERMS

Respondent may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions. Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. §§227.01(3) and 227.42.

(D) SUMMARY SUSPENSION

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

(E) EFFECTIVE DATE OF ORDER

This Order shall become effective upon the date of its signing.

BOARD OF NURSING

By:

Pamela A. Mayson /CP
A Member of the Board

5-15-95
Date

jh

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
SHERRY LEE BAYER, L.P.N.,	:	94 NUR 195
RESPONDENT	:	

It is hereby stipulated between Sherry Lee Bayer, personally on her own behalf and James W. Harris, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

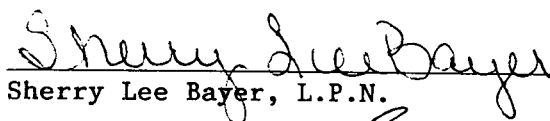
1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement. Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Respondent understands that by the signing of this Stipulation she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; 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 her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Respondent is aware of her right to seek legal representation and has been provided the opportunity to seek legal advice prior to signing this stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board of Nursing. 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 Division of Enforcement 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.

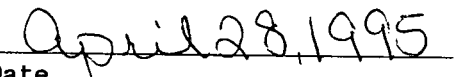
6. Attached to this Stipulation is the current licensure card of Respondent. If the Board accepts the Stipulation, Respondent's license shall be reissued in accordance with the terms of the attached Final Decision and Order.

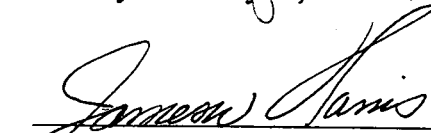
7. Also attached to this Stipulation are copies of Respondent's health care records for review by the Board in conjunction with their consideration of the attached Final Decision and Order.

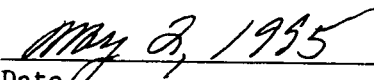
8. The parties to this stipulation agree that the attorney for the Division of Enforcement may appear before the Board of Nursing for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

9. The Division of Enforcement joins Respondent in recommending the Board of Nursing adopt this Stipulation and issue the attached Final Decision and Order.


Sherry Lee Bayer, L.P.N.


Date


James W. Harris, Attorney
Division of Enforcement


Date

jh



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935
MADISON, WISCONSIN 53708
608 266-2112

May 8, 1995

Ms. Sherry Lee Bayer
243 MacArthur Avenue
Brillion, WI 54110

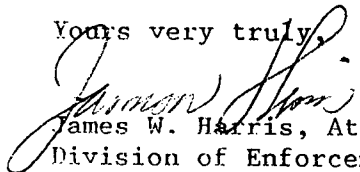
RE: 94 NUR 195

Dear Ms. Bayer:

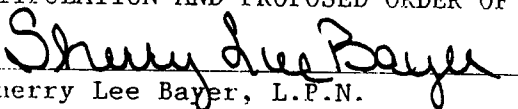
The Board of Nursing rejected our stipulation for settlement at its meeting on May 5th, on the ground that the period of suspension before the granting of a stay was not acceptable. If, however, you will agree that the period of suspension before stay will extend to October 31, 1995, the Board will enter the proposed order, effective May 5, 1995. This will get the two year period of the order running. If you do not agree, then we are back at the start of proceedings, and a formal complaint will likely issue, along with assessment of costs if a hearing is necessary.

Please indicate your choice at the bottom of this letter and return it to me at your earliest convenience. Thank you.

Yours very truly,


James W. Harris, Attorney
Division of Enforcement
(608) 266 9840

I, SHERRY LEE BAYER, HEREBY CONSENT TO A SUSPENSION BEFORE STAY EXTENDING TO OCTOBER 31, 1995. I UNDERSTAND THAT I MAY THEN PETITION THE BOARD OF NURSING FOR A STAY OF THE SUSPENSION. I UNDERSTAND THAT ALL OTHER TERMS OF THE STIPULATION AND PROPOSED ORDER OF APRIL 28, 1995, WILL REMAIN THE SAME.


Sherry Lee Bayer, L.P.N.

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN BOARD OF NURSING.

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

MAY 18, 1995.

1. 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 sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision 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.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)



PDF: DE00000001864-19950515

Order Dates:
MAY 15, 1995

Respondent Names:
BAYER, SHERRY LEE, LPN

Complaint IDs:
94NUR195

Profession:
LICENSED PRACTICAL NURSE

Boards:
NUR

Short Description:
SUSPENDED INDEFINITELY. MAY PETITION FOR STAY AFTER OCTOBER 31, 1995.

Case Summary:
WHILE EMPLOYED AS A NURSE HAS DIVERTED FOR HER OWN USE AT LEAST 800 TABLETS OF TYLENOL WITH CODEINE AND DARVOCET FROM MEDICATION DRAWERS. SHE INITIALLY DENIED BUT LATER ADMITTED THE DIVERSION AND DRUG USE.

