

# 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
TIMOTHY BERNARD MURPHY, R.N.,	:	LS0804035NUR
RESPONDENT.	:	

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[Division of Enforcement Case # 07 NUR 007]

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

Timothy Bernard Murphy, R.N.  
20 S. Concord Drive  
Janesville, WI 53545

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. Timothy Bernard Murphy, R.N., Respondent, date of birth May 13, 1963, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 133915, which was first granted December 2, 1999.

2. Respondent's last address reported to the Department of Regulation and Licensing is 20 S. Concord Drive, Janesville, WI 53545.

3. On March 17, 2005, as part of a deferred prosecution agreement in Rock County Circuit Court, Case No. 2004CF000732, Respondent was convicted of amended charges of obtaining a prescription drug by fraud (2 counts), in violation of Wis. Stat. § 450.11(7)(a), and theft, in violation of Wis. Stat. § 943.20(10)(a). The convictions were the result of offenses Respondent committed on October 30, 2003.

4. On August 1, 2005, Respondent, in Jefferson County Circuit Court, Case Number 2004CF000457, pled guilty to charges of obtaining a prescription drug by fraud, in violation of Wis. Stat. § 450.(7)(a), and felony bail jumping, in violation of Wis. Stat. § 946.49(1)(b). The convictions were the result of conduct that occurred on May 29, 2004, when Respondent went to the home of a former patient, claiming that he worked for the patient's physician and was checking the former patient's condition. Respondent then stole the patient's morphine.

5. Prior to May 28, 2004, Respondent was enrolled in the Department of Regulation and Licensing's Impaired Professionals Procedure, 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. Respondent was terminated from the program as a result of his behaviors on May 29, 2004.

6. On December 14, 2006, the Board issued a Final Decision and Order in the Disciplinary Proceedings against Timothy B. Murphy, R.N., case number LS 0612142 NUR.

a. The Board found that Respondent violated Wis. Adm. Code § N 7.04(1) by having been convicted of obtaining a prescription drug by fraud for an incident that occurred on May 28, 2004, in violation of Wis. Stat. § 450.11(7)(a).

b. The Board issued an Order suspending Respondent's license for an indefinite period. The suspension was stayed based upon Respondent having provided proof acceptable to the Board that Respondent was in compliance with certain conditions and limitations on his license, including requirements for treatment and monitoring.

7. Respondent, while employed as a registered nurse at Cedar Crest, Inc., a nursing home located in Janesville, Wisconsin:

a. On January 19, 2007, diverted a Demerol 50 mg/ml syringe from a resident for his own use. Respondent documented that he gave the medication to the patient and then administered it to himself, at times while still on the premises. Demerol contains meperidine, a narcotic analgesic and Schedule II controlled substance, pursuant to Wis. Stat. § 961.16(3)(k).

b. Between December 29, 2006 and January 19, 2007, Respondent began diverting fentanyl patches, sometimes by changing resident's patches before they were due to be changed. Respondent extracted the remaining fentanyl from the patches and injected himself with it. At the height of his use, Respondent arranged to have enough of the drug to use every 2 to 3 hours during the day. Fentanyl is a narcotic analgesic and Schedule II controlled substance.

8. Respondent was suspended immediately pending the results of an investigation and his employment was subsequently terminated. Respondent was directed to report his relapse to the Board of Nursing.

9. On January 23, 2007, the Board considered evidence that Respondent had not been in compliance with the limitations on his license by using controlled substances. As a result, the Board revoked Respondent's stay of suspension.

10. On June 21, 2007, the Board reviewed Respondent's request for reinstatement and compliance record since the January 23<sup>rd</sup> suspension of his license. The Board issued an Order which stayed the suspension of Respondent's license and ordered that all the terms and conditions of the Board's December 14, 2006 Order remain in effect.

11. On July 24, 2007, as a result of his conduct on January 19, 2007, Respondent was charged in Rock County Wisconsin Circuit Court case number 2007CF002224 with two counts of felony possession of narcotic drugs, in violation of Wis. Stat. § 961.41(3g)(am). Respondent was charged as a habitual offender under Wis. Stat. § 939.62(1)(b).

12. On August 29, 2007, Respondent pled guilty and was convicted of two counts of felony possession of narcotic drugs, in violation of Wis. Stat. § 961.41(3g)(am). On November 16, 2007, sentence was withheld and Respondent was placed on 42 months probation, concurrent, with the following conditions:

a. Jail Time: 7 months; to serve 2 months, 5 months stayed. Huber for work and childcare. May work outside State of Wisconsin. 12-17-07: Court allows Furlough from 6pm 12-31-07 until 6pm 01-01-08.

b. Alcohol treatment: Assessment, Treatment and Counseling.

c. Drug treatment: Assessment, Treatment and Counseling.

d. Costs of \$105.00

e. Other: Absolute Sobriety; Must submit to random urine screens by DOC. 1<sup>st</sup> positive test-

[Respondent] must serve additional 5 days. 2<sup>nd</sup> test-must serve 10 days. 3<sup>rd</sup> test-must serve 20 days. 4<sup>th</sup> test-must serve 30 days.

f. Prohibitions: May not work in any place during probation in which he has access to drugs or medication. Not to work in Care Giver capacity or in Medication passing facility.

13. From July 5, 2007 until his employment was terminated on December 7, 2007, Respondent was employed as a registered nurse at Oak Park Place, an assisted living facility located in Madison, Wisconsin.

a. On December 4, 2007, Oak Park administrators became aware of Respondent's court-ordered restrictions prohibiting him from working in a medication passing facility.

b. On December 5, 2007, Respondent was directed not to return to work until he provided proper documentation from the courts stating that he was allowed to work in a medication passing facility.

c. On December 7, 2007, Respondent came to work and was directed to remove himself from the floor until the Director of Human Resources arrived to meet with him. Respondent, fearing loss of his Huber privileges, did not wait and left the facility.

d. Respondent's employment was immediately terminated based on his conduct and failure to follow assigned responsibilities.

### 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 his conduct as set out in Finding of Fact 7, violated an Order of the Board, which is misconduct or unprofessional conduct as defined by Wis. Adm. Code § N 7.04(14), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).

3. Respondent, by engaging in the conduct described in Finding of Fact 7, obtained narcotic drugs through a course of conduct prohibited by law, which is unprofessional conduct as defined by Wis. Adm. Code § N 7.04(2), and which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).

4. Respondent by engaging in the conduct set out in Finding of Fact 7, falsified a patient's medical records, which is misconduct or unprofessional conduct as defined by Wis. Adm. Code § N 7.04(6), and which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).

5. Respondent, by having been convicted of laws which substantially relate to the practice of professional nursing, as set out in Finding of Fact 12, 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).

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The license of Timothy Bernard Murphy, R.N. as a registered nurse in the State of Wisconsin is hereby **REVOKED**.

2. Respondent shall, prior to any Petition for Reinstatement, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$750.00 pursuant to Wis. Stat. § 440.22(2).

3. Payment shall be mailed or delivered to:

Department Monitor  
Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Avenue

P.O. Box 8935  
Madison, WI 53708-8935  
Fax (608) 266-2264  
Telephone (608) 267-3817

4. This Order is effective on the date it is signed.

Wisconsin Board of Nursing

By: Marilyn Kaufmann  
A Member of the Board

4/3/08  
Date

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
TIMOTHY BERNARD MURPHY, R.N.,	:	LS _____ NUR
RESPONDENT.	:	

[Division of Enforcement Case # 07 NUR 007]

It is hereby stipulated and agreed, by and between Timothy Bernard Murphy, R.N., Respondent; and Sandra L. Nowack, 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 07 NUR 007). 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, he voluntarily and knowingly waives his rights, including the right to a hearing on the allegations against him, 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 him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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 him 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 been provided an opportunity to obtain 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 consideration of this attempted resolution.
6. Attached to this Stipulation are Respondent's current 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 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 his attorney, if any, 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. 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.

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

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Timothy Bernard Murphy, R.N.  
Respondent  
20 S. Concord Drive  
Janesville, WI 53545

\_\_\_\_\_  
Date

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Sandra L. Nowack  
Attorney for Complainant  
Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935

\_\_\_\_\_  
Date