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**Before The  
State Of Wisconsin  
BOARD OF NURSING**

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In the Matter of the Disciplinary Proceedings  
Against **RACHEAL ROARK, R.N.**, Respondent

FINAL DECISION AND ORDER  
WITH VARIANCE  
DHA Case No. SPS-11-0101  
**ORDER 0001481**

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**Division of Enforcement Case No. 10 NUR 612**

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

Racheal G. Roark  
609 Center Street  
Clio, MI 48420

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

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

Attorney Chad W. Koplien  
Department of Safety and Professional Services  
Division of Enforcement  
P. O. Box 8935  
Madison, WI 53708-8935

**PROCEDURAL HISTORY**

These proceedings were initiated when the Department of Safety and Professional Services, Division of Enforcement (the Division), filed a formal Complaint against Respondent Racheal Roark, alleging that Respondent Roark's license was subject to disciplinary action

pursuant to Wis. Stat. § 441.07(1)(c) and (d) and Wis. Admin. Code §§ N 7.03(2), N 7.04(2) and N 7.04(7).<sup>1</sup> Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09 and failed to appear at the prehearing telephonic conference held before the Division of Hearings and Appeals (DHA) on January 3, 2012. As a result, the Administrative Law Judge (ALJ) granted the Division's motion for default against Respondent, and the Division filed recommendations regarding discipline and costs to be imposed on Respondent. Respondent failed to respond to either the Notice of Default issued against her, or the written recommendations provided by the Division. The ALJ then prepared a Proposed Decision with Findings of Fact, Conclusions of Law, Discussion, Costs and Order.

On March 22, 2012, the Board of Nursing reviewed and discussed the ALJ's Proposed Decision. Neither party filed objections to the proposed decision. Based upon its consideration of the proposed decision, including the discussion and disciplinary recommendations of the ALJ, the Board of Nursing now adopts the following as its final decision and order in this matter, with an explanation of variance. The board-approved standard impairment order and the explanation of variance are made part of the final decision and order.

### **FINDINGS OF FACT**

Findings of Fact 1-6 are taken from the Division's Complaint against Respondent filed in this matter.

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<sup>1</sup> Wisconsin Stat. § 441.07(1)(c) and (d), state, in relevant part:

**Revocation.**

(1) The board may, after disciplinary proceedings conducted in accordance with rules promulgated under s. 440.03 (1), revoke, limit, suspend or deny renewal of a license of a registered nurse, a nurse-midwife or a licensed practical nurse, may revoke, limit, suspend or deny renewal of a certificate to prescribe drugs or devices granted under s. 441.16, or may reprimand a registered nurse, nurse-midwife or licensed practical nurse, if the board finds that the person committed any of the following:

...

(c) Acts which show the registered nurse, nurse-midwife or licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.

(d) Misconduct or unprofessional conduct.

As used in Wis. Stat. § 441.07(1)(c), the phrase "abuse of alcohol or other drugs" is defined 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." Wis. Admin. Code § N 7.03(2). As used in Wis. Stat. § 441.07(1)(d), "misconduct or unprofessional conduct" is defined as "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." Wis. Admin. Rule § N 7.04. "Misconduct or unprofessional conduct" includes, *inter alia*: "[a]dministering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law," Wis. Admin. Code § N 7.04(2), and "[h]aving disciplinary action through final board adjudication taken against one's license in another jurisdiction." Wis. Admin. Code § N 7.04(7).

1. Racheal G. Roark, R.N., is licensed as a professional nurse in the State of Wisconsin (License No. 174524-30). This license was first granted on November 8, 2010.

2. At the time the Complaint was filed in this matter, the Respondent's most recent address on file with the Wisconsin Board of Nursing was 608 Center Street, Clio, MI 48420.

3. At all times relevant, Respondent was employed as a traveling professional nurse at Medical Solutions Staffing Agency (Agency) in Omaha, Nebraska.

4. While working for a client in Michigan, Respondent refused to submit to a drug screen as directed by the client.

5. On November 16, 2010, after refusing the client's drug screen, Respondent submitted to a "for cause" drug screen as directed by the Agency. Respondent's test results were positive for morphine/opiates, for which she did not have a prescription, and her employment with the Agency was terminated.

6. On March 14, 2011, the Michigan Department of Community Health, Bureau of Health Professions, filed an Administrative Complaint against Respondent based on her positive drug screen and termination from the Agency.

7. With respect to the matter in this case, the Division filed a Complaint with the DHA on October 20, 2011, alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 441.07(1)(c) and (d) and Wis. Admin. Code §§ N 7.03(2), N 7.04(2) and N 7.04(7). The Division had sent a copy of the Complaint and a Notice of Hearing via both regular and certified mail to Respondent on October 18, 2011, at her address of record with the Division at the time, 608 Center Street, Clio, MI 48420.

8. The Notice of Hearing stated that Respondent 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."

9. On November 16, 2011, the Division received the certified receipt back from the U.S. Postal Service, with a label reading, "Return to Sender, Unclaimed, Unable to Forward, Return to Sender." The Postal Service also informed the Division that Respondent's house number is 609, not 608.

10. To date, no Answer has been filed.

11. On December 15, 2011, the ALJ issued a Notice of Telephone Prehearing Conference that set a telephone conference with Respondent and Attorney Chad Koplien of the Division for January 3, 2012. This Notice instructed Respondent to contact the ALJ to provide

the telephone number for which she could be reached for the January 3, 2012 telephone conference. The Notice was sent to Respondent at her last known address, 608 Center Street. Clio, MI 48420.<sup>2</sup> The Notice was not returned to DHA as refused or undeliverable.

12. Respondent did not contact the ALJ with a telephone number at which she could be reached for the January 3, 2012 telephone conference, and the telephone conference that was conducted on that date was without Respondent's participation.

13. At the January 3, 2012 conference, Attorney Koplien moved for default judgment pursuant to Wis. Admin. Code § SPS 2.14. The ALJ summarily accepted Attorney Koplien's default motion and, on January 3, 2012, issued a notice instructing Respondent that she was in default and that findings would be made and an Order entered on the basis of the Complaint and other evidence. The notice further ordered Attorney Koplien to provide the ALJ with the Division's written recommendations for discipline and the assessment of costs in this matter. The notice was mailed to Respondent at the address provided above and was not returned to DHA as refused or undeliverable. Attorney Koplien filed his recommendations to the ALJ on January 4, 2012.

14. Respondent has failed to respond to either the default notice issued against her or the recommendations provided by the Division.

### **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. Respondent was duly served with the Complaint and Notice of Hearing pursuant to Wis. Admin. Code § SPS 2.08 and was also served with the Notice of Telephone Prehearing Conference and Notice of Default.

4. Respondent has defaulted in this proceeding pursuant to Wis. Admin. Code § SPS 2.14 by failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § SPS 2.09.

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<sup>2</sup> The undersigned ALJ did not become aware until January 25, 2012 that Respondent's house number is 609 rather than 608. (In response to an inquiry by a DHA administrative assistant, the Division sent DHA a scanned copy of the undelivered certified mail receipt described in Finding of Fact 9.) As stated above, however, none of the notices sent to Respondent by the ALJ were returned as undeliverable by the U.S. Postal Service.

5. Pursuant to Wis. Admin. Code § SPS 2.09, Respondent has admitted to the allegations of the Complaint by not filing an Answer.

6. Respondent also defaulted in this proceeding for her failure to appear at the scheduled prehearing conference after due notice, pursuant to Wis. Admin. Code § HA 1.07(3)(c).

7. Pursuant to Wis. Stat. § 441.07(1)(c), the Board of Nursing has the authority to “revoke, limit, suspend or deny renewal of a license of a registered nurse” if the Board finds that the registered nurse has engaged in acts which show her to “be unfit or incompetent by reason of . . . abuse of alcohol or other drugs.”

8. Respondent’s conduct as described in Findings of Fact 4-5 above constitutes abuse of alcohol or other drugs in violation of Wis. Stat. § 441.07(1)(c) and Wis. Admin. Code § N 7.03(2), and constitutes obtaining a drug other than in the course of legitimate practice, which is misconduct or unprofessional conduct pursuant to Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(2). As a result of these violations, Respondent is subject to discipline pursuant to Wis. Stat. §§ 441.07(1)(c) and (d).

9. The Division has not demonstrated that Respondent’s conduct violated Wis. Admin. Code § N 7.04(7) because the Division has not established that there was a disciplinary action through “final board adjudication” taken against Respondent’s license in another jurisdiction, as required by Wis. Admin. Code § N 7.04(7).

### **ALJ’s DISCUSSION**

#### **Violations of Wisconsin Statute and Administrative Code**

By failing to provide an Answer to the Complaint filed against her, Respondent has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § SPS 2.09. As such, it is undisputed that the following events occurred. In 2010, Respondent was employed as a traveling professional nurse for an agency located in Omaha, Nebraska. Respondent was asked by a client in Michigan to undergo a drug screen, but Respondent refused. In November 2010, Respondent underwent a “for cause” drug screen as directed by her agency. Respondent tested positive for morphine/opiates, for which she did not have a prescription. Her employment at the agency was terminated. In March 2011, the Michigan Department of Community Health, Bureau of Health Professions filed an Administrative Complaint against Respondent based on her positive drug screen and termination from the agency.

Respondent’s conduct as described in the Findings of Fact set forth above constitutes abuse of alcohol or other drugs in violation of Wis. Stat. § 441.07(1)(c) and Wis. Admin. Code § N 7.03(2), and misconduct or unprofessional conduct in violation of § 441.07(1)(d), specifically, “[a]dministering, supplying or obtaining any drug other than in the course of legitimate practice”

Wis. Admin Code § N 7.04(2). For these violations, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1)(c) and (d).

However, the Division has not established that Respondent's conduct violated Wis. Admin. Code § N 7.04(7) because the allegations in the Division's Complaint, which by default have been accepted as true, do not establish that there was a disciplinary action through "final board adjudication" taken against Respondent's license in another jurisdiction. Rather, the Division's Complaint only alleges that Respondent was terminated from employment and that a Complaint was filed against her by the Michigan Department of Community Health, Bureau of Health Professions. The Division has not provided any information regarding the resolution of the Michigan complaint. Nonetheless, because the Division's Complaint establishes that Respondent is subject to discipline for violations of Wis. Stat. § 441.07(1)(c) and (d), and Wis. Admin. Code §§ N 7.03(2) and 7.04(2), the next issue is what discipline is appropriate.

### **ALJ's Disciplinary Recommendations and Costs**

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division requests that Respondent's license be revoked. Alternatively, if revocation is rejected, the Division requests an indefinite suspension for a minimum of five years, with drug treatment, testing, and work restrictions which the Division does not specify.

The record demonstrates that an indefinite suspension for a minimum of five years with drug treatment and testing is appropriate. The Division indicates that the Board commonly imposes this type of discipline under circumstances such as those here. Respondent's above-noted conduct evinces that she has a serious drug problem. Although the facts do not establish that she was under the influence of drugs while at work, Respondent did test positive for morphine/opiates, a serious offense. Further, while working for a client, Respondent refused to submit to a drug screen as directed by the client. Her problem was serious enough that she was terminated by the agency for whom she worked and had a Complaint filed against her by the Michigan Department of Community Health, Bureau of Health Professions.

Respondent's behavior poses a danger to the public she serves (her patients). The fact that she did not participate at all in these proceedings strengthens concerns that she has not been rehabilitated. That said, the facts do not show that Respondent is unamenable to treatment and rehabilitation. The ALJ therefore rejects the Division's recommendation of license revocation and instead adopt the Division's alternative recommendation. Accordingly, Respondent's license to practice as a nurse in the State of Wisconsin is suspended for an indefinite period of time, not less than five years. The suspension of Respondent's 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 following requirements.<sup>3</sup>

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1. <sup>3</sup> 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.

This disciplinary order promotes the rehabilitation of Respondent in that it provides an avenue for her to continue practicing in a safe and responsible manner. It protects the public in that it ensures that she only practices under conditions in which patients cannot be harmed. Finally, it deters other licensees from engaging in similar misconduct, as it is a discipline reportable to the public.

### Costs

The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings.

In the decision of the Chiropractic Examining Board *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), the factors for assessment of costs were discussed as follows:

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 [Safety and Professional Services] 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.

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2. 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.

3. Respondent shall enroll and participate in a drug and alcohol monitoring program which is approved by the Department, the terms of which shall also be approved by the Department.

4. Respondent shall practice only in a work setting pre-approved by the Board or its designee.



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 [Safety and Professional Services] 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 delineated in the *Buenzli-Fritz* decision, Respondent should be assessed the full amount of recoverable costs. Her alleged conduct is of a serious nature, she did not 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 dictates imposing the costs of these disciplinary proceedings on Respondent, and not on fellow members of the nursing profession who have not engaged in such conduct. If the Board assesses costs against Respondent, the amounts of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

### **EXPLANATION OF BOARD’S VARIANCE**

The Board of Nursing has revised the disciplinary recommendations in the Proposed Decision and Order prepared by the Administrative Law Judge Jennifer Nashold to include all of the terms and conditions of a board-approved standard impairment order. The standard impairment order is utilized routinely by the Board of Nursing in disciplinary cases involving drug and alcohol abuse and diversion of controlled substances. The standard impairment order contains the details necessary to inform the Respondent of the requirements she is to satisfy to obtain a stay of suspension and return to the practice of nursing in the future. Also, the standard impairment terms protects the public by providing for specific monitoring and treatment requirements to ensure that the Respondent does not practice while impaired.

It appears that the ALJ recognized the importance of including provisions from the standard impairment order because she included a partial list of the terms and conditions. The ALJ’s partial list may have been based upon the Division’s request, however, it is the board’s preference to include all the standard requirements, in verbatim form, rather than waiting until the Respondent seeks her initial stay of suspension. By knowing in advance what is required of her, the Respondent will be able to take the rehabilitative steps necessary to qualify for an initial stay of suspension and the board will be in position to act upon her request in a timely manner.

This variance fulfills the requirements of Wis. Stat. § 227.46(2), which provides that in any case which is a Class 2 or 3 proceeding disciplinary proceeding, the hearing examiner shall prepare a proposed decision, which includes findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case. The Board of Nursing,

as the regulatory authority and final decision maker, is authorized to make modifications as necessary to the proposed decision and has included the full terms and conditions of the standard impairment order.

### **ORDER**

For the reasons set forth above, IT IS FURTHER ORDERED, effective the date of this Order:

### **SUSPENSION**

- A.1. The license of Racheal G. Roark, R.N., hereinafter referred to as Respondent 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 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 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; and
- 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.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 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 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 shall 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 subsequent order of the board, within six (6) months of the date of the subsequent Order. Payment shall be made 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 or remain 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 Racheal G. Roark.

Dated at Madison, Wisconsin on April 9<sup>th</sup>, 2012.

Wisconsin Board of Nursing

By: Lou Ann Weix  
Lou Ann Weix, APNP  
Chair