

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

| | | |
|----------------------------------|---|--------------------------|
| IN THE MATTER OF | : | |
| DISCIPLINARY PROCEEDINGS AGAINST | : | |
| | : | FINAL DECISION AND ORDER |
| KATHLEEN M. WHALEN, R.N., | : | |
| RESPONDENT. | : | ORDER 0001000 |

Division of Enforcement Case No. 10 NUR 125

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

Kathleen Whalen, R.N.
1372 30th Avenue #9B
Kenosha, WI 53144

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Board of Nursing
Department of Regulation & 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 the attached Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Kathleen Whalen, R.N., Respondent, (DOB 04/08/1961) is licensed as a professional nurse in the State of Wisconsin (license no. 145664-30). This license was first granted on October 21, 2003.

2. Respondent's most recent address on file with the Wisconsin Board of Nursing is 1372 30th Avenue #9B, Kenosha, WI 53144.

3. Between June 2008 and March 2010, Respondent was employed as a professional nurse at Brookside Care Center in Kenosha, Wisconsin.

4. On February 20, 2010, Respondent documented that she gave Resident A Percocet at 1900 hours, however Resident A was on pass and out of the facility at that time. When questioned, Resident A stated she did not take any Percocet as indicated in Respondent's records.

5. The Director of Nursing (DON) initiated an investigation and checked other residents' narcotic records. The DON found several other discrepancies in Respondent's record keeping of narcotics and anti-anxiety PRN medications.

6. Respondent consented to a just cause drug test and was accompanied by the DON to the local emergency room. Respondent's drug test results were negative for Percocet.

7. During further investigation, another resident reported not receiving narcotic medications as recorded by Respondent. The DON also discovered that Respondent recorded signing out narcotic doses as given to residents and then signing out additional doses as "wasted."

8. Upon questioning, Respondent admitted to sloppy documentation but could not explain why residents would deny taking the narcotics she signed out. Respondent stated she probably took the wasted medications for another resident as the nurses sometimes do that, however no other residents on Respondent's unit take that particular medication. Respondent's employment was terminated.

9. In February 2005, Respondent, the State of Illinois Department of Financial and Professional Regulation Division of Professional Regulation ("Department"), and the Nursing Board of the State of Illinois, entered into an Agreement of Care, Counseling and Treatment ("Agreement"). Within the Agreement, the parties stipulated that the Department is in receipt of information that Respondent has an addiction to opiates, and that she tested positive for Propoxyphene while working at a hospital as an employee of a travel nurse agency. The Agreement included the following conditions:

a. For a period of three years:

1. Respondent shall comply with all substantive conditions of the Aftercare Agreement entered into with the Illinois Professionals Health Program.
2. Respondent shall routinely attend approved self-help group meetings.

3. Respondent shall submit monitored random urine, blood or other toxicology screens within twenty-four (24) hours of a request made by the Aftercare Program.
4. Respondent shall cause copies of quarterly reports from her Aftercare Program to be sent to the Department which document her compliance.
5. Respondent shall secure a primary care physician and shall ensure the submission to the Department of quarterly reports from her primary treating physician regarding Respondent's condition, prognosis, and any medication prescribed.
6. Respondent shall abstain from the consumption of alcohol and use of mood altering and psychoactive drugs except those prescribed by a primary care or treating physician.
7. Respondent shall submit a personal statement on a quarterly basis regarding her compliance with the Aftercare Agreement and the Agreement. Respondent shall notify the Department of her source of employment and the nature of that practice if employed as a nurse.

10. Respondent's license to practice nursing in the State of Illinois expired on May 31, 2008, but Respondent maintains the license in inactive status.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction to act in this matter, pursuant to Wis. Stat. § 441.07, and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. The conduct described in paragraphs 4-8 above constitute a violation of Wisconsin Administrative Code § N7.04(2) and subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).

ORDER

IT IS ORDERED:

1. Kathleen M. Whalen, R.N., is REPRIMANDED.
2. The license of Kathleen M. Whalen, R.N., to practice nursing in the state of Wisconsin, and her privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, are LIMITED as follows:

- a. Respondent, at her own expense, shall complete four (4) hours of pre-approved continuing education in safe medication dispensing and documentation, within 90 days of the date of this Order. Respondent is responsible for finding an appropriate course and submitting the course information to the Board for approval prior to taking the course and in sufficient time to obtain board approval within the 90 day time frame, taking into account the board's meeting schedule. Respondent shall provide proof of completion of the continuing education to the Department Monitor.
- b. For a period of at least two (2) years from the date of this Order, Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department ("Approved Program").
 - i. 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:
 - ii. Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - iii. 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.
 - iv. The Approved Program shall require the testing of specimens at a frequency of not less than 49 times per year. 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. For a period of at least two (2) years from the date of this Order, Respondent shall work only under direct supervision, and only in a work setting pre-approved by the Board. Respondent shall not work in a home health, agency or pool position.
- d. For a period of at least two (2) years from the date of this Order, Respondent shall arrange for quarterly reports from her nursing employer(s) reporting the terms and conditions of her employment and evaluating her work performance.
- e. Pursuant to Uniform Nurse Licensure Compact regulations, Respondent's nursing practice is limited to Wisconsin during the pendency of this limitation. This requirement may be waived only upon the prior written authorization of both the Wisconsin Board of

Nursing and the regulatory board in the state in which Respondent proposes to practice.

- f. Respondent shall notify the Department Monitor of any change of nursing employment during the time in which the Order is in effect. Notification shall occur within fifteen (15) days of a change of employment and shall include an explanation of the reasons for the change.

3. After two (2) years from the date of this Order, Respondent may petition the board for the modification or termination of the limitation. The Board may grant or deny the petition, in its discretion, or may modify this Order as it sees fit.

4. Respondent shall, within one hundred twenty (120) days of the date of this Order, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of Seven Hundred Dollars (\$700.00) pursuant to Wis. Stat. § 440.22(2).

5. All petitions, payments, reports and other correspondence shall be mailed or delivered to:

Department Monitor
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

6. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit payment of the costs as ordered, or fails to comply with the ordered continuing education as set forth above, 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.

7. This Order is effective on the date of its signing.

Wisconsin Board of Nursing

By: L. Weir RN APNP
A Member of the Board

7/21/11
Date