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**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Disciplinary Proceedings
Against **JENNIFER J. CARLSON, R.N.**,
Respondent

**FINAL DECISION AND ORDER
WITH EXPLANATION OF VARIANCE**
DHA Case No. SPS-11-0081
ORDER 0002049

Division of Enforcement Case No. 10 NUR 446

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

Jennifer J. Carlson
615 6th Street North
Montrose, MN 55363

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
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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 Jennifer J. Carlson, alleging that Ms. Carlson'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) and N 7.04(7). The Division filed the Complaint with the Division of Hearings and Appeals on August 30, 2011 and, on that same date, sent a copy of the Complaint and a Notice of Hearing via both regular and certified mail to Ms. Carlson at her most recent address on file with the Division.

At the telephone prehearing conference held on October 12, 2011, the Division's attorney requested the opportunity to file a motion for summary judgment. The Division of Hearings and Appeals' Administrative Law Judge (ALJ) allowed the Division to submit a motion for summary judgment and issued a scheduling order on October 12, 2011, setting forth dates for the motion and briefs for the parties. The Division's Motion for Summary Judgment and supporting brief were filed on October 28, 2011, within the timeframe of the October 12, 2011 scheduling order. Ms. Carlson did not file a response within the scheduling order's deadline of November 30, 2012 and again failed to respond in a timely manner after being given another opportunity to file a response by February 10, 2012. Ms. Carlson finally sent an e-mail to the ALJ and the Division's attorney on February 14, 2012, which the undersigned ALJ construed as a response, and the Division e-mailed an electronic version of its Reply Brief to the ALJ and Ms. Carlson on February 17, 2012, a hard copy of which was received by the ALJ on March 15, 2012.

On March 20, 2012, the undersigned administrative law judge (ALJ) issued an Order Granting Partial Summary Judgment in favor of the Division. That Order concluded that the Division had demonstrated that the undisputed material facts established a violation under Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(7) but not under Wis. Stat. § 441.07(1)(c) and Wis. Admin. Code § N 7.03(2). The Order provided the Division with the option of either proceeding to hearing on Wis. Stat. § 441.07(1)(c) and Wis. Admin. Code § N 7.03(2) or dismissing that allegation and having the ALJ issue a proposed decision based solely on the ALJ's conclusion that Ms. Carlson's conduct constituted a violation under Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(7). The Division informed the ALJ and Ms. Carlson via e-mail dated March 21, 2012 that it wished to dismiss the claim under Wis. Stat. § 441.07(1)(c) and Wis. Admin. Code § N 7.03(2) and have the ALJ issue a proposed decision based on its conclusion that Ms. Carlson violated Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(7).

On June 7, 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 to include additional disciplinary terms and conditions.

UNDISPUTED MATERIAL FACTS

The following facts are taken from the Division's Complaint and Ms. Carlson's Answer. Affidavits were not submitted by either party.

1. Ms. Carlson is licensed as a professional nurse in the State of Wisconsin (license no. 30-164129). This license was first granted on June 25, 2008.
2. At all times relevant, Ms. Carlson was employed as a rotor wing registered nurse at Life Link III in St. Cloud, Minnesota.
3. On August 22, 2010, the crew replacing Ms. Carlson conducted a narcotic count and discovered a vial of Fentanyl was missing. Ms. Carlson indicated she had administered Fentanyl to a patient during her shift; however, that did not account for the missing vial.
4. Ms. Carlson and her co-worker underwent a for-cause toxicology drug test and on August 30, 2010, test results confirmed Ms. Carlson was positive for Fentanyl at 0.6 ng/mL. Ms. Carlson reported she had a prescription for Fentanyl, but admitted the prescription was more than two years old.
5. On September 3, 2010, Ms. Carlson voluntarily resigned from her position at Life Link III.
6. When interviewed by the Minnesota Board of Nursing Review Panel (Panel), Ms. Carlson reported that she still had a prescription for Fentanyl from 2004 and that she applied a patch for a short time 55 hours prior to her August 22, 2010 shift. Ms. Carlson further told the

Panel that crew staff did not consistently conduct narcotic counts and they are therefore unreliable. The Panel noted Ms. Carlson signed the narcotic count as on-coming staff on the evening of August 21, 2010 and as the off-going staff on August 22, 2010. Ms. Carlson later filed a written addendum with the Panel indicating that she used the Fentanyl patch for 16-18 hours on August 18 and 19, 2010 and not during the short interval she previously stated.

7. On February 3, 2011, the Panel issued a Stipulation and Consent Order against Ms. Carlson in which the Panel suspended her license. The Order stated that Ms. Carlson could petition the Panel for reinstatement after six months if she complied with certain requirements.

8. On August 30, 2011, the Division filed a formal Complaint against Ms. Carlson, alleging that Ms. Carlson'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) and N 7.04(7).¹

DISCUSSION AND CONCLUSIONS OF LAW

Standards Governing Summary Judgment

"The summary judgment procedure as provided in s. 802.08, Stats., shall be available to the parties upon approval by the division or the administrative law judge." Wis. Admin. Code § HA 1.10(2).

Pursuant to Wis. Stat. § 802.08, summary judgment "shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wis. Stat. § 802.08(2). "When a motion for summary judgment is made and supported as provided in this section [§ 802.08], an adverse party may not rest upon the mere allegations or denials of the pleadings but the adverse party's response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there

is a genuine issue for trial.” Wis. Stat. § 802.08(3). “If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against such party.” *Id.*

“A motion for summary judgment may be made on the basis of the pleadings or other portions of the record in the case or it may be supported by affidavits and a variety of outside material.” *Tews v. NHI, LLC*, 2010 WI 137, ¶ 49, 330 Wis. 2d 389, 793 N.W.2d 860 (citation omitted). On a motion for summary judgment, the facts are construed in favor of the non-moving party. *DeHart v. Wis. Mut. Ins. Co.*, 2007 WI 91, ¶ 7, 302 Wis. 2d 564, 734 N.W.2d 394.

Burden of Proof

The burden of proof in disciplinary proceedings is on the Division to show by a preponderance of the evidence that the events constituting the alleged violations occurred. Wis. Stat. § 440.20(3). To prove by a preponderance of the evidence means that it is “more likely than not” that the examined action occurred. *See State v. Rodriguez*, 2007 WI App. 252, ¶ 18, 306 Wis. 2d. 129, 743 N.W.2d 460, citing *United States v. Saulter*, 60 F.3d 270, 280 (7th Cir. 1995).

Violations of Wisconsin Statute and Administrative Code

The Division alleges a violation of Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code §§ N 7.04(7). Wisconsin Stat. § 441.07(1)(d), states, 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:

...

(d) Misconduct or unprofessional conduct.

¹ As stated above, the Division subsequently dismissed its allegation that Ms. Carlson violated Wis. Stat. § 441.07(1)(c) and Wis. Admin. Code § N 7.03(2).

As used in Wis. Stat. § 441.07(1)(d), "misconduct or unprofessional conduct" is "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" and includes, *inter alia*: "[h]aving disciplinary action through final board adjudication taken against one's license in another jurisdiction." Wis. Admin. Code § N 7.04(7).

The undisputed material facts establish that Ms. Carlson engaged in misconduct or unprofessional conduct by "[h]aving disciplinary action through final board adjudication taken against [her] license in another jurisdiction." Wis. Admin. Rule § N 7.04(7). Ms. Carlson admits in her Answer dated September 27, 2011, at Paragraph 9 that "[o]n February 3rd, 2011, the MN Board of Nursing suspended my license for six months." She further states in the final paragraph of the September 27, 2011 Answer: "I have undergone a six month suspension which has actually turned into eight months due to the shutdown of the State of Minnesota that occurred this summer." Although Ms. Carlson states in her February 14, 2012 e-mail response to the Divisions' motion for summary judgment that she was subsequently reinstated to practice nursing in Minnesota, that assertion is not only unsupported by any documentation but it is also not relevant to the issue of whether she had "disciplinary action through final board adjudication taken against her in another jurisdiction." The undisputed facts demonstrate that it is more likely than not that such a disciplinary action occurred in Minnesota. Accordingly, Ms. Carlson has violated Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(7) and is therefore subject to discipline pursuant to Wis. Stat. § 441.07.

Disciplinary Recommendations

The Division recommended that Ms. Carlson's license be suspended indefinitely, with an opportunity for Ms. Carlson to petition the Board of Nursing (Board) for a stay of the suspension after she has been assessed by a pain management specialist approved in advance by the Board for fitness to practice, and after she has shown at least three months of compliance with drug

treatment, testing and counseling. The Division also recommended that Ms. Carlson's practice be restricted so that she has no access to narcotics and so that she has direct supervision, and that Ms. Carlson provide the Board with work reports on a quarterly basis from her employers and treaters.

The ALJ concluded that the discipline recommended by the Division is warranted. Ms. Carlson underwent a for-cause toxicology drug test on August 30, 2010 and tested positive for Fentanyl at 0.6 ng/mL. This drug test occurred just eight days following an incident at Ms. Carlson's workplace on August 22, 2010, in which the crew replacing Ms. Carlson conducted a narcotic count and discovered that a vial of Fentanyl was missing. Ms. Carlson indicated she had administered Fentanyl to a patient during her shift; however, that did not account for the missing vial. She reported that she still had a prescription for Fentanyl from 2004 and that she used the Fentanyl patch for 16-18 hours on August 18 and 19, 2010. The Minnesota Board of Nursing Review Panel suspended Ms. Carlson's license as a result of her actions.

The discipline recommended by the Division promotes Ms. Carlson's rehabilitation in that it encourages her to be assessed and seek treatment of what, by any logical interpretation of the facts, appears to be a drug problem.² Such treatment will be required for Ms. Carlson to have suspension of her license stayed. The recommended discipline also protects the public and deters others from such unauthorized use of narcotics by not allowing Ms. Carlson to act as a licensed nurse unless and until it is well-established that she will practice in a safe and responsible manner.

Costs

² 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 final issue is what amount of costs, if any, of the investigation and prosecution of this matter should be borne by Ms. Carlson under Wis. Admin. Code § SPS 2.18.

The Division requested that Ms. Carlson be ordered to pay the full costs of its investigation and of these proceedings. Factors to be taken into account when considering imposition of costs in disciplinary matters were set forth in *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), in which the Chiropractic Examining Board stated:

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 respondent's 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.

Considering the factors set forth in the *Buenzli-Fritz* decision, Ms. Carlson is ordered to pay seventy-five percent of the costs of this proceeding. While the conduct in this case was serious, the Division did not conclusively establish Ms. Carlson was under the influence while on the job. Of the two violations alleged, one was proven. However, the facts that are established point to serious misconduct, either diversion of narcotics, or at a minimum, that Ms. Carlson took narcotics whose prescription had expired years ago, and took such narcotics in very close

proximity to her work shift. In addition, Ms. Carlson's cooperation in these disciplinary proceedings has been somewhat hit and miss, as demonstrated by missed deadlines set forth above. Finally, as the costs of disciplinary proceedings are borne by the revenue received from licenses, it would be unfair not to impose the bulk of the costs of disciplining Ms. Carlson on her rather than on her fellow nurses. If the Board assesses costs against Ms. Carlson, the amount of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

ALJ's Proposed Discipline

The ALJ granted the Division's motion for summary judgment with respect to its allegation that Ms. Carlson violated Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(7) and recommended that Ms. Carlson's license is suspended indefinitely. The ALJ further recommended that Ms. Carlson may petition the Board for a stay of the suspension after she has been assessed by a pain management specialist approved in advance by the Board for fitness to practice, and after she has shown at least three months of compliance with drug treatment, testing and counseling and if the suspension is stayed, Ms. Carlson's practice shall be restricted so that she has no access to narcotics and so that she has direct supervision. The ALJ specified that if the suspension is stayed and Ms. Carlson resumes employment as a registered nurse, she shall provide the Board with work reports on a quarterly basis from her employers and treaters. Finally, the ALJ recommended that Ms. Carlson shall pay seventy-five percent of the costs of the investigation and prosecution in this matter by certified check or money order payable to the Wisconsin Department of Safety and Professional Services in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18.

EXPLANATION OF VARIANCE TO ALJ PROPOSED DECISION

The Board of Nursing, as the regulatory authority and final decision maker in this Class 2 proceeding, is permitted under Wis. Stat. § 227.46(2) to make modifications to a proposed decision. In so doing, the Board of Nursing is required to include an explanation of the basis for

each variance. The reasons for the variance in this matter are three-fold. The first reason is that rather than waiting until Respondent seeks her initial stay of suspension, the Board deems it preferable to specify the terms and conditions in advance that she must satisfy to obtain an initial stay and the conditions under which she may practice nursing. Under the proposed order, the Respondent shall submit proof of three (3) months of “compliance” with the order prior to requesting a stay. By knowing in advance what constitutes “compliance,” the Respondent shall be informed of the specific drug treatment and counseling, drug testing frequency and practice restrictions required of her. Also, compliance under this order shall include the submission of a fitness to practice assessment by a pain management specialist approved in advance by the Board.

Secondly, because the standard impairment order has been used consistently in disciplinary matters involving diversion of controlled substances or substance abuse, Respondent shall be subject to the same requirements applied to nurses who have engaged in similar misconduct. Third, the standard impairment order protects the public welfare and safety by ensuring that the Respondent does not practice while impaired and that she remains compliant with the Board’s order through specified monitoring procedures. By including the standard impairment terms and conditions in this final decision and order, the purposes of Board’s disciplinary order; (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) are effectuated.

Finally, the Board of Nursing has determined that it is appropriate to impose full costs of the proceeding on the basis of the seriousness of Respondent’s unprofessional conduct and to avoid the unfairness of imposing these costs on the fellow members of the nursing profession who have not engaged in such conduct. Although it was not established that Respondent was impaired while at work, the record shows that she took the narcotics in very close proximity to

her work shift. The ALJ also noted that Respondent's cooperation in these disciplinary proceedings was inconsistent, having missed deadlines, and likely not helpful to the efficient resolution of this matter. Respondent, as an experienced nurse who engaged in unprofessional conduct should bear the full responsibility of her actions including the full costs of this proceeding.

ORDER

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

SUSPENSION

- A.1. The license of Jennifer J. Carlson, 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 has been assessed by a pain management specialist approved in advance by the Board for fitness to practice, 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 recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18 by subsequent order of the board. 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 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.

Dated at Madison, Wisconsin on September 18th, 2012.

Wisconsin Board of Nursing

By: Julia Nelson
Julia Nelson, R.N.
Chair of the Board