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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE :
PETITION FOR REINSTATEMENT OF : **FINAL DECISION AND ORDER**
 :
 :
 THOMAS JOHN BERTHOLD, R.N., : LS0711083NUR
 PETITIONER. :

Division of Enforcement Case #07 NUR 328

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

Thomas John Berthold
W4788 Swan Acre Dr
Cecil, WI 54111

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Thomas John Berthold (dob: 7/28/55) was formerly licensed in Wisconsin as a registered nurse pursuant to license #70721. This license was first granted on 9/29/78, and was surrendered on 11/16/84 in file #83 Nur 27. Respondent has not practiced nursing since that date.
2. Respondent was a nurse anesthetist, and the allegations in 83 Nur 27 included several that he diverted certain drugs of anesthesia, and self-administered them.
3. Petitioner has petitioned for reinstatement of his license, and has presented the Board with an AODA assessment dated 2/26/07, which diagnoses him with alcohol and opioid dependence, in remission.
4. Petitioner represents to the Board that his last use of any unprescribed mood altering substance was on 10/12/04. On 5/26/04, when he was arrested for OWI, second offense; his blood alcohol was 0.28% by weight. He was subsequently convicted of this offense on 1/25/05.

CONCLUSIONS OF LAW

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

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 Thomas John Berthold, R.N., to practice as a professional nurse in the State of Wisconsin is REINSTATED, and SUSPENDED for an indefinite period. The privilege of Petitioner to practice as a 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.2 [omitted]
- A.3. During the pendency of this Order and any subsequent related orders, Petitioner may not practice in another state pursuant to the Nurse Licensure Compact under the authority of the Wisconsin license, unless Petitioner receives prior written authorization to do so from both the Wisconsin Board of Nursing and the regulatory authority in the other state.
- A.4. Upon a showing by Petitioner 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 Petitioner under paragraph D.4. for return of full licensure.
- A.5. 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 Petitioner petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Petitioner is in compliance with the provisions of Sections C and D of this Order, and has been in such compliance for at least 4 months.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Petitioner 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 Petitioner 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 Petitioner either by:
 - (a) Mailing to Petitioner's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Petitioner or Petitioner's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Petitioner 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 Petitioner 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 Petitioner's request, unless waived by Petitioner. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Petitioner 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. Petitioner shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Petitioner 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 Petitioner'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, Petitioner 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 Petitioner'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. Petitioner 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 Petitioner's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Petitioner 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 Petitioner at such meetings shall be verified and reported monthly to Treater and the Department Monitor.

Sobriety

- C.8. Petitioner shall abstain from all personal use of alcohol.
- C.9. Petitioner 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. Petitioner shall disclose Petitioner's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Petitioner 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 Petitioner's treatment with, and provide copies of treatment records to, Treater and the Board or its designee.
- C.10. Petitioner 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 Petitioner's treatment and rehabilitation.
- C.11. Petitioner shall report all medications and drugs, over-the-counter or prescription, taken by Petitioner 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 Petitioner 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, Petitioner 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 Petitioner's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

- C.12. Petitioner 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 Petitioner enrolls in the Approved Program, Petitioner 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. The Department Monitor, Board or Board designee shall determine the tests to be performed upon the specimens. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Petitioner 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 Petitioner 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. Petitioner 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. Petitioner shall not work as a nurse or other health care provider in a setting in which Petitioner has access to controlled substances.
- C.20. Petitioner 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. Petitioner may not work in a home health care, hospice, pool nursing, or agency setting, and shall not practice as a nurse-anesthetist without the express permission of the Board.
- C.21. Petitioner shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Petitioner works as a nurse or care giver or provides health care, currently or in the future.
- C.22. It is Petitioner'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 Petitioner's work performance, and shall include the number of hours of active nursing practice worked during that quarter.
- C.23. Petitioner 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.
- C.24. The initial stay of suspension shall be limited to permit Petitioner to take and satisfactorily complete a Board-approved RN refresher course. Following successful completion of the course, Petitioner may then petition for a stay of suspension, to engage in the practice of nursing subject to the other terms and limitations of this Order.

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 Petitioner

- D.2. Petitioner is responsible for compliance with all of the terms and conditions of this Order, including the timely

submission of reports by others. Petitioner 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. Petitioner shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Petitioner. Additionally, every three (3) months the Petitioner shall notify the Department Monitor of the Petitioner'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 Petitioner continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.4. Petitioner 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 Petitioner'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 Petitioner shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

- D.5. Petitioner 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. Petitioner shall pay costs of \$200 to the Department of Regulation and Licensing, before 1/5/08. In the event Petitioner fails to timely submit full payment of costs, the Petitioner's license SHALL BE SUSPENDED, without further notice or hearing, until Petitioner has paid the costs in full, together with any accrued interest.

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 a separate disciplinary action pursuant to Wis. Stat. § 441.07.

Dated at Madison, Wisconsin this November 8, 2007,

WISCONSIN BOARD OF NURSING, by:

Marilyn Kaufmann
Chairperson