

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/wscca>.
- 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

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	
HOLLY R. GERSTL, R.N.,	:	LS0409164NUR
RESPONDENT.	:	03 NUR 14, 04 NUR 223

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

Holly R. Gerstl, RN
10163 W. Forest Home Ave. #206
Hales Corners, WI 53130

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

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Holly Rose Gerstl (dob: 11/15/68) is and was at all times relevant to the facts set forth herein a professional nurse licensed in the State of Wisconsin pursuant to license #131634. This license was first granted 3/5/99. Respondent was formerly licensed as a practical nurse from 5/21/93-4/30/99, and could renew her LPN license by paying the required late fees at any time before 4/30/04.

2. On 11/27/02, and while employed through an agency as a professional nurse at the Waukesha Memorial Hospital, Emergency Department, respondent was observed to be impaired while on duty. She refused to provide a sample of her urine at that time; a sample of her urine taken the day before was positive for benzodiazepines and THC. Respondent had smoked marijuana at a party on 11/15/02. A check of medications dispensed through the Pyxis system to respondent showed that the following medications were taken by respondent and could not be accounted for completely: diazepam, meperidine, butorphanol, ketorolac, and morphine. Respondent had a valid prescription for alprazolam, and denies taking the missing medications.

3. Following an evaluation at Aurora Psychiatric Hospital in the summer of 2003, respondent was diagnosed with polysubstance dependence. During her stay, respondent admitted self-injecting and ingesting mood altering substances, primarily opioids, without prescription or authority, on a frequent and compulsive basis, and to abusing alcohol by binge drinking. Respondent has participated in treatment for her condition with a psychiatrist. Her health insurance ended in 12/03, and since that time she has continued to attend AA meetings.

4. On 8/18/04, respondent was employed as a professional nurse at the Milwaukee County Behavioral Health Division, Observation Unit. While on duty at approximately 2 AM, respondent was discovered unconscious in the medication room with a syringe placed in her arm. She was treated with naloxone and responded quickly; she was ultimately diagnosed with narcotic overdose, and benzodiazepines were also found in her urine. The physician notes that he recalled respondent from a similar incident one year previous at another hospital.

CONCLUSIONS OF LAW

A. The Wisconsin Board of Nursing has jurisdiction to act in this matter pursuant to §441.07(1)(b)(c) and(d) Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

B. The conduct described in paragraphs 2 through 4, above, violated § N 7.03(2) and N 7.04(1), (2) and (15) Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED that respondent shall not renew, or attempt to renew, her LPN license at any time, without express permission of the Board.

IT IS FURTHER ORDERED that effective on the date of this Order, the license of Holly R. Gerstl to practice as a professional nurse in the state of Wisconsin is SUSPENDED for an INDEFINITE period. 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.

- a. Respondent may apply for an initial stay, and then 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. The application for an initial stay shall include a statement from her therapist or supervising health care provider that respondent is capable of practicing nursing safely.
- 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 below.)

IT IS FURTHER ORDERED, that the license to practice of respondent 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 two meetings 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
department.monitor@drl.state.wi.us

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 Screens

7. Within thirty (30) days from the date of the signing of this Order, respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the department pursuant to Wis. Adm. Code § RL 7.11, ("Approved Program").
- a. The Department Monitor, Board or Board designee shall provide respondent with a list of Approved Programs, however, 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 56 times per year.
 - c. The Department Monitor, Board or Board designee shall determine the tests to be performed upon the urine specimens.
 - d. Respondent shall comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program, including but not limited to;
 - (i.) contact with the Approved Program as directed on a daily basis, including weekends and holidays, and;
 - (ii.) 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 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 respondent. 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. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Supervising Health Care Provider shall determine to be appropriate to clarify or confirm the positive or suspected positive urine, blood or hair specimen test results.

Required Reporting 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, e-mail department.monitor@drl.state.wi.us] 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, which shall not include agency or pool nursing, independent practice sites, or home health or hospice care nursing.

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.

IT IS FURTHER ORDERED: that respondent shall pay partial costs of \$750, within 120 days of this Order.

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, including additional screening, or other discipline. If the Board receives information from a professional who is treating the respondent or from the work supervisor that indicates that the respondent is not safe to practice, the Board may deny a Stay or suspend the license of the licensee

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

WISCONSIN BOARD OF NURSING

Jacqueline Johnsrud
Board Chair

9-16-04
Date