

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."
The status of an appeal may be found on court access websites at:
<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wsccl>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov



Before The
State Of Wisconsin
BOARD OF NURSING

In the Matter of the Disciplinary Proceedings
Against **DARLENE E. MUELLER, R.N.**,
Respondent

FINAL DECISION AND ORDER WITH
VARIANCE

DHA Case No. SPS-11-0059

ORDER 0001340

Division of Enforcement Case No. 11 NUR 135

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

Darlene E. Mueller
7114 North 97th Street
Milwaukee, WI 53224

Wisconsin Board of Nursing
P. O. Box 8935
Madison, WI 53708-8935

Department of Safety and Professional Services, Division of Enforcement, by

Attorney Jeanette Lytle
Department of Regulation
Division of Enforcement
P. O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services¹, Division of Enforcement (the "Division") filed a formal Complaint against the Respondent, Darlene Mueller. The Division filed said Complaint with the Division of Hearings and Appeals on June 20, 2011. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing, via both certified and regular mail, to Respondent Mueller at her last

¹ formerly known as the Department of Regulation and Licensing

reported address to the Department of Safety and Professional Services; 825 South 14th Street, Milwaukee, WI 53204. Said documents were further sent to Respondent Mueller, via both certified and regular mail, at the following address: 7114 North 97th Street, Milwaukee, WI 53224. The Notice of Hearing stated that Respondent Mueller was required to file a written Answer to the Complaint within 20 days, failing which “[she would] be found to be in default and a default judgment [could] be entered against [her] on the basis of the Complaint and other evidence and the Wisconsin Board of Nursing [could] take disciplinary action against [her] and impose the costs of the investigation, prosecution and decision of this matter upon [her] without further notice or hearing.”

To date, no Answer has been filed. The administrative law judge (ALJ) thereafter scheduled a prehearing conference for July 15, 2011. Notice of this prehearing conference was sent to Respondent Mueller at both of the above addresses, with instructions that she provide the telephone number at which she could be reached for the July 15, 2011, telephone conference to the administrative law judge no later than July 12, 2011. Respondent Mueller did not contact the ALJ by July 12, 2011, with a telephone number that she could be reached at for the July 15, 2011, telephone conference, and the telephone conference that was conducted on that date was without Respondent’s participation.

However, later that same day (July 15, 2011), Respondent contacted the administrative law judge’s assistant and informed her that (1) she was currently homeless, (2) her mail was being forwarded from her 97th Street address to her father², (3) she just learned that there had been a prehearing conference scheduled for that day, and (4) she would be available by a certain telephone number for the rest of the day. The prehearing conference was thus continued later in the day. At said prehearing conference, Respondent expressed her desire to contest the allegations against her. A contested case hearing was thus scheduled for Wednesday, September 28, 2011. Additionally, deadlines were set for the disclosure of witnesses (August 15, 2011), the disclosure of discovery (September 14, 2011), and the exchange of exhibits (September 21, 2011).

Respondent failed to appear at the time and place set for the hearing. She further failed to file a witness list, appear for scheduled depositions³, and file any exhibits. The Division thus moved for default against Respondent pursuant to Wis. Admin. Code § SPS 2.14 and SPS § 2.09. Administrative Law Judge Amanda Tollefsen, presiding, granted the motion and upon the record and all proceedings held in this matter issued a Proposed Decision and Order dated November 1, 2011.

² Respondent indicated that all correspondence should continue to be sent to this address.

³ On September 7, 2011, Respondent called Attorney Lytle’s paralegal to inform her she would not be appearing for her deposition, which had been properly noticed for September 9, 2011. Upon receiving this information, Attorney Lytle left voice mails with Respondent, reminding her of the requirement to appear for depositions, and indicating that it would be rescheduled for September 14, 2011. Respondent responded that she would not be available for deposition on September 14, 2011, but that she would agree to stipulate this matter. However, Attorney Lytle never received a signed stipulation from Respondent. (See September 9, 2011 letter from Attorney Lytle to Administrative Law Judge Amanda Tollefsen; September 21, 2011 Affidavit of Jeanette Lytle).

The Respondent through her legal counsel submitted *Respondent Darlene E. Mueller's Objections to the Proposed Decision and Order* and *Respondent Darlene E. Mueller R.N.'s Legal Argument in Support of Her Objections to the Proposed Decision and Order and Exhibit List of Respondent Darlene E. Mueller, R.N.* The Division filed *State's Response to Respondent's Objections*. The Board of Nursing reviewed the *Proposed Decision and Order* and the parties' submissions at its regularly scheduled meeting on January 26, 2012, and based upon its review and consideration of the evidence of record, was not persuaded that re-opening the default judgment would be appropriate given the Respondent's failure to respond and appear in the proceedings after having received actual notice, having made an initial appearance and after having been given ample opportunity to participate in the proceedings. Moreover, the requested for re-opening of the default in this matter would likely lead to nearly the same result recommended by the ALJ; the imposition of the Board's standard impairment order. This is especially true given Respondent's admission that she has a substance abuse problem and is agreeable to monitoring.⁴ For these reasons the Board now adopts the following as the *Final Decision and Order with Variance* in this matter.

FINDINGS OF FACT

1. Darlene E. Mueller, R.N. (Respondent), date of birth April 10, 1966, is licensed by the Wisconsin Board of Nursing as a registered nurse pursuant to license number 125117-30, which was first granted on January 22, 1997.
2. Respondent's last address reported to the Department of Safety and Professional Services was 825 South 14th Street, Milwaukee, WI 53204.
3. At all times relevant, Respondent was employed as a registered nurse at Recovery Network, Inc. in Milwaukee, Wisconsin.
4. On March 14, 2011, Respondent took a patient/resident with her to run errands. While running errands, Respondent stopped and picked up street drugs. Respondent admitted to using cocaine and to the patient/resident using cocaine and opiates. Respondent returned to work under the influence and worked in the capacity of a house manager and registered nurse. Respondent's employment was terminated on March 15, 2011.

⁴ Respondent's legal counsel submitted her own version of a proposed final decision and order which mirrored many of the provisions that were in the ALJ's Proposed Decision and Order; e.g; participation in a drug and alcohol treatment program, drug and alcohol screens, AA/NA meetings, sobriety, restriction on access to narcotics in practice setting, quarterly work reports, and providing copy of the order to her employer. However, the Respondent's version of the order provided for an administrative warning to be issued to Respondent. The Respondent's version also provided for fewer drug screens and did not include direct supervision in the work setting. The ALJ's proposed order provided for an indefinite suspension of Respondent's license with an option for a stay of suspension, which constitutes formal discipline. An administrative warning is not a disciplinary order, is private and confidential, and as result cannot impose enforceable requirements or limitations upon Respondent's nursing license. The ALJ's recommended proposed order is consistent with the Board's standard impairment order.

5. During the Division of Enforcement's investigation of the above matter, it was discovered that in 2008, Respondent was convicted of the following in Washington County Case Number 2008CM000506:

- a. Possession of drug paraphernalia, a violation of Wis. Stat. § 961.573(1), and class U misdemeanor; and
- b. Misdemeanor Retail Theft (\leq \$2,500), a violation of Wis. Stat. § 943.50(1m)(b), and class A misdemeanor.

6. Respondent was sentenced to a two year probation period and was ordered not to possess/consume controlled substances without a valid prescription and to participate in all counseling and/or treatment programs directed by the probation agent.

7. As set out in the Procedural History above, despite expressing her desire to contest the allegations against her at the prehearing conference of July 15, 2011, Respondent Mueller did not appear for the September 28, 2011 contested case hearing.⁵ Nor did she ever file an Answer to the Division's Complaint.

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. Wisconsin Stat. § 440.03(1) provides that the department [of Safety and Professional Services] may promulgate rules defining uniform procedures to be used by the department... and all examining boards and affiliated credentialing boards attached to the department or an examining board, for... conducting [disciplinary] hearings. These rules are codified in Wis. Admin. Code ch. SPS.

3. Wisconsin Administrative Code § SPS 2.08(1) provides, in relevant part, that "[t]he complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent" and that "[s]ervice by mail is complete upon mailing." Because the Complaint and Notice of Hearing, Notice of Telephone Prehearing Conferences, and Notice of Default were mailed to Respondent Mueller at her last known address, she was duly served with these papers pursuant to Wis. Admin. Code § SPS 2.08.

4. As the licensee, it was Respondent Mueller's responsibility to keep her address on record with the Department of Safety and Professional Services current. Wis. Stat. § 440.11(1).

5. Wisconsin Admin. Code § SPS 2.09 provides that "An answer to a complaint shall be filed within 20 days from the date of service of the complaint."

⁵ Consistent with Wis. Admin. Code § HA 1.07(3)(c), the administrative law judge waited 15 minutes after the time set for the commencement of the hearing for Respondent to appear. She failed to do so within this time.

6. Wisconsin Admin. Code § SPS 2.14 further provides that “If the respondent fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence....”

5. Wisconsin Admin. Code § HA 1.07(3)(b) additionally provides that “If a respondent fails to appear, the administrative law judge may... take the allegations in an appeal as true as may be appropriate....”

6. Respondent Mueller has defaulted in this proceeding pursuant to Wis. Admin. Code § HA 1.07(3)(c) by failing to appear at the time and date designated for the contested case hearing (September 28, 2011 at 10:00 a.m.), and failing to file an Answer to the Division’s Complaint.

7. When a respondent is in default, “the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence.” Wis. Admin. Code § SPS 2.14. *See also*, Wis. Admin. Code § HA 1.07(3)(b).

8. 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 registered nurse,” or may reprimand the registered nurse if the Board finds that the registered nurse has committed “acts which show the registered nurse, nurse-midwife or licensed practical nurse to be unfit or incompetent by reason of ... abuse of alcohol or other drugs....”

9. Wisconsin Admin. Code § N 703(2), defines “abuse of alcohol or other drugs,” as “the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice.”

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

11. Wisconsin Admin. Code § N 704 defines “misconduct or unprofessional conduct” to include: “Any practice or behavior which violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public.”

12. Wisconsin Admin. Code § N 704(1) further defines “misconduct or unprofessional conduct” to include: “Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing.”

13. Wisconsin Admin. Code § N 704(2) further defines “misconduct or unprofessional conduct” to include: “Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law.”

14. Respondent’s conduct as described in paragraphs 4-5 constitutes misconduct or unprofessional conduct pursuant to Wis. Admin. Code §§ N 7.04(1) and (2) and constitutes abuse of alcohol or other drugs pursuant to Wis. Admin. Code § N 7.03(2). Therefore, Respondent is subject to discipline pursuant to Wis. Stat. §§ 441.07(1)(c) and (d).

OPINION

Violations of Wisconsin Statute and Administrative Code

By failing to answer the Complaint filed against her and by failing to appear for the contested case hearing in this case, Respondent Mueller defaulted in these proceedings, and as such, admitted all allegations contained within the Complaint. (*See* Wis. Admin. Code §§ HA 1.07(3)(c) and SPS 2.14, as discussed above). As such, it is undisputed that Respondent Mueller: (1) took a patient/resident of a rehabilitation facility to get street drugs, (2) consumed street drugs with said patient, (3) returned to work while under the influence of said street drugs, and (4) prior to these events, in 2008, was convicted of possession of drug paraphernalia (a class U misdemeanor) and misdemeanor retail theft (a class A misdemeanor) and sentenced to a two-year probation period and ordered not to possess/consume controlled substances without a valid prescription – measures she apparently did not report to the Board of Nursing. Such conduct clearly violates Wis. Admin. Code §§ N 7.04, N 7.04(1), and N.7.04(2), which include as misconduct: (1) the “[a]dministering, supplying or obtaining [of] any drug other than in the course of legitimate practice or as otherwise prohibited by law,” and (2) “[v]iolating... any law substantially related to the practice of professional or practical nursing.”⁶ The facts that she (1) worked in an incapacitated manner, and (2) consumed street drugs when specifically ordered not to further evinces “acts which show the Respondent to be unfit or incompetent by reason of ... abuse of alcohol or other drugs...” (*See* Wis. Admin. Code § N 7.03(2)). Respondent Mueller is thus subject to discipline pursuant to Wis. Stat. § 441.07(1)(c) and (d). The only question that remains is what kind of discipline is appropriate.

Appropriate Discipline

As discipline for her above violations, the Division requested the “Board’s standard impairment order, with six months before the suspension can be stayed, and full costs.”⁷ In

⁶ Although the Division failed to provide any argument that Respondent’s possession of drug paraphernalia and theft are substantially related to the practice of nursing, it is quite clear from both her conviction and probation that they were.

⁷ Consistent with the decisions in Christele Williams and Zetisha Kayde, and the Division’s proposed order, (*see infra*), the Board’s “standard impairment order,” includes an indefinite suspension of not less than five (5) years, an opportunity to stay the suspension after six (6) months, if certain conditions (compliance with drug treatment, testing

support of this recommendation, it referenced two cases with similar facts and disciplines (*In re Disciplinary Proceedings Against Christele Williams*, *In re Disciplinary Proceedings Against Zetisha Kayde*), and attached a proposed order.

Under the circumstances of this case, the ALJ found that the discipline recommended by the Division was appropriate. The Board agrees. Indeed, two of the three purposes of discipline are (1) to promote the rehabilitation of the licensee, and (2) to protect the public from other instances of misconduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976).⁸ Respondent Mueller's conduct in taking a patient of a rehabilitation facility off premises to get street drugs, consuming those drugs with the patient, and then returning to work as a house manager in an incapacitated state shows that she is very much a danger to the public she serves. Her actions in failing to appear for her contested case hearing after expressing her desire to contest the allegations against her, strengthens this concern, and further demonstrates that she is not yet rehabilitated. Thus, the discipline requested by the Division is not only appropriate, but is necessary to protect the public. It will further discourage others in the profession from conducting themselves as Respondent did.

Costs

The Division requested that Respondent Mueller be ordered to pay the full costs of its investigation and of these proceedings. The factors to be considered in determining assessment of costs in a disciplinary proceeding were addressed *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), which found that:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties
- 4) The respondents cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;
- 7) Any other relevant circumstances.

and counseling) are met, and restricted practice during the stay (no access to narcotics, direct supervision, quarterly work and treatment reports).

⁸ The third purpose of discipline is to deter other licensees from engaging in similar contact.

The respondent, by nature of her being in default has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. To the contrary, her conduct is of a serious nature. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven (being none), or that certain factual findings were investigated and litigated that were unnecessary. Given the fact that the Department of Regulation and Licensing is a “program revenue” agency, whose operating costs are funded by the revenue received for licensees, fairness here dictates imposing the costs of disciplining the respondent upon the respondent and not fellow members of the chiropractic profession who have not engaged in such conduct.”

For many of the same reasons as cited in the *Buenzli-Fritz* decision, Respondent Mueller should be assessed the full amount of recoverable costs. Her alleged conduct is of an extremely serious nature, she did not meaningfully participate in these proceedings, there is no argument that certain factual findings were investigated and litigated unnecessarily, and given the program revenue nature of the Department of Safety and Professional Services, fairness again dictates imposing the costs of disciplining Respondent Mueller on Respondent Mueller, and not fellow members of the nursing profession who have not engaged in such conduct. If the Board assesses costs against the respondent, this amount of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of the Respondent Darlene E. Mueller to practice nursing in the State of Wisconsin be and is hereby **SUSPENDED FOR AN INDEFINITE PERIOD OF TIME.**

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

SUSPENSION

- A.1. The license of Darlene E. Mueller, R.N., to practice as a nurse in the State of Wisconsin is **SUSPENDED** for an indefinite period.
- A.2. The privilege of Darlene E. Mueller, R.N. 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 Safety and Professional Services 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 shall not be stayed for the first six (6) months, but any time after six (6) months the suspension may be stayed upon Respondent 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. A substantial violation includes, but is not limited to, a positive drug or alcohol screen. A 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 Safety and Professional Services 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, 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. 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 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. 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. 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 Safety and Professional Services, 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 with Treater and treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. 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. 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 (including but not limited to natural substances such as poppy seeds) which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation. It is Respondent's responsibility to educate himself or herself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.

- C.11. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs 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.
- C.12. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that they may take from time to time. Over-the-counter medications and drugs that mask the consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation, shall not be taken unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11.

Drug and Alcohol Screens

- C.13. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department ("Approved Program").
- C.14. 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.15. 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.16. 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.17. 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.18. 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.19. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- C.20. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances.
- C.21. 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.22. Respondent shall practice only in a work setting pre-approved by the Board or its designee.
- C.23. Respondent may not work in a home health care, hospice, pool nursing, or agency setting.
- C.24. 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.25. 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. If a report indicates poor performance, the Board may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.
- C.26. 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 Safety and Professional Services
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.

- 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 the initial stay of the suspension. 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 the initial stay of the suspension. 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 the full costs of this proceeding, in an amount to be determined by the Board, to the Department of Safety and Professional Services. Payment should be directed to the attention of the Department Monitor at the address in paragraph D.1., above. In the event Respondent fails to timely submit any payment of costs, the 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.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.

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Darlene E. Mueller.

EXPLANATION OF VARIANCE

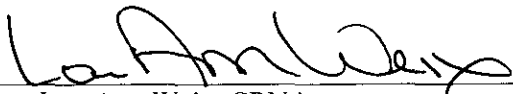
The Board of Nursing (hereinafter "Board") has adopted the ALJ's recommended Findings of Fact, Conclusions of Law and Order except for the recommendation that the costs assessed in this proceeding shall be paid within 90 days of this order, as described in paragraph D.8 of the Proposed Order. The imposition of a time frame for payment of costs is premature at this juncture because the Board has yet to receive the affidavits of costs and has yet to enter its order fixing costs. The administrative rule governing the assessment of costs, SPS 2.18, Wis. Admin. Code, provides that when costs are imposed in the disciplinary authority's final decision and order, the Division and the ALJ shall file supporting affidavits showing costs incurred within 15 days of the date of the final decision and order. The amount of costs incurred in the prosecution of this matter are determined after the affidavits of costs are submitted and reviewed. The time frame for payment of the assessed costs will also be established at the time that the amount of costs is determined. The administrative code also provides that the Respondent shall file any objection to the affidavits of costs within 30 days after the date of the final decision and order. The disciplinary authority shall review any objections along with the affidavits and affirm or modify its order without a hearing. Accordingly, the Board has deleted the language in the Proposed Decision which imposes the 90 day timeframe for payment of costs.

In addition, the Board made minor clerical revisions to the Proposed Decision including the references to the Wisconsin Administrative Code which govern the proceedings within the department. The citations to the code using the acronym "RL" for the Department of Regulation and Licensing code have been replaced with SPS which reflects the agency's new name, Department of Safety and Professional Services (SPS). The Board also renamed the ALJ discussion section of the proposed decision as the opinion.

Dated at Madison, Wisconsin on the 2nd day of February, 2012.

WISCONSIN BOARD OF NURSING

By:


Lou Ann Weix, CRNA
Board Chair

