

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

ANN M. LENCK, R.N.,
RESPONDENT.

FINAL DECISION AND ORDER
WITH VARIANCE

DHA Case No. SPS-16-0026
DLSC Case No. 14 NUR 692

0005386

BACKGROUND

On April 25, 2017, 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. The Division of Legal Services and Compliance (Division) filed objections to portions of the PDO, to which Respondent replied by letter. On June 8, 2017, the Board of Nursing (Board) met to consider the merits of the PDO, the Division's objections and Respondent's response thereto. 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(1m) and 441.07, 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). Pursuant to Wis. Stat. § 227.46(2), the Board may make modifications to a PDO arising from a class 2 proceeding provided the Board's decision includes an explanation of the basis for each variance.

The record in this case supports the disciplinary outcome requested by the Division, with an additional restriction not addressed by either party, but appropriate under the circumstances and set forth later herein. Accordingly, the Board adopts in its entirety, without variance, the PDO sections titled "Procedural History" and "Findings of Fact" at pages 1 through 4 of the PDO; and the sections "Burden of Proof" and "Violation of Wisconsin Statute and Administrative Code" found under the "DISCUSSION AND CONCLUSIONS OF LAW" heading on page five of the PDO.

Regarding the section titled "Discipline" (also commencing on page 5 of the PDO), the Board agrees in large part with the ALJ's recitation of facts and summary of cases cited.¹ The Board disagrees, however, with the analysis and conclusions drawn regarding discipline, and varies the PDO accordingly. The Board also disagrees with the ALJ's analysis and conclusion related to "Costs" and varies that section of the PDO as well. Based on the foregoing, the ORDER section commencing on page 9 of the PDO is repealed and replaced as outlined later herein.

¹ The Board's analysis and conclusion are based on the record as outlined by the ALJ under the "Discipline" section on page 5 and through the last full paragraph commencing on page 6 and ending top of page 7. The Board also agrees with ALJ's factual/procedural summary of the cited cases.

Explanation for Variance

The Board's analysis of the fact and conclusion of what constitutes appropriate discipline differs from the ALJ's conclusion. In reaching her conclusions on discipline, the ALJ noted four prior nursing board cases: Dawson,² Brandenburg,³ Danforth,⁴ and Stout.⁵ In Dawson and Danforth, as in the instant case, Respondents engaged in multiple recurrent acts of diverting controlled substances for personal use – generally for an extended period. Brandenburg and Stout involved Respondents engaging in a single instance of diversion. Unlike this Respondent, neither Danforth, Stout, nor Dawson had opioid dependence diagnoses, thus, no recorded history of treatment. Conversely, Brandenburg and Respondent in the instant case had opioid dependence diagnoses and both had participated in some form of treatment for opioid dependence. While the length and extent of treatment in the two cases appear to be significantly different, for all *practical* intents and purposes, those distinctions are not significant and definitely not sufficient to warrant a disciplinary outcome that is significantly less than that ordered by the Board in Dawson and Brandenburg. The combined facts and circumstances of Dawson and Brandenburg are more akin to those in the instant case, and the Board's actions in those cases (which included indefinite license suspension) are more reflective of the action needed here, particularly since there are both aggravating and mitigating factors present here that were not present in any of the four cases the ALJ referenced in the PDO.

In the instant case, Respondent was given, and took advantage of the opportunity to return to work following her diversion of narcotics by means of a Return to Work Contract (Contract). Pursuant to the Contract, she agreed, for a five-year period, to undergo random drug testing; to not have access to controlled substances; and to abstain from all personal use of alcohol. Consistent with the Contract, Respondent, for the most part, underwent the testing. However, the testing was so random and infrequent in its application (7 times in 4 years, with one gap of over two years between tests) as to be practically futile. Likewise, this Respondent participated in a one-on-one treatment program on a weekly basis and attended NA meetings for approximately four years. Notwithstanding that, the ALJ opined in the PDO that Respondent yet "lacks insight into her dependence/addiction issues." Additionally, throughout the duration of the Contract, Respondent continued to consume alcohol in direct contravention of the terms she agreed to, and contrary to her counselor's recommendation. Also significant is Respondent's failure to submit the results of a HairStat 14 drug test which would confirm for the Board whether she had used controlled substances within the preceding 90-day period. In short, this Respondent was given ample opportunity to demonstrate rehabilitation, and heretofore, has failed to do so.

Given the grave matters evidenced here, the Board is not satisfied with Respondent's assertion, and the ALJ's conclusion, that a mere reprimand and a short period (2 years) of monitoring with

² *In the Matter of Disciplinary Proceedings Against Jill Dawson, R.N.*

(<https://online.dri.wi.gov/decisions/2005/Is0511102nur-00069249.pdf>)

³ *In the Matter of the Disciplinary Proceedings Against Charlotte Brandenburg, L.P.N.*

(<https://online.dri.wi.gov/decisions/2006/Is0607132nur-00100889.pdf>)

⁴ *In the Matter of the Disciplinary Proceedings Against Ericka J Danforth, R.N.*

(<https://online.dri.wi.gov/decisions/2014/ORDER0003299-00010027.pdf>)

⁵ *In the Matter of Disciplinary Proceedings Against Monica J. Stout, R.N., A.P.N.P.*

(<https://online.dri.wi.gov/decisions/2015/ORDER0003621-00010651.pdf>)

limitations are sufficient to address Respondent's need for rehabilitation, protection of the public, and deterrence. Based on the factors set forth in *Aldrich* and the record in this case, the Board concludes, as it did in *Dawson and Brandenburg*, that an indefinite suspension of Respondent's license and imposition of certain terms and conditions upon her license is required. The Board further concludes that in addition to the other limitations and conditions set forth in the PDO, an additional practice limitation is warranted: Respondent may not work as a nurse in a correctional setting during the pendency of the Board's Order.

Costs

The Board has authority to assess all or part of the costs of a disciplinary proceeding that results in discipline against the credential holder. Wisconsin Statute § 440.22(2), reads in pertinent part:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. . .

The Board is not required to go through any particular analysis when determining whether to assess all or part of the costs of the proceeding against Respondent. Nevertheless, guidance can be found in *Noesen v. State Department of Regulation & Licensing, ⁶ Pharmacy Examining Board.*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. In *Noesen*, the Court opined,

Under WIS. STAT. § 440.22(2), the Board may, in its discretion, "assess all or part of the costs of the proceeding" against the licensee if the Board takes disciplinary action as a result. We give due weight to the Board's exercise of discretion. WIS. STAT. § 227.57(10). In reviewing the exercise of discretion, we look to determine whether the decision maker examined the relevant facts, applied the proper standard of law, and reached a reasonable conclusion. *Doersching*, 138 Wis. 2d at 328.

Id. ¶ 30.

In addition to the above mandatory authority, the Board has also, in previous orders, considered the following *non-mandatory* factors when determining if all or part of the costs should be assessed against a respondent.

- 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 In 2011, the Department of Regulation and Licensing was combined with parts of the Department of Commerce to form what is now known as the Department of Safety and Professional Services.

- 6) The fact that the Department is a “program revenue” agency, whose operating costs are funded by the revenue received from licensees, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of licensees who have not engaged in misconduct; 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 it deems appropriate given the circumstances presented.

The Division requested that 100 percent of costs be assessed against Respondent. Respondent asserted that she should be responsible for payment of no more than 50 percent of costs. The PDO ordered that 70 percent of costs be assessed against Respondent. The Board considered Wis. Stat. § 440.22(2), along with the mandatory guidance contained in the above-referenced Wisconsin Court of Appeal decision, and feels strongly based on its assessment of all the facts and circumstances presented, that 100 percent of recoverable costs should be borne by Respondent. The Board varies the PDO on Costs accordingly.

Explanation for Variance

In the instant case, the Board finds particularly relevant, and in its discretion, gives great weight to the facts as follows: 1) the Division wasted no resources or took any unwarranted action that unnecessarily incurred additional costs in this matter. The fact that Respondent engaged in unprofessional conduct was undisputed and stipulated to by the parties; 2) Respondent’s unprofessional conduct was extremely serious – she obtained controlled substance medications in the name of her patients and diverted it for her own personal use for an extended period; 3) The Division’s pursuit of a suspension of Respondent’s license, a 5-year monitoring period, and other limitations and conditions on her license was consistent with prior similar board orders, and otherwise reasonable and appropriate under the circumstances; 4) Respondent’s cooperation with the process although recognized, is not weighted much in the face of her significant unprofessional conduct, her failure to take full advantage of the unique opportunity for rehabilitation presented by her employer, and her failure to demonstrate sobriety to the Board by submitting the results of a hair test drug screen; and 5) The Department is a program revenue agency, whose operating costs are funded by the revenue received from credential holders. This factor weighs heavily into the Board’s cost determination. Fairness dictates that the costs of Respondent’s deliberate misconduct be borne by Respondent alone, and not spread to other non-culpable nurse licensees.

ORDER

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

1. The professional nursing license issued to Respondent Ann M. Lenck, R.N., (license number 94812-30) is SUSPENDED as follows:

SUSPENSION

- A.1. The license of Ann M. Lenck, R.N., (license number 94812-30) to practice as a nurse in the State of Wisconsin is SUSPENDED for an indefinite period.
- A.2. The privilege of Ann M. Lenck, R.N., 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 fourteen (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 (5) 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 the 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. The suspension shall not be stayed for the first three (3) months, but any time after three (3) months the suspension may be stayed upon Respondent providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) consecutive months.
- 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 sixty (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

Releases

- C.1. Respondent shall provide and keep on file with all 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 Department of Safety and Professional Services, Division of Legal Services and Compliance to: (a) obtain all specimen screen results and patient health care and reports, and (b) discuss the progress of Respondent's rehabilitation with personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.2. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an equivalent program for recovering professionals no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported quarterly to the Department Monitor.

Sobriety

- C.3. Respondent shall abstain from all personal use of alcohol.
- C.4. 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, the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.

- C.5. 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 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.6. Respondent shall report to the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within twenty-four (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.7. 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 or of alcohol, create false positive screening results, or interfere with Respondent's rehabilitation, shall not be taken unless ordered by a physician, in which case the drug must be reported as described in paragraph C.6.

Drug and Alcohol Screens

- C.8. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department (Approved Program).
- C.9. 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 (5) hours of notification of a test.
- C.10. The Approved Program shall require the testing of specimens at a frequency of not less than forty-nine (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.11. 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.12. 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.13. 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.14. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- C.15. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances.
- C.16. 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.17. Respondent shall practice only in a work setting pre-approved by the Board or its designee.
- C.18. Respondent shall not work as a nurse in a home health care, hospice, pool nursing, assisted living, agency, or correctional setting.
- C.19. 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.20. 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.21. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) 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 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 (3) months the Respondent shall notify the Department Monitor of the 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 Approved Program by Board

- D.4. If the Board or its designee determines the 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 rehabilitation under the direction of another 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 (1) year from the date of the initial stay of the suspension. 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 (5) 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 (5) years.

Costs of Compliance

- D.7. Respondent 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.
2. Respondent Ann M. Lenck, R.N., shall pay 100% of 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

3. The terms of this Order are effective the date this Order is signed by the Board.

Dated at Madison, Wisconsin this 27 day of July, 2017.

By: Shey Kraus (Dv)
A Member of the Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings
Against Ann M. Lenck, R.N., Respondent

DHA Case No. SPS-16-0026
DLSC Case No. 14 NUR 692

PROPOSED DECISION AND ORDER

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

Ann M. Lenck, R.N., by

Attorney Patrick K. Knight
Gimbel, Reilly, Guerin & Brown, LLP
330 East Kilbourn Avenue, Suite 1170
Milwaukee, WI 53202-3101

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 Ann M. Lenck, R.N. (Respondent), alleging that Respondent engaged in unprofessional conduct by administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law, in violation of Wis. Admin. Code § N 7.04(2).¹

The Division served Respondent on March 15, 2016, by sending a copy of the Notice of Hearing and Complaint to her last known address on file with the Department, via certified and regular mail.

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

After Respondent failed to file an Answer to the Complaint within the required 20-day time period, on April 6, 2016, the Administrative Law Judge (ALJ) issued a Notice of Telephone Prehearing Conference which set a telephone pre-hearing conference for April 20, 2016.

On April 20, 2016, the ALJ held a prehearing telephone conference at which time the parties indicated they wished to have additional time to determine whether a resolution of this matter was possible. The ALJ set a telephone status conference for April 28, 2016.

On April 28, 2016, the ALJ held a telephone status conference at which time Respondent indicated she wished to retain an attorney in this matter and needed additional time to do so. The ALJ set another telephone status conference for May 9, 2016, and indicated that if Respondent retained an attorney, the attorney would need to file a Notice of Appearance prior to the May 9, 2016 conference.

Shortly before the conference to be held on May 9, 2016, Respondent sent a fax to the ALJ stating that she was unable to attend the conference due to her work schedule and that she needed additional time to retain an attorney. The ALJ set another telephone status conference for May 23, 2016, and indicated that if Respondent retained an attorney, the attorney must file a Notice of Appearance prior to the May 23, 2016 conference.

On May 23, 2016, the ALJ held a telephone conference at which Respondent requested additional time to meet with an attorney. The parties agreed to set a new telephone conference for June 2, 2016.

On the morning of the conference scheduled for June 2, 2016, Respondent sent a fax to the ALJ requesting that the conference be re-scheduled to a later date because she had just retained an attorney. The Division did not object to re-scheduling the telephone conference and the parties agreed to June 16, 2016 as the new conference date. The ALJ indicated that if Respondent retained an attorney, the attorney must file a Notice of Appearance prior to the June 16, 2016 conference.

On June 14, 2016, Respondent's current counsel filed a Notice of Appearance on Respondent's behalf. On June 16, 2016, the ALJ held a telephone status conference at which time the parties agreed to hold a telephone status conference on July 19, 2016. The ALJ ordered that Respondent file an Answer to the Complaint no later than June 23, 2016.

On June 23, 2016, Respondent's counsel filed an Answer to the Division's Complaint, admitting unprofessional conduct by Respondent. On July 19, 2016, the ALJ held a telephone status conference at which time the parties agreed to attempt to reach a resolution and requested that the ALJ hold a telephone status conference on August 25, 2016.

On August 25, 2016, the ALJ held a telephone status conference at which time the parties agreed to attempt to reach a resolution and requested that the ALJ hold a telephone status conference on September 22, 2016.

On September 22, 2016, the ALJ held a telephone status conference at which time the parties indicated they had not come to a resolution. The ALJ issued a scheduling order and a hearing date was set for December 6, 2016.

The hearing was held on December 6, 2016, in Madison, Wisconsin. Respondent was present by telephone and her attorney appeared in person on her behalf. Following the hearing, the parties agreed to leave the record open for 14 days for Respondent to submit the results of a drug test known as the HairStat 14.

The ALJ subsequently issued a briefing order setting Complainant's deadline for filing its brief-in-chief by January 30, 2017. Respondent's brief was due by March 1, 2017, and Complainant's reply brief was due March 13, 2017.

FINDINGS OF FACT

1. Respondent Ann M. Lenck, R.N., is licensed in the State of Wisconsin as a professional nurse, having license number 94812-30, first issued on August 22, 1986 and current through February 28, 2018. (Complaint, ¶ 1; Answer, ¶ 1).

2. At all times relevant to this proceeding, Respondent was employed as a professional nurse at a nursing home (Home), located in Milwaukee, Wisconsin. (Complaint, ¶ 3; Answer, ¶ 3)

3. On February 27, 2012, Respondent signed for delivery of 30 tablets of oxycodone 5 mg from the pharmacy for Resident D.M. She did not log the medication in and did not place it in the medication cart. (Complaint, ¶ 4; Division's Exhibit (Div. Ex.) 1; December 6, 2016 Hearing Transcript (Hrg. Tr.), pp. 28, 38-39)

4. On March 12, 2012, Respondent documented on Resident M.L.'s medication administration record (MAR) that an order for hydrocodone/APAP 5/500 mg had been discontinued, even though no discontinuation order from the physician is in the medical record. (Complaint, ¶ 5; Div. Ex. 1; Hrg. Tr., pp. 28, 38-39)

5. On March 15, 2012, Respondent signed for delivery of 15 tablets of hydrocodone/APAP 5/500 mg from the pharmacy for Resident M.L. She did not log the medication in and did not place it in the medication cart. (Complaint, ¶ 6; Div. Ex. 1; Hrg. Tr., pp. 28, 38-39)

6. On March 20, 2012, Respondent signed for delivery of 15 tablets of hydrocodone/APAP 5/500 mg from the pharmacy for Resident M.L. She did not log the medication in and did not place it in the medication cart. (Complaint, ¶ 7; Div. Ex. 1; Hrg., Tr., pp. 28, 38-39)

7. On March 26, 2012, Respondent signed for delivery of 30 tablets of hydrocodone/APAP 5/325 mg from the pharmacy for Resident G.S. She did not log the medication in and did not place it in the medication cart. (Complaint ¶ 8; Div. Ex. 1; Hrg. Tr., pp. 28, 38-39)

8. Following the discovery of the discrepancies by administration at the Home, Respondent admitted to the director of nursing that she had diverted the above narcotics for personal use. (Complaint, ¶ 9; Answer, ¶ 9)

9. Pursuant to Wis. Stat. § 961.16(2)(a)11., oxycodone is a schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(2). (Complaint, ¶ 11; Answer, ¶ 11)

10. Pursuant to Wis. Stat. § 961.16(2)(a)7., hydrocodone is a schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(2). (Complaint, ¶ 12; Answer, ¶ 12)

11. On April 4, 2012, administrators at the Home and Respondent entered into a Return to Work Contract (Contract) following Respondent's diversion of narcotics. The Contract required Respondent to undergo an AODA assessment, comply with all recommendations made in the assessment; undergo random drug testing for a period not to exceed five years; not have access to controlled substances for a period not to exceed five years; and abstain from all personal use of alcohol and controlled substances (except when prescribed). (Div. Ex. 2)

12. In April 2012, Respondent underwent an AODA assessment and was diagnosed with opioid dependence. Respondent had become addicted to opioids after being prescribed Vicodin following a motorcycle accident in 2006. (Complaint, ¶ 10; Answer, ¶ 10; Div. Ex. 1; Hrg. Tr., pp. 27-28)

13. Respondent admitted that she has been drinking alcohol during the five-year period of the Contract, including wine tasting events and other occasions. Respondent has done so knowing the risks of using any mood altering substance when she has been diagnosed with opioid dependence. The Contract required that she abstain from alcohol, and Respondent's substance abuse counselor had also recommended that she abstain from alcohol. Respondent's explanation for not following the counselor's recommendation was that "we don't always make good decisions for ourself (sic)." (Hrg. Tr., pp. 36-37)

14. Pursuant to the Contract, Respondent submitted to drug testing at the Home. She tested seven times in over four years, with one gap of over two years between tests. Vince Bergstrom, the director of nursing at the Home, testified that the reason that drug testing was not performed regularly was because their drug testing policy only permitted drug testing if an employee was suspected of using a chemical substance or being under the influence. Respondent's last urine drug screen with the Home was in May 2016. (Respondent's Exhibits (Resp. Ex.) 1-7; Hrg. Tr., p. 9)

15. Following the events at issue, Respondent underwent drug treatment for narcotic addiction, which initially was a one-on-one treatment program on a weekly basis and then progressed to every two weeks and then to every three weeks. In addition, Respondent attended NA meetings on a weekly basis for approximately four years. (Hrg. Tr., pp. 29-31)

16. At the close of the December 6, 2016 hearing in this matter, the parties agreed to leave the record open for 14 days for Respondent to submit the results of a drug test known as the HairStat 14, which, according to Division counsel, determines whether there has been any use of controlled substances within the prior 90 days. However, Respondent did not submit a HairStat 14 test result in this proceeding. (Hrg. Tr., p. 38)

DISCUSSION AND CONCLUSIONS OF LAW

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. Sautler*, 60 F.3d 270, 280 (7th Cir. 1995).

Violation of Wisconsin Statute and Administrative Code

The Wisconsin Board of Nursing (Board) may revoke, limit, suspend or deny renewal of a license of a registered nurse if it finds that the licensee has engaged in “[o]ne or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter” or in “[m]isconduct or unprofessional conduct.” Wis. Stat. § 441.07(1)(b) and (d),² respectively.

Respondent has admitted that, by the conduct described above, she engaged in unprofessional conduct as defined by 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. (Complaint, ¶ 13; Answer, ¶ 13) As a result of this violation, she is subject to discipline pursuant to Wis. Stat. § 441.07(1)(b) and (d).

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 recommends a version of its standard five-year impairment order. It requests that Respondent’s license be suspended indefinitely, with the opportunity for her to petition for a stay of the suspension after three months upon providing proof to the Board that she is in compliance with conditions and limitations placed on her license for that three-month period. These conditions and limitations include attending programs such as Narcotics Anonymous and/or Alcoholics Anonymous meetings twice per week; abstaining from all personal use of controlled substances and alcohol; enrolling in a drug and alcohol monitoring program which would include testing of specimens at a frequency of not less than 49 times per year for the first year of the Order; not working in a setting in which she has access to controlled substances; working only under the direct supervision of a licensed nurse or other health care professional approved by the Board; and not working in a home health care, hospice, pool nursing, assisted living or agency setting. The Division recommends that the Board be permitted to grant full licensure on its own motion or at the request of the Department Monitor and that Respondent be permitted to petition the Board for full licensure upon a showing of continuance compliance with the terms of the order for a period of at least five years.

² Wis. Stat. (2011-2012).

Respondent argues that the discipline recommended by the Division is unnecessary and punitive, given that she has complied with all terms of the Contract with her employer (with the exception of abstention from alcohol), has undergone treatment, and has tested negative for opioids or any other medication for over four years. Respondent recommends a reprimand, one year of monitoring with substance testing 25 times and quarterly reports from her employer during that year, and no access to controlled substances during the monitoring period.

Based on the record, the objectives of discipline articulated in *Aldrich*, and prior Board decisions, it is appropriate to impose discipline less than that recommended by the Division and more than that recommended by Respondent. Therefore, as set forth in more detail in the Order section below, a reprimand is imposed, along with license conditions and limitations which include a two-year monitoring period, with testing at a frequency of 49 times per year for the first year.

Respondent's misconduct was serious. Diverting controlled substances violates a fundamental duty with which all nurses are entrusted: the responsible handling of controlled substances that they have access to by virtue of their professional licenses. At the time she diverted these controlled substances in 2012, Respondent had an opioid dependency, resulting from a Vicodin prescription following a motorcycle accident in 2006. This reflects a substantial period of opioid use.

The discipline imposed must ensure Respondent's rehabilitation and patient safety. Although Respondent has undergone treatment and has submitted to drug testing at the Home, she only tested seven times in over four years. That is an average of two drug screens per year, which is inadequate. Therefore, additional monitoring is necessary to ensure Respondent is not taking non-prescribed medications or illegal drugs and is not consuming alcohol.

Respondent has previously undergone an AODA assessment and drug treatment which initially was a one-on-one treatment program on a weekly basis. She also attended NA meetings for approximately four years. However, Respondent should continue to attend NA meetings as she lacks accountability in her recovery and lacks insight into her dependence/addiction issues. Respondent's alcohol use, contrary to her counselor's recommendation and the Contract, demonstrates the necessity for continued accountability for her conduct.

Respondent is in need of monitoring to allow rehabilitation, to protect the public and to deter other nurses from diverting narcotic medications for personal use. At hearing, the parties stipulated to leaving the record open for 14 days in order for Respondent to undergo a HairStat 14 test to determine whether Respondent has used any controlled substances in the previous 90 days. Respondent has not submitted a hair test. Her last urine drug screen with the Home was in May 2016. Therefore, it is not known whether she has been abstinent from drug use for the last 90 days. As a result of the aforementioned, Respondent must demonstrate compliance with the drug monitoring and abstinence for a substantial period of time.

In order to protect the public, Respondent should be required to provide the order to all employers to ensure that she is adequately monitored and that any usual behavior can be brought to the attention of the Board or its designee. Having access to controlled substances provides too much of an opportunity for Respondent to obtain substances she cannot legally possess. Additionally, Respondent should be restricted to work in Wisconsin pursuant to the Nurse

Licensure Compact during the pendency of the limitations because otherwise monitoring becomes too difficult.

Based on the foregoing, the discipline recommended by Respondent is insufficient. However, discipline less than that recommended by the Division is warranted. In so concluding, I distinguish the two prior Board cases upon which the Division relies, *In the Matter of Disciplinary Proceedings Against Jill Dawson, R.N.*, Order No. LS0511102NUR (Nov. 10, 2005),³ and *In the Matter of the Disciplinary Proceedings Against Charlotte Brandenburg, L.P.N.*, Order No. LS0607132NUR (July 13, 2006).⁴

In *Dawson*, a nurse diverted hydrocodone and oxycodone from facilities where she worked. She began diverting pain medication following a previous neck and shoulder injury from a car accident approximately two years earlier. At the time of the Board's decision, the nurse had been criminally charged, was not practicing nursing and had been evaluated by a practitioner with no evidence found of drug dependency.⁵ The Board suspended her license indefinitely until she could provide proof of compliance for a period of five years with drug and alcohol treatment; drug and alcohol monitoring; AA/NA meetings of not less than twice a week; abstaining from alcohol and use of controlled substances; drug and alcohol screens of not less than 56 times in the first year; no access to controlled substances; practicing only under direct supervision and in a pre-approved work setting; no home health, hospice, pool, assisted living or agency nursing practice; showing a copy of the order and all subsequent orders immediately to supervisory personnel where she works as a nurse; and submission of reports.

In *Brandenburg*, a nurse diverted a controlled substance, meperidine, from a clinic where she worked. She was not impaired at work, but did have an opioid dependence diagnosis which arose following a previous back injury and she diverted meperidine to self-medicate her back pain. The Board suspended her license indefinitely until she could provide proof of compliance for a period of five years with drug and alcohol treatment; drug and alcohol monitoring; AA/NA meetings of not less than twice a week; abstaining from alcohol and use of controlled substances; drug and alcohol screens of not less than 56 times in the first year; no access to controlled substances; practicing only under direct supervision; pre-approved work setting; no home health, hospice, pool, assisted living or agency nursing practice; showing a copy of the order and all subsequent orders immediately to supervisory personnel where she works as a nurse; and submission of reports.

Although these cases are instructive, they are distinguishable from the instant case in that, unlike the instant case, there had not been a period of over four years during which the nurses had undergone treatment, NA counselling and drug testing with negative test results. Although the nurse in *Brandenburg* had participated in treatment for her opioid dependence, her treatment was limited to weekly attendance at 12-step groups, which she had been participating in for approximately a year and a half.⁶

³ A copy of this decision can be found at <http://online.dr1.wi.gov/decisions/2005/ls0511102nur-00069249.pdf>.

⁴ A copy of this decision can be found at <http://online.dr1.wi.gov/decisions/2006/ls0607132nur-00100889.pdf>.

⁵ The Division erroneously states that the nurse in *Dawson* "did have a drug dependence diagnosis." (Division's Proposed Decision and Order, p. 9) The Division also states that the nurses in *Dawson* and *Brandenburg* were ordered to provide screens at a frequency of 49 times per year, when it was actually 56. (*Id.*, p. 10)

⁶ There was no evidence of treatment or testing in *Dawson*, although an evaluation had also shown no evidence of drug dependency.

The discipline imposed in this case is consistent with prior Board cases. For example, in *In the Matter of the Disciplinary Proceedings Against Ericka J. Danforth*, Case No. 0003299 (July 10, 2014),⁷ a nurse diverted narcotic medications from two different facilities while on duty and was suspected to have taken them for personal use. Despite that fact that, unlike here, there was no indication in *Danforth* that the nurse had undergone a significant period of treatment or testing, the Board nevertheless imposed a reprimand rather than a suspension, and limited the nurse's license for a period of two years rather than five. The limitations included an AODA assessment, and drug and alcohol monitoring, including testing of specimens at a frequency of not less than 49 times per year for the first year of the order.

Likewise, in *In the Matter of Disciplinary Proceedings Against Monica J. Stout, R.N., A.P.N.P.*, Order No. 000361 (Jan. 8, 2015),⁸ a nurse diverted 26 tablets of Vicodin. Again, despite no history of treatment or monitoring, the Board reprimanded the nurse and limited her license for two years. The nurse's license limitations included enrolling and participating in a drug monitoring program with random drug testing of not less than 49 times per year, providing a copy of the order to her employer, not working in a setting where she had access to controlled substances, completing education on the topics of ethics in nursing and medication dispensing, practicing only in Wisconsin during the pendency of the limitations and paying costs.

Based on the foregoing, it is appropriate to impose the discipline discussed above and set forth in more detail in the Order section below.

Costs

The Department is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. See Wis. Stat. § 440.22(2). In exercising such discretion, the Department must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. The Department has also, in many previous orders, considered many factors when determining if all or part of the costs should be assessed against a Respondent. Factors have included: (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 e.g., *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, LS 0802183 CHI (Aug. 14, 2008). It is within the Department's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

⁷ A copy of this decision can be found at <https://online.drl.wi.gov/decisions/2014/ORDER0003299-00010027.pdf>.

⁸ A copy of this decision can be found at <https://online.drl.wi.gov/decisions/2015/ORDER000362-00010651.pdf>.

The Division states that Respondent should pay the full costs of this proceeding, whereas Respondent argues that she should pay no more than half of the costs. I conclude that 70 percent of the costs should be imposed on Respondent. Respondent's conduct in diverting controlled substances is extremely serious and is essentially theft of a drug. However, Respondent has also recognized her opioid dependency and has taken steps to address it, although more monitoring is needed and Respondent violated the terms of her Contract and her counselor's recommendation by failing to abstain from alcohol. Moreover, although the level of discipline sought by the Division – suspension with a five-year standard impairment order – is severe, a less severe level of discipline was actually imposed – a reprimand and a two-year period of monitoring. In addition, after initially not filing an Answer and causing delay in these proceedings, Respondent has generally been cooperative, admitting the factual allegations but disputing the discipline recommended by the Division. Also in Respondent's favor is that she has no prior discipline. Weighing against Respondent, however, is that any costs not borne by her will be borne by those licensees who, unlike Respondent, have not engaged in misconduct. Accordingly, it is appropriate for Respondent to pay 70 percent of the costs of these proceedings.

ORDER

Accordingly, IT IS ORDERED:

1. Respondent is REPRIMANDED.
2. Respondent's license to practice nursing in the State of Wisconsin, and her privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, are limited for a period of at least two years from the date of this Order, as follows:

CONDITIONS AND LIMITATIONS

Releases

- A.1. Respondent shall provide and keep on file with all personnel, laboratories and collection sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Safety and Professional Services, Division of Legal Services and Compliance to: (a) obtain all specimen screen results and patient health care and reports, and (b) discuss the progress of Respondent's rehabilitation with personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- A.2. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an equivalent program for recovering professionals no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported quarterly to the Department Monitor.

Sobriety

- A.3. Respondent shall abstain from all personal use of alcohol.

- A.4. 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 her 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, the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
- A.5. 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 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.
- A.6. 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.
- A.7. 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 or of alcohol, create false positive screening results, or interfere with Respondent's rehabilitation, shall not be taken unless ordered by a physician, in which case the drug must be reported as described in paragraph A.6.

Drug and Alcohol Screens

- A.8. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department (Approved Program).
- A.9. 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.

- A.10. 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.
- A.11. 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.
- A.12. 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.
- A.13. 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.
- A.14. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- A.15. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances.
- A.16. 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.
- A.17. Respondent shall practice only in a work setting pre-approved by the Board or its designee.
- A.18. Respondent may not work in a home health care, hospice, pool nursing, assisted living, or agency setting.
- A.19. 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.
- A.20. 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.
- A.21. 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.

- A.22. 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.

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
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

- B.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 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.
- B.3. Every three months the Respondent shall notify the Department Monitor of the 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 Approved Program by Board

- B.4. If the Board or its designee determines the 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 rehabilitation under the direction of another Approved Program.

Petitions for Modification of Limitations or Termination of Order

- B.5. 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 consecutive years of successful compliance, 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. 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. The Board may also, on its

own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

Costs of Compliance

B.6. Respondent 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.

IT IS FURTHER ORDERED that Respondent shall pay 70 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:

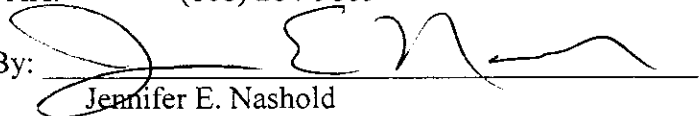
Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

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

Dated at Madison, Wisconsin on April 25, 2017.

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