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STATE OF WISCONSIN

BEFORE THE NURSING HOME ADMINISTRATOR EXAMINING BOARD

IN THE MATTER OF THE APPLICATION

FOR LICENSURE AS A NURSING HOME

ADMINISTRATOR OF:

VINCENT W. BERGSTROM,

Applicant

FINAL DECISION AND ORDER

LS0112071NHA

Investigative File # 01 NHA 018

The parties to this action for the purposes of section 227.53 of the Wisconsin statutes are:

Vincent W. Bergstrom

1028 E. Juneau Avenue, #728

Milwaukee, WI 53202

Nursing Home Administrator Examining Board

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. Vincent W. Bergstrom (D.O.B. 04/11/50) (hereinafter referred to as "applicant") is duly licensed to practice as a Registered Nurse in the state of Wisconsin (license #75497). This license was first granted on April 7, 1980. Applicant's nursing license is currently limited pursuant to the terms of the Final Decision and Order of the Board of Nursing, dated June 3, 1999.

2. Applicant's most recent address on file with the Department of Regulation and Licensing is 1028 E. Juneau Avenue, #728, Milwaukee, WI 53202.

3. On August 23, 2001, applicant submitted a Request to Apply for Examination for Nursing Home Administrator license to the Department of Regulation and Licensing. On October 25, 2001, the Division of Business Licensure and Regulation, acting on behalf of the Nursing Home Administrator Examining Board, denied the applicant's application for examination as a nursing home administrator on the basis that "documentation in the file establishes that you have been convicted of a crimes, the circumstances of which substantially relate to the practice of a nursing home administrator.

4. The applicant has a criminal record consisting of three misdemeanor convictions: Possession of a Prescription Drug without a Valid Prescription (September 19, 1991); Prostitution (October 21, 1991); and Operating While Intoxicated (2nd offense)(November 30, 1998).

5. The applicant filed a timely request for a hearing on the denial of his application.

6. In resolution of the denial of his application, the applicant consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Nursing Home Administrator Examining Board has jurisdiction over this matter, pursuant to sec. 456.02(3), Stats. and 456.03, Stats.

2. The Wisconsin Nursing Home Administrator Examining Board is authorized to enter into the attached stipulation, pursuant to secs. 227.44(5) and 456.10, Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that applicant, Vincent W. Bergstrom, shall be granted a LIMITED license to practice as a Nursing Home Administrator in the State of Wisconsin, contingent upon his obtaining a passing score on the nursing home administrator examination. The terms of limitation upon the license granted to applicant are set forth below.

Practice Limitations

1. The purpose of the limited license shall be to enable the applicant to serve as a substitute Nursing Home Administrator at Cameo Care Center in Milwaukee. The substitution periods shall consist of :

(a) Days when the regular administrator is briefly (not to exceed three days on any occurrence) away from the facility on business, sick leave, holidays, jury duty, seminars or professional education, bereavement leave, vacation, or personal leave. Such days of practice shall be reported to the Department Monitor within 30 days following each calendar quarter in which they occur;

(b) Longer time periods (not to exceed three weeks at any one time, without the prior approval of the Board or the Board's designee) when the administrator is away from the facility on vacation, family and medical leave, jury duty, sick leave or personal leave. Such periods shall be reported to the Department Monitor in advance, where possible, but in no event later than two (2) days after the time period has commenced; and,

(c) Such other periods as shall be approved by the Board or the Board's designee;

2. The term of the license shall be for three (3) months, subject to consecutive reinstatement periods of the same duration, for a minimum period of three (3) years. The application for reinstatement of the license for each consecutive three (3) month period, shall be conditioned upon the applicant's full compliance with the terms and conditions set forth below.

3. Applicant shall maintain continuous participation in a program for the treatment of chemical dependency at a health care facility as currently required by the Board of Nursing order dated July 16, 2001. The terms of that order are incorporated herein and shall remain in effect throughout the duration of applicant's limited license.

4. As part of his on-going drug and alcohol treatment, the applicant shall attend therapy on a schedule as recommended by his therapist or Supervising Health Care Provider, but not less than two (2) sessions per month. In addition, applicant shall attend Alcoholics Anonymous or Narcotics Anonymous on a schedule as recommended by his therapist. Applicant 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.

5. Applicant shall abstain from all personal use of alcohol and refrain from the consumption of any 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 applicant's treatment and rehabilitation. Applicant shall report all medications and drugs, over-the-counter or prescription, taken by applicant 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, applicant 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 applicant. These releases shall also authorize the Supervising Health Care Provider, the Board or its designee to discuss the applicant'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 applicant's obligations as set forth in this Order.

6. Applicant 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 applicant'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.

7. Applicant shall supply on average at least a two (2) times per month basis, random monitored urine, blood or hair specimen(s) as the Supervising Health Care Provider shall direct. The Supervising Health Care Provider (or designee) shall request the specimens from applicant and these requests shall be random with respect to the hour of the day and the day of the week. In addition, the Board or its designee may at any time request additional random monitored urine, blood or hair specimen from applicant by directing the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement to contact applicant and request applicant provide a specimen.

8. Applicant shall keep the Supervising Health Care Provider informed of his location and shall be available for contact by the Supervising Health Care Provider at all times.

9. All requested urine, blood or hair specimens shall be provided by applicant 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. Applicant's initial specimen was outside of the normal temperature range (32.5 - 37.7 C/90.5 - 99.8 F) or he refuses to have an oral body temperature measurement or the reading of an additional measurement varies by more than 1 C/1.8 F from the temperature of the urine specimen;
- b. Applicant'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 applicant acting in such a manner to provide reason to believe that applicant 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 applicant to provide an additional observed urine specimen;
- d. The last provided specimen resulted in a positive or suspected positive test result for the presence of controlled substances; or
- e. The Board (or any member of the Board), the Department Monitor, or applicant's Supervising Health Care Provider directs that the urine specimen collection be by direct observation.
- f. 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.

10. The treatment program in which applicant 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 Applicant.

11. The treatment program in which applicant is enrolled shall utilize only those urine, blood and hair specimen collection sites for collection of applicant'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.

12. 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 applicant.

13. Every urine specimen collected from applicant shall be analyzed at the time of collection for tampering by measurement of the temperature of the specimen and the oral temperature of applicant. Every urine specimen collected from applicant 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 or any member thereof conduct additional tests to evaluate the urine specimen for tampering including, but not limited to, pH, color and odor.

14. Every urine, blood or hair specimen collected from applicant shall be analyzed for alcohol, amphetamine, cocaine, opiates, phencyclidine, marijuana, methadone, propoxyphene, methaqualone, barbiturates, benzodiazepines or the metabolites thereof. The Board or its designated agent may at any time direct that screens for additional substances and their metabolites are 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.

15. 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 or any member thereof may direct that the urine, blood or hair specimens be maintained for a longer period of time.

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

17. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, applicant 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.

18. 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 applicant to provide a urine, blood or hair specimen within five (5) hours from the time it was requested; or of any inability to locate applicant 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.

19. The laboratory shall within 48 hours of completion of each drug or alcohol analysis mail the report from **all** specimens requested of applicant 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.

20. The Supervising Health Care Provider shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Monitor. These reports shall assess applicant'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 make any required reports to the Department Monitor of any violation or suspected violation of the Board's Final Decision and Order.

21. Applicant is responsible for compliance with all of the terms and conditions of this Order. It is the responsibility of Applicant 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.

22. 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 Order, the Board may, at its sole discretion, direct that Applicant 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 Order.

23. Applicant shall not be allowed to have access to controlled substances at the facility and shall not interfere with or direct the administration, storage, enumeration, or disposal of any controlled substances at the facility. Any reports concerning the diversion of controlled substances, or consumption thereof, by the applicant shall be referred to the Supervising Health Care Provider, the full-time licensed nursing home administrator or the facility medical director and to the Department Monitor immediately.

24. 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

25. Applicant may not request or petition for any change in the terms of his limited license for at least three (3) years from the date it is granted.

26. Applicant shall report to the Department Monitor any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

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

28. The Board shall retain in its absolute and sole discretion determine whether, and under what terms and conditions, further limitations, if any, may be imposed upon applicant's license in the future or whether the limitations may be removed in the future.

Termination of Restrictions

29. Upon successful and continuous compliance with the terms of this Order for a period of three (3) years, the applicant may petition for full and restricted licensure status. Denial in whole or part shall not constitute denial of license and shall not give rise to a contested case with the meaning of Wis. Stats. 227.01(3) and 227.42.

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 Applicant's license; the Board in its discretion may in the alternative impose additional conditions and limitations or other discipline upon applicant's license.

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

NURSING HOME ADMINISTRATOR EXAMINING BOARD

By: David Egan

6-20-02

On behalf of the Board

Date