

# 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	:	FINAL DECISION
	:	AND ORDER
BETHANY BOAMAN,	:	LS0208061NUR
RESPONDENT.	:	

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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 5<sup>th</sup> day of December, 2002.

Linda M. Sanner, RN  
Chairperson  
Board of Nursing

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS	:	<b>PROPOSED DECISION</b>
AGAINST	:	
<b>BETHANY A. BOAMAN, R.N.,</b>	:	LS0208061NUR
RESPONDENT.	:	

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**SUMMARY**

This is a disciplinary action against Bethany A. Boaman for violating rules of the Board of Nursing related to the diversion of controlled substances. Ms. Boaman did not respond to the complaint, a finding of default was made, and no hearing was held. This Proposed Decision finds that Ms. Boaman committed the violations as charged, recommends an indefinite suspension of her license, and imposes conditions under which the suspension may be stayed.

**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:

Complainant:

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

Respondent:

Bethany A. Boaman  
825 1/2 Mills Street  
Madison, WI 53715

Disciplinary Authority:

Wisconsin Board of Nursing  
1400 East Washington Ave.  
Madison, WI 53708-8935

## PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint (DOE case # 02 NUR 046) with the Board of Nursing on August 7, 2002. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on August 7, 2002 to Bethany A. Boaman at her last-known address on file with this department, 825 1/2 Mills Street, Madison, WI 53715. The Notice of Hearing informed Ms. Boaman that an Answer to the Complaint was to be filed within twenty days, and that if it was not filed, she would be found in default.

B. No answer was filed by Ms. Boaman.

C. On August 28, 2002, a Notice of Prehearing Conference was mailed to Ms. Boaman at her last-known address and a prehearing conference by telephone was scheduled for September 13, 2002. The prehearing conference was held as scheduled; Attorney James Harris of the Division of Enforcement appeared by phone, and there was no contact from Ms. Boaman. Mr. Harris made an oral motion for a finding of default under sec. RL 2.14, Wis. Admin. Code, and the motion was granted. There being no disputed issues of fact, it was ordered that no hearing be held.

D. On September 16, 2002, Mr. Harris filed affidavits in support of the complaint, along with a proposed order.

## APPLICABLE STATUTES AND RULES

### Statutes

441.07 Revocation.

(1) The board may, after disciplinary proceedings conducted in accordance with rules promulgated under s. 440.03 (1), revoke, limit, suspend or deny renewal of a license of a registered nurse, a nurse-midwife or a licensed practical nurse, may revoke, limit, suspend or deny renewal of a certificate to prescribe drugs or devices granted under s. 441.16, or may reprimand a registered nurse, nurse-midwife or licensed practical nurse, if the board finds that the person committed any of the following:

...

(b) One or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter.

(c) Acts which show the registered nurse, nurse-midwife or licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.

(d) Misconduct or unprofessional conduct.

...

### Wisconsin Administrative Code

N 7.03 Negligence, abuse of alcohol or other drugs or mental incompetency.

...

(2) "Abuse of alcohol or other drugs" is the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice.

...

#### N 7.04 Misconduct or unprofessional conduct.

As used in s. 441.07 (1) (d), Stats., "misconduct or unprofessional conduct" means any practice or behavior which violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. "Misconduct or unprofessional conduct" includes, but is not limited to, the following:

- (1) Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing. A certified copy of a judgment of conviction is prima facie evidence of a violation;
- (2) Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law;

...

- (15) Violating any rule of the board.

### **FINDINGS OF FACT**

1. The respondent, Bethany A. Boaman, is and was at all times relevant to the facts set forth herein a registered nurse licensed in the State of Wisconsin pursuant to license # 128428 . This license was first granted January 28, 1998. The license expired 02/28/02; however, Ms. Boaman retains the statutory right to renewal upon payment of the appropriate fee.
2. During the period beginning in late May or early June, 2001, and while employed as a registered nurse at St. Marys Hospital in Madison, Wisconsin, Ms. Boaman diverted controlled substances, including hydromorphone, meperidine and morphine through the manipulation of an automated drug dispensing machine, for her personal use.
3. Ms. Boaman has stated that she sought treatment at Gateway Recovery Center beginning September 6, 2001.
4. Ms. Boaman is in default in this proceeding.

### **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 Nursing alleging that the respondent, Bethany A. Boaman, violated rules regulating 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. Sec. 440.20(3), Stats.; 75 Att. Gen. 76; Gandhi v. Medical Examining Board, 168 Wis.2d 299, 483 N.W. 295 (Ct.App. 1992). Ms. Boaman's failure to respond is treated as a default under section RL 2.14, Wis. Admin. Code and the allegations of the complaint are accepted as true. If Ms. Boaman wishes to object to the entry of the order in this case, she must respond to the filing of this Proposed Decision. Section RL 2.14 provides that "The disciplinary authority may, for good cause, relieve the respondent from the effect of such [default] findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter."

As a registered nurse, Ms. Boaman diverted controlled substances. This fact is sufficient to conclude that she engaged in unprofessional conduct by violating section N 7.04 (2) of the board's rules, which prohibits "administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law."

Although there is no evidence that Ms. Boaman was ever charged criminally for her activities, a reasonable conclusion may be drawn that she also violated section N 7.04 (1), which prohibits "violating, or aiding and abetting a violator of any law substantially related to the practice of professional or practical nursing." The mere fact of diversion is not sufficient, however, to establish that Ms. Boaman violated section. 441.07(1)(c) of the statutes or section N 7.03 Wis. Admin. Code., both of which prohibit "the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice." Upon a finding of unprofessional conduct, discipline may be imposed by the Board.

The purposes of professional discipline have been set forth in Wisconsin Supreme Court Rule SCR 21.03(5), which states: "Discipline for misconduct is not intended as punishment for wrongdoing, but is for the protection of the public, the courts and the legal profession." Those purposes have been elaborated on 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, 233 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. Although a diversion of controlled substances does not by itself require the suspension or revocation of a credential, Ms. Boaman's failure to participate in the disciplinary process leaves no reasonable alternative. The protection of the public requires that Ms. Boaman not practice as a registered nurse until the issues raised by her diversions are addressed and resolved. For this reason, an order is issued suspending her license indefinitely and setting forth conditions -- designed to protect the public as they promote her rehabilitation under which she may apply for a stay of that suspension.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats. and 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. 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 on 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 misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding. The ALJ's recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

## **CONCLUSIONS OF LAW**

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

II. Based upon Bethany A. Boaman's default, the Board of Nursing may enter an order on the basis of the complaint and other evidence under sec. RL 2.14, Wis. Admin. Code.

III. The conduct described in Finding of Fact 2 above violated section 441.07(1)(b) and (d) of the Wisconsin Statutes and sections N 7.04(1), (2) and (15) of the Wisconsin Administrative Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes, and discipline is appropriate under sec. 441.07, Stats. No Conclusion of Law can be drawn that the conduct constitutes a violation of sec. 441.07(1)(c), Stats. or sec. N 7.03(2), Wis. Admin. Code.

## **ORDER**

THEREFORE, IT IS HEREBY ORDERED that, effective on the date of this Order, the license of Bethany A. Boaman to practice as a registered nurse in the state of Wisconsin is SUSPENDED for an INDEFINITE period.

IT IS FURTHER ORDERED that Bethany A. Boaman pay the costs of investigation and prosecution of this disciplinary matter.

IT IS FURTHER ORDERED that Bethany A. Boaman, hereinafter referred to as 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.)

## **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.

EMPLOYERS WHO ARE DEA REGISTRANTS ARE INFORMED THAT IF RESPONDENT HAS BEEN CONVICTED OF ANY FELONY RELATING TO CONTROLLED SUBSTANCES, THE EMPLOYER MUST RECEIVE A WAIVER OF 21 CFR §1301.76 UNDER 21 CFR §1307.03 BEFORE EMPLOYING RESPONDENT.

### **Reporting Required**

18. Respondent shall arrange for her nursing 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.

Dated and signed: October 7, 2002.

John N. Schweitzer

Administrative Law Judge