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**STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING**

**IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST**

**FINAL DECISION AND ORDER
WITH VARIANCE**

**NANCY BRENDEN,
RESPONDENT.**

DHA Case No. SPS-14-0085
DLSC Case No. 14 NUR 003

0004108

BACKGROUND

On April 23, 2015, Administrative Law Judge Jennifer Nashold (ALJ), Division of Hearings and Appeals, issued a Proposed Decision and Order (PDO) in the above referenced matter. The PDO was mailed to all parties. On May 11, 2015, the Division of Legal Services and Compliance (Division) filed an objection to the imposition of only 30% of the costs and requested 100% costs. Also on May 11, 2015, the Respondent filed objections to the suspension/stay of suspension and the practice limitations barring Respondent from working in home health care, hospice, pool nursing, assisted living, or agency setting. On May 18, 2015, each party filed responses to the stated objections. On June 11, 2015, the Board of Nursing (Board) met to consider the merits of the PDO and the stated objections. The Board voted to approve the PDO with variance. The PDO is attached hereto and incorporated in its entirety into this Final Decision and Order with Variance (Order).

VARIANCE

Pursuant to Wis. Stat. §§ 440.035(1) and 441.07(1)(d), the Board is the regulatory authority and final decision maker governing disciplinary matters of those credentialed by the Board. The matter at hand is characterized as a class 2 proceeding pursuant to Wis. Stat. § 227.01(3)(b). The Board may make modifications to a PDO, in a class 2 proceeding, pursuant to Wis. Stat. § 227.46(2), provided the Board's decision includes an explanation of the basis for each variance.

In the present case, the Board adopts the PDO in its entirety except for the following variances:

1. In the section titled, "DISCUSSION" under the subsection titled, "Discipline" found on page five (5) of the PDO, the Board makes the following amendment to the first sentence in the first full paragraph to read "The standard impairment order is generally *appropriate here.*"
2. All references to 30% of costs found in the section titled "CONCLUSIONS OF LAW" found on page six (6) of the PDO, and the section titled "ORDER" found on pages six through twelve (6-12) of the PDO, are removed, and 80% is substituted in its place.

3. In the section titled, "DISCUSSION" under the subsection titled, "Costs" found on page six (6) of the PDO, the Board removes both paragraphs in their entirety and the following is substituted.

Costs

The Board has authority to assess costs for these disciplinary proceedings pursuant to Wis. Stat. § 440.22. The decision whether to assess costs and, if assessed, the amount appropriate for the proceedings, is based on consideration of the following factors:

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 (DSPS) is a "program revenue" agency; and
7. Any other relevant circumstances.

In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz (LS 0802183 CHI). In considering these factors, the Board has the discretion to give each factor the weight appropriate under the circumstances present. In this case the Board finds that the imposition of 80% of the costs on Respondent is warranted.

There was one count charged, the charge was contested, but ultimately proven which demonstrated the Division appropriately charged this case and did not charge a number of other violations that were unsubstantiated. There were no extraneous costs accumulated by the Division outside of the one charge; rather all costs of this case relate solely to the single charged and proven count. Furthermore, the nature of the sole count proven in this case is extremely serious. Respondent, while intoxicated with a blood alcohol concentration more than twice the legal limit, was driving to provide in-home care to a patient. She was only prevented from providing nursing care to the patient because her level of intoxication caused her to drive her car into a ditch and resulted in her arrest for Operating While Intoxicated (OWI). But for her car accident, she would have continued on her way to provide nursing care to a patient. Her actions in consuming alcohol prior to work and then driving to work in an intoxicated manner were deliberate and demonstrate a problem with alcohol. The risks to patients presented by an inebriated nurse are severe. In this case that severe risk was vastly compounded as there is little to no supervision with the provision of in-home care.

Due to the extremely serious nature of the offense, the level of discipline imposed here is equally severe. Respondent's license is suspended indefinitely and she is under an intensive impairment order. The order requires an Alcohol and Other Drug Abuse assessment, treatment, attendance at meetings, sobriety, drug and alcohol screens, and various practice limitations. Respondent cannot practice as a nurse unless and until the Board determines she has shown five (5) years of compliance with this order and that she will be able to practice nursing in a safe and reliable manner.

Respondent's cooperation in stipulating to the facts presented herein and the fact that she has not previously been disciplined are far outweighed by all of the other factors taken into consideration. Moreover, precedent supports the Board's discretion in allocating less weight to these factors. For example, *In the matter of Disciplinary Proceedings Against Stacey L. Medved, R.N.*, (13 NUR 303, Order 3741), Ms. Medved was found asleep at a nursing station in the nursing home where she worked and was observed displaying impaired behavior. Medved like Respondent was charged and contested a single charge that was ultimately proven. Medved like Respondent had serious alcohol impairment that was found to relate substantially to the practice of nursing. Medved like Respondent was put on a serious 5 year impairment order. Medved signed a stipulation to discipline displaying similar cooperation during her first disciplinary proceeding. Yet in the end, the Board ordered Medved to pay full costs.

In addition to the above considerations, the fact that DSPS is a program revenue agency also weighs heavily into the calculation of the appropriate amount of costs to be borne by the Respondent. DSPS is funded by the revenue received from all licensees. Therefore, any costs not paid by the Respondent are shared by all other nursing licensees. The Board gives serious consideration to whether the costs associated with this action should be paid by the Respondent or shared by other licensees. The Board finds in this case, that the fact that DSPS is a program revenue agency, coupled with the facts at hand and discipline imposed; require that Respondent pay 80% of costs.

Based on all of the above, it is appropriate under the *Buenzli-Fritz* factors for the Respondent to bear 80% of the costs associated with this matter.

Dated at Madison, Wisconsin this 19 day of June, 2015.

By: Sheryl Krause
A Member of the Board

(DW)



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

In the Matter of Disciplinary Proceedings Against
Nancy Brenden, Respondent

DHA Case No. SPS-14-0085
DLSC Case No. 14 NUR 003

PROPOSED DECISION AND ORDER

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

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Compliance, by

Attorney Amanda L. Florek
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PROCEDURAL HISTORY

On November 19, 2014, the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Nancy R. Brenden, alleging that she abused alcohol or other drugs to an extent that such use impaired her ability to safely or reliably practice, and was therefore subject to discipline pursuant to Wis. Stat. § 441.07(b)¹ and (c) and Wis. Admin. Code § N 7.03(2).²

On December 8, 2014, Respondent, through counsel, filed an Answer in which she denied the violation. A prehearing conference was held by telephone on December 19, 2014, at which the parties agreed that this matter could be resolved through a stipulation of facts and briefing.

¹ All references to Wis. Stat. § 441.07 are to the 2011-2012 provisions.

² All references to Wis. Admin. Code §§ N 7.03 and 7.04 refer to the code as it existed during the relevant time period in this case, before the August 1, 2014 effective date of amendments to these provisions.

On December 23, 2014, the Division filed an Amended Complaint. Rather than alleging that Respondent violated Wis. Admin. Code § N 7.03(2) by using alcohol or other drugs to an extent that such use impaired her ability to safety or reliably practice, the Amended Complaint alleged that Respondent engaged in unprofessional conduct by violating a law substantially related to the practice of professional or practical nursing, in violation of Wis. Stat. § 441.07(1)(b) and (d) and Wis. Admin. Code § 7.04(1).

On January 12, 2015, Respondent, through counsel, filed an Answer to the Amended Complaint in which she again denied the allegation in the original Complaint that she abused alcohol or other drugs to an extent that such use impaired her ability to safety and reliably practice. The Answer did not address the new allegation in the Amended Complaint, that Respondent violated a law which substantially related to the practice of professional nursing. On January 20, 2015, the parties filed a Stipulation of Facts.

FINDINGS OF FACT

The following facts are taken from the parties' Stipulation of Facts, filed January 20, 2015.

1. Respondent Nancy R. Brendan, R.N. (DOB April 2, 1961), is licensed in the State of Wisconsin as a professional nurse, having license number 115388-30, first granted on March 25, 1994 and current through February 29, 2016.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 3581 Tura Road, McFarland, Wisconsin 53558-9767.

3. At all times relevant to this proceeding, Respondent was employed as an in-home nurse.

4. On November 22, 2013, Respondent drove her car into a ditch while on her way to provide in-home care to a patient.

5. Police responded to the scene. Respondent had glassy eyes, slurred speech and a strong odor of intoxicants on her breath. Respondent was placed under arrest for operating while intoxicated (OWI) and transported to the Rock County Jail.

6. Respondent voluntarily submitted to a legal blood draw to determine her blood alcohol concentration (BAC). The test revealed Respondent had a BAC of .184 g/100 ml.

7. The Rock County District Attorney charged Respondent with OWI, first offense, Wis. Stat. § 346.63(1)(a), in Rock County case number 2013TR16348.

8. On October 10, 2014, in Rock County Circuit Court Case Number 2013TR16348, Respondent pled no contest, was found guilty and was convicted of OWI, first offense, Wis. Stat. § 346.63(1)(a).

DISCUSSION

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); *see also* Wis. Admin. Code § HA 1.17(2). 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).

Violation

Wisconsin Stat. § 441.07(1)(d) allows the Board of Nursing (Board) to discipline a professional nurse upon a finding of “misconduct or unprofessional conduct.” “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,” and includes “violating . . . any law substantially related to the practice of professional or practical nursing.” Wis. Admin. Code § N 7.04(1) (Rule 7.04(1)). “A certified copy of a judgment of conviction is prima facie evidence of a violation.” *Id.*

Although under Wis. Stat. § 346.63(1)(a) a conviction for first offense OWI is a civil forfeiture rather than a criminal offense, it nevertheless constitutes a violation of “any law” under Rule 7.04(1).³ The question in this case is whether Respondent’s violation is “substantially related” to the practice of professional nursing. Based on the circumstances of this case, I conclude that it is.

Respondent, while driving drunk, was on her way to provide in-home care to a patient, when she drove her car into a ditch. At the time of her arrest, she had a BAC of .184 g/100 ml, over twice the legal limit of .08. *See* Wis. Stat. §§ 346.63(1)(a) and 340.01(46m)(a). She also had glassy eyes, slurred speech and a strong odor of intoxicants on her breath. On October 10, 2014, Respondent pled no contest, was found guilty and was convicted of OWI, first offense, Wis. Stat. § 346.63(1)(a). It may be reasonably inferred from the stipulated facts in this case that Respondent intended to provide nursing care to an in-home patient while extremely intoxicated, and presumably would have done so had she not driven her car into the ditch and been arrested for OWI.

According to the National Institute of Alcohol and Abuse and Alcoholism, intoxication “interferes with the brain’s communication pathways, and can affect the way the brain looks and works. These disruptions can change mood and behavior, and make it harder to think clearly and move with coordination.” *See* <http://niaaa.nih.gov/alcohol-health/alcohols-effects-body>. As a nurse, Respondent is entrusted with the care of vulnerable patients. In-home nurses have a higher degree of independence than those in a hospital or clinic setting, as they have little or no supervision.

³ A court’s acceptance of a no contest plea for this offense also constitutes a “conviction” under Wis. Stat. § 340.01(9r).

The standards of practice for registered nurses are set forth in Wis. Admin. Code § N 6.03 as follows:

(1) **GENERAL NURSING PROCEDURES.** An R.N. shall utilize the nursing process in the execution of general nursing procedures in the maintenance of health, prevention of illness or care of the ill. The nursing process consists of the steps of assessment, planning, intervention and evaluation. This standard is met through performance of each of the following steps of the nursing process:

(a) *Assessment.* Assessment is the systematic and continual collection and analysis of data about the health status of a patient culminating in the formulation of a nursing diagnosis.

(b) *Planning.* Planning is developing a nursing plan of care for a patient which includes goals and priorities derived from the nursing diagnosis.

(c) *Intervention.* Intervention is the nursing action to implement the plan of care by directly administering care or by directing and supervising nursing acts delegated to L.P.N.'s or less skilled assistants.

(d) *Evaluation.* Evaluation is the determination of a patient's progress or lack of progress toward goal achievement which may lead to modification of the nursing diagnosis.

These necessary standards and skills are compromised by intoxication. Nursing, particularly in-home nursing, requires vigilance, good judgment, responsibility, quick reaction time and critical thinking skills to address situations which may occur. As noted by the Division, nurses are often responsible for such tasks as giving medications, cleaning wounds, aiding in emergencies, observing changes in conditions, keeping doctors updated and following through on doctors' orders, and helping move patients from beds to wheelchairs. Failure to carry out these and other nursing tasks could lead to injury or even death. Even if Respondent would not have been performing each or any of these specific tasks for the patient she going to see on the date of her arrest, it cannot be seriously argued that a nurse can be entrusted to safely perform her nursing duties when she is impaired to such an extent that she is unable to control her vehicle, drives into a ditch, has slurred speech, and has a BAC of over twice the legal limit for driving.

Discipline

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 Department requests a version of the Board's standard impairment order, set forth in the Order section below, with an indefinite suspension of Respondent's license and a five-year period of monitoring and AODA treatment, following which the Board may grant a petition for a return of full licensure. *See e.g., In the Matter of Disciplinary Proceedings Against Michael Duane Polivka, R.N.*, Order No. LS0702021NUR (April 19, 2007); *In the Matter of Disciplinary Proceedings Against Brian J. Reynolds, R.N.*, Order No. 0002520 (July 11, 2013); *In the Matter of Disciplinary Proceedings Against Denise F. Linder, R.N.*, Order No. 0511141NUR (Mar. 9, 2006). The impairment order also prohibits working as a home-care nurse and in other settings

where there is no supervision. However, it further provides the opportunity for a stay of the suspension after a period of time, if the Board, in its discretion, deems such action appropriate.

The standard impairment order is generally appropriately here. Respondent, while drunk, was on her way to provide care as an in-home nurse, broke the law by driving with a BAC of over twice the legal limit, and was intoxicated to the extent that she drove her car into a ditch and had slurred speech. It may reasonably be inferred from these facts that Respondent has a problem with alcohol which needs to be addressed before she can safely and reliably practice as a nurse. At a minimum, Respondent should not practice nursing until an AODA assessment is done to determine what treatment, if any, is appropriate.

I adopt the Division's recommendation with one exception. The Division requests that Respondent not be allowed to petition the Board for a stay of her suspension for three months. I conclude that she may petition for a stay immediately upon the final decision in this matter being issued by the Board. The incident at issue occurred on November 22, 2013, approximately 18 months ago. There is no indication that Respondent has engaged in any type of similar conduct since then. There is also the possibility that Respondent has undergone an assessment and/or received treatment during this time period which would satisfy the Board, although it seems unlikely as Respondent presumably would have provided such information in this proceeding. At any rate, I determine that the better course here is to leave the determination regarding whether and when to stay the suspension in the Board's discretion, allowing the Board to consider all of the factors at issue.⁴

Such discipline is consistent with the factors set forth in *Aldrich*. It protects the public in that it does not allow Respondent to practice as a nurse unless and until the Board determines that she will not do so under the influence of alcohol or other mind-altering substances and that she will practice nursing in a safe and reliable manner. The discipline also serves to rehabilitate Respondent, in that it demonstrates to her the seriousness of driving drunk on her way to care for a patient and it also provides her with strong incentives to take a good look at her drinking and address abuse issues that appear to exist. For these same reasons, the discipline ordered will also best deter others from engaging in such conduct.

Finally, this discipline is consistent with the three prior Board cases cited by the Division, in which nurses were either on the job or on their way to care for patients while under the influence. See *In the Matter of Disciplinary Proceedings Against Coretta Harris, R.N.*, Order No. 0003226 (May 16, 2014); *In the Matter of Disciplinary Proceedings Against Lisa M. Johnson, R.N.*, Order No. 0003008 (Feb. 13, 2014); *In the Matter of Disciplinary Proceedings Against Kathleen M. Hart, R.N.*, Order No. LS0705171NUR (Aug. 30, 2007). Those cases, in which more severe discipline was ordered than that imposed here, either involved more than one incident of misuse of alcohol and/or controlled substances or, in the case of *Harris*, involved consuming alcohol and performing nursing duties while under the influence of alcohol.

Based on the foregoing, I conclude that the discipline set forth in the Order section below is appropriate.

⁴ I also order that Respondent undergo an AODA assessment, which was not requested here.

Costs

The Division has the authority to assess costs for these disciplinary proceedings pursuant to Wis. Stat. § 440.22. With respect to imposition of costs, factors to consider include: (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 prosecutor; (4) the cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI).

The Division requests that full costs be imposed on Respondent. The Division's request is not appropriate given the factors in *Buenzli-Fritz* and the facts of this case. There was one count proven and charged. Respondent has fully cooperated in this proceeding, including entering into a stipulation of all of the relevant facts. Respondent has never been disciplined before. Although the misconduct is extremely serious, I also note that it involved one discrete incident and that, fortunately, no one was actually harmed. Moreover, although the discipline recommended and imposed is severe, there is also the opportunity for a stay of the suspension provided Respondent meets the requirements the Board deems appropriate. In light of these factors and the fact that any costs not paid by Respondent will be borne by other licensees who have not engaged in misconduct, I conclude that imposition of 30 percent of the costs on Respondent is warranted.

CONCLUSIONS OF LAW

1. Respondent violated a law substantially related to the practice of professional nursing and is therefore subject to discipline pursuant to Wis. Stat. § 441.07(1)(d) and Rule 7.04(1).
2. The discipline set forth in the Order section below is warranted based on the facts of record and the factors delineated in *Aldrich*.
3. Imposing 30 percent of the costs of these proceedings on Respondent is appropriate under Wis. Stat. § 440.22, the facts of record and the Department's prior decision in *Buenzli-Fritz*.

ORDER

For the reasons set forth above, IT IS ORDERED that:

The license of Respondent Nancy R. Brenden to practice as a nurse in the State of Wisconsin is hereby SUSPENDED for an indefinite period and LIMITED as follows:

SUSPENSION

- A.1. Respondent's license 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://dsps.wi.gov/index.htm>.
- A.5. Upon a showing by Respondent of continuous, successful compliance for a period of at least five 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 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. Respondent may petition the Board for a stay of the suspension at any time following the final decision in this matter. The Board may, in its discretion, grant or deny the petition.
- 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 or its designee may, in conjunction with any removal of any stay, prohibit 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. If Respondent has not done so already, she shall undergo an AODA assessment by a treater acceptable to the Board or its designee (Treater). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by D.5., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Division 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 she 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 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 may work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances. If Treater subsequently recommends restrictions on such access, the Board or its designee may impose such restrictions.
- C.21. Respondent shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee.
- C.22. Respondent shall practice only in a work setting pre-approved by the Board or its designee.
- C.23. Respondent may not work in a home health care, hospice, pool nursing, assisted living, 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 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
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

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 months, Respondent shall notify the Department Monitor of 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 any time 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.
- D.7. Respondent may petition the Board for a modification of this Order. However, it shall be in the sole discretion of the Board whether to modify this Order or to impose any additional limitations if this Order is modified.

IT IS FURTHER ORDERED THAT Respondent shall pay 30 percent of 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:

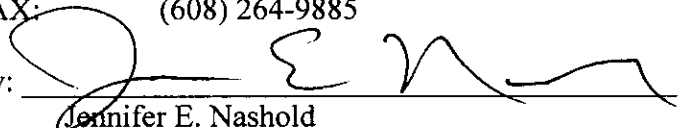
**Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190**

IT IS FURTHER ORDERED THAT the terms of this Order are effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on April 23, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____


Jennifer E. Nashold
Administrative Law Judge