

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	<b>FINAL DECISION AND ORDER</b>
	:	
DONALD C. ROSS, R.N.,	:	LS0501033NUR
RESPONDENT.	:	

02 NUR 279

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

Donald C. Ross RN  
P.O. Box 140  
Phillips, WI 54555

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

**PROCEDURAL HISTORY**

A formal Complaint was filed in this matter, and a timely Answer was filed. 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. Donald C. Ross (dob: 11/20/53) 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 #97923. This license was first granted 9/4/87. Respondent was disciplined by the Board on July 20, 1989, in file 88 Nur 113 for having been criminally convicted of misdemeanor sexual assault, which the board found was related to his being chemically dependent at that time. His license was suspended for two years and the suspension was stayed on condition that he enter treatment and remain chemical-free; he was given credit for 8 months of treatment. Respondent’s unlimited license was restored on 12/1/90.
2. On 10/30/02, and while applying for employment as a professional nurse at a nursing home, respondent provided a sample of his urine which tested positive for cannabinoids. Respondent informed the prospective employer that he did not have a prescription for Marinol®, and the Board infers that respondent illicitly used marijuana, a Schedule I controlled substance.
3. Following an evaluation at The Counseling and Development Center, Phillips, WI, respondent was diagnosed with alcohol dependence in full remission, and current cannabis abuse. Respondent has participated in treatment for his condition at the Center, and represents to the Board that he will not ingest or use marijuana again. His treatment provider has informed the Board that respondent completed the recommended program on 10/23/03, and has a good prognosis.
4. Respondent is currently engaged in nursing practice for the Wisconsin Department of Corrections.

**CONCLUSIONS OF LAW**

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

B. The conduct described in ¶2, above, violated § 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 Donald C. Ross, RN, is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that Respondent shall, for the rest of his nursing career, submit a sample of his hair, breath, blood, or urine, forthwith upon request of any investigator of the Department. This shall not be deemed a limitation on the license of Respondent.

IT IS FURTHER ORDERED, that Respondent shall abstain from all personal use of controlled substances as defined in §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. This shall not be deemed a limitation on the license of Respondent.

IT IS FURTHER ORDERED, that the license to practice nursing of Respondent is LIMITED in the following manner:

### **MONITORING**

#### **Department Monitor**

1. 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**

2. Respondent shall provide and keep on file with the Department Monitor, 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.

#### **Drug Screens**

3. Within thirty (30) days from the date of the signing of this Order, respondent shall enroll and begin participation in a drug 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 14 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 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.
4. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances, Respondent shall promptly submit to additional tests or examinations as the Department Monitor shall determine to be appropriate to clarify or confirm the positive or suspected positive urine, blood or hair specimen test results.

#### **Required Reporting by Approved Program**

5. The Approved Program 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 to the Department Monitor.
6. The laboratory shall within 48 hours of completion of each drug 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). 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.

#### **Required reporting by Respondent**

7. 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 Approved Program, laboratory or collection sites to conform to the terms and conditions of this Order.

#### **Facility approval**

8. If the Board determines that the Approved Program, 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 Approved Program, laboratory or collection site which will conform to the terms and conditions of this Final Decision and Order.

### **PETITIONS FOR MODIFICATION OF TERMS**

9. Respondent may petition the Board for modification of the terms of this limited license. Denial of the petition in whole or in part shall not be considered a denial of a license within the meaning of §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 one year of continuous active professional practice under this Order and without relapse, 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 §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 MONITORING**

10. 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.

IT IS FURTHER ORDERED, that respondent shall pay costs of \$1,500, before his license is next renewed.

Violation of any of the terms of this Order may 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 impose additional or extended conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit to a requested test, or tests positive for an unprescribed controlled substance, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

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

WISCONSIN BOARD OF NURSING

by: Jacqueline Johnsrud, RN  
Board Chair

September 8, 2005  
Date