

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	
PAULA M. SALKIN, R.N.,	:	LS-0807011-NUR
RESPONDENT.	:	

Division of Enforcement Case #08 NUR 80

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

Paula M. Salkin
18375 Brookfield Lake Dr., # 87
Brookfield, WI 53045

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

A disciplinary proceeding was commenced in this matter by the filing of a Notice of Hearing and Complaint with the Board on July 1, 2008. Prior to the hearing on the Complaint, the parties in this matter agreed to the terms and conditions of the attached Stipulation as the final disposition 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. Paula Mary Salkin (dob: 3/27/56) is and was at all times relevant to the facts set forth herein a professional nurse licensed in the State of Wisconsin pursuant to license #84037. This license was first granted 3/25/83.
2. On 2/28/08, and while employed as a professional nurse at the Waukesha Springs nursing home, Respondent reported for her scheduled work shift at 2:30 PM with the odor of an alcoholic beverage upon her breath. At 4:38 PM, her breath was tested with a standard testing device, and found to contain 0.038% alcohol by weight. The Board infers that at the time she started her shift, she had approximately 0.07% alcohol by weight, in her breath and blood.
3. Respondent has the following history: she received a deferred prosecution or sentence after being found in unauthorized possession of a controlled substance on 1/11/96, and successfully completed the required program resulting in the criminal case being dismissed in 1998. She has been convicted of operating a motor vehicle while influenced by an intoxicant on three occasions, the incidents having occurred on: 7/25/02 in Washington County, Minnesota; 8/21/05 in Madison, Wisconsin (at 2:00 PM in the afternoon, at which time her BAC was 0.288% and she rear-ended another car); and 10/27/05 in Ozaukee County, Wisconsin (at 9:10 PM, at which time her BAC was 0.298%). On 5/3/04, she was at work at a training program required by her employer, Froedert Hospital, and fellow employees observed the odor of an alcoholic beverage upon her breath and other signs of intoxication; the Board issued an Administrative Warning to Respondent in that matter, file #04 Nur 130, on 10/4/07.
4. Following evaluations at Aro Counseling Centers, Inc., in 2005 and 2006, Respondent was diagnosed with alcohol

dependence. Respondent participated in treatment for her condition at Aro counseling between 9/24/05 and 3/18/06, and again in April and May, 2006, but declined her therapist's recommendation that she involve herself in a 12-step group following her completion of counseling at Aro.

5. During the investigation of file #04 Nur 130, Respondent stated to the Board's investigator that the 8/21/05 incident occurred when she had been at a wedding and had returned to her hotel, and realized that she had left her cellphone at the wedding location. She then drove to retrieve the cellphone, a matter of a couple of blocks. She stated that she was arrested when she arrived at the side and caught the heel of her high heel shoe on her car as she was getting out, causing her to fall out of the car in front of a police officer.

6. In fact, the police reports (which were not obtained until the current investigation was undertaken) make it clear that Respondent was observed by an off-duty police officer to be driving in a dangerous and erratic manner for several blocks, and then struck a car from behind as it entered an intersection. The officer (who was in street clothes) then observed Respondent to get out of her car, and did not report that she fell. The officer pulled over, got out of his car, identified himself, and requested Respondent's driver's license, following which Respondent stated: "I don't have to give you anything." Uniformed officers then arrived at the scene in a marked police car, and Respondent then submitted to police authority. The police report states that Respondent indicated that she had been at a wedding the previous evening, and had driven from Milwaukee to Madison earlier in the day to meet her son.

7. During the investigation of file #01 Nur 130, Respondent stated to the Board's investigator that the 10/27/05 incident occurred when she had been taken to a birthday party by a friend, and began to feel unwell. She then went out to the friend's car to rest in the back seat; she was given the car keys so she could enter the car. While in the vehicle, she placed the key in the ignition so she could listen to the radio. At some point, she became aware of flashing lights, and sat up to find that the police had arrived. This was considered her third offense, as she had been charged with her first OWI "many years" before.

8. In fact, Respondent's first OWI was three years before, in 2002. Further, the police reports (which were not obtained until the current investigation was undertaken) make it clear that Respondent was observed by a deputy sheriff to be driving a car in a rural area near Cedarburg, Wisconsin, in an erratic and unsafe manner. When he stopped the vehicle, Respondent was alone in the car. She stated that she was on her way to a friend's. After being arrested, Respondent refused to allow her blood to be drawn for the designated test, and in fact the specimen was drawn over her objection, pursuant to department policy in that this was not a first offense.

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).

B. The conduct described in paragraph 2, above, violated Wis. Stat. § 441.07(1)(c) and Wis. Adm. Code § N 7.03(2). The conduct described in paragraphs 5 and 7, above, violated Wis. Stat. § 441.07(1)(d). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

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 Paula M. Salkin, R.N., to practice as a nurse in the State of Wisconsin is SUSPENDED for an indefinite period. The privilege of Respondent 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. 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.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 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 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.5. The Board may, on its own motion or at the request of the Department Monitor, grant full licensure at any time.
- A.6. Additionally, for the conduct described in pars. 5-8 (making false statements to the Board's investigator), Respondent's license to practice nursing is SUSPENDED for thirty days, commencing at 12:01 AM on Saturday, November 1, 2008, and ending on Sunday, November 30, 2008, at 11:59 PM.

STAY OF SUSPENSION

- B.1. The suspension 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 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 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 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 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. 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,

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 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

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 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 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 \$850 to the Department of Regulation and Licensing, before 1/5/10. In the event Respondent fails to timely submit full payment of costs, the Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent 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 September 4, 2008,

WISCONSIN BOARD OF NURSING, by:

Marilyn Kaufmann
Chairperson