

# 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 DISCIPLINARY

PROCEEDINGS AGAINST:

TIMOTHY D. BARTELT,

FINAL DECISION AND ORDER

RESPONDENT

LS0103121NUR

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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, makes 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 Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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 this 2<sup>nd</sup> day of August, 2001.

Ann Brewer, RN

A Member of the Board

**STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING**

**IN THE MATTER OF THE DISCIPLINARY**

**PROCEEDINGS AGAINST**

**TIMOTHY D. BARTELT, RN,**

**PROPOSED DECISION**

**RESPONDENT**

**LS0103121NUR**

**PARTIES**

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Timothy D. Bartelt

10594 West Cortez Circle, Apt. 12

Franklin, Wisconsin 53132

Timothy D. Bartelt

5032 North 84th Street

Milwaukee, WI 53225

Board of Nursing

P.O. Box 8935

Madison, WI 53708-8935

Department of Regulation & Licensing

Division of Enforcement

P.O. Box 8935

Madison, Wisconsin 53708-8935

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on March 12, 2001. A hearing was held on May 31, 2001. The hearing was held open until June 11, 2001, for purposes of receiving an additional exhibit. Atty. James W. Harris appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The respondent, Timothy D. Bartelt, did not file an Answer and did not appear at the hearing.

Based upon the record herein, the Administrative Law Judge recommends that the Board of Nursing adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law and Order.

#### **FINDINGS OF FACT**

1. The respondent, Timothy D. Bartelt (d.o.b. 06/24/68) is duly licensed in the state of Wisconsin to practice as a registered nurse (license #127827). Respondent's license was first granted on September 30, 1997.
2. Respondent's latest address on file with the Department of Regulation and Licensing is 10594 West Cortez Circle, Apt. 12, Franklin, Wisconsin 53132.
3. During 1998, and while employed as a registered nurse at St. Luke's Hospital, Milwaukee, Wisconsin, respondent diverted the controlled substance, Meperidine, from patient supplies for his personal use.
4. Following an evaluation on September 24, 1998, at St. Luke's Medical Center, Milwaukee, Wisconsin, respondent was diagnosed with opioid abuse. Respondent participated in treatment for his condition at St. Luke's Medical Center.
5. In March 2000, respondent was employed as a registered nurse at Vencor Hospital, Greenfield, Wisconsin. A review of 37 patient records revealed a number of medication administration and documentation errors made by respondent, including:
  - (a) Drugs signed out, but not documented as administered.
  - (b) No documentation of wasting of leftover drugs.
  - (c) PRN medications removed from the narcotic cabinet more than an hour prior to the time of administration.
  - (d) Documentation of administration at a time prior to the time that a drug was signed out from the medication cabinet.
  - (e) Routine doses of medication administered early followed shortly by administration of a prn dose.
6. During April 2000, and while employed as a registered nurse at Milwaukee County Mental Health Division, respondent diverted Benadryl ampoules from patient supplies for his personal use. On April 10, 2000, while on

duty, respondent took Benadryl in addition to legitimately prescribed medications and became impaired.

7. An evaluation of respondent on April 25, 2000, at Cornerstone Counseling Services, resulted in a diagnosis of unspecified substance abuse with counseling recommended.

8. On May 12, 2000, respondent received emergency room treatment at St. Luke's Medical Center. His diagnosis was "drug abuse, cause undetermined". He was discharged against medical advice after refusing to participate in recommended drug counseling.

9. On June 28, 2000, respondent was admitted to the intensive care unit at St. Luke's Medical Center following an apparent overdose of an over-the-counter dietary supplement containing gamma hydroxybutyric acid (GHB). Discharge instructions included a recommendation to seek counseling for stress.

10. Respondent did not file an Answer to the Complaint filed in this matter and did not appear at the hearing held in this matter.

### **CONCLUSIONS OF LAW**

1. The Board of Nursing has jurisdiction in this matter pursuant to s. 441.07 (1), Stats., and ch. N 7, Wis. Adm. Code.

2. By engaging in conduct, as described in Findings of Fact 3 through 9 herein, respondent violated s. 441.07 (1) (b), (c) and (d), Stats.

3. By engaging in conduct, as described in Findings of Fact 3 and 6 herein, respondent violated s. N 7.04 (1) and (15), Code.

4. By engaging in conduct, as described in Findings of Fact 3, 4 and 6 through 9 herein, respondent violated s. N 7.04 (2) and (15), Code.

5. By failing file an Answer to the Complaint and failing to appear at the hearing held in this matter, respondent is in default under s. RL 2.14 Wis. Adm. Code.

### **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the license (#127827) of Timothy D. Bartelt to practice as a registered nurse be, and hereby is, **SUSPENDED** for an **INDEFINITE PERIOD** of time.

**IT IS FURTHER ORDERED** that:

**(1) Petition for Stay.** Mr. Bartelt may petition the Board at any time for a stay of the suspension of his license. In conjunction with such petition, Mr. Bartelt shall submit documentation of an evaluation performed by a health care provider acceptable to the Board of his current use and/or dependence on controlled substances. The assessor shall submit a written report of his or her findings directly to the Board, including: 1) a diagnosis of Mr. Bartelt's condition; 2) recommendations (if any) for treatment; 3) an evaluation of Mr. Bartelt's level of cooperation in the assessment process; 4) work restriction recommendations, and 5) Mr. Bartelt's prognosis. The report shall include a certification stating that Mr. Bartelt is fit to safely and competently return to the active practice of nursing. The assessment shall occur within thirty (30) days prior to the date of its submission and reflect the fact that the person (s) performing the assessment received a copy of this Order.

**(2) Board Action.** Upon its determination that Mr. Bartelt can safely and competently return to the active practice of nursing, the Board may stay the suspension for a period of three (3) months, conditioned upon compliance with the conditions and limitations set forth in paragraph (3).

(a) Respondent may apply for consecutive three (3) months 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.

(b) Upon a showing by respondent of complete, successful and continuous compliance for a period of five (5) years with the terms of paragraph (3), below, the Board may grant a petition by respondent for return of full licensure if it determines that respondent may safely and competently practice as a registered nurse.

### **(3) Conditions of Stay**

(a) If the assessment report referred to in paragraph (1) above recommends continued therapy, respondent shall maintain successful participation in a program of treatment at a health care facility acceptable to the Board. As part of treatment, respondent must attend therapy on a schedule as recommended by his therapist; the Board may, however, in its discretion establish a minimum number of therapy sessions per month.

(b) If continued therapy is required under the stay Order, respondent shall arrange for submission of quarterly

reports to the Board from his therapist evaluating his attendance and progress in therapy. If the assessment recommends work restrictions, respondent shall comply with all restrictions recommended.

(c) Respondent shall provide the Board with current releases complying with state and federal laws, authorizing release and access to the records of the health care provider(s) performing his assessment.

(d) Respondent shall be responsible for all costs associated with the assessment referred to in paragraph (1) above, and for all treatment, education and reporting required under the terms of the stay Order.

(e) Within six (6) months of the date of the initial Board Order granting stay of suspension, respondent shall certify to the Board of Nursing the successful completion of an approved course of education in medication administration and documentation. Respondent shall submit a course outline for approval by a Board designee within two (2) months of the date of the stay Order. The course outline shall include the name of the institution providing the instruction, the name of the instructor, and the course content. Until filing of certification of successful completion of the required training, respondent shall not engage in medication administration except under the direct supervision of another registered nurse.

(f) Respondent shall provide all current and prospective nursing employers with a copy of this Final Decision and Order and any subsequent stay Orders; arrange for submission of quarterly reports to the Board of Nursing from his nursing employer(s) reporting the terms and conditions of his employment and evaluating his work performance, and report to the Board any change in his employment status within five (5) days of such change.

(g) The Board may, in its discretion, impose additional conditions and limitations on respondent's practice to ensure that he is fit to safely and competently practice as a registered nurse.

**(4) Petition 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. S. 227.01 (3) and 227.42.

**(5) Costs:** Pursuant to s. 440.22 Wis. Stats., the cost of this proceeding shall be assessed against respondent, and shall be payable to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed by a designee of the Board of Nursing.

### **OPINION**

The Division of Enforcement alleges in its Complaint that Mr. Bartelt's conduct, as described therein, constitutes a violation of s. 441.07 (1) (b), (c) and (d), Stats., and s. N 7.03 (2) and s. N 7.04 (1), (2) and (15), Code.

#### **I. Violations**

By failing to file an Answer to the Complaint and failing to appear at the hearing held in this matter, Mr. Bartelt is in default under s. RL 2.14, Code. Therefore, the Board of Nursing may make findings and enter an order on the basis of the Complaint and other evidence.

The evidence presented in this case establishes that Mr. Bartelt violated numerous laws relating to the practice of professional nursing. On at least two occasions, he diverted drugs from patient supplies for his own use. On numerous occasions, he abused drugs and on at least one occasion was diagnosed with and treated for opioid abuse. In March 2000, Mr. Bartelt was employed as a registered nurse at Vencor Hospital. A review of 37 patient records at the hospital revealed numerous medication administration and document errors made by Mr. Bartelt.

#### **II. Discipline**

The evidence presented in this case establishes that the Mr. Bartelt violated s. 441.07 (1) (b), (c) and (d), Stats., and s. N 7.04 (1), (2) and (15), Code. Having found that Mr. Bartelt violated laws governing the practice of a registered nurse in Wisconsin, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Board of Nursing is authorized under s. 441.07 (1), Stats., to reprimand a registered nurse or limit, suspend or revoke the license of a registered nurse if it finds that the individual has violated ch. 441, Stats., or any rule adopted by the Board under the statutes.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1969).

The complainant recommends that the respondent's license be suspended for an indefinite period of time, but not less than 5 years, and that if the suspension is stayed, respondent be required to comply with certain conditions.

The Administrative Law Judge recommends that Mr. Bartelt's license to practice as a registered nurse be suspended for an indefinite period of time, and that if the suspension is stayed, the respondent be required to comply with the conditions set forth in the proposed order. This measure is designed primarily to ensure protection of the public.

Based upon the evidence presented, Mr. Bartelt is not capable of practicing as a registered nurse in a manner that safeguards the interests of the public. Upon receipt of a petition for a stay of the order of suspension and documentation of fitness to safely and competently resume practice as a registered nurse, it is recommended that Mr. Bartelt be permitted to return to active practice subject to compliance with certain conditions as set forth in the proposed Order. The requirement that he complete educational course work in medication administration and documentation prior to being allowed to return to full licensure is designed to provide an additional measure of protection to the public.

### **III. Costs of the Proceeding**

Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Board, and that the board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The Administrative Law Judge's recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist. In the Matter of Disciplinary Proceedings against M. Joanne Wolf, 165 Wis. 2d 1, 12, 476 N.W. 2d 878 (1991); In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III, 116 Wis. 2d 380, 385, 342 N.W. 2d 406 (1984).

Based upon the record herein, the Administrative Law Judge recommends that the Board of Nursing adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 22nd day of June, 2001

Respectfully submitted,

Ruby Jefferson-Moore

Administrative Law Judge