

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DEAN E. TRACEY, L.P.N.,
RESPONDENT.

:
:
: FINAL DECISION AND ORDER
:
: **0004970**
:

Division of Legal Services and Compliance Case No. 16 NUR 008

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

Dean E. Tracey, L.P.N.
2515 N. 13th St.
Sheboygan, WI 53083

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

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

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 Dean E. Tracey, L.P.N., (dob November 25, 1963) is licensed in the State of Wisconsin as a practical nurse, having license number 313627-31, first issued on March 4, 2011 and current through April 30, 2017. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2515 North 13th Street, Sheboygan, Wisconsin 53083.

2. At all times relevant to this proceeding, Respondent was employed as a practical nurse at a nursing home (Home), located in Plymouth, Wisconsin.

3. On October 7, 2015, LPN A noticed that a blister pack of Vicodin® belonging to Patient R.L. was missing.

4. On October 9, 2015, Respondent was interviewed by the Home's administration and denied diverting any medication.

5. On October 11, 2015, Respondent's employment was suspended pending investigation.

6. The Home's internal investigation revealed the following:

a. On July 19, 2015, Patient J.K. was admitted to the Home. Patient J.K. had a physician's order for tramadol Hcl 50 mg as needed. The Home received 30 tablets of tramadol Hcl upon Patient J.K.'s admission.

b. On July 20, 2015, Respondent ordered a refill of Patient J.K.'s tramadol Hcl prescription and received another 26 tablets.

c. Between July and August 6, 2015, Patient A had been administered 21 of the 56 tramadol Hcl 50 mg tablets.

d. As of August 6, 2015, Patient J.K. should have had 35 tramadol Hcl 50 mg tablets remaining. None of the 35 tablets or the associated paperwork could be located at the time of the investigation and cannot be accounted for.

e. On August 6, 2015, LPN B ordered a refill of Patient J.K.'s tramadol Hcl prescription. This blister pack was at the Home during the investigation and had 23 tablets remaining.

f. On August 29, 2015, Respondent ordered a refill of 24 tramadol Hcl tablets for Patient J.K. The medication and associated paperwork were missing from the Home at the time of the investigation and cannot be accounted for.

g. On September 20, 2015, Respondent ordered a refill of 30 tramadol Hcl tablets for Patient J.K. The medication and associated paperwork were missing from the Home and cannot be accounted for.

h. On October 3, 2015, Respondent ordered a refill of 30 tramadol Hcl tablets for Patient J.K. The medication and associated paperwork were missing from the Home at the time of the investigation.

7. On October 15, 2015, the Sheboygan County Sheriff's Office executed a search warrant of Respondent's residence pursuant to numerous missing tramadol and hydrocodone/APAP medication from the Home.

8. During the execution of the search warrant, two baggies were found containing medication. One baggie contained seven (7) full and three (3) partial diazepam 5 mg tablets and one (1) full lorazepam 1 mg tablet. The second baggie contained two (2) full and one (1) partial lorazepam 1 mg tablet.

9. Respondent admitted to the detective that the pills were diverted from the Home. Respondent explained that he would sometimes forget to administer a patient's medication. When this occurred Respondent would document that he administered the medication in the patient's medication administration record, place the tablet in his pocket and take it home rather than properly waste it for fear of being terminated.

10. No tramadol or hydrocodone/APAP medication was found in Respondent's residence.

11. 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. Pursuant to Wis. Stat. § 961.20(4)(e), tramadol is a schedule IV controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(3).

3. Pursuant to Wis. Stat. § 961.20(2)(er), lorazepam is a schedule IV controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(3).

4. Pursuant to Wis. Stat. § 961.20(2)(cr), diazepam is a schedule IV controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(3).

5. By the conduct described in the Findings of Fact, Dean E. Tracey, L.P.N., engaged in unprofessional conduct as defined by Wis. Admin. Code § N 7.03(6)(c), by departing from or failing to conform to the minimal standards of acceptable nursing practice that may create unnecessary risk or danger to a patient's life, health, or safety.

6. By the conduct described in the Findings of Fact, Dean E. Tracey, L.P.N., engaged in unprofessional conduct as defined by Wis. Admin. Code § N 7.03(8)(e), by obtaining, possessing or attempting to obtain or possess a drug without lawful authority.

7. As a result of the above conduct, Dean E. Tracey, L.P.N., is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d).

ORDER

1. The attached Stipulation is accepted.
2. The professional nursing license issued to Dean E. Tracey, L.P.N., (license number 313627-31) to practice nursing in the State of Wisconsin, and his privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, is SUSPENDED indefinitely.
3. Respondent may petition for a stay of suspension after he completes an AODA assessment and has provided proof of successful completion of the Order education below as follows:
 - a. Respondent shall, at his own expense, obtain an AODA assessment with a treater pre-approved by the Board or its designee under the following terms:
 - i. Prior to the assessment, Respondent shall provide a copy of this Order to the treater.
 - ii. Respondent shall provide and keep on file with the treater current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department to obtain a copy of the assessment. Copies of these releases shall be immediately filed with the Department Monitor at the address below.
 - iii. Respondent shall comply with the treater's recommendations.
 - iv. The Board, or its designee, may impose any additional limitations they believe are necessary based on the results of the assessment.
 - b. Respondent shall, at his own expense, successfully complete five (5) hours of education on the topic of documentation; three (3) hours of education on the topic of medication administration; and four (4) hours of education on the topic of 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.
 - c. 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.
 - d. 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.

4. The professional nursing license issued to Dean E. Tracey, L.P.N., (license number 313627-31) to practice nursing in the State of Wisconsin, and his privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, is LIMITED as follows:

- a. For a period of at least two (2) 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). Enrollment shall occur within thirty (30) calendar days from the date of this Order.
 - 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 (5) hours of notification of a test.
 3. The Approved Program shall require the testing of specimens at a frequency of not less than forty-nine (49) times per year, for at least the first year of this Order. Thereafter, the Board may adjust the frequency of testing on its own initiative at any time.
 - 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 they 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 3(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, 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.
- viii. Respondent shall practice only in a work setting pre-approved by the Board or its designee.
- ix. Respondent shall provide his nursing employer with a copy of this Order before engaging in any nursing employment. Respondent shall provide the Department Monitor with written acknowledgment from each nursing employer that a copy of this Order has been received. Such acknowledgment shall be provided to the Department Monitor within fourteen (14) days of beginning new employment and/or within fourteen (14) days of the date of this Order for employment current as of the date of this Order.
- x. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances. Respondent shall provide the Department Monitor with written acknowledgment from each nursing employer that Respondent does not have access to controlled substances. Such acknowledgement shall be provided to the Department Monitor within fourteen (14) days from the date of this Order for any

current employer and on a quarterly basis thereafter from each nursing employer.

5. 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.

6. 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 screen. A repeated violation is defined as the multiple violations of the same provision or violation of more than one provision. The Board or its designee may, in conjunction with the suspension, prohibit Respondent from seeking termination of the suspension for a specified period of time.

7. The Board or its designee may terminate the suspension if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the suspension to be terminated. Whether to terminate the suspension shall be wholly in the discretion of the Board or its designee.

8. After the first year from the date of this Order, Respondent may petition the Board on an annual basis for a modification of the terms of this Order. After two (2) consecutive years of successful compliance, the Respondent may petition the Board for return of full licensure. The Board may grant or deny any petition, in its discretion, or may modify this Order as it sees fit.

9. Within 120 days from the date of this Order, Dean E. Tracey, L.P.N., shall pay COSTS of this matter in the amount of \$915.00.

10. Any requests, reports, documents, 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

11. 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 enroll in an approved drug monitoring program, fails to comply with the treater's recommendations, fails to comply with the requirements for

participation in the approved drug and alcohol monitoring program, fails to practice in a pre-approved work setting, or fails to timely submit payment of the costs as ordered, Respondent's license (no. 313627-31) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has enrolled in an approved drug monitoring program, complied with the treater's recommendations, complied with the participation requirements for the approved drug monitoring program, practice in a pre-approved work setting, and complied with payment of costs.

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

WISCONSIN BOARD OF NURSING

by: Jessy V. New DNP, APRN
A Member of the Board

10.13.16
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
DEAN E. TRACEY, L.P.N.,	:	
RESPONDENT.	:	0004970

Division of Legal Services and Compliance Case No. 16 NUR 008

Respondent Dean E. Tracey, L.P.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. Respondent is represented by Attorney Melissa Barrette.

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.

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 or Respondent's attorney, 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.

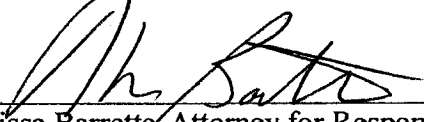
9. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



Dean E. Tracey, L.P.N., Respondent
2515 N. 13th St.
Sheboygan, WI 53083
License no. 313627-31

9/9/14


Date



Melissa Barrette, Attorney for Respondent
Kirk Obear and Associates
603 S. 8th St.
Sheboygan, WI 53082-0935

9/12/2016

Date



Amanda L. Florek, Attorney
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

9/12/14

Date