

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**

SARAH A. SPAETH, R.N., : LS-0708291-NUR
RESPONDENT. : LS-0905011-NUR

Division of Enforcement Case #06 NUR 381, 09 NUR 15

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

Sarah A. Spaeth
1503 Monroe Ave.
South Milwaukee, WI 53172

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 06 Nur 381 by the filing of a Notice of Hearing and Complaint with the Board on 8/29/97. A hearing has been held on the Complaint and an Administrative Law Judge has issued a Recommended Decision and Order. Before the Board issued a Final Decision and Order, 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.

A disciplinary proceeding was commenced in 09 Nur 15 by the filing of a Notice of Hearing and Complaint with the Board on 5/1/09. Before a hearing was held, 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.

On 5/7/09, the Board summarily suspended the license of Respondent, pending the outcome of disciplinary proceedings in 09 Nur 15.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Sarah A. Spaeth (dob: 11/28/72) 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 #151055. This license was first granted 7/15/05, and is suspended pending the outcome of the disciplinary proceeding in 09 Nur 15.

2. Respondent has been admitted to Aurora Psychiatric Hospital, Wauwatosa, Wisconsin, and diagnosed with substance abuse and dependence, for which she is receiving treatment. She represents to the Board that she is fully complying with all treatment recommendations made by her physicians and counselors.

COUNT I (06 NUR 381)

3. Between mid-July, 2006, and 9/19/06, and while employed as a professional nurse at the Aurora St. Luke's Medical

Center, on multiple occasions Respondent's personal computer identification was used to withdraw from the AcuDose system the Schedule II controlled substances oxycodone, meperidine, hydromorphone, and morphine, purportedly for administration to patients, and causing the patients to be charged for the medications. The Medication Administration Records for the patients did not contain documentation that all of these medications had been administered to patients, and in fact Respondent diverted some of them for her own use.

COUNT II (09 NUR 15)

4. On and between 11/11/08, and 1/8/09, Respondent practiced nursing at Specialty Hospitals, Inc., Waukesha, Wisconsin as a nurse providing direct patient care in an inpatient setting, including the providing of controlled substances to patients, as ordered by their physicians.

5. During Respondent's tenure with Specialty Hospitals, there were repeated irregularities with controlled substances attributable to her, including: on 12/5/09, 4 syringes of morphine and 4 of hydromorphone (Dilaudid®), both Schedule II controlled substances, were found to be missing from the medication dispensing machine. An unused syringe of morphine and an empty vial of lorazepam, a Schedule IV medication, were found in Respondent's pocket; Respondent stated that she had administered the morphine to a patient and the patient's chart contained documentation that the medication had been administered, by Respondent. However, the morphine was still in the syringe, sealed, and it is physically impossible for that syringe to have been used for that patient, as stated and charted by Respondent.

6. Further review of Respondent's charting showed that in the previous days and weeks, Respondent had repeatedly removed multiple controlled substances for multiple patients at the same time from the dispensing machine, which is contrary to policy and safe nursing practice, that her documentation of administering controlled substances did not correspond to the records of her removing those medications from the machine, and that on occasion she had documented administering more medication to patients than the physician had authorized or ordered, thus giving rise to the inference that she gave the patient the amount ordered but reserved the balance for herself.

COUNT III (09 NUR 15)

7. On 1/5/09, Specialty Hospitals, Inc., required Respondent to submit a sample of her urine for testing, and upon testing it was found to contain methadone, hydrocodone, oxycodone, and hydromorphone (or their metabolites), all of which are Schedule II or III opioids or opiates. Respondent did not have prescription for any of these medications except oxycodone.

COUNT IV (09 NUR 15)

8. Respondent appeared before Inv. Michelle Schram on February 2, 2009, pursuant to investigative subpoena, and stated, among other things, that she had been diagnosed with cervical cancer which had metastasized to her bones and that she therefore had between six and twelve months of anticipated survival, and that she had prescriptions for all of the medications found in her urine. She stated that her oncologist was a Dr. James Hanson (phonetic), and that her primary care physician was currently Dr. James Scerpella. All of these statements were false.

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 Count I and II, above, violated Wis. Stat. § 441.07(1)(b), (c), and (d), and Wis. Adm. Code §§ N 7.03(1)(b) and N 7.04(2), (6), and (15). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

C. The conduct described in Count III, above, violated Wis. Stat. § 441.07(1)(b), (c), and (d), and Wis. Adm. Code §§ N 7.03(1)(b) and Wis. Adm. Code § N 7.04(1), (2), and (15). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

D. The conduct described in Count IV, above, violated Wis. Stat. § 441.07(1)(b), (c), and (d), and Wis. Adm. Code

§ N 7.04(intro). 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 Sarah A. Spaeth, R.N., to practice as a professional nurse in the State of Wisconsin is SUSPENDED for 60 days for the conduct set forth in Count IV, above, effective May 8, 2009, and then 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. 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.4. 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 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 specimen screening 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 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 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 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 specimens, (b) submit specimens of blood, hair, breath, urine, fingernail, saliva, and any additional tissue or product of the body, the collection of which does not require piercing the skin, (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 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 \$10,900, 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 they are paid in full, together with any accrued interest. Respondent may petition the Board for a payment plan lasting beyond 1/5/10; it is entirely within the discretion of the Board whether to grant, in whole or in part, such a petition, and Respondent shall not have a right to a hearing on any denial, in whole or in part, of such a petition.

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 July 23, 2009,

WISCONSIN BOARD OF NURSING, by:

Marilyn Kaufmann
A member of the Board