

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



## Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

### Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DRL website:** An individual who believes that information on the website is inaccurate may contact the webmaster at [web@drl.state.wi.gov](mailto:web@drl.state.wi.gov)

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

-----  
IN THE MATTER OF THE  
DISCIPLINARY PROCEEDINGS

AGAINST:

ROBIN J. SWIGGUM,  
RESPONDENT

FINAL DECISION AND ORDER  
LS0110161NUR

-----  
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 1<sup>st</sup> day of February, 2002.

Linda M. Sanner  
Chairperson  
Board of Nursing

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

-----  
IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST:

**ROBIN J. SWIGGUM, R.N.,**  
RESPONDENT

**PROPOSED DECISION**  
LS0110161NUR

-----  
**PARTIES**

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

Division of Enforcement  
Department of Regulation and Licensing  
1400 East Washington Ave.  
Madison, WI 53708-8935

Robin Swiggum  
1516 Nakomis Ave.  
LaCrosse, WI 54603

Board of Nursing  
1400 East Washington Ave.  
Madison, WI 53703

### **PROCEDURAL HISTORY**

A. A disciplinary Complaint and Notice of Hearing were filed in this matter on October 16, 2001, and mailed to the respondent on October 22, 2001. The Notice of Hearing informed Ms. Swiggum that she should file an Answer within 20 days and that, if she did not, a default judgment could be taken against her.

B. On November 15, 2001, Attorney James Harris of the Division of Enforcement filed an Affidavit stating that Ms. Swiggum had not responded to the Complaint and Notice, and he requested a hearing in the matter.

C. On November 16, 2001, Ms. Swiggum mailed a letter responding to the complaint and notice. Among other items in the letter, Ms. Swiggum stated "Currently I have no transportation means to come to Madison for this hearing." [exhibit 4]

D. A hearing was scheduled for December 10, 2001. Mr. Harris wrote to Ms. Swiggum on November 27, 2001 informing her of the hearing [exhibit 3]. Among other items in his letter, Mr. Harris stated "You have stated that you cannot afford to attend the hearing. However if you would like to participate by telephone, then call Administrative Law Judge, John Schweitzer, at (608) 267-5205, and provide him with a telephone number where you can be reached on the date of the hearing." A Notice of Hearing was mailed to Ms. Swiggum on December 5, 2001.

E. The hearing was held as scheduled on December 10, 2001. Ms. Swiggum did not appear, and she did not call the ALJ to provide a phone number at which she could be reached. Mr. Harris moved for a finding of default, the motion was granted, and the hearing proceeded without Ms. Swiggum. The testimony and exhibits presented at the hearing form the basis for this proposed decision.

### **FINDINGS OF FACT**

1. The respondent, Robin J. Swiggum, is licensed to practice as a registered nurse in the state of Wisconsin, under license number 119898, first granted June 28, 1995.

2. In March of 1999, while on duty as a registered nurse at Vernon Manor Nursing Home, Ms. Swiggum diverted Vicodin®, a controlled substance, for her personal use.

3. In June of 1999, Ms. Swiggum was convicted in Vernon County Court of one misdemeanor count of Theft of Movable Property for her diversion of Vicodin® [exhibit 2].

4. Ms. Swiggum was admitted to the Wisconsin Impaired Professionals Procedure in December of 1999 but she relapsed in November of 2000, failed to comply with treatment and drug testing, and was terminated in July of 2001 for non-compliance [exhibit 1].

5. Limited financial resources constituted one factor in Ms. Swiggum's failure to comply with treatment and drug testing [exhibit 4].

## ANALYSIS

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the Board of Nursing alleging that the respondent, Robin J. Swiggum, violated rules regulating the practice of nursing by diverting a controlled substance and being convicted of a crime substantially related to the practice of nursing. The burden of proof is on the Division of Enforcement to prove the allegations of the complaint by a preponderance of the evidence. Ms. Swiggum did not contest the allegations and sufficient evidence was presented to meet the burden of proof. It was established that Ms. Swiggum diverted a controlled substance while she was working as a registered nurse, and that she was convicted of a misdemeanor for that offense. Such violations constitute unprofessional conduct and discipline may be imposed.

### Aggravating and Mitigating Circumstances

Ms. Swiggum has cooperated at times in the past with the Board and the Department. She entered the Impaired Professionals Procedure, but she was terminated following a relapse and failure to comply with treatment and testing. It appears that some of her non-compliance has been related to financial difficulties. In her letter she states "I am a divorced mother of three finding it hard to maintain my household on one income. I couldn't afford counseling and drug testing and the facility I worked at wouldn't help so I quit there and have been working at Reinhart Foods in La Crosse and living with friends to get enough money to move into my own house. I did go and take treatment in La Crosse WI in August of 2000 which has helped me maintain my mental and physical sobriety. I continue to go to AA meetings 3 times weekly. I have no options for free drug testing and free counseling or I would have done it. Currently I have no transportation means to come to Madison for this hearing. I do not wish to lose my license. I was compliant with treatment myself at La Crosse Wis following restrictions once out [?]. Working at Ellsworth Care Center and no contact with medications."

### Discipline.

The purposes of professional discipline have been set forth by the Wisconsin Supreme Court in various cases involving attorneys, such as State v. Kelly, 39 Wis.2d 171, 158 N.W.2d 554 (1968), State v. MacIntyre, 41 Wis.2d 481, 164 n.w.2d 235 (1969), State v. Cory, 51 Wis.2d 124, 186 N.W.2d 325 (1970), and State v. Aldrich, 71 Wis.2d 206, 237 N.W.2d 689 (1976). Those purposes are (1) to rehabilitate the offender, (2) to protect the public, by assuring the moral fitness and professional competency of those privileged to hold licenses, and (3) to deter others in the profession from similar unprofessional conduct. That framework has been adopted by regulatory agencies, including the Department of Regulation and Licensing, for disciplinary proceedings for other professions.

Rehabilitation is best served by requiring or encouraging Ms. Swiggum to obtain treatment and to maintain sobriety. Protection of the public requires that Ms. Swiggum not practice in the nursing field until and unless she complies with a rehabilitation plan. Deterring other professionals from similar misconduct is best served by the imposition of discipline and the publication of that fact. A standard order is recommended that will suspend Ms. Swiggum's license but allow her to obtain successive stays of that suspension once she participates in an approved program.

### Costs.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed. The Board of Nursing has the discretion to impose all, some, or none of the costs of the proceeding. One approach is routinely to order that the respondent pay all costs, on the theory that the cost of disciplinary enforcement should be borne by those individuals who commit unprofessional acts rather than by the profession as a whole. However, in this case, the available evidence indicates that requiring Ms. Swiggum to pay the costs of this proceeding would only create another barrier to her rehabilitation, and no cost order is recommended.

## CONCLUSIONS OF LAW

I. The Board of Nursing has personal jurisdiction over Robin Swiggum, based on her holding a credential issued by the Board, and based on notice under sec. 801.04 (2), Stats. Under sec. RL 2.08 (1), Wis. Admin. Code, a respondent may be served by mailing to her last-known address.

II. The Board of Nursing is the legal authority responsible for issuing and controlling credentials for registered nurses, under ch. 441, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 441.07, Stats., and ch. N 7, Wis. Admin. Code.

III. Robin Swiggum is in default, under sec. RL 2.14, Wis. Admin. Code, and the Board of Nursing may enter an order on the basis of the complaint and other evidence.

IV. The violation in finding of fact 2 constitutes unprofessional conduct, under sec. 441.07(1)(b) and (d), Wis.

Stats., and sec. N 7.04 (2), Wis. Admin. Code, and discipline is appropriate, under 441.07 (1), Stats.

V. The violation in finding of fact 3 constitutes unprofessional conduct, under sec. 441.07(1)(b) and (d), Wis. Stats., and sec. N 7.04(1), Wis. Admin. Code, and discipline is appropriate, under 441.07 (1), Stats.

### **ORDER**

THEREFORE, IT IS ORDERED that effective on the date of this Order, the license of Robin J. Swiggum (hereinafter "Respondent") to practice as a registered nurse in the state of Wisconsin is SUSPENDED for an INDEFINITE period

IT IS FURTHER ORDERED that Respondent may apply at any time to the Board for a stay of suspension for a period of three months, conditioned upon compliance with the conditions and limitations outlined below. In conjunction with the initial application for a stay of suspension Respondent must submit a current evaluation of her condition by a licensed physician which must contain specific treatment recommendations, and proof of satisfactory participation in a chemical dependence treatment program acceptable to the Board. The petition shall contain proof satisfactory to the Board that Respondent is able to safely and reliably practice as a nurse.

a. 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 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 a showing by respondent of continuous, successful compliance for a period of at least five years of active practice with the terms of this order and compliance with all other terms of this Order, the Board may grant a petition by the Respondent for return of full licensure. (See ¶14, below.)

IT IS FURTHER ORDERED that if a stay of suspension is granted as set forth above, the Respondent's license shall be LIMITED as follows:

#### **REHABILITATION, MONITORING AND TREATMENT**

##### Treatment Required

1. Respondent shall enroll and continue successful participation in all components of a drug and alcohol treatment program at a treatment facility acceptable to the Board as respondent's Supervising Health Care Provider shall determine to be appropriate for respondent's rehabilitation. Respondent shall commence involvement in the drug and alcohol rehabilitation program within 5 days of the date of the Final Decision and Order of the Board.

Therapy. The rehabilitation program shall include and respondent shall participate in individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the supervising physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed suspension, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the license under §§ 227.01(3) or 227.42, Wis. Stats., or ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

AA/NA Meetings. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

##### Sobriety

2. Respondent shall abstain from all personal use of controlled substances as defined in Sec. 161.01(4), Stats. except when necessitated by a legitimate medical condition and then only with the prior approval of the Supervising Health Care Provider.

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

4. 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 treatment and rehabilitation. Respondent shall report all

medications and drugs, over-the-counter or prescription, taken by respondent to the 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. Within 24 hours of a request by the Supervising Health Care Provider or the Board or its designee, Respondent shall provide releases which comply with state and federal laws authorizing release of all health care records by the person who prescribed, dispensed, administered or ordered this medication for respondent. These releases shall also authorize the Supervising Health Care Provider, the Board 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 obligations as set forth in this Order.

#### Department Monitor

5. 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) 267-3817

#### Releases

6. Respondent shall provide and keep on file with the Supervising Health Care Provider, 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 Supervising Health Care Provider 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 Monitoring

7. Within thirty (30) days from the date of the signing of this Order the Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the department pursuant to Wis. Admn. Code § RL 7.11, ("Approved Program").

- a. The Department Monitor, Board or Board designee shall provide to the Respondent a list of Approved Programs, however, the Respondent is solely responsible for timely enrollment in any such Approved Program.
- b. Unless otherwise ordered by the Board, the Approved Program shall require the testing of urine specimens at a frequency of not less than 52 times each year.
- c. The Department Monitor, Board or Board designee shall determine the tests to be performed upon the urine specimens.
- d. The Respondent shall comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program, including but not limited to;
  - (1) contact with the Approved Program as directed on a daily basis, including weekends and holidays, and;
  - (2) production of a urine specimen at a collection site designated by the Approved Program within five(5) hours of notification of a test.
- e. The Board in its discretion without a hearing and without further notice to the Respondent may modify this Order to require the submission of hair or breath specimens or that any urine or hair specimen be furnished in a directly witnessed manner.
- f. All expenses of enrollment and participation in the Approved Program shall be borne by the Respondent. The Respondent shall keep any account for such payments current in all respects.

g. For purposes of further Board action under this Order it is rebuttably presumed that all confirmed positive test results are valid. Respondent has the burden of proof to establish by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody which causes an invalid confirmed positive test result.

8. Respondent shall keep the Supervising Health Care Provider informed of Respondent's location and shall be available for contact by the Supervising Health Care Provider at all reasonable times.

#### Required Reporting by Supervising Health Care Provider, and laboratories

9. The Supervising Health Care Provider 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.

10. 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.

11. 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 the drug and alcohol treatment program 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)267-3817] any violation or suspected violation of the Board's Final Decision and Order.

#### Required reporting by Respondent

12. 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 Supervising Health Care Provider, treatment facility, laboratory or collection sites to conform to the terms and conditions of this Order.

#### Facility approval

13. If the Board determines that the Supervising Health Care Provider, treatment 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 treatment and rehabilitation 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.

#### PETITIONS FOR MODIFICATION OF TERMS

14. Respondent may petition the Board for modification of the terms of this limited license. Any such petition shall be accompanied by a written recommendation from respondent's Supervising Health Care Provider expressly supporting the specific modifications sought. Denial of the petition in whole or in part shall not be considered a denial of a license within the meaning of Sec. 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 five years of continuous active professional practice under this Order and without relapse, and upon recommendation of the Supervising Health Care Provider, 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 Sec. 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

15. 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

### Controlled Substance Access

16. (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.)

17. Respondent shall practice only under the general supervision of a licensed professional nurse or other licensed health care professional approved by the Board or in a work setting pre-approved by the Board or its designated agent.

### Reporting Required

18. Respondent shall arrange for her employer to provide 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 work performance.

### Change in Address or Work Status

19. 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.

20. 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.

**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 a stay of suspension of the license or impose additional conditions and limitations or other discipline.**

Dated and signed: December 14<sup>th</sup>, 2001.

John N. Schweitzer

Administrative Law Judge

Department of Regulation and Licensing