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IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :
BRENDA J. WENTA, L.P.N., :
RESPONDENT. :

DECISION AND ORDER

LS-0403047-NUR

02 NUR 259

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

Brenda J. Wenta
W9698 USH 14
Darien, WI 53114

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 Final Decision and Order was entered in this case on 3/4/04, accepting the surrender of Respondent's license. Respondent has petitioned the Board for reinstatement of that license, and that petition is pending. The parties in this matter agree to the terms and conditions of the attached Stipulation and this Decision and Order, as the decision of the Board in the matter of Respondent's petition for reinstatement of her license, 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. Brenda Jean Wenta, LPN, Respondent, date of birth January 30, 1957, was licensed by the Wisconsin Board of Nursing as a practical nurse in the state of Wisconsin pursuant to license number 34590, which was first granted February 20, 1998. The Board accepted the surrender of this license by order dated March 4, 2004.

2. On June 9, 1993, Respondent received treatment from a psychiatrist at Walworth County Department of Human Services in Elkhorn, Wisconsin. She was diagnosed with major depression, alcohol dependence and cannabis dependence, all in remission. The medical record note for that date indicates: "She also admits to a long history of polysubstance abuse in recent years, primarily alcohol and marijuana. She states she has not used alcohol in the last 10 months and has been 39 days since she used marijuana."

3. In May 2001, Respondent was employed as a practical nurse at Rogers Memorial Hospital in Oconomowoc, Wisconsin. During her employment at Rogers, Respondent began to increase her marijuana use. She also diverted narcotics from the hospital, which resulted in the termination of her employment in Spring 2002.

4. Later in 2002, Respondent obtained employment as a practical nurse at the Williams Bay Care Center (Center) in Williams Bay, Wisconsin. While working at the Center in September and October 2002, Respondent stole the following schedule II controlled substances from the Center's medication room:

- a. Duragesic® brand of fentanyl patches: one 25 mg. and two 50 mg.
- b. Morphine tablets and suppositories: eight 10 mg., nine 15 mg. and six 30 mg.
- c. Morphine injectable tubexes: four 10 mg.
- d. Morphine oral solution: seven 20 mg.
- e. Demerol® brand of meperidine injectable tubexes: eight 50 mg.

f. Oxycodone, including OxyContin®, 12@ 5 mg., 13@ 10 mg., and 14@ 20 mg.

5. Following investigations by the Center and the police, on October 28, 2002, Respondent admitted to diverting these medications. She told the Center's administrator that Respondent used the OxyContin herself and sold the rest of the narcotics to pay her bills.

6. On December 12, 2002, Respondent's psychiatrist diagnosed major depression, alcohol dependence in remission, cannabis abuse, opiate dependence and noted:

"She took a job at Williams Bay Care Center and again began to get involved in narcotic use. She states she used any of the opiates available and at times was even injecting herself with things such as Vistaril. She also used Duragesic patches. Apparently this was discovered and an investigation was done. She states that she told them she was selling it rather than admit to using it herself."

7. On December 19, 2002, Respondent told her counselor that she had used drugs while working. She denied selling any of the drugs she took.

8. In January 2003, Respondent completed 30 days of substance abuse treatment at New Dawn Treatment Facility in Janesville, Wisconsin and was referred to River Commons in Janesville for further treatment. She was discharged from River Commons on February 10, 2003 for violating rules by engaging in sexual conduct with another patient. Her discharge prognosis was poor.

9. The following occurred in Walworth County Wisconsin Circuit Court case number 2003CF000293 as a result of Respondent taking the controlled substances from the Center:

- a. On June 12, 2003, Respondent was charged with violating:
 - i. §961.41(1m)(a), Stats, possession of a narcotic schedule II drug with intent to deliver [3 counts].
 - ii. §943.20(1)(a), Stats., theft [3 counts].

- b. On October 7, 2003, as a result of a plea bargain, Respondent was convicted of:
 - i. §961.41(3g)(a)1, Stats., possession of narcotic drugs, a felony [Count 1 amended from possession with intent to deliver]. The two other counts of possession with intent to deliver were dismissed and read in for sentencing.
 - ii. §943.20(1)(a), Stats., theft, a misdemeanor [Count 5]. The two other counts of theft were dismissed and read in for sentencing.
- c. Respondent was sentenced to 2 years probation. Terms of probation included:
 - i. 75 days jail time during non-working hours, beginning December 5, 2003.
 - ii. AODA assessment and follow-through.
 - iii. No alcohol, illegal drugs or drug paraphernalia.
 - iv. Counseling as recommended by probation officer.
 - v. Self report to Board of Nursing.

10. § 961.41(3g)(am), Stats., possession of a schedule II controlled substance without the order of a practitioner, is a law substantially related to practice under Respondent's license.

11. § 943.20(1)(a), Stats., theft, is a law substantially related to practice under Respondent's license.

12. Respondent was, on 10/7/05, discharged from probation, having successfully completed the conditions of probation. Respondent has produced letters from her employer, AA sponsor, and past and current AODA counselors to the effect that she has maintained a sober lifestyle and engaged in recovery since her license was surrendered, and her current counselor and physician have opined that she is fit to practice as a nurse at this time. Respondent has petitioned the Board for reinstatement of her license to practice nursing as a practical nurse.

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.

ORDER

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

IT IS FURTHER ORDERED, effective the date of this Order, the PETITION of Brenda J. Wentta, L.P.N., to REINSTATE her license as a practical nurse is GRANTED.

IT IS FURTHER ORDERED:

SUSPENSION

- A.1. The license of Brenda J. Wentta, L.P.N., to practice as a practical nurse in the State of Wisconsin is SUSPENDED for an indefinite period.
- A.2. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active nursing for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D.4. for return of full licensure.
- A.3. The Board may, on its own motion or at the request of the Department Monitor, grant full licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension shall be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent is in compliance with the provisions of Sections C and D of this Order, and has been in such compliance for at least six continuous months. Additionally, Respondent shall furnish a letter from Treater stating that Respondent is fit to practice nursing with skill and safety to patient and public.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. Repeated violation is defined as

the multiple violation of the same provision or violation of more than one provision. The Board may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.

- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
- (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. RL 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, in a drug and alcohol treatment program at a treatment facility (Treater) acceptable to the Board or its designee. Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater, but not less than twice per month for the first year. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except

when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee.

- C.10. Respondent shall abstain from all use of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.
- C.11. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by Respondent to Treater and the Department Monitor within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. If Respondent has not provided a release as required by C.9 above, within 24 hours of a request by Treater or the Board or its designee, Respondent shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Respondent's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

- C.12. 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 list of Approved Programs is available from the Department Monitor.
- C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b.) Production of a urine specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.14. The Approved Program shall require the testing of urine specimens at a frequency of not less than 56 times per year, for the first year of this Order. After the first year, the frequency may be reduced only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.
- C.15. 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 Treater or the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, (c) furnish any specimen in a directly witnessed manner.
- C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.
- C.18. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11.

Practice Limitations

- C.19. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances.
- C.20. Respondent shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee and only in a work setting pre-approved by the Board or its designee. Respondent may not work in a home health care, hospice, pool nursing, or agency setting.
- C.21. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future.

- C.22. It is Respondent's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that quarter.
- C.23. 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.

MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Wisconsin Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817
department.monitor@drl.state.wi.us

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Board

- D.3. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.4. Respondent may petition the Board for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than one year from the date of this Order and no such petition for termination shall occur other than in compliance with paragraph A.3. Any such petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. §227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

- D.5. 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. Being dropped from a program for non-payment is a violation of this Order.

Additional Discipline

- D.6. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. §441.07.

Dated at Madison, Wisconsin this 8th day of June, 2006.

Marilyn Kaufmann
Chairperson
Board of Nursing