

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 :
 :
MICHELLE SVOKE, R.N., : FINAL DECISION AND ORDER
RESPONDENT. : AS ORDER 0000023 NUR
 :

[Division of Enforcement Case # 09 NUR 007]

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

Michelle Svoke, R.N.
3051 Pine Road
Mosinee, WI 54455

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 adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Michelle Svoke, R.N., Respondent, date of birth July 27, 1970, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 151661, which was first granted August 11, 2005.
2. Respondent's last address reported to the Department of Regulation and Licensing is 3051 Pine Road, Mosinee, WI 54455.

3. From 2004 until her employment was terminated on May 8, 2009, Respondent was employed as a registered nurse at Aspirus Wausau Hospital (Aspirus) in Wausau, Wisconsin. Respondent was first employed there as a student nurse intern and then continued to work as a registered nurse in the Birthing Center.

a. Aspirus pharmacy reports showed that Respondent had an unusually high number of occurrences of wasted Vicodin, which contains hydrocodone, a class III controlled substance. The reports revealed suspicious wasting of 20 tablets of Vicodin from January 19, 2008 to April 8, 2008. Administrators met with Respondent who admitted falsely recording wasting (destruction) of Vicodin, which Respondent actually took home for her own use for chronic low back pain.

b. Respondent entered into a Return to Work Contract with Aspirus with conditions for treatment and for returning to work. Conditions for treatment included, among other things, attending an evaluation at Aspirus Employee Assistance Services (EAS) and following all recommendations, random alcohol/drug testing for five (5) years, periodic case management checks to determine success of the plan, and self-report to the Department of Regulation and Licensing Impaired Professionals Procedure (IPP) by April 18, 2008. Conditions for returning to work included:

- 1) A negative drug screen prior to returning to work.
- 2) Work restrictions which prohibited dispensing of narcotics for a minimum of one year.
- 3) Any problem with work performance due to alcohol or other drugs would be grounds for disciplinary action.
- 4) Regular work attendance was stressed.
- 5) Breaking contract terms would lead to further disciplinary action.

c. Respondent did not apply to the Department's IPP by April 18, 2008. Respondent said she had trouble reaching anyone for IPP information. On January 8, 2009, Respondent spoke with the Department's IPP coordinator who told her to obtain an application form online and submit it. On January 13, 2009, Respondent met with Human Resources personnel at Saint Claire's (see below) who provided her with the IPP application. Respondent submitted an application but was denied.

4. Respondent was also working at Saint Clare's Hospital-Ministry Health Care in Weston, Wisconsin. She did not inform her supervisor there of what had occurred at Aspirus.

a. In January 2009, the pharmacy director at Saint Clare's discovered that Respondent had been removing 20 mg of Nubain from the Pyxis machine, administering 10 mg to patients and failing to record the waste of the remaining 10 mg. An order of a practitioner is required to legally obtain or possess Nubain, which contains nalbuphine an analgesic.

b. At that time, a patient also reported that she should have received 2 Norco and 1 Ibuprofen but Respondent gave her 1 Norco and 2 Ibuprofen. Norco contains hydrocodone, a Schedule III controlled substance.

c. An investigation showed nineteen suspicious dispensings of Nubain and Norco by Respondent from November 15, 2008 to January 7, 2009 and administrators confronted Respondent. Respondent admitted increasing dosages on patient charts giving the patient the wrong medications so that she could take the medications for herself because of her back pain. Respondent also told them she had been disciplined at Aspirus for using another employee's Pyxis password to falsely record medication waste of Vicodin and then using the medication herself.

d. On January 13, 2009, Saint Clare imposed a plan of action which included:

- 1) Immediate drug testing. The results of which were negative.
- 2) Mandatory referral to the Department's IPP. On January 26, 2009, Respondent submitted an application for participation in IPP. She was determined to be ineligible.
- 3) Mandatory EAP counseling. Respondent was allowed to continue with the Aspirus counselor but was required to have at least one meeting with the Saint Clare's EAP prior to returning to work.

5. On May 8, 2009, Respondent's employment at Aspirus was terminated as a result of her having violated her Return to Work Contract.

a. Aspirus ran a report of occurrences from April 2008 to March 2009, where Respondent documented administration of Nubain, Vicodin or Tylenol #3 on patients' Medication Records. There were two pages of such occurrences, which were in violation of Respondent's Return to Work Contract.

b. On May 7, 2009, Respondent documented a patient's pain level as "2," but for numerous prior shifts the patient's pain level was consistently "0." Because another nurse was busy with a different patient who was in labor, that nurse handed Respondent an oxycodone tablet to give to the patient. Respondent falsely documented on the Medication Record that the medication was administered by the other nurse.

c. Another nurse reported that while Respondent was on work restrictions, the nurse had retrieved Vicodin from the Pyxis and handed them to Respondent to give to the patient because that nurse was busy. This was an infraction of Respondent's Return to Work Contract.

6. On May 19, 2009, Respondent completed an AODA assessment at Family Counseling Services in Wausau, Wisconsin. The results indicated a diagnosis of opioid abuse (305.50). Weekly outpatient sessions were recommended and Respondent began attending them.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and authority to enter into this stipulated resolution pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by obtaining and using 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. Admin. Code § N 7.04(2) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

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 Michelle Svoke, R.N., Respondent, to practice as a registered nurse in the State of Wisconsin is SUSPENDED for an indefinite period.
- A.2. The privilege of Respondent to practice as a registered nurse in the State of Wisconsin under the authority of another state license pursuant to the Nurse Licensure Compact is also SUSPENDED for an indefinite period.
- A.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 Regulation 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 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 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.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 three (3) months**, but any time after three (3) months, 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 has been 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 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 either by:
- (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. RL 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, in a drug and alcohol treatment program at a treatment facility (Treater) acceptable to the Board or its designee. Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater, but not less than twice per month for the first year. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine,

blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee.
- C.10. Respondent shall abstain from all use of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.
- C.11. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by Respondent to Treater and the Department Monitor within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. If Respondent has not provided a release as required by C.9 above, within 24 hours of a request by Treater or the Board or its designee, Respondent shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Respondent's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11 ("Approved Program"). A list of Approved Programs is available from the Department Monitor.
- C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:

- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b.) Production of a urine specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.14. The Approved Program shall require the testing of urine specimens at a frequency of not less than 48 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. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Treater or the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, (c) furnish any specimen in a directly witnessed manner.
- C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.
- C.18. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11.

Practice Limitations

- C.19. Respondent 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.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 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 \$350.00 to the Department of Regulation and Licensing within 120 days 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 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.

Wisconsin Board of Nursing

By: Marilyn Kaufmann
A Member of the Board

1/28/10
Date