

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
CHARLENE M. WALLACE	:	LS07121312NUR
RESPONDENT.	:	

[Division of Enforcement Case # 06 NUR 345]

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

Charlene M. Wallace
23561 Hwy 27
P.O. Box 205
Holcombe, WI 54745

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 adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Charlene M. Wallace, Respondent, date of birth December 31, 1983, was licensed by the Wisconsin Board of Nursing as a licensed practical nurse in the state of Wisconsin pursuant to license number 305767, which was first granted February 24, 2005.

2. Respondent elected not to renew her license as a licensed practical nurse when it expired on April 30, 2007 but could renew it pursuant to Wis. Stat. § 440.08(3)(a) by paying the required fees.

3. Respondent's last address reported to the Department of Regulation and Licensing is 23516 Hwy 27, P.O. Box 205, Holcombe, WI 54745. The Department has information from which it believes that Respondent's current address is 27680 265th Street, Holcombe, WI 54745.

COUNT I

4. Respondent was employed as a nurse at Lakeside Health and Rehabilitation Center, which was then a facility offering comprehensive rehabilitation services and long term care in Chippewa Falls, Wisconsin. On November 2, 2005, a random urine drug screen of Respondent was positive for opiates. Respondent was unable to provide a legitimate medical explanation for the result and as a result, she was terminated from employment on November 12, 2005.

COUNT II

5. As a result of Respondent's conduct on May 13, 2006, the following took place in Chippewa County Wisconsin Circuit Court:

- a. On June 2, 2006, Respondent was charged as follows:
 - 1) Case number 2006TR002284 - operating a vehicle with an alcohol concentration of .10 or more, in violation of Wis. Stat. 346.63(1)(b), a forfeiture action.
 - 2) Case number 2006TR002285 - operating while under the influence – 1st offense, in violation of Wis. Stat. 346.63(1)(a), a forfeiture action.
 - 3) Case number 2006CM000509:
 - a) Disorderly conduct, in violation of Chippewa County ordinance § 5.10, a forfeiture action.
 - b) Possession of a prescription drug obtained illegally, in violation of Wis. Stat. 450.11(7)(h), a misdemeanor.
 - c) Obstructing an officer, in violation of Wis. Stat. 946.41(1), a Class A misdemeanor.
 - d) Possession of a controlled substance, in violation of Wis. Stat. 961.41(3g)(b), a misdemeanor.
- b. On July 6, 2006, as a result of a negotiated plea agreement:
 - 1) Case number 2006TR002284 was dismissed.
 - 2) In Case number 2006TR002285, Respondent was convicted of operating while under the influence.
 - 3) In Case number 2006CM000509, the criminal counts were dismissed and Respondent was convicted of ordinance disorderly conduct and ordered to pay a forfeiture.

COUNT III

6. From approximately May 2006 to July 2006, Respondent was employed by a family in Chippewa Falls, Wisconsin, to provide private home health care to Mr. A, a bedridden 56-year-old man who was paralyzed, had a feeding tube and was on a ventilator.

7. Mr. A required numerous medications, the supply of which was kept in a bedroom closet. Each day, Mr. A's spouse sorted Mr. A's required medications and placed them in a plastic box in the kitchen. Respondent was responsible for administering those medications to Mr. A. Respondent had no reason to remove medications from the supply kept in the closet.

8. The medications Respondent was required to administer to Mr. A included tablets of methadone. Methadone is a narcotic analgesic and Schedule II controlled substance. Mr. A was to receive two tablets of methadone each time. But Respondent gave Mr. A only one tablet of methadone and kept the other tablet for her own use. As a result, Mr. A was deprived of needed pain relief.

9. During that period of time, Respondent also stole and consumed methadone, oxycodone and lorazepam from the supply of medications stored in the bedroom closet. Oxycodone is a Schedule II controlled substance, pursuant to Wis. Stat. § 961.16. Lorazepam is a Schedule IV controlled substance, pursuant to Wis. Stat. § 961.20.

COUNT IV

10. On September 5, 2006, as a result of her conduct set out in Findings of Fact 8 and 9, above, Respondent was charged in Chippewa County Wisconsin Circuit Court case number 2006CF000385 with:

- a. Intentional abuse of a vulnerable adult likely to cause bodily harm, in violation of Wis. Stat. 940.285(2)(b)2, a Class I felony.
- b. Theft of movable property ≤\$2500, in violation of Wis. Stat. 943.21(1)(a), a Class A misdemeanor.
- c. Two counts of possession of a prescription drug obtained illegally, in violation of Wis. Stat. 450.11(7)(h), a misdemeanor.

11. On October 15, 2007, as a result of a negotiated plea agreement:

- a. Respondent pled guilty to and was convicted of the theft charge and the two counts of possession of a prescription drug obtained illegally.
- b. The abuse count was deferred for the duration of probation.
- c. Respondent was sentenced to 24 months of probation, including the following conditions:
 - 1) Six months in jail beginning 12-14-2007, with Huber work release.
 - 2) 200 hours community service.
 - 3) Assessment and counseling as required and follow through and complete all required treatment.
 - 4) Not to possess or consume any alcohol or illegal drugs. Not to go on any premises where primary purpose is the sale of alcohol. Not to possess any drug paraphernalia.
 - 5) Not to possess a nursing license or to be employed as a LPN or where medications are dispensed.

COUNT V

12. On August 27, 2007, as a result of conduct by Respondent which occurred on August 4, 2007, Respondent was charged in Eau Claire County Wisconsin Circuit Court case number 2007CF000650 with:
 - a. Theft of movable property <=\$2500, in violation of Wis. Stat. 943.20(1)(a), a Class A misdemeanor.
 - b. Possession of narcotic drugs in violation of Wis. Stat. 961.41(3g)(am), a felony.
13. On October 23, 2007, as a result of a negotiated plea agreement:
 - a. The theft charge was dismissed, but was read in and considered in sentencing.
 - b. The felony charge was amended to obtaining a prescription drug by fraud, in violation of Wis. Stat. 450.11(7)(a), a misdemeanor. Respondent pled guilty and was convicted of that charge.
 - c. Respondent was sentenced to 4 months in jail, which was stayed, and was placed on one year probation.

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, has used drugs to an extent that it impaired her ability to safely and reliably practice nursing as defined by Wis. Adm. Code § N 7.03(2) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(c).
3. Respondent, by engaging in the conduct set out in Counts II, IV and V, has violated laws substantially related to practice under her license, and has committed misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(1), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).
4. Respondent, by obtaining a drug other than in the course of legitimate practice and as otherwise prohibited by law as set out in Count III, has committed misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(2) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).
5. Respondent by engaging in the conduct set out in Count III, has engaged in behavior which violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient, which is misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(intro) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The SURRENDER by Charlene M. Wallace, Respondent, of her license as a licensed practical nurse in the state of Wisconsin is hereby ACCEPTED.

2. Respondent shall not have multistate licensure privileges, pursuant to the Nurse Licensure Compact, to practice in Wisconsin under any “home state” license.

3. If Respondent ever makes application to the Board for any nursing license:

a. She shall provide proof sufficient to the Board that there is no condition of probation in effect in any criminal proceeding that prohibits her from holding a license as a nurse or prohibits her from working as a nurse.

b. She shall provide proof sufficient to the Board that she does not suffer from any alcohol or drug related condition or other psychological condition which impairs her ability to function under the credential.

c. The decision whether to grant Respondent a credential, with or without limitations, shall be in the sole discretion of the Board.

d. Prior to any reinstatement, she shall have paid the costs of this proceeding in the amount of \$480.00, pursuant to Wis. Stat. § 440.22(2). Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed or delivered to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264

4. This Order is effective on the date of its signing.

Wisconsin Board of Nursing

By: Marilyn Kaufmann
A Member of the Board

12/13/07
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
CHARLENE M. WALLACE	:	LS _____ NUR
RESPONDENT.	:	

[Division of Enforcement Case # 06 NUR 345]

It is hereby stipulated and agreed, by and between Charlene M. Wallace, Respondent; Michael R. Cohen of Johnson & Cohen, 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 06 NUR 345). 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 most recent wall and wallet registration certificates. 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 the member of the Board assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the 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.
8. The parties agree that the member of the Board who has been appointed as the case advisor may participate in deliberations and vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
9. 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.
10. Respondent is further informed that should the Board adopt this Stipulation, the Board’s Final Decision and Order would constitute an agency finding within the meaning of Wis. Stats. §§ 48.685 and 50.065. Should Respondent wish to work in a Wisconsin DHFS-licensed facility, she will need to pass a Rehabilitation Review through DHFS prior to

commencement of such employment.

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

Charlene M. Wallace

Respondent

23516 Hwy 27

P.O. Box 205

Holcombe, WI 54745

Date

Michael R. Cohen

Johnson & Cohen, S.C.

Attorneys for Respondent

P.O. Box 145

Eau Claire, WI 54702-0145

Date

John R. Zwieg

Attorney for Complainant

Division of Enforcement

Department of Regulation and Licensing

P.O. Box 8935

Madison, WI 53708-8935

Date

[06 NUR 345: Costs \$480.00]

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