

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The  
State Of Wisconsin  
BOARD OF NURSING

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In the Matter of the Disciplinary Proceedings  
Against **REBECCA J. BROCK, L.P.N.**,  
Respondent

FINAL DECISION AND ORDER  
WITH VARIANCE  
DHA Case No. SPS-11-0095

**ORDER 0001483**

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**Division of Enforcement Case No. 10 NUR 130**

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

Rebecca J. Brock  
1107 88<sup>th</sup> Ave., Apt. 4  
Kenosha, WI 53144-3413

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 Safety and Professional Services  
Division of Enforcement  
P. O. Box 8935  
Madison, WI 53708-8935

**PROCEDURAL SUMMARY**

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Enforcement (Division), filed a formal Complaint against Respondent Rebecca J. Brock, alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(2).<sup>1</sup> Respondent

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<sup>1</sup> Wisconsin Stat. § 441.07(1)(d), states:

**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

failed to file an answer to the complaint and failed to appear at the prehearing conference scheduled on November 10, 2011. The Division moved for default judgment, which was granted, and the Division subsequently submitted written recommendations regarding discipline and costs to be imposed on Respondent.

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

### **FINDINGS OF FACT**

1. Respondent Rebecca J. Brock, L.P.N., is licensed as a practical nurse in the State of Wisconsin (license no. 307060-31). This license was first granted on May 31, 2006.

2. A review of controlled substances use records from January 1, 2010 – February 28, 2010, revealed the following unsatisfactory job performances by Respondent while employed as a practical nurse at Brookside Care Center in Kenosha, Wisconsin:

- a. 80 incidents of medications being signed out on the controlled substance use record and not documented on the PRN medication administration record;
- b. 11 incidents of medications being wasted and co-signed with forged, questionable signatures or no signature;
- c. 7 incidents of signed out medications that are not compliant with the physician's orders;
- d. 8 incidents of signing out medications on shifts that Respondent did not work;
- e. 1 incident of requesting a nurse to co-sign for wasted medications, and not being able to show her the medications;
- f. 2 incidents of signing out medications from one pill card and then signing out additional doses at the same time from the new card when no more medications are due; and

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registered nurse, nurse-midwife or licensed practical nurse, if the board finds that the person committed any of the following:

- ...  
(d) Misconduct or unprofessional conduct.

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*: "Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law." Wis. Admin. Rule § N 7.04(2).

- g. 57 incidents of signing out medications without actually delivering them to the resident.

3. Effective March 15, 2010, Respondent was placed on paid administrative leave pending the results of an investigation of her unsatisfactory job performance. Respondent was charged with violating the following Kenosha County Uniform Work Rules:

- a. Work Habits #3. Employees shall not demonstrate incompetence or inefficiency in the performance of their duties.
- b. Work Habits #12. Employees shall not give any incomplete, misleading or false information of any kind. This includes but is not limited to records, time cards, absences, time off, etc.
- c. Work Habits #21. Employees must comply with all federal or state codes, local ordinances, and regulations that govern their respective departments.
- d. Department #21. Acts of dishonesty.
- e. Violation of Brookside Care Center Policy and Procedure Administration of Medication.

4. Effective March 24, 2010, following a due cause hearing held on March 22, 2010, Respondent's employment at Brookside Care Center was terminated.

5. On September 2, 2010, while employed as a practical nurse at Oakridge Care Center in Union Grove, Wisconsin, Respondent administered insulin to a patient and left the syringe in the Geri-chair. The following day, another employee received a needle stick from the syringe.

6. On September 3, 2010, a licensed practical nurse (L.P.N.) contacted the registered nurse (R.N.) manager with concerns that Resident V.R. was receiving more medication than was ordered by her physician. Resident V.R. had an order for Oxycodone w/APAP 5/325. Respondent was administering this medication three times daily despite the order for two times daily PRN. The order was changed on August 31, 2010, to three times daily PRN and it was noted that after the order was changed, there were two days Resident V.R. received the medication four times.

7. Another L.P.N. discovered that Resident V.R. was receiving cough syrup from Respondent; however, there were no notes of Resident V.R. complaining of a cough and no reports of anyone hearing her cough or being congested since August 2010. Respondent recorded that Resident V.R. took Promethazine-codeine 5 mL every 4 hours as needed.

8. The R.N. manager reviewed Resident V.R.'s Controlled Drug Use Records and discovered that on September 2, 2010, Respondent recorded administering medication more often than it was ordered, and the computerized charting did not match the times indicated on the written controlled substance use record.

9. According to Respondent, she gets busy and does not always add the medication in the computer record immediately when administering medication, which is why the records do

not match. Respondent was surprised that Resident V.R. said she does not recall receiving all the medications because they review her medications together every evening.

10. Resident M.T. had an order for Lorazepam 0.5 mg ½ tab three times per day as needed for agitation. Review of her medication record revealed that Respondent was administering all three daily ½ tabs during her evening shift.

11. When questioned, Respondent stated that Resident M.T. had an increase in her anxiety and attempted to leave the building almost every night and the medication was given to calm her. Respondent said the doses that were given late in her shift were often administered by her per the request of a third shift nurse technician because it helped Resident M.T. sleep through the night.

12. According to the nurse technician, she never requested Respondent to administer medication to Resident M.T.

13. Effective September 7, 2010, Respondent's employment was terminated.

14. On or about September 29, 2011, the Division filed a formal Complaint against Respondent, alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(2).

15. The Division filed the Complaint with the Division of Hearings and Appeals on September 29, 2011, and, on that same date, sent a copy of the Complaint and a Notice of Hearing via both regular and certified mail to Respondent at her most recent address on file with the Division, 1107 88<sup>th</sup> Ave., Apt. 4, Kenosha, WI 53144-3413. 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."

16. To date, Respondent has not filed an Answer to the Complaint.

17. On October 25, 2011, the Administrative Law Judge (ALJ) of the Division of Hearings and Appeals issued a Notice of Telephone Prehearing Conference that set a telephone conference with Respondent and Attorney Jeanette Lytle of the Division for November 10, 2011. This Notice instructed Respondent to contact the ALJ to provide the telephone number for which she could be reached for the November 10, 2011 telephone conference, and was sent to the address on file for Respondent, as provided above.

18. Respondent did not contact the ALJ with a telephone number at which she could be reached for the November 10, 2011 telephone conference, and the telephone conference that was conducted on that date was without Respondent's participation.

19. At the October 10, 2011 conference, Attorney Lytle moved for default judgment pursuant to Wis. Admin. Code § SPS 2.14. The ALJ granted Attorney Lytle's default motion and issued a Notice of Default 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.

20. The Notice of Default further ordered Attorney Lytle to provide the ALJ with the Division's written recommendations for discipline and the assessment of costs in this matter by October 14, 2011. The Notice was mailed to Respondent at the address provided above. Attorney Lytle provided the ALJ with the Division's written recommendations as to discipline and costs on November 15, 2011.

21. To date, Respondent has failed to respond to either the Notice of Default issued against her or the written 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, Notice of Telephone Prehearing Conference, and Notice of Default pursuant to Wis. Admin. Code § SPS 2.08.

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.

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) and (d), respectively, the Board of Nursing has the authority to "revoke, limit, suspend or deny renewal of a license of a...licensed practical nurse" if the board finds that the licensed practical nurse has engaged in "misconduct or unprofessional conduct."

8. The conduct described in Findings of Fact 2 and 6-11 above constitutes administering, supplying or obtaining any drug other than in the course of legitimate practice, which is misconduct or unprofessional conduct pursuant to Wis. Admin. Code § N 7.04(2), and subjects Respondent to discipline pursuant to Wis. Stat. § 441.07.

### **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 in early 2010, while working at Brookside Care Center in Kenosha, Respondent's employer reviewed controlled substance use records for a two-month period and found numerous discrepancies in Respondent's controlled substances documentation. Respondent was placed on paid administrative leave and, after a due cause hearing, was terminated.

Respondent then found employment as a practical nurse at Oakridge Care Center in Union Grove, Wisconsin. Soon, there were reports of more medication discrepancies. Respondent documented giving a resident patient, V.R., more narcotic medication than was ordered by her physician. Later, another nurse reported that V.R. was receiving narcotic cough syrup from Respondent; however, there were no notes of that patient complaining of a cough and no reports of anyone hearing the patient cough or being congested since August 2010. Another resident who had an order for Lorazepam, a benzodiazepine, for ½ tab three times daily, was getting all three of these doses on Respondent's evening shift. Respondent claimed the third shift nurse technician had requested that she administer the Lorazepam all at once at bedtime. However, the nurse technician denied making that request.

As a result of these complaints, the R.N. manager reviewed Resident V.R.'s Controlled Drug Use Records and discovered that Respondent recorded administering medication more often than it was ordered, and the computerized charting did not match the times indicated on the written controlled substance use record. Respondent's employment was terminated. The Division states that Respondent's conduct is consistent with medication diversion, and the undisputed facts support that inference.

The undisputed facts also support a finding of misconduct or unprofessional conduct as the conduct involves "[a]dministering, supplying or obtaining any drug other than in the course of legitimate practice," in violation of Wis. Admin. Code § N 7.04(2).

#### **ALJ's Recommended Discipline and Costs**

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

According to the Division, when a nurse diverts medication, the Board typically suspends the nurse's license for an indefinite period, then stays the suspension contingent on AODA treatment, drug testing, and practice restrictions. The Division submitted a standard impairment order but did not suggest which of the available options contained in that order are appropriate.

Based on the facts and circumstances of Respondent's conduct and the three goals of discipline set forth above, the ALJ concludes that the following discipline is warranted. Respondent's license to practice as a nurse in the State of Wisconsin is suspended for an indefinite period of time. 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>2</sup> 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 designed to ensure she does not practice while impaired. Finally, it deters other licensees from engaging in similar misconduct, as it is a discipline, reportable to the public.

### Costs

Factors to consider in awarding costs include:

- The number of counts charged, contested and proven;
- The nature and seriousness of the misconduct;
- The level of discipline sought;
- The respondent's cooperation with the disciplinary process;
- Prior discipline, if any;
- The fact that the Department is a "program revenue" agency, whose operating costs are funded by licensees; and
- Any other relevant circumstances.

*In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz (LS 0802183 CHI).*

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

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1. <sup>2</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.

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.



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.

Payment of assessed costs will be necessary before Respondent's license can be reinstated pursuant to Wis. Stat. § 441.07(2). If the Board assesses costs against Respondent, the amount of costs will be determined pursuant Wis. Admin. Code § SPS 2.18.

### **EXPLANATION OF BOARD'S VARIANCE**

The Board of Nursing has determined that the recommendations for discipline contained in the Proposed Decision and Order prepared by the Administrative Law Judge Jennifer Nashold should be revised, in part, to include all of the terms and conditions of a board-approved standard impairment order. The standard impairment order is utilized routinely by 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 terms of the standard impairment order 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 as she indicated on page 8 of her proposed order that "*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 Board.*" The ALJ's proposed decision contains only an abbreviated version of the standard impairment terms; it did not include all of the required components. It is the view of the Board that it is preferable to specify and include the complete requirements of a standard impairment order rather than waiting until Respondent seeks her initial stay of suspension. This is important because one of the basic requirements to qualify for a stay of suspension is that Respondent submit proof of 3 months of compliance with the order prior to requesting a stay. 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 should she desire to return to the practice of nursing.

This variance fulfills the requirements of Wis. Stat. § 227.46(2), which provides that in any case which is a Class 2 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. Ultimately, the Board of Nursing, as the regulatory authority and final decision maker, is authorized to make modifications as necessary to the proposed decision. Accordingly the Board has adjusted the order to now include the terms and conditions necessary to fulfill the requirements of the law:

## **ORDER**

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

### **SUSPENSION**

- A.1. The license of Rebecca J. Brock, L.P.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. SPS 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 Respondent shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to the attention of the Department Monitor at the address listed above.

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

Wisconsin Board of Nursing

By: Lou Ann Weix  
Lou Ann Weix, APNP  
Chair