

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
VICTORIA J. BERG, R.N.,	:	LS 0601272 NUR
RESPONDENT.	:	

[Division of Enforcement Case #'s 03 NUR 277, 05 NUR 112, 05 NUR 143 & 06 NUR 004]

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

Victoria J. Berg, R.N.
W1022 CTY RD A
Mondovi, WI 54755

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Board of Nursing
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

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 of Nursing. 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. Victoria J. Berg, R.N., Respondent, date of birth January 30, 1970, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 121021, which was first granted September 5, 1995.

2. Respondent's last address reported to the Department of Regulation and Licensing is W1022 County Road A Mondovi, WI 54755.

3. From 1995 to 1997, Respondent participated in and successfully completed the Department of Regulation and Licensing's Impaired Professionals Procedure (IPP). The IPP is a non-disciplinary monitoring program that may be offered to credential holders with alcohol and/or drug issues, which allows participants to obtain treatment and ongoing aftercare while returning to safe practice.

COUNT I

4. Respondent has acknowledged to the Department that during 2003, she became addicted to benzodiazepines which were prescribed to her and that she had "problems with" narcotic analgesics which were prescribed.

5. On October 28, 2003, while Respondent was employed at American Lutheran Home, a nursing home in Mondovi, Wisconsin, she stole a Duragesic patch which was ordered for a resident. Duragesic contains fentanyl, a Schedule II controlled substance.

6. An investigation was conducted and Respondent admitted to taking the Duragesic patch from the facility. Respondent was found to have falsified patient records and was terminated from that employment on November 11, 2003.

COUNT II

7. On October 30, 2003, Respondent was charged in Buffalo County Wisconsin Circuit Court case number 2003CM000152:

- a. The original charge was having violated Wis. Stat. § 943.20(1)(a) - disorderly conduct, a class B misdemeanor criminal offense.
- b. The charge was based upon Respondent having engaged in a domestic altercation with her spouse.
- c. Further investigation by law enforcement revealed that Respondent had stolen a Duragesic patch. On January 7, 2004, the disorderly conduct charge was amended to a charge of Wis. Stat. § 940.20(1)(a) - Theft of Movable Property ≤\$2500, a class A misdemeanor criminal offense and Respondent pled no contest to the amended charge.
- d. Respondent was placed on one year probation and conditions of probation included:
 - 1) Respondent was prohibited from possessing controlled substances except as necessary in her employment or when prescribed by a physician.
 - 2) Respondent was to obtain counseling, including an impaired professionals program.

8. Wis. Stat. § 940.20(1)(a) - Theft of Movable Property ≤\$2500, is a law substantially related to the practice of professional nursing.

COUNT III

9. From February 9, 2005 until her employment was terminated on March 15, 2005, Respondent was employed as a registered nurse at Trempealeau County Health Care Center (HCC) in Whitehall, Wisconsin. Respondent was assigned to work the p.m. shifts on the First Floor IMD (Institute for Mental Disease) Nursing Home Unit. On March 12:

- a. Staff noted that Respondent looked tired when she reported to work but did not display any impairment in her functioning. RN staff offered her assistance if she needed it but Respondent declined, indicating that she was okay.
- b. Around 7:00 p.m., CNA staff reported to another RN that Respondent had been crying and looked fatigued. That RN spoke with Respondent but did not note any significant impairment at that time. The RN and an LPN continued to monitor Respondent for a short time, did not note any impairment and returned to complete tasks on their assigned units.
- c. Some time later, CNA staff reported:
 - 1) Respondent appeared tired, had a staggered gait and slurred speech, was confused and had difficulty in completing the medication passes. Staff suspected inebriation, but she did not smell of alcohol.
 - 2) Respondent laid her head down on the med cart and her eyes were swollen and bloodshot.
 - 3) Respondent had fallen asleep during a smoke break and her cigarette fell out of her hand.
 - 4) Respondent was unable to open the medication room and required assistance from other staff, who had no difficulty opening it.
- d. At 9:45 p.m., the LPN saw that Respondent was still passing medications and tried to assist her. The LPN found medications all over the top of the cart and in cups with no names. Respondent had no idea who the pills belonged to and continued to punch more pills from the cards. Respondent did not know which medications were for which residents. The staff RN and the LPN finished passing medications.
- e. At the end of Respondent's shift, Respondent's behavior had deteriorated to the point that staff were concerned about her ability to drive home. Respondent could not remember the code to leave the building.

10. On Sunday morning, March 13, 2005, the Unit Manager did an audit of the med sheets and medications and found outpatient orders Respondent had not transcribed and that Respondent had committed at least 10 medication errors on the p.m. shift on Saturday, March 12. Among other things, Ativan (a benzodiazepine) and Duragesic brand of Fentanyl

patches had disappeared on Respondent's shift. On March 15, 2005, Respondent met with administrative staff and denied taking the missing medications. Respondent's employment was terminated.

COUNT IV

11. At 6:30 a.m. on May 7, 2005, Respondent started her shift as a registered nurse at St. Michael's Lutheran Home, a nursing home in Fountain City, Wisconsin. At 9:00 a.m., co-workers noted that Respondent appeared to be under the influence of something, but did not smell of alcohol. Respondent, among other things:

- a. Ran the med cart into the wall.
- b. Was slurring her words, was unsure how to pass medications and asked nurse aides for assistance.
- c. Could not walk straight.
- d. Stood at the med cart for periods of time, rocking back and forth with her eyes closed.
- e. Was unable to use the phone.
- f. Was unable to finish the med pass.

12. Respondent was removed from her duties. Respondent said her behavior was because she had too much sun the day before and was sunburned and that she had taken Sudafed.

13. Staff called the Director of Nursing (DON), who arrived at approximately 11:00 a.m., spoke with Respondent and noted Respondent's pupils were pinpointed and her hands were shaky.

14. The DON took over the med cart and was passing the medications when Respondent brought her a used Duragesic patch 25 mcg. Respondent told the DON that a CNA had brought her the patch after it fell off a resident during a bath. That statement was not true. The patch had not come off a resident and had not been given to Respondent by a CNA.

15. The DON asked Respondent to provide urine for a drug screen and Respondent refused. Respondent said she had taken a prescribed Percocet the previous night and did not want a positive result for drugs on her work record. During the conversation, Respondent fell asleep and had to be awakened to continue the conversation. Because of Respondent's condition, the DON drove Respondent home.

COUNT V

16. On January 14, 2006 at 6:00 a.m., Respondent was near the end of her shift as a registered nurse at Plum City Care Center, a skilled nursing facility in Plum City, Wisconsin. Co-workers noted her unusual behavior and concluded Respondent was under the influence of drugs. Respondent, among other things:

- a. Was disorganized and disoriented.
- b. Was slurring her words and was unable to pass medications.
- c. Could not walk straight.
- d. Fell asleep while others were talking to her and was difficult to arouse.

17. Respondent became unresponsive. Her lips, hands and fingernails were blue. She had shallow, irregular respirations and a bounding pulse of 140. She was administered oxygen and transported by ambulance to a hospital.

18. Prior to Respondent's departure from the Care Center, a nurse saw and removed a Duragesic patch from Respondent's oral cavity. Two additional patches were found in her shirt pocket. Respondent later admitted that she had taken used Duragesic patches from the trash and put them in her mouth to obtain the medication.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by obtaining a drug other than in the course of legitimate practice and as otherwise prohibited by law as set out in Count I above, has committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § 17.04(2) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

3. Respondent, by violating a law which substantially relates to the practice of professional nursing, as set out in Count II above, has committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(1) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

4. Respondent, by engaging in the conduct set out in Count III above, abused drugs to the extent her ability to safely and reliably practice was impaired, as defined by Wis. Admin. Code § N 7.03(2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(c).

5. Respondent, by engaging in the conduct set out in Count IV above, abused drugs to the extent her ability to safely and reliably practice was impaired, as defined by Wis. Admin. Code § N 7.03(2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(c).

6. Respondent, by engaging in the conduct set out in Count V above, abused drugs to the extent her ability to safely and reliably practice was impaired, as defined by Wis. Admin. Code § N 7.03(2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(c).

ORDER

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

IT IS FURTHER ORDERED, effective the date of this Order:

SUSPENSION

- A.1. The license of Victoria J. Berg, R.N., to practice as a registered nurse in the State of Wisconsin is SUSPENDED for an indefinite period.
- A.2. Respondent shall mail or physically deliver all indicia of nursing licensure to the Department Monitor within 14 days of the effective date of this Order.
- A.3. 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.4. 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 not be stayed for the first year**, but any time after one year, 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 has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) consecutive months.
- 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 § 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. Admin. 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. Admin. 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

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, 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 written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of 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.

Costs of Proceeding

- D.6. Respondent shall pay costs of \$925.00 to the Department of Regulation and Licensing within 120 days of this Order. In the event Respondent fails to timely submit all payment of costs, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

- D.7. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for separate disciplinary action pursuant to Wis. Stat. § 441.07.

Wisconsin Board of Nursing

By: Marilyn Kaufmann
A Member of the Board

3/9/06
Date