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Before The
State Of Wisconsin
BOARD OF NURSING

In the Matter of the Disciplinary Proceedings
Against **HOLLY M. ANDERSON, L.P.N.**,
Respondent

FINAL DECISION AND ORDER
DHA Case No. DRL-09-0122
LS0911201NUR

Division of Enforcement Case No. 09 NUR 190

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Holly M. Anderson, L.P.N.
7 St. Joseph Street
Markesan, Wisconsin 53946

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

The Department of Regulation and Licensing, Division of Enforcement (the "Division") filed a formal Complaint against Respondent Holly M. Anderson on or about November 23, 2009, alleging that on or about May 27, 2009¹, Respondent Anderson tested positive for Codeine and Morphine after a reasonable suspicion drug test, in violation of Wis. Adm. Code § N 7.04(2)², and further subjecting her to discipline pursuant to Wis. Stat § 441.07(1)(c)³. The Division maintains that Respondent Anderson did not have a prescription for either of these

¹ At the May 18, 2010 hearing in this matter, both parties referred to the date of the incident as May 26th, 2009, as well as May 27th, 2009.

² Wis. Admin. Code § N 704(2) defines as "misconduct or unprofessional conduct," "administering, supplying or obtaining any drug other than in the course of legitimate practice or otherwise prohibited by law." *See infra* at Conclusions of Law, ¶ 3.

³ Pursuant to Wis. Stat. § 441.07(1)(c), the Board of Nursing has authority to "revoke, limit, suspend or deny renewal of a license of a ... licensed practical nurse" if the board finds that the nurse has engaged in "acts which show the... licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency." *See infra* at Conclusions of Law, ¶ 2.

substances. On or about December 11, 2009, Respondent Anderson, by her attorney, Todd Snow, filed an Answer denying these allegations and affirmatively alleging that Respondent Anderson had a prescription for a drug or drugs that could cause a positive test result for Codeine and/or Morphine.

A Prehearing Conference was held by telephone on January 19, 2010, Amanda Tollefsen, administrative law judge, presiding. Respondent Anderson's attorney (Todd Snow) reiterated that Respondent Anderson had a prescription for a drug or drugs that could cause a positive test result for Codeine and/or Morphine, of which he was awaiting evidentiary proof. Because counsel for the Division indicated that she would dismiss these proceedings if there was proof that Respondent Anderson indeed had a prescription for a drug or drugs that could cause a positive test result for Codeine and/or Morphine, ALJ Tollefsen set a Continued Prehearing Conference for February 3, 2010, so as to allow Respondent Anderson time to come forth with proof of the above-referenced prescriptions.

A Continued Prehearing Conference was held by telephone on February 3, 2010, ALJ Amanda Tollefsen again presiding. Because Respondent Anderson's attorney had yet to receive any proof that Respondent Anderson had a prescription- for a drug or drugs that could cause a positive rest result for Codeine and/or Morphine, a contested case hearing was scheduled for May 18, 2010 at the Department of Regulation and Licensing.⁴ On April 30, the undersigned ALJ received an e-mail from Attorney Todd Snow indicating that Respondent Anderson had advised him that his services were no longer needed, and that she would be taking over her own defense. Pursuant to due notice, the contested case hearing in this matter was held at the Department of Regulation and Licensing on May 18, 2010.

Final Disposition of the Board of Nursing

On July 22, 2010, the Board of Nursing, completed its review and consideration of the entire record, including the recommendations of the ALJ, and now issues this Final Decision and Order, which adopts the following Findings of Fact, Conclusions of Law and Order, with an explanation of variance as to the length of the suspension imposed in this matter.

FINDINGS OF FACT

On the evidence presented, the undersigned ALJ makes the following findings of fact:

⁴ At hearing, Respondent Anderson testified that she never told her attorney (Todd Snow) that she had prescriptions for drugs that could test positive for Codeine and/or Morphine, and that she did not know that this had been his position. She testified that she merely told him that she thought that the Codeine [that she took] was her prescription at one time, but had expired. See Transcript, p. 28, ll. 4-13.

1. Holly M. Anderson, L.P.N., Respondent, date of birth February 23, 1957, is licensed by the Wisconsin Board of Nursing as a practical nurse in the State of Wisconsin pursuant to license number 28979-31. This license was granted on May 22, 1987.

2. Respondent Anderson's address of record with the Department of Regulation and Licensing is 7 Saint Joseph Street, Markesan, WI 53946.

3. At all times relevant to this action, Respondent Anderson was employed as a licensed practical nurse at Golden Living Center-Randolph, 502 S. High Street, Randolph, WI 53956.

4. On or about May 27, 2009, Respondent Anderson submitted to a reasonable suspicion drug test in accordance to work policy.

5. Respondent's urine drug test confirmed positive for Codeine, Morphine and Oxazepam.

6. Respondent had a prescription that explained the Oxazepam, but did not have a prescription for Codeine or Morphine.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. §§ 441.07 and 441.50(3)(b).

2. Pursuant to Wis. Stat. § 441.07(1)(c), the Board of Nursing has authority to "revoke, limit, suspend or deny renewal of a license of a ... licensed practical nurse " if the board finds that the registered nurse has engaged in "acts which show the... licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency."

3. Wis. Admin. Code § N 704(2) defines as "misconduct or unprofessional conduct," "administering, supplying or obtaining any drug other than in the course of legitimate practice or otherwise prohibited by law."

4. The conduct described in paragraphs 3 through 6 of the Findings of Fact constitutes a violation of Wis. Adm. Code § N 7.04(2), and subjects Respondent Anderson to discipline pursuant to Wis. Stat. § 440.07(1)(c).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

At her disciplinary hearing, Respondent Anderson testified that in the 24-hour period before she came into work on May 27, 2009, she had taken a Tylenol with Codeine (dosage unknown), a Percocet (dosage unknown), a Vicodin (500 milligrams), a double dose of Xanax⁵ (1 milligram), and two doses of Restoril⁶ (60 milligrams). (Transcript, pp. 20-25). She further testified that she did not have a current prescription for either the Tylenol with Codeine, the Percocet, or the Vicodin that she had taken – the Tylenol with Codeine and Percocet were taken from her “emergency narcotics” stash, and the Vicodin was her disabled husband’s. (Transcript, p. 48, ll. 1-9; pp. 26-27). What’s more, Respondent Anderson did not ask her husband for the Vicodin, or tell him that she took it. (Transcript, p. 27, ll. 8-10). Perhaps most damning, Respondent Anderson admitted that she was in no shape to be at work on the afternoon of May 27th, 2009, and that she acted suspiciously and needed to be tested [for drugs]. (Transcript, p. 29, ll. 5-8). Indeed, the uncontested evidence shows that Respondent Anderson caught the attention of her supervisor when she pushed a medical cart into a wall, and then stumbled against a door frame. (Transcript, p. 32, ll. 10-12). Respondent Anderson testified that she had no memory of this, in fact, she claims to have no memory of anything past 9:30 a.m. the morning of May 27th, including driving to work. (Transcript, p. 16, ll. 21-23; p. 18, ll. 20-25, p. 27, ll. 23-24).

Although Respondent Anderson contends that it was her prescribed Restoril, and not the other narcotics she had ingested that made her unable to work on the afternoon of May 27, 2009, (Transcript, p. 29, ll. 3-11), her ingestion of non-prescribed narcotics clearly violates Wis. Admin. Code § N 7.04(2), which includes as misconduct the “... obtaining [of] any drug other than in the course of legitimate practice or as otherwise prohibited by law.” Ordinarily, such conduct subjects respondents to discipline pursuant to Wis. Stat. § 441.07(1)(d)⁷, however, the Division does not allege discipline pursuant to this statute. Nevertheless, by showing up to work in a admittedly impaired state, Respondent Anderson is subject to discipline pursuant to Wis. Stat. § 440.07(1)(c) (*see supra* at Conclusions of Law, ¶ 2), which is alleged by petitioner. The only question that remains is what sort of discipline is appropriate in light of Respondent Anderson’s actions.

Appropriate Discipline

The Division requests that Respondent Anderson receive the same discipline the Nursing Board found appropriate *In the Matter of Disciplinary Proceedings against Sara A. Scheel, R.N.* (Stipulation, accepted November 5, 2009), namely a three years stayed suspension with drug

⁵ Otherwise known as Oxazepam.

⁶ Restoril is the brand name for a sleeping pill. (Transcript, p. 23, ll. 18-21).

⁷ Wis. Stat. § 441.07(1)(d) gives the Board of Nursing has authority to “revoke, limit, suspend or deny renewal of a license of a ... licensed practical nurse ” if the board finds that the registered nurse engaged in “misconduct or unprofessional conduct.”

testing and treatment. (Transcript, p. 50). In support of this recommendation, the Division argues that the instant case has many similarities to the *Scheel* case, including the fact that the respondent in *Scheel* “claimed that she took her daughter’s Vicodin to explain her positive drug test (hydromorphone).” (*Id.*)

For her part, Respondent Anderson argues that she realizes that she did something wrong, however, she has already suffered greatly for it. She alleges that she has not worked in the last year, and that she is losing her home. She pleads the Nursing Board not punish her three years for a one-day mistake.

A review of both *Scheel* and the case at hand leads the undersigned ALJ to believe that although many of the conditions ordered in *Scheel* are warranted here, a somewhat lesser period suspension is justified.

In *Scheel*, the respondent registered nurse underwent a drug test and tested positive for Hydromorphone after an pharmacy audit found that she had checked seven times more Hydromorphone and three times more Morphine than her peers in a two month period, and that a significant amount of both were either unaccounted for when compared to medical records, or “wasted,” and not recorded. Compared to these facts, which undoubtedly entail narcotics theft and records fraud, the respondent’s claim that her daughter’s hydrocodone caused her positive Hydromorphone test result is absurd.⁸

In the instant case, there is no evidence or allegations of narcotics theft and/or records fraud. Respondent Anderson’s reasonable suspicion drug test was the result of out of the ordinary behavior on one particular day. (Transcript, pp. 32-33). The record shows that Respondent Anderson practiced as a licensed practical nurse for 21 years without incident. (*See* Transcript, p. 15, ll. 19-25). Indeed, Respondent Anderson’s supervisor, Elaine Herron, R.N., testified that she had worked with Holly [Anderson] for several years, and recognized that she was “not herself” on the afternoon of May 27th, 2009. (Transcript p. 32, ll. 7-9). These facts support Respondent Anderson’s claim that she made a one day mistake.

Nevertheless, Respondent Anderson tested positive for three different kinds of narcotics on May 27th, 2009, two of which (Codeine and Morphine) she did not have any prescriptions for, and one of which (Morphine) she could not explain her positive test result for, except to offer that it was a false positive. (Transcript, p. 47, ll. 8-11). She was impaired beyond comprehension, and despite her claims that it was the Restoril that cause her impairment, there is credible testimony from Elaine Herron, R.N., that in her experience, Respondent Anderson’s behavior was not consistent with someone who had taken a sleeping pill, “it was much more bizarre than that.... Holly... was extremely low functioning, even for someone who had taken a sleeping pill or narcotic, much more so than if you were medicating for pain.” (Transcript, pp. 39-40). What’s more, Respondent Anderson drove to work in her admittedly improper condition. And though she now rather conveniently claims to have no recollection of giving her

⁸ Indeed, a toxicologist consulted by the Division of Enforcement opined that if there was no hydrocodone in the urine sample (which it does not appear that there was), it was highly unlikely that the hydromorphone in respondent’s sample came from hydrocodone.

first urine sample, Respondent Anderson appears to have been “with it” enough to have tried to dilute it with water. (See Transcript, pp. 44-45; 33-34).

The above circumstances lead the undersigned ALJ to believe that, at the very least, Respondent Anderson needs an AODA/Mental Health Assessment, and that in all probability, she requires drug treatment and testing.⁹ Unfortunately for Respondent Anderson, this takes time. In that vein, the undersigned ALJ believes that an 18-month suspension of Respondent Anderson’s nursing license is warranted. The purpose of discipline is to (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). All three goals will be accomplished by an 18-month suspension. Respondent Anderson’s suspension, however, shall be stayed upon her petitioning the Board, and providing proof of compliance with the drug treatment and screening requirements in Sections C and D of the below Order.

ORDER

IT IS THUS ORDERED, effective the date of this Order:

SUSPENSION

A.1. The license of Holly M. Anderson, L.P.N., to practice as a licensed practical nurse in the State of Wisconsin is SUSPENDED for a period of not less than three (3) years.

A.2. The privilege of Holly M. Anderson, L.P.N. to practice as a licensed practical nurse in the State of Wisconsin under the authority of another state’s license pursuant to the Nurse Licensure Compact is also SUSPENDED for a period of not less than three (3) years.

A.3. During the pendency of this Order and any subsequent related orders, Respondent Anderson 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.4. Respondent Anderson shall mail or physically deliver all indicia of Wisconsin nursing licensure to the Department Monitor within 14 days of the effective date of this order. Limited credentials can be printed from the Department of Regulation and Licensing website at <http://drl.wi.gov/index.htm>.

⁹ At the May 18, 2010 Hearing, Respondent Anderson presented evidence showing that she underwent an AODA/Mental Health Assessment on May 5, 2010, and that the recommendation of that assessment was for medication management, but no drug treatment. (Transcript, p. 52, ll. 5-20, Exhibit No. 100). Because it was not offered to the Division until the time of hearing, and because it was not previously approved by the Division (see Transcript, p. 53, ll. 5-17), it will not be accepted.

A.5. Upon a showing by Respondent Anderson of continuous, successful compliance for a period of no less than three (3) years with the terms and conditions of this Order, the Board shall grant a petition by the Respondent under paragraph D.4. for return of full Wisconsin licensure.

A.6. The Board may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at anytime.

STAY OF SUSPENSION

B.1. The suspension of Respondent Anderson'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 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 Anderson 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 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 Anderson 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.

B.4. The Board or its designee may reinstate the stay if provided with sufficient information that Respondent Anderson 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 Anderson 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 Anderson shall undergo an AODA assessment from an assessor acceptable to the Board or its designee. At the time of the assessment, Respondent Anderson shall provide the assessor with a copy of this Final Decision and Order.

C.2. If the assessor deems it necessary, Respondent Anderson shall enter into and continue in a drug 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 the Treater.

C.3. Respondent shall immediately provide the Treater with a copy of this Final Decision and Order and all other subsequent orders.

C.4. The Treater shall be responsible for coordinating Respondent Anderson'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 the Treater is unable or unwilling to serve as the Treater, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.

C.5. The 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 Anderson's progress in the drug treatment program. The Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

C.6. Respondent Anderson shall provide and keep on file with the 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 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.

Sobriety

C.7. Respondent Anderson 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 Anderson 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 Anderson 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 the Treater and the Board or its designee.

C.8. Respondent Anderson shall abstain from all use of over-the-counter medications or other substances which may mask consumption of controlled substances, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.

C.9. Respondent Anderson shall report all medications and drugs, over-the-counter or prescription, taken by Respondent to the 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.6 above, within 24 hours of a request by the 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.10. Respondent Anderson 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.11. At the time Respondent Anderson 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 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.
- (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.12. The Approved Program shall require the testing of urine specimens at a frequency of not less than twenty-four (24) 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.13. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances, Respondent Anderson 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.14. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent Anderson 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.15. All confirmed positive test results shall be presumed to be valid. Respondent Anderson must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.

C.16. 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.17. Respondent Anderson shall not work as a nurse or other health care provider in a setting in which Respondent has direct access to controlled substances.

C.18. Respondent Anderson 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.19. Respondent Anderson 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.20. It is Respondent Anderson'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.21. Respondent Anderson 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 Anderson 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 Anderson 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 Anderson may petition the Board for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than six (6) months 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 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 Anderson 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 all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and Licensing and sent to:

**Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

within one hundred eighty (180) days of this Order. In the event Respondent fails to timely submit any payment of costs, the Respondent's license (# 30-140147) SHALL BE

SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

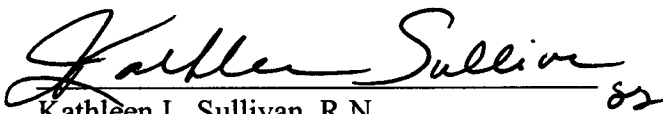
D.7. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 441.07.

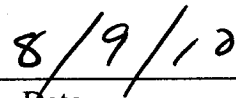
EXPLANATION OF VARIANCE

Based upon the evidence in the record of the proceedings, the Board has determined that it is appropriate to increase the length of suspension recommended by the ALJ in view of the need for an adequate period of AODA treatment and monitoring to ensure the respondent's sustained recovery from substance abuse and to protect the public.

The terms of this variance fulfills the requirements of Wis. Stat. § 227.46(4), which provides that in any case which is a class 2 disciplinary proceeding, the hearing examiner shall prepare a proposed decision, which includes findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case. Although the majority of the recommended findings, conclusions and opinion were satisfactory and acceptable, the reduced time period for the suspension, treatment and monitoring was not considered persuasive by the Board based upon the record evidence.

STATE OF WISCONSIN
BOARD OF NURSING


Kathleen L. Sullivan, R.N.,
Acting Chairperson


Date