

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
CHRISTINE A. BAYER, R.N., : LS0610122NUR
RESPONDENT. :

[Division of Enforcement Case #'s 05 NUR 142 & 06 NUR 003]

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

Christine A. Bayer, R.N.
2319 S. 54th Street
West Allis, WI 53219

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. Christine A. Bayer, R.N., Respondent, date of birth July 15, 1971, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 127337, which was first granted August 1, 1997.

2. Respondent's last address reported to the Department of Regulation and Licensing is 2319 S. 54th Street, West Allis, WI 53219.

COUNT I (05 NUR 142)

3. From January 10, 2005 to June 30, 2005, Respondent was employed as a registered nurse at Hillview Healthcare Center in Milwaukee, Wisconsin.

4. On June 6, 2005, Respondent received a written warning from her employer because she had been found sleeping in an unoccupied bed during her work shift. Documentation she prepared during that shift was illegible and written in the wrong patients' charts. Respondent noted that she had completed a body assessment of one resident, but her assessment did not mention the fact that the patient had a PICC line or the fact that the PICC line was non-functioning.

5. On June 25, 2005, Respondent was again found sleeping in an unoccupied bed during her work shift. She had to be awakened to complete Accu checks and administer insulin to residents. She had failed to administer 15 of 23 resident medications. Respondent did not sign out controlled substances which had been punched out.

6. Respondent had been hospitalized from 10:00 p.m. on June 15 to June 17, 2005, based on her complaint of low back pain which she attributed to an automobile accident. All x-rays and scans were negative and the diagnosis was pain secondary to muscle spasms from the accident. Respondent contends that she was ill on June 25, 2005 and worked only because no one else could be found to work. She contends that she had been vomiting and had low back pain since 3:00 a.m. that morning. Respondent did go to the emergency department after leaving work on June 25 and received narcotics for pain. However, Respondent has also disclosed that during that period of time, she also would become nauseated from drug withdrawal until she could receive a dose.

COUNT II (06 NUR 003)

7. From October 10, 2005 until her employment was terminated on January 19, 2006, Respondent was employed as a registered nurse at Select Specialty Hospital, St. Luke's Campus in Milwaukee, Wisconsin.

8. On January 12, 2006, a staff RN reported to the Director of Clinical Services that on January 10, 2006, she observed Respondent depositing two medication vials, in her outdoor jacket pocket as she prepared to take a cigarette break.

9. The Director then requested a Med Dispense System transaction report on Respondent for January 7 through January 10, 2006. The report and further investigation revealed the following:

- a. Between January 7 and January 10, 2006, Respondent, while on duty, requested 44 doses of injectable Morphine Sulfate, a Schedule II controlled substance, from the automated dispensing system for five different patients.
- b. Patient records revealed that Respondent did not document administration of any of the doses, did not document waste of partial doses, and did not document pain assessments and re-evaluation on any of these doses.
- c. On January 7 and 8, 2006, Respondent was acting as Charge RN and was not the assigned nurse to these patients when she requested the morphine.
- d. On January 9 and 10, 2006, Respondent worked as a staff nurse and was assigned to two of the patients. Her nursing assessments for those two patients indicated pain ratings of 0/10 and her notes indicated no requests or need for analgesics.
- e. No patient was deprived morphine due to Respondent's actions. Respondent diverted injectable morphine from patients who had active morphine orders but whose pain, if any, was controlled with oral analgesics.
- f. On January 16, 2006, Respondent was required to submit to a drug screen the results of which were positive for morphine and benzodiazepines. Respondent did not have a prescription or order of a practitioner for morphine.
- g. On January 19, 2006, after being informed of the results of her drug screen and the investigation, Respondent was terminated from her employment.

10. On February 22, 2006, as a result of her conduct at Select Specialty Hospital, Respondent was charged in Milwaukee County Wisconsin Circuit Court case number 2006CF001060 with one count of Possession of Morphine, a Class U Felony, in violation of Wis. Stat. 961.41(3g)(am). On August 31, 2006, Respondent entered a plea of guilty. Sentencing is scheduled for October 25, 2006.

11. Wis. Stat. § 961.41(3g)(am) prohibits possession of a Schedule II controlled substance unless obtained directly or by prescription of a practitioner. Respondent's possession of morphine was in violation of this law substantially related to the practice of nursing and was the obtaining of a drug other than as allowed by law.

ALL COUNTS

12. On January 23, 2006, Respondent entered a substance abuse treatment program at Quality Addiction Management (qAM) and has remained in that program. On May 3, 2006, her counselor, Kathy Gochanour CADCIH wrote, ". . . [Respondent] has been a patient here at qAM since 1/23/06. She has been totally free from illicit drug use and in total compliance with program expectations since admission. She is making good use of this opportunity to turn her life around. Her prognosis at this point is very good." Respondent's treatment has included methadone maintenance. The methadone is being

decreased with the expectation it will be eliminated within 90 to 180 days.

13. On August 30, 2006, Respondent began having random drug tests performed by FirstLab. All tests have been negative, except for the maintenance methadone Respondent has been receiving through her treatment at qAM.

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 engaging in the conduct set out in Count I, was negligent, as defined by Wis. Adm. Code § N 7.03(1), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(c).

3. Respondent, by engaging in the conduct set out in Count II, has violated a law substantially related to practice under her license and obtained a drug as prohibited by law, and has committed misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(1) & (2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).

ORDER

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

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

Respondent, Christine A. Bayer, R.N., is hereby REPRIMANDED for the conduct in Count I.

SUSPENSION

- A.1. The license of Christine A. Bayer, 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 is hereby stayed based upon Respondent having provided proof, which was 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.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in violation of a substantial or repeated violation of any provision of Sections C or D of this Order. Repeated violation is defined as multiple violation of the same provision or violation of more than one provision. The Board may, in conjunction with the 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

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 required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms or conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater to 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 collection sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and an 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, including any ongoing methadone maintenance treatment, 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 (other than methadone taken as part of the treatment program), 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 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, current 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

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 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 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 program for non-payment is a violation of this Order.

Costs of Proceeding

D.6. Respondent shall pay costs of \$945.00 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

10/12/06
Date