

# 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  
ENOC M. GARCIA, R.N., : LS0806056NUR  
RESPONDENT. :

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[Division of Enforcement Case #'s 06 NUR 107 & 08 NUR 154]

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

Enoc M. Garcia, R.N.  
3138 Coolidge Avenue  
Racine, WI 53403

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. Enoc M. Garcia, R.N., Respondent, date of birth May 5, 1970, is licensed by the Wisconsin Board of Nursing as a registered nurse in the State of Wisconsin pursuant to license number 144715, which was first granted July 2, 2003.

2. Respondent's address of record with the Department of Regulation and Licensing is 3138 Coolidge Avenue, Racine, WI 53403.

COUNT I

3. In 2006, Respondent was employed as a registered nurse (RN) by the Aurora Visiting Nurse Association (VNA) in Milwaukee, Wisconsin. Respondent worked as a RN Case Manager and hospice nurse at the VNA-Lake Geneva Branch. In that employment, Respondent provided nursing services to Mr. A, who was suffering from end-stage liver disease.

4. On March 10, 2006, Respondent was at Mr. A's home administering pain medication to Mr. A. A family member asked Mr. A if he was in pain and he stated he was not. The family member asked Respondent why he was giving Mr. A pain medication because they had started him on a patch about 24 hours prior. Respondent did not reply and appeared nervous.

5. Later that day, Mr. A passed away. Respondent gathered Mr. A's medications and put them in his briefcase. Respondent told family members that they could donate Mr. A's unused medication if they chose. A family member declined and requested the medication. The family member then noted that 41 OxyContin tablets were missing. OxyContin contain

oxycodone which is a Schedule II controlled substance pursuant to Wis. Stat. § 961.16(2)(a)11.

6. In an investigative interview, Respondent admitted to his employer that he had given family members medications that Respondent had obtained from another patient who no longer needed them.

7. As a result of his conduct, Respondent's employment was suspended pending further investigation. Respondent subsequently submitted his letter of resignation, effective March 21, 2006.

## COUNT II

8. In 2008, Respondent was employed as a registered nurse at Lakeview Specialty Hospital & Rehab in Waterford, Wisconsin.

9. Paragraph deleted per negotiations.

10. Paragraph deleted per negotiations.

11. The medications were packaged the same as that used at Lakeview. Managers then ran a PIXUS report for medications dispensed since April 18, 2008.

12. Through investigation, managers learned that in the early morning hours of April 23, 2008, Respondent had been seen exiting the building through the elevator that connects to the third floor dorm rooms. CB eventually confirmed that Respondent had been up in the dorm room area where CB had been staying.

13. Managers then ran a report of Respondent's PIXUS use commencing on April 18, 2008.

14. The report showed that Respondent accessed medication on April 22, 2008. Respondent was not scheduled to work that day. There had been an open slot on the PM shift (7-11) which the nursing supervisor had planned to fill and, in fact, worked. Respondent, unaware that the nursing supervisor was on duty, decided, on his own, to fill the open shift. When the supervisor was notified that Respondent was at work, the supervisor sent Respondent home. Respondent never punched in, had not received a patient assignment, nor had he passed any medication prior to being sent home. In spite of Respondent's lack of contact with patients, Respondent's PIXUS report showed that, between 6:48 and 6:56 p.m., Respondent had accessed four schedule II controlled substances:

2 tabs oxycodone/acetaminophen 5mg/325mg tab for Patient FB

2 oxycodone IR 5mg tabs for Patient AT

2 oxycodone/acetaminophen 5mg/325mg tabs for Patient MJB

2 oxycodone/acetaminophen 5mg/325mg tabs for Patient JS

15. When Respondent reported to work on April 23, managers confronted him about the questionable drug distribution. Managers asked to provide a urine sample in accordance with the Drug Free Work Place policy. Respondent initially agreed and went to the clinic. When he arrived at the clinic, however, Respondent became argumentative and belligerent, stating that he was not going to provide a urine specimen. He left the facility stating that he was not going to work there anymore and said "you guys are jerks."

16. The Director of Nursing began an investigation into Respondent's medication access history, starting from his orientation date on December 19, 2007. The full history consisted of 99 pages. The Director of Nursing looked at trends in medications dispensed, patients receiving medications, and dates dispensed related to dates Respondent worked. Medications accessed from the PIXUS were then cross-referenced to the specific patients' charts for documentation that the patients received the medications. A summary of the findings from March 12, 2008 to April 22, 2008 demonstrated multiple irregularities in Respondent's access and distribution of controlled substances, and particularly oxycodone and methadone:

Respondent repeatedly accessed PRN medication from PIXUS prior to reporting to the floor and receiving his patient assignments.

Respondent accessed the maximum dose of PRN medication every time he accessed patients' medications.

Respondent repeatedly accessed Schedule II narcotics on days he did not work.

On repeated occasions, there was no documentation that the patient received the PRN medication.

On multiple occasions Respondent accessed PRN medication for patients to whom he was not assigned, and on multiple occasions for patients that were not being cared for on the unit to which he was assigned.

17. Oxycodone and Methadone HCL are Schedule II controlled substances pursuant to Wis. Stat. § 961.16(2)(a)11.

18. During the time periods at issue, Respondent did not have a practitioner's order for oxycodone or methadone.

19. The behaviors delineated in par. 16 fall below the minimum standards of care for a registered nurse.

20. The behaviors delineated in par. 16 are consistent with those of nurses who obtain schedule II controlled substances for their own use.

### 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 pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by obtaining a drug other than in the course of legitimate practice and as otherwise prohibited by law, as set out in Counts I and II above, has committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(2) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

3. Respondent, by engaging in the behaviors set forth above has engaged in acts and omissions demonstrating his failure to maintain competency in practice and methods of nursing care, in violation of Wis. Admin. Code § N 7.03(1)(b), and he is therefore subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The license of Enoc M. Garcia, R.N., as a registered nurse in the State of Wisconsin is hereby **REVOKED**.

2. In the event that Respondent re-applies for Wisconsin licensure as a nurse, the Board may enter an order denying such application unless Respondent provides evidence sufficient to convince the Board that he has been abstinent from drugs and alcohol for at least one year immediately preceding his application. Such evidence must include at least 56 random drug tests by an approved drug testing program. Respondent hereby expressly waives all rights to a hearing on any resulting application denial.

3. If the Board grants Respondent a nursing license at any time in the future, the terms and conditions of sections A through D below will apply to his license:

### SUSPENSION

A.1. The license of Enoc M. Garcia, R.N., to practice as a nurse in the State of Wisconsin will be **SUSPENDED** for an indefinite period immediately upon issuance.

A.2. 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 receives prior written authorization to do so from both the Wisconsin Board of Nursing and the regulatory board in the other state.

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 Wisconsin licensure.

- A.4. The Board may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

### STAY OF SUSPENSION

- B.1. The suspension of Respondent's Wisconsin nursing license shall be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) consecutive months.
- 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 any 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 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 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 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 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 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 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 Alcoholics 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 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, 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. Adm. 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. Adm. 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, 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

### 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 the 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 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 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 that the initial stay of the suspension goes into effect 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 Respondent'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 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 a program for non-payment is a violation of this Order.

Costs of Proceeding

D.6. Respondent shall pay costs of \$687.50 to the Department of Regulation and Licensing before any license is granted to Respondent pursuant to paragraph 4 above. In the event Respondent fails to timely submit any payment of costs, the Respondent's application for a license SHALL BE DENIED, without further notice or hearing.

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.

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

Wisconsin Board of Nursing

By: Kathleen Sullivan  
A Member of the Board

6/5/08  
Date



STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 : STIPULATION  
ENOC M. GARCIA, R.N., : LS \_\_\_\_\_ NUR  
RESPONDENT. :

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[Division of Enforcement Case #'s 06 NUR 107 & 08 NUR 154]

It is hereby stipulated and agreed, by and between Enoc M. Garcia, 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 pending investigations of Respondent's licensure by the Division of Enforcement (files 06 NUR 107 & 08 NUR 154). Respondent consents to the resolution of these investigations 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 Administrative Law Judge 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 does not accept this Stipulation, Respondent's certificates shall be returned to the 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, 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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Enoc M. Garcia, R.N.  
Respondent  
3138 Coolidge Avenue  
Racine, WI 53403

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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

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Date