

## 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)

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

---

IN THE MATTER OF APPLICATION FOR	:	
A REGISTERED NURSE LICENSE	:	ORDER GRANTING
	:	LIMITED LICENSE
MISTY DEMARK	:	
APPLICANT	:	

**0005158**

---

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

MISTY DEMARK  
1827 SHILOR DR.  
COLUMBUS, IN 47203

BOARD OF NURSING  
1400 EAST WASHINGTON AVENUE  
P.O. BOX 8935  
MADISON, WI 53708-8935

FINDINGS OF FACT

- I. Misty DeMark (Applicant) has filed an application (#583009) for a credential to practice as a Registered Nurse (RN) in Wisconsin via endorsement from Indiana.
- II. Information received in the application process reflects that the Applicant was granted a license as a RN in Indiana on or about April 27, 2016.
- III. Information also received in the application process reflects that the Applicant was terminated from her position as a RN at Columbus Regional Health System effective March 22, 2016.
  - A. The Applicant was accused of stealing medication from her workplace after being seen on video surveillance.
  - B. Applicant states she recently had changes in her anti-depressant medication about a year ago which lead to a worsening depression and the decision to begin "self-medicating" with opiates. Applicant states this turned into a full blown opiate addiction. Applicant states she self-reported to Indiana State Nursing Assistance Program (ISNAP) and entered a detox and treatment facility rehab program.
- IV. Additionally, Applicant also submitted information regarding two (2) complaints that were filed in Indiana against her RN license also due to the diversion of narcotics from

her work as an RN. As of the date of this Order, there are no disciplinary actions against her Indiana license.

- V. In addition to her employment being terminated and complaints being filed against Applicant's RN license due to the narcotic diversion, Applicant was arrested and has the following pending charges against her:

A. Three (3) counts of Felony Possession of a Narcotic Drug, and one (1) count of misdemeanor Theft.

i. Applicant was terminated from her previous position as a RN at Columbus Regional Health System Services due to suspicion of diverting drugs from her employer after being seen on video surveillance. Her employer turned this information over to the prosecutor's office and they issued a warrant for her arrest.

ii. As of the date of this Order, these charges are still pending in Indiana.

#### CONCLUSIONS OF LAW

- I. The Board has jurisdiction over this matter pursuant to Wis. Stat. § 441.06, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. §§ 15.08(5)(c) and 227.44(5).
- II. Applicant's arrest and pending charges for diverting controlled substances while working as a nurse are substantially related to the practice of an RN, Wis. Stat. § 441.06(1)(b) and Wis. Admin. Code § N 2.10(1)(b).
- III. Applicant's admission that she "self-medicated" with opiates, which were obtained or possessed without lawful authority through diverting drugs from her employment as a nurse shows Applicant is unfit or incompetent to practice by reason of negligence, abuse of alcohol or other drugs, or mental incompetency, Wis. Stat. § 441.07(1g)(b), (c), and (d).
- IV. Applicant by her conduct is subject to action against her license pursuant to Wis. Stat. §§ 441.07(1g)(b), (c), (d), and 441.06(1)(b), and Wis. Admin. Code §§ N 2.10(1)(b), N 7.03(8)(e) and N 7.03(6)(f).

#### **ORDER**

NOW, THEREFORE, IT IS ORDERED that MISTY DEMARK is GRANTED A REGISTERED NURSE LICENSE subject to the following LIMITATIONS, TERMS AND CONDITIONS:

#### CONDITIONS AND LIMITATIONS

##### Practice Limitations

- A.1. Applicant shall provide a copy of this Order, all previous Orders and any future Order to her employer's human resources department and direct supervisor at all settings where Applicant works as a registered nurse or care giver or provides health care, currently or in the future, during the duration of the limited license. Applicant shall provide the Department of Safety and Professional Services Monitor (Department Monitor) with written acknowledgement from each employer that a copy of this Order has been received. Such acknowledgement shall be provided to the Department Monitoring 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.
- A.2. It is Applicant's responsibility to arrange for written reports from her direct supervisor to be provided to the Department of Safety and Professional Services Monitor (Department Monitor) on a quarterly basis. These reports shall assess Applicant's work performance, attendance and include the number of hours of active nursing practice worked during that quarter.
- A.3. Applicant shall not work in a home health, group homes, hospice, assisted living facilities, pool nursing, through temporary placement agencies or agency setting.
- A.4. Applicant shall practice only in a work setting pre-approved by the Board or its designee, and only under the direct supervision of a licensed registered nurse or other licensed health care professional approved by the Board or its designee.
- A.5. Applicant may not work as a provider in a setting in which Applicant has access to controlled substances.
- A.6. Pursuant to Nurse Licensure Compact regulations, Applicant'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 Board and the regulatory board in the state in which Applicant proposes to practice.
- A.7. Applicant shall report to the Department Monitor any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

#### Treatment Required

- A.8. Applicant shall enter into and continue, in an alcohol/drug addiction program with a Treater acceptable to the Board or its designee. Participation shall begin within 30 days of the date of this Order. Applicant shall participate in, cooperate with, and follow all treatment recommended by Treater.
- A.9. Applicant shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- A.10. Treater shall be responsible for coordinating Applicant's rehabilitation, alcohol/drug monitoring and treatment program as required under the term 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. If Treater is unable or unwilling to serve as Treater, Applicant shall immediately seek approval of a successor Treater by the Board or its designee.

- A.11. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by B.5.. below.
- A.12. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Applicant's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

#### Releases

- A.13. Applicant 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 urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Applicant's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

#### AA/NA Meetings

- A.14. Applicant shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an equivalent program for recovering professional, 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

- A.15. Applicant shall abstain from all personal use of alcohol.
- A.16. Applicant 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.
- A.17. Applicant 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 Applicant's rehabilitation. It is Applicant's responsibility to educate himself or herself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- A.18. Applicant shall report to the Department Monitor all prescription medications and drugs taken by Applicant. 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, Applicant shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.

#### Drug and Alcohol Screens

- A.19. Applicant shall participate in a drug and alcohol monitoring program which is approved by the Department Monitor (Approved Program). Participation shall begin within 30 days of the date of this Order.
- A.20. Applicant shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
- (a) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
  - (b) Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- A.21. The Approved Program shall require the testing of specimens at a frequency of not less than 28 urine screens and one hair test per year. Applicant may petition the Board on an annual basis for a modification of the frequency of tests pursuant to provision B.5. below. The board may adjust the frequency of testing on its own initiative at any time.
- A.22. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Applicant 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.
- A.23. In addition to any requirement of the Approved Program, the Board or its designee may require Applicant to do any or all of the following: (a) submit additional urine specimens; (b) submit blood, hair or breath specimens (c) furnish any specimen in a directly witnessed manner.
- A.24. All confirmed positive test results shall be presumed to be valid. Applicant must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.

#### MISCELLANEOUS

##### Department Monitor

- B.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor  
Department of Safety and Professional Services  
1400 E. Washington Ave.  
P.O. Box 7190, Madison, WI 53707-7190  
Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

#### Required Reporting by Applicant

- B.2. Applicant is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Applicant 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. Applicant shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Applicant.
- B.3. Applicant shall report to the Board any change of employment status, residence, address or telephone number within five days of the date of the change. Additionally, Applicant shall report any convictions or disciplinary action taken against any license within 48 hours of receipt of the judgment of conviction or final order. Every three months, Applicant shall notify the Department Monitor of Applicant'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

- B.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 Applicant continue treatment and rehabilitation under the direction of another Treater or Approved Program

#### Petitions for Modification of Limitations or Termination of Order

- B.5. Applicant may petition the Board on an annual basis for modification of the terms of this Order, but no petition for modification shall be considered sooner than one (1) year from the date of this Order. 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 Applicant shall not have a right to any further hearings or proceedings on the denial.
- B.6. Applicant may petition the Board for full, unrestricted licensure upon demonstration of continuous, successful compliance with the terms of the Order for at least two (2) years, including at least 600 hours of active nursing practice each year.

#### Costs of Compliance

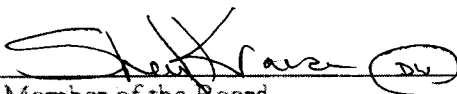
- B.7. Applicant shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Suspension/Additional Discipline

B.8. In the event that Applicant violates any term of this Order, Applicant's license may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Applicant has provided proof, which is determined by the Board or its designee to be sufficient, that Applicant is in compliance with the terms of the Order. The Board may, in addition and/or in the alternative, refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

Dated at Madison, Wisconsin this 7<sup>th</sup> day of February, 2017.

WISCONSIN BOARD OF NURSING

By:   
A Member of the Board



STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

IN THE MATTER OF APPLICATION FOR  
A REGISTERED NURSE LICENSE

MISTY DEMARK  
APPLICANT

STIPULATION

0005158

It is hereby stipulated between the above-referenced Applicant and the State of Wisconsin Board of Nursing (Board) as follows:

The Applicant has filed an application for a Registered Nurse license. Information received by the Board reflects a basis for denial of the application for a credential. Based upon the information of record, the Board agrees to issue and the Applicant agrees to accept a Limited License as a Registered Nurse subject to the terms and conditions set forth in the attached Order.

Dated this 3 day of Feb, 2017

Misty DeMark  
Misty DeMark, Applicant

STATE OF WISCONSIN  
BOARD OF NURSING

Dated this 7<sup>th</sup> day of February, 2017

By: Shel Kraus  
Member of the Board