

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

THOMAS M. BANHOLZER, R.N.,  
RESPONDENT.

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FINAL DECISION AND ORDER

**ORDER 0002755**

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Division of Legal Services and Compliance<sup>1</sup> Case No. 13 NUR 052

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

Thomas M. Banholzer, R.N.  
1634 South 53<sup>rd</sup> Street  
West Milwaukee, WI 53214

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

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Board of Nursing (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Thomas M. Banholzer, R.N., (dob June 17, 1952) is licensed in the State of Wisconsin as a professional nurse, having license number 98883-30, first issued on April 1, 1988 and current through February 28, 2014. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 1634 South 53<sup>rd</sup> Street, West Milwaukee, Wisconsin 53214.

2. At all times relevant to this proceeding, Respondent was employed as a professional nurse at a hospital (Hospital), located in Milwaukee, Wisconsin.

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<sup>1</sup> The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

3. On or about January 8, 2013, Respondent used the internet at Hospital, during work hours, for non-work related purposes. Specifically, Respondent used websites that were questionable in nature; including websites that were sexual in nature.

4. Due to Respondent's history of viewing websites with a sexual nature during his shift, while Respondent was responsible for patient care, Respondent was terminated from employment.

5. In Respondent's March 5, 2013 letter to the Department of Safety and Professional Services, Respondent admitted to accessing websites that were questionable in nature. Respondent further admits this was inappropriate and that accessing the sites amounted to stealing time and resources from his employer. Respondent also stated this conduct prevented him from providing the minimum standard of care to his patients.

6. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

#### CONCLUSIONS OF LAW

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

2. By the conduct described in the Findings of Fact, Thomas M. Banholzer, R.N., engaged in unprofessional conduct as defined in Wis. Admin. Code § N 7.04, not otherwise specified, by engaging in a practice or behavior that violates the minimum standards of the profession necessary for the health, safety, or welfare of a patient or the public.

3. As a result of the above conduct, Thomas M. Banholzer, R.N., is subject to discipline pursuant to Wis. Stat. § 441.07(1)(b) and (d).

#### ORDER

1. The attached Stipulation is accepted.

2. Respondent Thomas M. Banholzer, R.N., is REPRIMANDED.

3. The professional nursing license issued to Respondent Thomas M. Banholzer, R.N., (license number 98883-30) and his privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, are LIMITED as follows:

- a. Within 90 days of the date of this Order, Respondent, at his own expense, shall complete four (4) hours of education on the topic of ethics of nursing. Respondent is responsible for finding an appropriate course and submitting the course information to the Board for approval prior to taking the course and in sufficient time to obtain Board approval within the 90-day time frame, taking into account the Board's meeting schedule.

Respondent shall provide proof of completion of the education to the Department Monitor.

- b. Respondent shall provide his nursing employers with a copy of this Order before engaging in any nursing employment.
- c. For a period of at least two (2) years while working at least half-time as a nurse, Respondent shall work only under direct supervision, and only in a work setting pre-approved by the Board. Respondent shall not work in a home health, assisted living, agency or pool position.
- d. For a period of at least two (2) years while working at least half-time as a nurse, Respondent shall arrange for his nursing employer(s) to send to the Department Monitor quarterly reports, reporting the terms and conditions of his employment and evaluating his work performance.
- e. Pursuant to Uniform Nurse Licensure Compact regulations, Respondent's nursing practice is limited to Wisconsin during the pendency of this limitation. This requirement may be waived only upon the prior written authorization of both the Wisconsin Board of Nursing and the regulatory board in the state in which Respondent proposes to practice.
- f. Respondent shall notify the Department Monitor of any change of nursing employment during the time in which the Order is in effect. Notification shall occur within fifteen (15) days of a change of employment and shall include an explanation of the reasons for the change.
- g. After two (2) years of working at least half-time as a nurse, Respondent may petition the board for the modification or termination of the limitation. The Board may grant or deny the petition, in its discretion, or may modify this Order as it sees fit.

4. The professional nursing license issued to Respondent Thomas M. Banholzer, R.N., (license number 98883-30) and his privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, is further LIMITED as follows:

- a. Within thirty (30) days from the date of this order Respondent shall have, at Respondent's own expense, undergone an assessment by a mental health care provider experienced in evaluating health care practitioners' fitness for duty.
- b. The provider performing the assessment must not have treated Respondent and shall have been approved by the Board, with the opportunity for the Division of Legal Services and Compliance to make its recommendation, prior to the evaluation being performed; and,

- c. Within fifteen (15) days of the completion of the assessment, a written report regarding the results of the assessment shall be submitted to the Department Monitor at the address below.
- d. Respondent must provide proof sufficient to convince the Board that Respondent is able to practice with reasonable skill and safety of patients and the public and does not suffer from any condition which prevents Respondent from practicing in that manner;
- e. Based on the assessment, the Board, or its designee, may require additional limitations on Respondent's license in a manner to address any concerns the Board has as a result of the conduct set out in the findings of fact and to address any recommendations resulting from the assessment, including, but not limited to:
  - i. Psychotherapy, at Respondent's expense, by a therapist approved by the Board or its designee, to address specific treatment goals, with quarterly reports to the Board by the therapist; and/or,
  - ii. Additional professional education in any identified areas of deficiency; and/or,
  - iii. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Board, with quarterly reports to the Board by the supervisor.

5. Within 120 days from the date of this Order, Thomas M. Banholzer, R.N., shall pay COSTS of this matter in the amount of \$400.00.

6. Payment of forfeiture and costs shall be made payable to the Wisconsin Department of Safety and Professional Services and sent to the Department Monitor at the address below:

Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 8935, Madison, WI 53708-8935  
Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

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

reports, Respondent's license (no. 98883-30) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of costs, submit proof of completion of the education, completes the fitness to practice evaluation and provides the assessment to the Department as set forth above, and submits required work reports.

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

WISCONSIN BOARD OF NURSING

by: Julia Nelson, RN  
A Member of the Board

11/14/13  
Date

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

THOMAS M. BANHOLZER, R.N.,  
RESPONDENT.

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STIPULATION

ORDER 0002755

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Division of Legal Services and Compliance<sup>1</sup> Case No. 13 NUR 052

Respondent Thomas M. Banholzer, R.N., and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.
2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:
  - the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
  - the right to confront and cross-examine the witnesses against Respondent;
  - the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
  - the right to testify on Respondent's own behalf;
  - the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
  - the right to petition for rehearing; and
  - all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.
3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Board of Nursing (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

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<sup>1</sup> The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.


5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

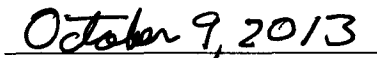
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

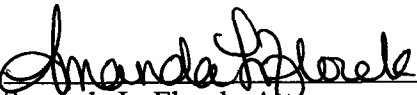
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

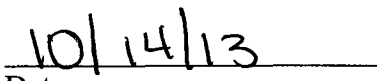
8. Respondent is further informed that should the Board adopt this Stipulation, the Board's Final Decision and Order would constitute an agency finding within the meaning of Wis. Stat. §§ 48.685 and 50.065. Should Respondent wish to work in a Wisconsin DHS-licensed facility in any role, Respondent will need to pass a Rehabilitation Review through DHS prior to commencement of such employment.

9. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

  
Thomas M. Banholzer, R.N., Respondent  
1634 South 53<sup>rd</sup> Street  
West Milwaukee, WI 53214  
License no. 98883-30

  
Date

  
Amanda L. Florek, Attorney  
Division of Legal Services and Compliance  
P.O. Box 8935  
Madison, WI 53708-8935

  
Date