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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

BRENDA L. KLABACKA, L.P.N.,

Respondent

ORDER GRANTING STAY AND MODIFICATIONS OF ORDER

On January 9, 1997, the Board of Nursing issued its Final Decision and Order (“*Order*”) in the above-captioned matter. By the terms of the board's order, respondent's license to practice as a licensed practical nurse was suspended for an indefinite period of not less than two years, with provision for successive three-month stays of the suspension conditioned upon compliance with certain conditions and limitations on the license. Among these were that respondent participate in a recognized drug treatment program, that she participate in therapy as recommended by her therapist but not fewer than two sessions per month, that she submit to random urine screens for the presence of alcohol and controlled substances a minimum of four times per month, and that she provide for quarterly written reports from her employer, her therapist and the monitoring program. The Order also provides that respondent refrain from access to or administration of controlled substances in her work setting until such time as access and administration is approved by the board.

By letter dated July 30, 1997, Mark A. Huffman, M.D. Medical Review Officer for Totally Positive Drug Testing Review, S.C., Ms. Klabacka's drug testing facility, reported that on July 22, 1997, Ms. Klabacka tested positive for Propoxyphene and Butabital. The letter also indicated that Ms. Klabacka had failed to notify the program either of the identity of her treating physician or that she was taking Propoxyphene. Sarah Groth, CICSW, CADC III, Ms. Klabacka's therapist, notified the board by letter dated July 31, 1997, that Ms. Klabacka had missed therapy sessions on August 6, August 20, and September 3.

Based on these failures by respondent to comply with the requirements of her limited license, the board on September 12, 1997, denied Ms. Klabacka further stays of the suspension of her license.

By letter dated October 28, 1999, Ms. Klabacka petitioned the board for a further stay of the suspension of her license, and she appeared before the board on January 6, 2000, in support of her petition. The board granted the request by its Order dated January 18, 2000.

On May 19, 2000, the board considered Ms. Klabacka's request for a further three month stay of the suspension of her license. The board also considered evidence of Ms. Klabacka's having violated the terms of her limited license, and the stay was denied by the board's Order dated June 6, 2000.

On September 1, 2000, Ms. Klabacka, along with Attorney Kenneth R. Sipsma, appeared before the board in support of her request that the stay of the suspension of her license be reinstated. Ms. Klabacka also requested that the board's most recent Final Decision and Order in the matter dated May 14, 1999, be modified to permit her access to and administration of controlled substances in her employment setting. The board considered the matter on that date, and granted Ms. Klabacka's requests by its Order dated September 8, 2000.

On February 2, 2001, the board considered Ms. Klabacka's request for a further three month stay of the suspension her license. The board also considered information establishing that Ms. Klabacka had been in violation of the limitations on her license, including that Ms. Klabacka had never presented a copy of the board's Order to either her employer or her therapist, and that there had been several positive urine screens. Based upon that information, the board denied the stay.

On June 6, 2002, the board considered Ms. Klabacka's request for reinstatement of the stay of suspension, and Ms.

Klabacka appeared before the board on that date in support of her petition. At that time the board and Ms. Klabacka discussed Ms. Klabacka's participation in a methadone treatment program.

The board historically has taken and continues to take the position that a licensee of this board should not be permitted to practice during a period of time when he or she is involved in a methadone treatment program. While the board takes no position on the appropriateness of a methadone program as a treatment modality, the board does not believe that it is in the interest of the public health, welfare or safety to permit a health care provider licensed by this board to practice during a time when he or she is under the influence of a narcotic substance. The board therefore denied the stay.

Ms. Klabacka appeared before the board at its meeting of July 11, 2002, in support of her further request that she be granted a stay. At that time, Ms. Klabacka indicated that she had terminated the methadone treatment program, as evidenced by her most recent screens. Accordingly, the board granted the stay.

On October 4, 2002, the board considered Ms. Klabacka's request for a further three month stay of the suspension, and her further request that the number of required urine screens be reduced. Based upon the board's conclusion that it is too soon to reduce the number of required screens, the board granted the stay but denied the reduction in screens.

On January 10, 2003, the board considered Ms. Klabacka's petition for a further stay of the suspension, and renewal of her request for a reduction in the number of urine screens. Based upon the board's conclusion that the number of screens should not be reduced at a time when Ms. Klabacka is not employed as a nurse, the board granted the stay, but denied the request for a reduction in screens.

On April 4, 2003, the board considered Ms. Klabacka's request for a further three month stay of the suspension and for reduction in the number of required screens and the number of therapy sessions. The stay and the reduction in the number of therapy sessions was granted. The reduction in the number of urine screens was not.

On August 5, the board considered Ms. Klabacka's request for a stay, renewal of her request for a reduction in the number of required urine screens, pre-approval of a number of work sites, and elimination of the prohibition against being employed in home health care. The board approved the stay and the work sites, but denied the requests for a reduction in urine screens and to be permitted to work in a home health care setting.

On October 3, 2003, the board granted Ms. Klabacka's request for a further stay of the suspension.

On January 15, 2004, the board considered Ms. Klabacka's request for a further stay of the suspension and a reduction in urine screens and group therapy. Based upon all information of record herein, the board orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that the request for a three month stay of the suspension of the license of Brenda L. Klabacka, R.N., to practice as a professional nurse in Wisconsin is hereby granted.

IT IS FURTHER ORDERED that the request for a reduction in the frequency of urine screens as required by the *Order* is granted, to a frequency of (26x) twenty six times per year.

IT IS FURTHER ORDERED that the request for a reduction in the frequency of group therapy as required by the *Order* is granted to (1x) one time per month.

Dated this 20th day of January, 2004.

Jacqueline Johnsrud, RN
Chair