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

BRETT D. NGASSA, L.P.N., : LS09022612NUR

RESPONDENT. :

[Division of Enforcement Case #'s 08 NUR 206 & 09 NUR 002]

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

Brett D. Ngassa, L.P.N. 1142 Gammon Lane, Apt. 3 Madison, WI 53719

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. Brett D. Ngassa, L.P.N., Respondent, date of birth February 13, 1972, is licensed by the Wisconsin Board o Nursing as a licensed practical nurse in the state of Wisconsin pursuant to license number 307614, which was first grante October 16, 2006.
- 2. Respondent's last address reported to the Department of Regulation and Licensing is 1142 Gammon Lane, Apr 3, Madison, WI 53719.
- 3. Between June 2008 and August 13, 2008, Respondent was employed as a licensed practical nurse (LPN) a Oregon Manor, Ltd. ("the facility"), a nursing home in Oregon, Wisconsin.
- 4. On June 16, 2008, Respondent's employer suspended her for three days after Respondent improperly dispense narcotics in separate incidents on June 12, 2008 and on June 13, 2008. On June 12, 2008, Respondent called a physician t get an order of Ambien (zolpidem) for Patient AB. Patient AB was not to receive Ambien without prior consent of her family which Respondent did not obtain. Respondent indicated that she did not administer Ambien to Patient AB. Insteac Respondent stated that she discarded the Ambien, without a witness and without documenting its destruction.
- 5. On June 13, 2008, Respondent documented in Resident EO's medical record that she gave Resident EO Vicodin (hydrocodone and acetaminophen) for pain. Resident EO and Resident EO's family confirmed that Respondent had actuall given Resident EO round tablets of Tylenol PM rather than oblong tablets of Vicodin.

- 6. On Friday, August 8, 2008, a registered nurse at the facility administered hydrocodone to Resident JD, for whon it had been prescribed. The RN noted that after she administered one pill, there were eight remaining in a partially-used blister pack. The pharmacy had also delivered a new blister-pack with a count of 30 hydrocodone. At the end of her shift, the R1 counted the narcotics with Respondent, who was to work the night shift.
- 7. On Tuesday, August 12, 2008, the RN noted that there were only 29 of the 38 hydrocodone remaining, all in the previously unopened blister-pack. The partially-empty blister-pack was gone without any record of it. The RN examined the controlled substance record pertaining to Resident JD and saw that Respondent had documented administration of on hydrocodone to the resident. The MAR indicated that one hydrocodone had been administered on August 9, 2008 and anothe on August 10, 2008. There was no indication of what had happened to the six hydrocodone tablets which should hav remained in the partially-used blister-pack.
- 8. The facility's protocol required a controlled substance record to be completed and filed with the director o nursing whenever a blister-pack with narcotics was completed with zero pills or if medication had been wasted (and witnesse by two nurses). The controlled substance sheet at issue was missing.
- 9. While investigating another matter, the RN found a torn controlled substance sheet in a bin intended for shredder confidential documents. The controlled substance report included a July 11, 2008 notation, with a count of three hydrocodone Respondent was the last person to have signed out hydrocodone. The RN further discovered that on July 28, 2008 Respondent received a delivery from the pharmacy of a new blister-pack of 15 hydrocodone.
- 10. The information from the MAR established that the narcotic count did not equal the amount of hydrocodone i the narcotic box and on the controlled substances record and that the irregularities were Respondent's responsibility Respondent's employment was terminated on August 13, 2008.
- 11. Respondent then obtained employment at Oak Park Place, 718 Juniper Drive, Madison, Wisconsin. On December 3, 2008, staff at Oak Park Place discovered that a partially used blister-pack of hydrocodone, with approximatel 14 pills remaining, was missing. Two nurses, including Respondent, had access to the missing drug.
- 12. On December 3, 2008, at approximately 4:00 p.m., a manager called Respondent and asked her to come in to talk. Respondent could not come in that afternoon, but agreed to report the next morning at 10:00 a.m.
- 13. On December 4, 2008, Respondent reported for a urinalysis but claimed she was unable to urinate. A approximately 12:30 p.m., more than two hours later, Respondent finally reported to Oak Park Place. Administrator transported Respondent to a site for hair toxicology. As she was being transported, Respondent said she had a prescription fc Vicodin and that she recently took one for boils she gets on her head. The administrators told Respondent she would be aske to produce a copy of the prescription if the drug screen was positive.
- 14. On December 9, 2008, Oak Park Place received the report of Respondent's toxicology test. Respondent teste positive for extended opiates, hydrocodone and oxycodone.
- 15. When Respondent was told of the test results, she indicated she would produce a prescription. Actually Respondent did not have a prescription for the controlled substances found in her system. She produced only a statement fror a physician's assistant which read:

Respondent was seen in my office on December 10, 2008. She reports taking her sister's pain medication for an abscess on the back of her scalp.

- 16. On January 22, 2009, Respondent talked with a DRL consumer protection investigator. Respondent said sh had not undergone an AODA evaluation and she denied that she was impaired. She said her physician's documentation explained why she tested positive for the narcotics. Respondent states that she is not presently working as a nurse but intend to seek work [as a nurse] in the near future.
 - 17. Pursuant to Wis. Stat. § 961.20(2)(p), zolpidem is a schedule IV controlled substance, for which a prescription is

required pursuant to Wis. Stat. § 961.38(3).

- 18. Pursuant to Wis. Stat. § 961.16(2)(a)7, hydrocodone is a schedule II controlled substance, for which a written prescription is required pursuant to § 961.38(1r).
- 19. Pursuant to Wis. Stat. § 961.16(2)(a)11, oxycodone is a schedule II controlled substance, for which a writter prescription is required pursuant to § 961.38(1r).
- 20. On the dates in question, Respondent took hydrocodone and oxycodone without written prescriptions from a practitioner, in violation of Wis. Stat. §§ 961.38(1r) and (5).
- 21. Wisconsin Adm. Code § HFS 132.65(6)(c)2 requires that, within the context of a nursing home, unuse prescription medications which are not returned for credit must be destroyed and the destruction witnessed by two or mor health care professionals who sign and date the documentation.
 - 22. Standards of the nursing profession require that nurses accurately document administration of medications.

CONCLUSIONS OF LAW

- 1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and authority t 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 above, 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).
- 3. Respondent, by engaging in the conduct set out in par. 4, above, has violated a law substantially related to the practice of nursing, which is misconduct as defined by Wis. Adm. Code § N 7.04(1), and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(c).
- 4. Respondent, by engaging in the conduct set out in par. 5, above, falsified patient records, which is misconduct as defined by Wis. Adm. Code § N 7.04(6), and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(c).

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 Brett D. Ngassa, L.P.N., to practice as a licensed practical nurse in the State of Wisconsin SUSPENDED for an indefinite period.
- A.2. The privilege of Brett D. Ngassa, L.P.N., to practice as a licensed practical nurse in the State of Wisconsin under the authority of another state license pursuant to the Nurse Licensure Compact is also SUSPENDED for an indefinit period.
- A.3. During the pendency of this Order and any subsequent related orders, Respondent may not practice in another stat pursuant to the Nurse Licensure Compact Regulation under the authority of the Wisconsin license, unless Responder receives prior written authorization to do so from both the Wisconsin Board of Nursing and the regulatory board in th other state.
- A.4 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.5. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with th terms of this Order, including at least 600 hours of active nursing for every year the suspension is stayed, the Board magrant a petition by the Respondent under paragraph D.4. for return of full licensure.

A.6. 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 not be stayed for the first six (6) months, but any time after six (6) months, the suspension shall be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or it designed to be sufficient, that Respondent is 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 it 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 an removal of any stay, prohibit 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 Responder either by:
 - (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuar 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 complianc 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 i 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 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 treatmen recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequer orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program a required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms an conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). I Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater b 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 Boar 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 th 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 collection sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and an employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hai 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 or 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 ordere immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent' 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 mas consumption of controlled substances or of alcohol, create false positive screening results, or interfere wit Respondent's treatment and rehabilitation.
- C.11. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by Respondent to Treate and the Department Monitor within 24 hours of ingestion or administration, and shall identify the person or persons wh prescribed, dispensed, administered or ordered said medications or drugs. If Respondent has not provided a release a required by C.9 above, within 24 hours of a request by Treater or the Board or its designee, Respondent shall provid 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 th 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 mad available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohomonitoring 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 o 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 Boar 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 alcohole 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 an or all of the following: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, (c) furnish an 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 th requirements of Wis. Adm. Code § RL 7.11.

Practice Limitations

C.19. Respondent shall <u>not</u> 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 professions 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 t 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 Departmen Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's wor 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 o 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 timel submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of th 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 thi Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of th Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with 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 treatmer 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.5. Any such petition for modification shall be accompanied by written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of 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 program for non-payment is a violation of this Order.

Costs of Proceeding

D.6. Prior to any stay of the Suspension of Respondent's license, Respondent shall pay costs of \$585.00 to the Department

of Regulation and Licensing.

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

Wisconsin Board of Nursing

By: Marilyn Kaufmann

2/26/09

A Member of the Board

Date

STATE OF WISCONSIN BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:			
PROCEEDINGS AGAINST	:			
	:	STIPU	LATION	
BRETT D. NGASSA, L.P.N.,	:	LS	NUR	
RESPONDENT.	:			

[Division of Enforcement Case #'s 08 NUR 206 & 09 NUR 002]

It is hereby stipulated and agreed, by and between Brett D. Ngassa, L.P.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 08 NUR 206 & 09 NUR 002). 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, 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 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. 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 Fina Decision and Order.
- 7. 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.
- 8. 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.
 - 9. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the

attached Final Decision and Order.		
Brett D. Ngassa, L.P.N. Respondent	Date	
1142 Gammon Lane, Apt. 3		
Madison, WI 53719		
Sandra L. Nowack	Date	
Attorney for Complainant		
Division of Enforcement		
Department of Regulation and Licensing		
P.O. Box 8935		
P.O. Box 8935		