

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

BARBARA J. WARNER, R.N.,
RESPONDENT.

Order 0000569

Division of Enforcement Case #07 NUR 249

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

Barbara J. Warner
7950 N. Edgeworth Dr.
Milwaukee, WI 53223

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 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. 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. Barbara J. Warner (dob: 6/28/59) 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 #145471. This license was first granted 12/4/03. Respondent is also licensed in New York.

2. While employed as a professional nurse at St. Joseph Hospital, Milwaukee, Wisconsin, Respondent's charting of controlled substances had the following discrepancies:

- On 3-13-07, 1mg Ativan® [lorazepam] was ordered for L.T., 2mg were taken out, 1mg was given, none was wasted, 1mg was missing.
- On 3-14-07, 1mg morphine was ordered for J.G., 2mg were taken out, 1mg was given, none was wasted, 1mg was missing.

- On 3-20-07, 1mg Dilaudid® [hydromorphone] was ordered for M.T., 2mg was taken out, 1mg was given, none was wasted, 1mg was missing.
- On 3-21-07, 4mg morphine was taken out for G.B.; however, he was not the Respondent's patient and the Respondent did not document administration.
- On 3-25-07, 1mg Ativan® [lorazepam] was ordered for T.E., 2mg were taken out, 1mg was given, none was wasted, 1mg was missing.
- On 3-28-07, 1mg Dilaudid® [hydromorphone] was ordered for M.A., 2mg was taken out, 1mg was charted as given, and none was wasted.
- On 4-7-07, the Respondent documented giving 4mg morphine to M.P.; however, she was not the Respondent's patient.
- On 4-23-07, the Respondent documented giving 2mg morphine to T.J.; however, she was not the Respondent's patient.
- On 4-26-07, 1 Vicodin® (hydrocodone with acetaminophen) was ordered for a different T.J., 1 was taken, there was no documentation of giving the Vicodin®, and none was wasted.
- On 5-1-07, 1mg Dilaudid® [Hydromorphone] was ordered for D.H., 2mg was taken out, 1mg was charted as given, and 1mg was not wasted.
- On 5-5-07, 1mg morphine was ordered for M.C.; however, 2mg Morphine was taken out, it was not charted as given, and nothing was wasted.
- On 5-18-07, 1mg Dilaudid® [hydromorphone] was ordered for J.V., 4mg was taken out, none was wasted. Later 1mg Dilaudid® was ordered for J.V., 2mg was taken out, the patient refused the medication, and none was wasted again.
- On 5-20-07, 1 Percocet® [oxycodone with acetaminophen] was taken out for D.S.; however, there was no documentation of it being administered to DS.
- On 5-25-07, 1 Vicodin® [hydrocodone with acetaminophen] was ordered for C.C.; however, there was no documentation that it was given.
- On 5-25-07, 4mg morphine was taken for L.W.; however, there was no physician order, it was not charted as given, and was unaccounted for.
- On 5-25-07, 1mg Dilaudid® [hydromorphone] was ordered for D.E., 2mg was taken, none was charted as given, and none was wasted.
- On 6-2-07, 2mg morphine was ordered for L.Y. It was charted and then crossed out. Nothing was wasted.
- On 6-2-07, 5ml acetaminophen with codeine was ordered for A.M.; 5ml acetaminophen with codeine was taken, it was not charted as being given, and nothing was wasted.
- On 6-3-07, 1 Tylenol #3® (acetaminophen with codeine) was taken for S.B.; however, there was no physician order, it was not charted as given, and was unaccounted for.

3. Respondent denies any diversion or substance abuse, and admits the failures to document, as described above; she represents to the Board that these were a result of insufficient time to complete her documentation in a fast-paced environment. The Board finds that this is not an acceptable reason for failing to document.

4. Respondent is currently engaged in nursing practice.

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. Adm. Code § N 7.03(1)(b). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

IT IS ORDERED, that the attached Stipulation is accepted.

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

SUSPENSION

- A.1. The license of Barbara J. Warner, R.N., to practice as a nurse in the State of Wisconsin is **SUSPENDED** for an indefinite period.
- A.2. The privilege of Respondent to practice as a nurse in the State of Wisconsin under the authority of another state's license pursuant to the Nurse Licensure Compact is also **SUSPENDED** for an indefinite period.
- 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 a 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 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>.
- A.5. 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.6. for return of full Wisconsin licensure. The Board may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension of Respondent's Wisconsin nursing license shall be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent 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. If Respondent is ever diagnosed with substance abuse, Respondent shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee ("Treater"). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. If Respondent is ever diagnosed with substance abuse, Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. If Respondent is ever diagnosed with substance abuse, Treater shall be responsible for coordinating Respondent's rehabilitation and treatment 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 required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. If Respondent is ever diagnosed with substance abuse, the rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by D.5., below.
- C.5. If Respondent is ever diagnosed with substance abuse, 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 drug and alcohol treatment. 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 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. If Respondent is ever diagnosed with substance abuse, Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported quarterly to Treater and the Department Monitor.

Sobriety

- C.8. If Respondent is ever diagnosed with substance abuse, 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. Copies of these releases shall immediately be filed with the Department Monitor.
- 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 to Treater and the Department Monitor all medications and drugs, over-the-counter or prescription, taken by Respondent. Reports must be received within 24 hours of ingestion or administration of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.

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 ("Approved Program").
- 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, blood, sweat, fingernail, hair, saliva or other 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 49 times per year, for the first year of this Order. After the first year, Respondent may petition the Board on an annual basis for a modification of the frequency of tests. The Board may adjust the frequency of testing on its own initiative at any time.
- C.15. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as 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) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.
- 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, fault in the chain of custody or other valid defense.
- C.18. The Approved Program shall submit information and reports to the Department Monitor as directed.

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 Respondent is ever diagnosed with substance abuse, and if Treater subsequently recommends restrictions on such access, the Board or its designee may impose such restrictions.
- C.20. If Respondent is ever diagnosed with substance abuse, 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.
- C.21. If Respondent is ever diagnosed with substance abuse, Respondent shall practice only in a work setting pre-approved by the Board or its designee.
- C.22. If Respondent is ever diagnosed with substance abuse, Respondent may not work in a home health care, hospice, pool nursing, or agency setting.
- C.23. 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.24. 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.25. 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 Avenue
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.
- D.3. 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.4. 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.5. Respondent may petition the Board on an annual basis for modification of the terms of this Order, however no such petition for modification shall occur earlier than one year from the date of this Order. Any 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.
- D.6. Respondent may petition the Board for termination of this Order anytime after five years from the date of this Order. However, no petition for termination shall be considered

without a showing of continuous, successful compliance with the terms of the Order, for at least five years.

Costs of Compliance

- D.7. 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.8. Respondent shall pay costs of \$1,500, to the Department of Regulation and Licensing, within 6 months of the date of this Order. In the event Respondent fails to timely submit any payment of costs, Respondent's license may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until they are paid in full, including any accrued interest.

Additional Discipline

- D.9. 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.

Wisconsin Board of Nursing

By: Kathleen Auer
A Member of the Board

December 2, 2010
Date

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