

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



### Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

#### Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscga>

- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DSPS website:** An individual who believes that information on the website is inaccurate may contact [DSPS@wisconsin.gov](mailto:DSPS@wisconsin.gov)



**Before the  
State Of Wisconsin  
Board of Nursing**

---

In the Matter of Disciplinary Proceedings Against  
Terri S. Gratz, R.N., Respondent

FINAL DECISION AND ORDER

Order No. 0004132

---

**Division of Legal Services and Compliance Case No. 13 NUR 548**

The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Board of Nursing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 9<sup>th</sup> day of July, 2015.

  
\_\_\_\_\_  
Member

Board of Nursing



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

---

In the Matter of Disciplinary Proceedings Against  
Terri S. Gratz, R.N., Respondent

DHA Case No. SPS-15-0038  
DLSC Case No. 13 NUR 548

---

**PROPOSED DECISION AND ORDER**

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

Terri S. Gratz, R.N.  
East 7122 Ellegson road  
Viroqua, WI 54665-7741

Wisconsin Board of Nursing  
P.O. Box 8366  
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and  
Compliance, by

Attorney Kim M. Kluck  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P. O. Box 7190  
Madison, WI 53707-7190

**PROCEDURAL HISTORY**

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Terri S. Gratz (Respondent), alleging that she engaged in misconduct or unprofessional conduct by violating any law substantially related to the practice of professional nursing, contrary to Wis. Admin. Code § N 7.04(1),<sup>1</sup> and by administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law, contrary to Wis. Admin. Code § N 7.04(2). The Division served Respondent on April 6, 2015, by sending a copy of the Notice of Hearing and Complaint to Respondent's last

---

<sup>1</sup> All references to Wis. Admin. Code § N 7.04 refer to the code as it existed before August 1, 2014.

known address. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09, and failed to appear at the telephone prehearing conference held before the undersigned Administrative Law Judge (ALJ) on May 8, 2015.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear at the prehearing conference, the ALJ found Respondent to be in default. On May 15, 2015, the ALJ issued a Notice of Default and Order against Respondent. Consistent with the notice, the Division filed a recommended proposed decision and order on May 15, 2015.

### FINDINGS OF FACT

#### Facts Related to the Alleged Violations

Findings of Fact 1-7 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Terri S. Gratz, R.N. (DOB April 15, 1958), is licensed in the State of Wisconsin as a professional nurse, having license number 77116-30, first granted on August 29, 1980 and current through February 29, 2016.

2. Respondent's most recent address on file with the Department is East 7122 Ellefson Road, Viroqua, Wisconsin 54665-7741.

3. At all times relevant to this proceeding, Respondent was employed as a professional nurse at a retirement home (Home) located in Viroqua, Wisconsin.

4. On September 23, 2013, another professional nurse at the Home saw Respondent take medication pills intended for a patient out of a narcotic card and raise her hand to her mouth. When Respondent saw the employee, she lowered her hand.

5. The employee saw that Respondent then went to a nearby water fountain and ingested the medication.

6. The medication Respondent ingested was from the narcotic lock box and contained a controlled substance.

7. On September 26, 2013, the employee reported Respondent's actions to the police. During the subsequent investigation, Respondent told police that it was possible that she had taken the medication because of her migraine condition and just did not remember diverting and ingesting the controlled substance.

#### Facts Related to Default

8. The Complaint and Notice of Hearing in this matter were served on Respondent on April 6, 2015, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing informed Respondent: "If you do not provide a proper Answer within

twenty (20) days, you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.”

9. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

10. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for May 8, 2015. Notice of the prehearing conference was sent to both parties on April 27, 2015, with instructions that Respondent provide the ALJ with a telephone number at which Respondent could be reached for the conference no later than May 4, 2015. The Notice further informed Respondent: “A respondent’s failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent.”

11. Respondent failed to provide a telephone number and could not be reached for the prehearing conference.

12. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

13. On May 8, 2015, the ALJ issued a Notice of Default and Order which concluded that Respondent was in default and required the Division to serve no later than May 20, 2015, a recommended proposed decision and order.

14. The Division filed its recommended proposed decision and order on May 15, 2015.

15. Respondent did not file a response to either the Division’s submission or to the Notice of Default and Order.

## DISCUSSION AND CONCLUSIONS OF LAW

### Default

As stated in the May 8, 2015 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conference held on January 20, 2015. *See* Wis. Admin. Code §§ SPS § 2.09(4) and 2.14; Wis. Admin. Code § HA 1.07(3). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

### Violations of Wisconsin Statute and Administrative Code

Following an investigation and disciplinary hearing, if the Wisconsin Board of Nursing (Board) determines that a nurse has violated subchapter I of Wis. Stat. ch. 441 or any rule promulgated by Board under that subchapter, or has committed misconduct or unprofessional

conduct, it may reprimand the nurse and may revoke, limit, suspend or deny a renewal of a nursing license. Wis. Stat. § 441.07(1)(b) and (d),<sup>2</sup> respectively.

The phrase “misconduct or unprofessional conduct” as used in Wis. Stat. § 441.07(1)(d) means “any practice of 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 “[v]iolating . . . any law substantially related to the practice of professional or practical nursing” and “[a]dministering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law.” Wis. Admin. Code § N 7.04(1) and (2), respectively.

By the conduct described above in paragraphs 3 through 7, Respondent engaged in unprofessional conduct as defined in Wis. Admin. Code § N 7.04(1) by violating any law substantially related to the practice of professional nursing, and as defined in Wis. Admin. Code § N 7.04(2), by administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law.

As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1)(b) and (d).

#### Appropriate 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 Division requests that Respondent be reprimanded and that her license be limited as set forth in the Order section below. These limitations include drug monitoring conditions and continuing education on medication errors and nursing professionalism and ethics. The Division’s recommended discipline is warranted.

Respondent’s conduct of diverting a controlled substance from a narcotic card is a significant breach of trust and poses a risk of harm to patients. Diverting medications violates a fundamental duty with which every nurse is entrusted: the responsible handling of controlled substances that they have access to by virtue of their professional licenses. Regardless of whether Respondent diverted the medications for her personal use, for the use of family members or friends or for selling on the street, she has demonstrated that she cannot be trusted with the privilege of handling these medications.

Reprimanding Respondent and requiring her to comply with drug monitoring conditions and complete continuing education on medication errors and nursing professionalism and ethics will best serve to promote Respondent’s rehabilitation, protect the public and deter others from engaging in such conduct.

---

<sup>2</sup> Wis. Stats. (2011-2012).

The discipline recommended by the Division is also consistent with prior Board decisions. In *In the Matter of Disciplinary Proceedings Against Monica J. Stout, R.N., A.P.N.P.*, Order No. 0003621 (Jan 8, 2015), a nurse diverted a card of Vicodin tablets from a resident at a care center. The nurse admitted during the Department's investigation that she took the Vicodin to treat her pain due to gallstones. The Board reprimanded the nurse and limited her license for a minimum of two years with the following requirements: that she participate in a drug monitoring program; that she undergo drug testing no less than 49 times a year for at least one year; that she abstain from use of controlled substances unless prescribed by a health professional; that she provide her nursing employer with a copy of the order before engaging in any nursing employment; that she not work as a nurse in a setting in which she has access to controlled substances; and that she complete education on the topics of ethics of nursing and medication dispensing.

Similarly, in *In the Matter of Disciplinary Proceedings Against Tracy M. Majerle, R.N.*, Order No. 0003459 (Oct. 9, 2014), a nurse diverted a tablet of modanafil, a prescription drug used to promote wakefulness. The Board reprimanded the nurse and limited her license for a minimum of two years with the following requirements: that she participate in a drug monitoring program; that she undergo drug testing no less than 49 times a year for at least one year; that she abstain from use of controlled substances unless prescribed by a health professional; that she provide her nursing employer with a copy of the order before engaging in any nursing employment; that she not work as a nurse in a setting in which she has access to controlled substances; and that she complete education on the topics of ethics and professionalism in nursing.

Based on the factors in *Aldrich*, the facts of this case and the prior Board decisions in *Stout* and *Majerle*, the discipline recommended by the Division is appropriate.

### Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings. The factors to be considered in assessing costs are: (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 respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department 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; and (7) any other relevant circumstances. See *In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz, D.C.*, LS0802183CHI (Aug. 14, 2008).

Respondent has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven, or that certain factual findings were investigated and litigated that were unnecessary.

The underlying drug diversion and potential abuse issues pose a risk of harm to patients. This is a significant breach of trust for a professional nurse. In addition, Respondent's refusal to cooperate in these proceedings demonstrates a lack of appreciation of the extent of her misconduct and a refusal to accept responsibility for her actions.

Based on the criteria delineated in the *Buenzli-Fritz* decision and the facts of record, Respondent should be assessed all of the recoverable costs in this case.

#### ORDER

Accordingly, IT IS ORDERED that Respondent Terri S. Gratz, R.N. (license no. 77116-30), is REPRIMANDED and her license to practice as a professional nurse in the State of Wisconsin and her privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact are limited as follows:

- a. For a period of at least two years from the date of this Order:
  - i. Respondent shall enroll and participate in a drug monitoring program which is approved by the Department (Approved Program).
  - ii. 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 monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
    1. Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
    2. 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.
    3. 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.
  - iii. 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 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, the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.

- iv. Respondent shall report to 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.
- v. 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, create false positive screening results, or interfere with Respondent's treatment and rehabilitation, shall not be taken unless ordered by a physician, in which case the drug must be reported as described in the paragraph 2(a)iv.
- vi. All positive test results are presumed valid and may result in automatic suspension of licensure by the Board or the Board's designee. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.
- vii. 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. Respondent shall provide her nursing employer with a copy of this Order before engaging in any nursing employment.
- viii. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances.

- ix. Respondent shall provide her nursing employer with a copy of this Order before engaging in any nursing employment.
- b. 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.
- c. The Board or its designee may, without hearing, suspend Respondent's nursing license upon receipt of information that Respondent is in substantial or repeated violation of any provision 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 violations of the same provision or violation of more than one provision.
- d. 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. After two years from the date of this Order, Respondent may petition the Board for the modification or termination of any other limitations contained in this Order. The Board may grant or deny the petition, in its discretion, or may modify this Order as it sees fit.
- e. The professional nursing license issued to Respondent and her privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, is further LIMITED as follows:
  - i. Within 90 days of the date of this Order, Respondent shall at her own expense, successfully complete six hours of education on medication errors and three hours on the topic of professionalism and ethics in nursing offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the courses.
  - ii. Respondent shall submit proof of successful completion of the education in the form of verification from the institution providing the education to the Department Monitor at the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department, and also may not be used in future attempts to upgrade a credential in Wisconsin.
  - iii. This limitation shall be removed from Respondent's license after satisfying the Board or its designee that Respondent has successfully completed all of the ordered education.

- f. Request of approval of courses, proof of successful course completion and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent 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 7190, Madison, WI 53707-7190  
Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

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:

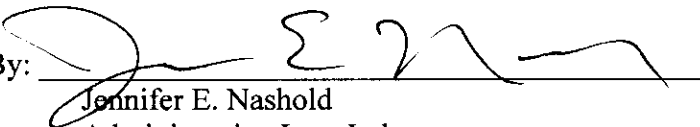
Department Monitor  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

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 June 5, 2015.

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

By: \_\_\_\_\_

  
Jennifer E. Nashold  
Administrative Law Judge