

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
TRACY L. RIEL, R.N.,	:	LS07041911NUR
RESPONDENT.	:	

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[Division of Enforcement Case # 04 NUR 281]

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

Tracy L. Riel, R.N.  
W11865 County Road T  
Brandon, WI 53919

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. Tracy L. Riel, (f/k/a Biel/Hoeppner), R.N., Respondent, date of birth December 21, 1960, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 127563, which was first granted August 29, 1997.

2. Respondent's last address reported to the Department of Regulation and Licensing is W11865 County Road T Brandon, WI 53919.

COUNT I

3. From September 16, 2002 through July 2004, Respondent was employed as a registered nurse at Beaver Dam Community Hospital in Beaver Dam, Wisconsin. While employed in that position:

a. Respondent's spouse found, at their residence, a vial of injectable lorazepam 2mg/1ml (brand name Ativan), a benzodiazepine with central nervous system depressant, anxiolytic and sedative properties, which is a Schedule IV controlled substance, and two syringes containing a clear fluid. Respondent's spouse reported this to Respondent's supervisors, who had the fluid analyzed and it was found to be hydromorphone (brand name Dilaudid), a narcotic analgesic and a Schedule II controlled substance. Respondent did not have an order from a practitioner for any of those drugs.

b. As a result of her spouse's report, at the end of her shift at 7:00 a.m. on July 8, 2004, Respondent was

asked to submit to a search of her uniform pockets, purse and workplace locker. The following items were discovered for which she had no valid order of a practitioner:

- 1) In her uniform pockets:
  - two 22 gauge one inch needle wrappers
  - a 22 gauge one inch needle in a sealed packet
  - an empty three CC syringe wrapper
  - a sealed three CC syringe
  - a two mg vial of injectable lorazepam.
- 2) In her purse:
  - a three CC syringe sealed
  - a ten CC syringe sealed

c. Respondent admitted to hospital administrators that she had a substance abuse problem and was referred for counseling and treatment.

d. Respondent was admitted to St. Agnes Hospital in Fond du Lac, Wisconsin, and was then admitted on July 13, 2004 to the Partial Hospital Program at Rogers Memorial Hospital in Oconomowoc, Wisconsin.

4. Respondent sought admission in the Department of Regulation and Licensing Impaired Professionals Procedure (IPP). As part of the process on July 20, 2004, she admitted that she had been diverting morphine and meperidine (brand name Demerol) by taking PRN (as needed) medications not requested by patients. Respondent was notified that she was not eligible for IPP.

5. Respondent contacted a friend in Florida who mailed her opiates which she took. After repeated urine drug screen results that were positive for opiates, on August 31, 2004, Respondent was discharged from the Rogers program, with a discharge diagnosis of "opiate dependence and depressive versus organic affective disorder." She was referred to residential treatment at the Lawrence Center in Waukesha, Wisconsin. On September 13, 2004, she began seeing a counselor at Affiliated Counseling in Beaver Dam.

## COUNT II

6. Upon her release from the Lawrence Center on approximately September 11, 2004, Respondent was employed as a registered nurse at Mercy Medical Center, in Oshkosh, Wisconsin.

a. Beginning October 14, 2004, nurses who worked with Respondent told the nurse manager of their concerns with Respondent's behavior relating to injectable controlled substances. The nurse manager began a review and found Respondent had been making inappropriate withdrawals of controlled substances from the Pyxis. The nurse manager also found that Respondent had charted giving injections of Demerol and of Valium to patients who said they never received the injections.

b. On October 15, 2004, Respondent's employment was suspended pending investigation and when the investigation found more discrepancies in Respondent's documentation of controlled substances, her employment was terminated on October 19, 2004.

c. During the time she was working at Mercy, Respondent was diverting controlled substances for her own use.

## COUNT III

7. As a result of her July 2004 conduct at Beaver Dam Community Hospital:

- a. On November 23, 2004, Respondent was charged in Dodge County Wisconsin Circuit Court case number 2004CF000439 with one count of violating Wis. Stat. § 961.41(3g) – Possession of Narcotic Drugs, a class I felony.
- b. On March 3, 2005, the charge was amended to one count of violating Wis. Stat. § 450.11(7)(h) – Possess/Illegally Obtained Prescription, a misdemeanor. Respondent pled no contest and was convicted of the amended charge and was sentenced to 2 years of probation.
- c. During Respondent's probation:

She underwent an AODA assessment in November 2005, which determined she was in remission and further treatment was not required.

On most report dates with her probation agent, drug screens were conducted which were all negative. The last screen was done in April 2006.

8. Wis. Stat. § 450.11(7)(h) is a law which is substantially related to the practice of professional nursing.

### RECOVERY

9. Respondent reentered the Partial Hospital Program at Rogers Memorial Hospital in early November 2004 and completed it December 30, 2004. All drug screens performed by Rogers were negative. Discharge recommendations were that she: 1) return to seeing her outpatient therapist once a week, 2) maintain complete abstinence and continue with AA/NA meetings at least 3 times a week with regular contact with her sponsor.

10. Respondent saw her counselor at Affiliated Counseling in Beaver Dam from January 7, 2005 until discharged on July 7, 2005 because all treatment goals had been reached. The discharge summary noted that she was attending NA twice a week and recommended that she continue with NA as a support.

11. Respondent continued to attend AA/NA meetings 2-3 times a week, but during 2006 stopped attending those meetings and began attending a weekly women's church group which she describes as providing her with more serenity.

12. Respondent did not work as a nurse from October 18, 2004 until beginning at Planned Parenthood of Wisconsin on April 5, 2005. She worked there, where she did not have access to controlled substances, until beginning employment at a Mayville Nursing Rehabilitation Center on May 6, 2006, where she has had access to controlled substances. Prior to commencing those jobs, Respondent told her employers about her history of drug abuse. Her supervisors at those jobs were contacted by the Division in January 2007 and said they had not seen anything to cause them to suspect drug use or abuse by Respondent.

### CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and 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 Counts I and II, has administered, supplied and obtained drug other than in the course of legitimate practice and as otherwise prohibited by law, and has committed misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).

3. Respondent, by having violated a law substantially related to the practice of professional nursing as set out in Count III, has committed misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(1) and is subject 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:

### SUSPENSION

- A.1. The license of Tracy L. Riel, R.N., to practice as a registered nurse in the State of Wisconsin is SUSPENDED for an indefinite period.
- A.2. The privilege of Respondent to practice as a registered nurse in the State of Wisconsin under the authority of another state license pursuant to the Nurse Licensure Compact is also SUSPENDED for an indefinite period.
- A.3. During the pendency of this Order and any subsequent related orders, Respondent may not practice in another state pursuant to the Nurse Licensure Compact under the authority of the Wisconsin license, unless Respondent receive prior written authorization to do so from both the Wisconsin Board of Nursing and the regulatory board in the other state.

state.

- A.4 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.5 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.6 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 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 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 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 from 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 once 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 at Respondent's church group for women may be substituted for one of the twice weekly AA/NA meetings. Attendance of Respondent at all 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 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 may work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances. If Treater subsequently recommends restrictions on such access, the Board or its designee may impose such restrictions.
- 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](mailto: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, Respondent shall notify the Department Monitor of their 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 \$1,114.50 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

4/19/07  
Date

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

TRACY L. RIEL, R.N.,  
RESPONDENT.

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STIPULATION

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[Division of Enforcement Case # 04 NUR 281]

It is hereby stipulated and agreed, by and between Tracy L. Riel, R.N., Respondent; William H. Gergen of Gergen Gergen & Pretto, S.C., attorneys for Respondent; and John R. Zwieg, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement (file 04 NUR 281). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, she voluntarily and knowingly waives her rights, including the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has obtained advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. Attached to this Stipulation are Respondent's current wall and wallet registration certificates. If the Board accepts the Stipulation, upon issuance of an Order, Respondent's license may be reissued pursuant to the terms of the Order. If the Board does not accept this Stipulation, Respondent's certificates shall be returned to Respondent with a notice of the Board's decision not to accept the Stipulation.

7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or her attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

8. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

9. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Tracy L. Riel, R.N.

Date

Respondent

W11865 County Road T

Brandon, WI 53919

William H. Gergen

Gergen, Gergen & Pretto, S.C.

Attorneys for Respondent

105 Front Street

Beaver Dam, WI 53916

Date

John R. Zwieg

Attorney for Complainant

Division of Enforcement

Department of Regulation and Licensing

P.O. Box 8935

Madison, WI 53708-8935

Date