

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

FINAL DECISION AND ORDER
WITH VARIANCE

TIMOTHY M. DUBOIS, R.N.,
RESPONDENT.

DHA Case No. SPS-17-00310
DLSC Case Nos. 16 NUR 633
17 NUR 435

0005732

BACKGROUND

On February 26, 2018, Administrative Law Judge Jennifer Nashold (ALJ), Division of Hearings and Appeals, issued a Proposed Decision and Order (PDO) in the above referenced matter. The PDO was mailed to all parties. On April 12, 2018, the Board of Nursing (Board) met to consider the merits of the PDO. The Board voted to approve the PDO with variance. The PDO is attached hereto and incorporated into this Final Decision and Order with Variance.

VARIANCE

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

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

1. During the pendency of this proceeding, Respondent's license to practice professional nursing (# 221495-30) expired on February 28, 2018. Respondent's license has not been renewed to date. Among other powers, Wis. Stat. § 441.07(1g) gives the Board the authority to suspend *a license* of a Registered Nurse granted under this subchapter if the Board finds that the licensee committed unprofessional conduct. Since the Respondent does not have an active license at this time, the appropriate remedy and discipline is to suspend Respondent's five (5) year right to renew, under Wis. Stat. § 440.08(3), providing for a stay of such suspension once Respondent meets the requirements of the Order.
2. If Respondent is granted an initial stay of the suspension of his right to renew, the Order is varied to provide the Board with the authority to impose a suspension and to stay that suspension of his license in accordance with the terms of this Order.
3. The "ORDER" section found on pages eleven through seventeen (11-17) is removed and replaced with the following:

ORDER

Accordingly, IT IS ORDERED that:

SUSPENSION

- A.1. Timothy M. Dubois, R.N.'s five (5) year right to renew his license (number 221495-30) to practice professional nursing in the State of Wisconsin is SUSPENDED for an indefinite period.
- A.2. Respondent shall not engage in the practice of professional nursing in any capacity unless the suspension of his right to renew is stayed, the Board determines Respondent meets the requirements for renewal of his license at the time he applies to renew, and he is in full compliance with this Order.
- A.3. If a stay of the suspension of Respondent's right to renew is granted, the Board has the right to impose a suspension against Respondent's license to practice as a nurse in the State of Wisconsin in accordance with the terms of paragraph B.2.
- A.4. If a stay of the suspension of Respondent's right to renew is granted, Respondent's privilege to practice as a nurse in the State of Wisconsin under the authority of another state's license pursuant to the Nurse Licensure Compact and the Enhanced Nurse Licensure Compact are also SUSPENDED for an indefinite period.
- A.5. During the pendency of this Order and any subsequent related orders, Respondent may not practice in another state pursuant to the Nurse Licensure Compact or the Enhanced 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.6. 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 practice 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, grant full Wisconsin licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension of Respondent's right to renew shall not be stayed for six (6) months after the date of this Order. The Board may grant a stay at any time after six (6) months upon Respondent having provided proof, which is determined by the Board or its designee to be sufficient, that Respondent meets the requirements for renewal of his license, and that he is in compliance with the provisions of Sections C and D of this Order for the most recent six (6) 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 multiple violations of the same provision or violation of more than one (1) provision. The Board or its designee may, in conjunction with any removal of any stay, prohibit Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
- (a) Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services, pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee (Treater). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment, as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department of Safety and Professional Services Monitor (Department Monitor; See D.1., below). If Treater is unable or unwilling to serve as required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.

- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification, as required by D.5., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and 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 treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation with Treater, treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an approved equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified by the speaker or chair and reported quarterly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances, as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
- C.10. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that he may take from time to time. Respondent shall abstain

from all use of over-the-counter medications, products, or other substances (including, but not limited to, natural substances, such as poppy seeds or any products containing alcohol) which may mask consumption of controlled substances or alcohol, create false positive screening results, or otherwise interfere with Respondent's test results, treatment or rehabilitation, unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11. It is Respondent's responsibility to educate herself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.

- C.11. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within 24 hours of administration, fill or refill 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.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department (Approved Program).
- C.13. 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, nail, hair, saliva, or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.14. The Approved Program shall require the testing of specimens at a frequency of not less than 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.
- C.15. If any urine, blood, sweat, nail, 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.16. 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.17. 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.18. The Approved Program shall submit information and reports to the Department Monitor, as directed.

Practice Limitations

- C.19. Respondent may work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances. If Treater subsequently recommends restrictions on such access, the Board or its designee may impose such restrictions.
- C.20. 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, who has received a copy of this Order.
- C.21. Respondent shall practice only in a work setting pre-approved by the Board or its designee. Requests for preapproval must be accompanied by a current job description, name and contact information of the direct supervisor, and written acknowledgment from the employer that a copy of this Order has been received and that the restrictions will be accommodated.
- C.22. Respondent may not work in a home health care, hospice, pool nursing, assisted living, agency, or as a nurse in a correctional setting.
- C.23. Prior to commencing practice, 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.24. It is Respondent's responsibility to arrange for quarterly written reports to be submitted to the Department Monitor from his supervisor at each setting in which Respondent practiced nursing in the previous quarter. These reports shall be submitted as directed by the Department Monitor, 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.25. 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
Department of Safety and Professional Services
Division of Legal Services & Compliance
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program, or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.
- D.3. Respondent shall submit self-reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. The reports shall include a summary of Respondent's compliance with the terms and conditions of the Order in the previous quarter, Respondent's current address and home telephone number. The self-report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

Change of Treater or Approved Program by Board

- D.4. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee, may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent may petition the Board on an annual basis for modification of the terms of this Order; however, no such petition for modification shall occur earlier than one (1) year from the date of the initial stay of the suspension. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license, within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

- D.6. Respondent may petition the Board for termination of this Order any time after five (5) years from the date of the initial stay of the suspension.

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 nonpayment is a violation of this Order.

Costs of Proceeding

- D.8. Respondent shall pay costs to the Department. In the event Respondent fails to timely submit any payment of costs, the Respondent's license (#221495-30) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

- D.9. In addition to any other action authorized by this Order or law, the Board, in its discretion, may impose additional limitations or pursue separate disciplinary action for violation of any term of this Order.

IT IS FURTHER ORDERED that Respondent Timothy M. Dubois, R.N., shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order, payable to the Wisconsin Department of Safety and Professional Services and sent to:

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

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

Dated at Madison, Wisconsin this 26 day of April, 2018

By: 
A Member of the Board



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

In the Matter of Disciplinary Proceedings Against
Timothy M. Dubois, R.N., Respondent

DHA Case No. SPS-17-0031
DLSC Case Nos. 16 NUR 633
17 NUR 435

PROPOSED DECISION AND ORDER

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

Timothy M. Dubois, R.N.
112 S. Franklin Street
New Ulm, WI 56073-3220

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 Amanda L. Florek
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 on December 6, 2017, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Timothy M. Dubois, R.N. (Respondent), alleging that Respondent violated Wis. Admin. Code § N 7.03(8)(e) by obtaining, possessing or attempting to obtain or possess a drug without lawful authority; violated Wis. Admin. Code § N 7.03(1)(c) by failing to cooperate in a timely manner with the Board of Nursing's (Board) investigation of a complaint filed against him, after a request of the Board;¹ and violated Wis. Admin. Code § N

¹ Pursuant to Wis. Admin. Code § N 7.03(1)(c), there is a rebuttable presumption that a credential holder who takes longer than 30 days to respond to a request of the Board has failed to cooperate in a timely manner.

7.03(1)(b) by having a license to practice nursing or a nurse licensure privilege to practice denied, revoked, suspended, limited, or having the credential holder otherwise disciplined in another state, territory, or country.

The Division served Respondent on December 6, 2017, by sending a copy of the Notice of Hearing and Complaint to his last known address on file with the Department (24 South Front Street, New Ulm, Minnesota 56073), via certified and regular mail. Respondent failed to file an Answer to the Division's Complaint.

On January 4, 2018, the Administrative Law Judge (ALJ) issued a Notice of Telephone Prehearing Conference which set a telephone prehearing conference for January 18, 2018. Respondent failed to provide a phone number or appear at the telephone prehearing conference, whereupon the Division moved for default judgment based on Respondent's failure to appear, failure to provide the ALJ with his phone number and failure to file an Answer to the Complaint.

On January 18, 2018, the ALJ issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order by February 9, 2018. On February 8, 2017, the Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-26 are taken from the Division's Complaint filed against Respondent in this matter.

1. Respondent Timothy M. Dubois, R.N., (DOB August 15, 1983) is licensed in the State of Wisconsin as a professional nurse, having license number 221495-30, first issued on February 19, 2015, and current through February 28, 2018.

2. Respondent's most recent address on file with the Department is 24 South Front Street, New Ulm, Minnesota 56073.

Case No. 16 NUR 633

3. At all times relevant to this case, Respondent was employed through an agency at a medical hospital (Hospital) located in Marshfield, Wisconsin.

4. On November 10, 2016, a Hospital staff member notified the patient service manager (Manager) that the staff member had concerns regarding Respondent's behavior. Respondent was observed staggering, falling, swaying, needing support, slurring his speech, drowsy, erratic, confused, rambling, constantly eating chips, and his eyes were glassy.

5. An audit of Respondent's medication dispensing, administration and wasting revealed the following:

- a. On November 9, 2016, at 3:51 p.m., Respondent dispensed 100 mcg of fentanyl citrate 100 mcg/2 mL, for Patient J.S. On November 9, 2017, at 3:52 p.m., Respondent documented administration of 25 mcg of fentanyl citrate to Patient J.S. There were 75 mcg of fentanyl unaccounted for.
- b. On November 10, 2016, at 3:08 p.m., Respondent dispensed 2 mg of lorazepam 2 mg/1 mL, for Patient D.J. At 3:14 p.m., Respondent documented administration of 0.5 mg of lorazepam to Patient D.J. There were 1.5 mg of lorazepam unaccounted for.

6. During the Hospital's investigation, Respondent admitted to being tired but denied displaying any behaviors that were identified. Respondent failed to explain the missing 75 mcg of fentanyl and pulled a 1.5 mg of lorazepam syringe out of his pocket.

7. Respondent refused to take a urine drug test and walked out of the Hospital.

8. On November 11, 2016, Respondent's family member found Respondent in his hotel room, believed he was under the influence of drugs and called the paramedics. Respondent was taken to the emergency department. An empty bottle of propofol and an empty intravenous (IV) bag of Precedex were found by police.

9. The police contacted the Hospital regarding a suspected theft of propofol and Precedex. The Hospital conducted an inventory for propofol at the Pyxis and identified a 200 mL discrepancy of propofol.

10. The lot number in the Pyxis machine matched the lot number found on a bottle obtained by the police in Respondent's possession.

11. Respondent did not have permission to remove the medications from the Hospital or to self-administer the medication.

12. Respondent reported to emergency department personnel that he had an extensive drug abuse history and that he frequently injected IV narcotics, benzodiazepines, and reported that he injected IV propofol that evening. Respondent reported injecting a total of 1,000 mcg of propofol over the course of an hour. He also reported using IV fentanyl and taking a combination of Ativan and Xanax with no prescription within the last 24 hours. He reported using this to help with opioid withdrawal.

13. On December 7, 2016, Department staff mailed Respondent a letter requesting a response regarding the incident. The response was due no later than December 21, 2016.

14. Respondent failed to respond.

15. On May 18, 2017, the Department sent Respondent a subpoena to either provide a written response no later than June 1, 2017, or show up for an in person interview on June 7, 2017.

16. Respondent failed to respond or show up for the interview.

Case No. 17 NUR 435

17. On June 1, 2017, Respondent and the State of Minnesota Board of Nursing (Minnesota Board) entered into a consent order (Minnesota Order) revoking Respondent's license to practice nursing in the State of Minnesota.

18. The June 1, 2017 Minnesota Order was based on the following facts:

- a. During the months of January and February 2017, while Respondent was employed as a registered nurse at a transitional and long-term care facility (Facility) in Coon Rapids, Minnesota:
 - i. Respondent withdrew 117 tablets of oxycodone from the medication dispensing system (MDS) that Respondent did not document administering and are unaccounted for;
 - ii. Of the unaccounted for tablets of oxycodone, 36 tablets were withdrawn under the names of patients with whom Respondent never worked;
 - iii. Respondent documented administering oxycodone to patients at times that did not correspond with the withdrawal of the medications from the MDS; and
 - iv. On February 1, 2017, the discrepancies were discovered and Respondent's employment from the Facility was terminated.
- b. While Respondent was employed as a registered nurse at a home health agency in St. Cloud, Minnesota, the following occurred:
 - i. On April 15, 2017, Respondent began employment at a home of a non-verbal, vulnerable adult (Patient) who relied on around-the-clock nursing care for his basic bodily functions.
 - ii. At approximately 3:45 a.m., the Patient's mother was awoken by Respondent's presence in her bedroom. Respondent was making incoherent statements.
 - iii. The Patient's mother observed Patient's medications scattered across the kitchen. Four tablets of amitriptyline, four tablets of Seroquel, liquid Valium, and several needles and syringes, were missing from the Patient's medication supply.
 - iv. Respondent had not changed Patient's urine and fecal waste bags and had not given the Patient his IV medications. The Patient's

central line had also been shut off for a period of four hours, which could compromise the Patient's health and ability to receive care.

- v. A bloody syringe with an uncapped needle and piece of IV tubing with teeth marks on it was discovered in a nearby room. Blood was spattered in multiple locations around the room. There were also used syringes found throughout the house.
- vi. The Patient was discovered crying in his room. A rectal thermometer was discovered in the Patient's room. The thermometer was not something normally used in the Patient's care. There was also blood discovered in the Patient's underwear.
- vii. Respondent was involved in a single vehicle collision and was arrested on suspicion of driving while impaired. The missing amitriptyline and Seroquel along with a medication bottle, syringes, needles, and a syringe containing a red liquid were discovered in Respondent's possession at the time of his arrest.
- viii. On April 17, 2017, Respondent's employment was terminated.

19. On June 19, 2017, the Commonwealth of Virginia Board of Nursing (Virginia BON) issued an order mandatorily suspending Respondent's licensure and his multistate licensure privilege to practice professional nursing in the Commonwealth of Virginia based on the June 1, 2017 Minnesota Order.

20. Pursuant to Wis. Stat. § 961.16(3)(f), fentanyl is a schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38.

21. 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.

22. 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.

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

24. Ativan is a brand name for lorazepam. 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.

25. Xanax is a brand name for alprazolam. Pursuant to Wis. Stat. § 961.20(2)(a), alprazolam is a schedule IV controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38.

26. Valium is a brand name for diazepam. 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.

Facts Related to Default

27. The Notice of Hearing and Complaint in this matter were served on Respondent on December 6, 2017, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing instructed Respondent: "If you do not provide a proper Answer within 20 days, you will be found in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

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

29. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for January 18, 2018. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which he could be reached for the conference no later than January 12, 2018. The Notice instructed Respondent: "The Respondent's failure to appear at the scheduled conference or hearing may result in default judgment being entered against the Respondent."

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

31. On January 16, 2018, the Division of Hearings and Appeals received notice from the U.S. Postal Service that mailings to Respondent were being forwarded from his old address on South Front Street in New Ulm, MN to his new address on South Franklin Street in New Ulm, MN.

32. On January 18, 2018, the prehearing conference was held. Respondent did not appear. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). The ALJ granted the motion for default.

33. On January 18, 2017, the ALJ issued a Notice of Default and Order which required the Division to file and serve, no later than February 9, 2017, a recommended proposed decision and order. The Notice of Default and Order was sent to Respondent's new address on South Franklin Street.

34. Respondent did not file a response to the ALJ's Notice of Default and Order.

35. The Division timely filed its recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the January 18, 2018 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the status conference held on January 18, 2018. *See* Wis. Admin. Code §§ SPS § 2.09(4) and 2.14; Wis. Admin. Code § HA 1.07(3). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

Violations of Wisconsin Statute and Administrative Code

Following an investigation and opportunity for hearing, the Board may revoke, limit or suspend the license of a registered nurse or may reprimand the nurse if the Board finds that the nurse engaged in “[o]ne or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter” or has engaged in “misconduct or unprofessional conduct.” Wis. Stat. § 441.07(1g)(b) and (d), respectively.

Respondent violated Wis. Admin. Code § N 7.03(8)(e), by obtaining, possessing or attempting to obtain or possess a drug without lawful authority. Respondent dispensed fentanyl and lorazepam that could not be accounted for; a bottle of propofol and an empty bag of Precedex were found by police in Respondent’s hotel room; the medication found in Respondent’s hotel room matched the lot number for missing medication from the Hospital; Respondent did not have permission to remove the medication from the Hospital or to self-administer the medications; and Respondent was arrested in Minnesota with medications in his possession that did not belong to him.

Respondent violated Wis. Admin. Code § N 7.03(1)(c), by failing to cooperate in a timely manner with the Board’s investigation of a complaint filed against him, after a request of the Board. On December 7, 2016, Department staff² mailed Respondent a letter requesting a response regarding the incident that occurred in Wisconsin. The response was due no later than December 21, 2016. Respondent failed to submit a response. On May 18, 2017, the Department sent Respondent a subpoena to provide a response no later than June 1, 2017, or show up for an in person interview on June 7, 2017. Respondent failed to provide a response or appear for the interview.

Respondent violated Wis. Admin. Code § N 7.03(1)(b), by having a license to practice nursing or a nursing privilege to practice denied, revoked, suspended, or limited in another state. On June 1, 2017, Minnesota revoked Respondent’s privilege to practice in Minnesota. On June 19, 2017, the Virginia BON issued an order mandatorily suspending Respondent’s licensure and his multistate licensure privilege to practice professional nursing in the Commonwealth of Virginia based on the June 1, 2017 Minnesota Order. Notably, these orders were based on very egregious conduct by Respondent.

² Although the Division’s Complaint does not specify that the request was sent on behalf of the Board, I conclude that this may be reasonably inferred, particularly where Respondent has made no argument to the contrary.

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

Respondent's license should be suspended indefinitely to ensure he does not endanger patients and to deter other licensees from similar conduct. Respondent's conduct was egregious and repeated, and placed patients at risk.

To further protect the public from Respondent's conduct and promote his rehabilitation, the discipline imposed against Respondent should include drug and alcohol testing. Testing is the only way that the Board will know if Respondent has ingested any medications that are not prescribed to him and ensure Respondent is not ingesting any alcohol. Respondent should be required to abstain from all alcohol use because alcohol could be used as a substitute for controlled substances. Respondent should provide a copy of all over-the-counter medications and prescribed medications that he takes because they sometimes contain alcohol or other substances that his drug testing may report.

Respondent should also be required to seek treatment, show this order to his treater and complete all treatment the treater recommends. It is not known if Respondent has obtained any treatment in the past. It is necessary to monitor his current and future treatment in order to ensure he complies with treatment and that his treatment is successful. Respondent should be required to keep releases on file with all treaters so the Board can properly monitor his treatment to ensure he is in compliance. Respondent should be required to attend alcoholics/narcotics anonymous meetings or an approved equivalent program at least twice a week and report this attendance quarterly to ensure Respondent has all the support necessary for successful treatment.

Respondent should practice under direct supervision and in a pre-approved work setting to ensure he does not work while impaired. Respondent should not be allowed to work in home health care, hospice, pool nursing, assisted living, agency or in a correctional setting because such work settings will not provide adequate supervision. Respondent should be required to provide a copy of the order to all his employers. Respondent should arrange for quarterly work reports so his employer can report to the Board if Respondent has any unusual behaviors or if Respondent appears to be complying and is safe to practice. Respondent should be required to report any change in employment, status, residence, address or telephone number so that he can be contacted by monitoring if needed. All of these limitations combined will ensure Respondent is being properly monitored and progressing in his rehabilitation. Additionally, Respondent should be restricted to work in Wisconsin pursuant to the Nurse Licensure Compact and the Enhanced Nurse Licensure Compact during the pendency of the limitations to ensure successful monitoring.

The discipline imposed here is consistent with prior Board decisions. For example, in *In the Matter of Disciplinary Proceedings Against Carrie L. Voss*, R.N., Order No. 0005442 (Sept.

14, 2017),³ Carrie Voss, a registered nurse, was driving erratically and almost caused a car accident. Police found several medications in her possession. Colleagues also believed she was under the influence while she was working as a nurse on one of her shifts. When her employer looked into her impaired behavior, they discovered she had obtained several prescriptions by fraud. The Board suspended her license for an indefinite period and limited her license. The suspension could not be stayed for six months. Ms. Voss' license limitations included enrolling and participating in a drug monitoring program with random drug testing of not less than 49 times per year; participating in treatment; providing a copy of the order to her employer; complying with treatment recommendations; keeping releases on file with all treatment facilities; attending AA/NA meetings at least twice a week; abstaining from use of alcohol; abstaining from use of controlled substances except when prescribed; notifying the Department Monitor of all prescribed medications as well as use of any over-the-counter medications; practicing under direct supervision; obtaining pre-approval of work settings prior to beginning employment (including not working in home health care, hospice, pool, assisted living or agency setting); arranging for quarterly work reports from her supervisor; and practicing only in Wisconsin during the pendency of the limitations.

In *In the Matter of Disciplinary Proceedings Against Amanda R. Adams, R.N.*, Order No. 003900 (April 9, 2015),⁴ Amanda Adams, a registered nurse, appeared to be impaired while at work and diverted fentanyl from her employer. The Board suspended her license indefinitely and limited her license. The suspension could not be stayed for at least six months. Ms. Adams' license limitations included enrolling and participating in a drug monitoring program with random drug testing of not less than 49 times per year; participating in treatment; providing a copy of the order to her employer; complying with treatment recommendations; keeping releases on file with all treatment facilities; attending AA/NA meetings at least twice a week; abstaining from use of alcohol; abstaining from use of controlled substances except when prescribed; notifying the Department Monitor of all prescribed medications as well as use of any over-the-counter medications; practicing under direct supervision, obtaining pre-approval of work settings prior to beginning employment (including not working in home health care, hospice, pool, assisted living or agency setting); arranging for quarterly work reports from her supervisor; and practicing only in Wisconsin during the pendency of the limitations.

In *In the Matter of Disciplinary Proceedings Against Lindsay F. Mohrbacher, R.N.*, Order No. 2596 (Dec. 11, 2014),⁵ Lindsay Mohrbacher, a registered nurse, was exhibiting unusual behaviors while at work; including, slurred speech and being noticeably forgetful. Ms. Mohrbacher admitted to stealing controlled substances and forging other nurses' signatures in the medical records to obtain these substances. The Board suspended her license indefinitely and limited her license. The suspension could not be stayed for at least six months. Ms. Mohrbacher's license limitations included enrolling and participating in a drug monitoring program with random drug testing of not less than 49 times per year; participating in treatment; providing a copy of the order to her employer; complying with treatment recommendations; keeping releases on file with all treatment facilities; attending AA/NA meetings at least twice a week; abstaining from use of alcohol; abstaining from use of controlled substances except when prescribed; notifying the

³A copy of this order may be found at <https://online.drl.wi.gov/decisions/2017/ORDER0005442-00014021.pdf>.

⁴A copy of this order may be found at <https://online.drl.wi.gov/decisions/2015/ORDER0003900-00011144.pdf>.

⁵A copy of this order may be found at <https://online.drl.wi.gov/decisions/2014/ORDER0002596-00010589.pdf>.

Department Monitor of all prescribed medications as well as use of any over-the-counter medications; practicing under direct supervision; obtaining pre-approval of work settings prior to beginning employment (including not working in home health care, hospice, pool, assisted living or agency setting); arranging for quarterly work reports from her supervisor; and practicing only in Wisconsin during the pendency of the limitations.

The circumstances in these prior Board decisions are sufficiently similar to those in the instant case that similar discipline should be imposed.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings.

The Board 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 Board 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.

In previous orders, many factors have been considered when determining if all or part of the costs should be assessed against a Respondent. These 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 respondent’s cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department is a “program revenue” agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and (7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz, D.C.*, LS0802183CHI (Aug. 14, 2008). It is within the Board’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.

In this case, the Division has proven all counts alleged. The factual allegations were deemed admitted and there is no argument to indicate any factual findings or litigation were unnecessary. Respondent’s actions are serious in nature – repeated possession and use of illegal substances, including while caring for patients, revocation and immediate suspension of his license by other jurisdictions, and failure to comply with requests for information by the Board regarding his disturbing conduct. The discipline sought by the Division and granted in this case is also serious -- indefinite suspension of Respondent’s nursing license until the Board receives sufficient assurances that Respondent may safely and competently practice. Moreover, Respondent has failed to participate in any way in these proceedings. Finally, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Accordingly, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings.

ORDER

Accordingly, IT IS ORDERED that Respondent Timothy M. Dubois, R.N.'s, professional nursing license (license number 221495-30) and his privilege to practice nursing in the State of Wisconsin pursuant to the Nurse Licensure Compact and Enhanced Nurse Licensure Compact are suspended and limited as follows:

SUSPENSION

- A.1. Respondent's license to practice as a nurse in the State of Wisconsin is SUSPENDED for an indefinite period.
- A.2. Respondent's privilege to practice as a nurse in the State of Wisconsin under the authority of another state's license pursuant to the Nurse Licensure Compact and the Enhanced Nurse Licensure Compact are 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 and the Enhanced 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. Upon a showing by Respondent of continuous, successful compliance for a period of at least five years with the terms of this Order, including at least 600 hours of active nursing practice for every year the suspension is stayed, the Board may grant a petition by Respondent under paragraph D.6. for return of full Wisconsin licensure. The Board may, on its own motion, grant full Wisconsin licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension shall not be stayed for the first six months, but any time after six 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 six 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 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee (Treater). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by D.5., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and 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 treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation with Treater, treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an approved equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified by the speaker or chair and reported quarterly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
- C.10. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that he may take from time to time. Respondent shall abstain from all use of over-the-counter medications, products, or other substances (including but not limited to natural substances, such as poppy seeds or any products containing alcohol) which may mask consumption of controlled substances or alcohol, create false positive screening results, or otherwise interfere with Respondent's test results, treatment or rehabilitation, unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11. It is Respondent's responsibility to educate himself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- C.11. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within 24 hours of administration, fill or refill 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.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department (Approved Program).
- C.13. 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, nail, hair, saliva or other specimen at a collection site designated by the Approved Program within five hours of notification of a test.
- C.14. The Approved Program shall require the testing of specimens at a frequency of not less than 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.
- C.15. If any urine, blood, sweat, nail, 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.16. 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.17. 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.18. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- C.19. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances.

- C.20. 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, who has received a copy of this Order.
- C.21. Respondent shall practice only in a work setting pre-approved by the Board or its designee. Requests for preapproval must be accompanied by a current job description, name and contact information of the direct supervisor, and written acknowledgment from the employer that a copy of this Order has been received and that the restrictions will be accommodated.
- C.22. Respondent may not work in a home health care, hospice, pool nursing, assisted living, agency, or as a nurse in a correctional setting.
- C.23. Prior to commencing practice, 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.24. It is Respondent's responsibility to arrange for quarterly written reports to be submitted to the Department Monitor from his supervisor at each setting in which Respondent practiced nursing in the previous quarter. These reports shall be submitted as directed by the Department Monitor, and 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.25. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five days of the date of a change.

MISCELLANEOUS

Department Monitor

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

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

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the

Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.

- D.3. Respondent shall submit self-reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. The reports shall include a summary of Respondent's compliance with the terms and conditions of the Order in the previous quarter, Respondent's current address and home telephone number. The self-report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

Change of Treater or Approved Program by Board

- D.4. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent may petition the Board on an annual basis for modification of the terms of this Order; however, no such petition for modification shall occur earlier than one year from the date of the initial stay of the suspension. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.
- D.6. Respondent may petition the Board for termination of this Order any time after five years from the date of the initial stay of the suspension.

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.

Costs of Proceeding

- D.8. Respondent shall pay costs to the Department of Safety and Professional Services. In the event Respondent fails to timely submit any payment of costs, the Respondent's license (#221495-30) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

D.9. In addition to any other action authorized by this Order or law, the Board, in its discretion, may impose additional limitations or pursue separate disciplinary action for violation of any term of this Order.

IT IS FURTHER ORDERED that Respondent Timothy M. Dubois, R.N., shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

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

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

Dated at Madison, Wisconsin on February 26, 2018.

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

By: 

Jennifer E. Nashold
Administrative Law Judge