

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

JAMES R. CAMPBELL, R.N.,  
RESPONDENT.

FINAL DECISION AND ORDER  
WITH VARIANCE

DHA Case No. SPS-17-0030  
DLSC Case No. 16 NUR 363

0005733

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BACKGROUND

On March 8, 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 (# 160223-30) 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 eight through fifteen (8-15) is removed and replaced with the following:

## ORDER

Accordingly, IT IS ORDERED that:

### SUSPENSION

- A.1. James R. Campbell, R.N.'s five (5) year right to renew his license (number 160223-30) 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 (#164748-30) 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 James R. Campbell, 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**

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In the Matter of Disciplinary Proceedings Against  
James R. Campbell, RN, Respondent

DHA Case No. SPS-17-0030  
DLSC Case No. 16 NUR 363

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**PROPOSED DECISION AND ORDER**

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

James R. Campbell, R.N.  
2408 N. 5th Street  
Sheboygan, WI 53081

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 November 27, 2017, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent James R. Campbell, R.N. (Respondent), alleging that Respondent is subject to discipline under Wis. Stat. § 441.07(1g)(b) and (d) for obtaining, possessing or attempting to obtain or possess a drug without lawful authority, in violation of Wis. Admin. Code § N 7.03(8)(e), and for being unable to practice safely by reason of alcohol or other substance use, in violation of Wis. Admin. Code § N 7.03(6)(f).

The Division served Respondent on November 27, 2017, by sending a copy of the Notice of Hearing and Complaint to his last known address on file with the Department (1633 Alabama Avenue, Sheboygan, Wisconsin 53081), via certified and regular mail.

Respondent failed to file an Answer to the Complaint and failed to appear at a prehearing conference held on February 15, 2018. As a result, on February 15, 2018, the undersigned administrative law judge (ALJ) issued a Notice of Default and Order against Respondent, finding Respondent to be in default and ordering that the Division file a recommended proposed decision and order by March 9, 2018. On March 6, 2018, the Division timely filed its submission.

## FINDINGS OF FACT

### Facts Related to the Alleged Violations

Findings of Fact 1-19 are taken from the Division's Complaint filed against Respondent in this matter.

1. Respondent James R. Campbell, R.N. (DOB June 27, 1980), is licensed in the State of Wisconsin as a professional nurse, having license number 160223-30, first issued on August 8, 2007, and current through February 28, 2018.

2. At all times relevant to this proceeding, Respondent was employed as a professional nurse at a nursing and rehabilitation center (Center) located in Sheboygan, Wisconsin.

3. Respondent was working the overnight shift from June 26, 2016 to June 27, 2016, and Respondent exited the building for a break at 12:30 a.m.

4. After several hours, staff realized that Respondent had not returned from break and staff conducted a search.

5. Respondent was located unresponsive in his car and staff called police.

6. At the scene, law enforcement found a black case in Respondent's car with an eye glass case and a small blue pill case. Upon opening the cases, law enforcement found five individually packaged zip lock bags rolled tightly and taped shut containing tablets, which were later identified as Adderall tablets and another zip lock bag contained nine tablets, which were later identified as flurazepam tablets.

7. Respondent informed law enforcement that he had a prescription for Adderall, which he took twice daily. Respondent admitted to law enforcement that he did not have a prescription for flurazepam and was taking them for "insomnia issues."

8. Respondent informed law enforcement he acquired the flurazepam at work on the rehabilitation side of the Center. Respondent stated the medications were meant to be wasted and he had diverted them.

9. Respondent stated he ingested the flurazepam around noon on June 26, 2016, but he did not sleep. He indicated that the medication did not take effect until he laid down in his car on his break at approximately 12:34 a.m. on June 27, 2016.

10. Respondent was taken by ambulance to the hospital. While at the hospital with Respondent, law enforcement found two additional tablets in Respondent's small blue case. These tablets were later identified as oxycodone 325 mg tablets.

11. Respondent informed law enforcement that he did not have a prescription for oxycodone and had purchased them from an individual on the street.

12. Respondent admitted to ingesting both the flurazepam and oxycodone without a prescription.

13. Respondent was terminated from his employment.

14. On July 5, 2016, Respondent was charged in Sheboygan County circuit court case number 2016CF0429, with one count of possession of narcotic drugs, in violation of Wis. Stat. § 961.41(3g)(am), and one count of possession of a controlled substance, in violation of Wis. Stat. § 961.41(3g)(b).

15. On September 16, 2016, Respondent entered into a deferred prosecution agreement in Sheboygan County case number 2016CF0429.

16. On September 21, 2016, the court entered a judgment of conviction in Sheboygan County case number 2016CF0429.

17. Adderall is a combination of dextroamphetamine and amphetamine. Pursuant to Wis. Stat. § 961.16(5)(a), an amphetamine is a schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(2).

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

19. 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).

#### Facts Related to Default

20. The Notice of Hearing and Complaint in this matter were served on Respondent on November 27, 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."

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

22. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for January 5, 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 3, 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."

23. The prehearing conference was rescheduled to January 11, 2018. Notice of the Rescheduled Telephone Prehearing Conference was sent to both parties.

24. On January 11, 2018, the prehearing conference was held, with both parties appearing. Respondent provided a new mailing address of 2408 N. 5th Street in Sheboygan, Wisconsin. The Division moved for default based on Respondent's failure to file an Answer to the Complaint. The ALJ denied the motion for default and gave Respondent until January 25, 2018, to file an Answer.

25. On January 11, 2018, the ALJ issued a Notice of Status Conference. The notice set a telephone status conference for February 1, 2018 and set Respondent's new Answer deadline for January 25, 2018. The notice stated that if an Answer was not filed by the deadline, default may be entered against Respondent.

26. Respondent failed to file an Answer to the Complaint.

27. On February 1, 2018, the ALJ's office contacted both parties to inform them that the ALJ was out ill and the matter was being reset for February 15, 2018.

28. On February 2, 2018, the ALJ issued a Notice of Rescheduled Telephone Prehearing Conference. The prehearing conference was scheduled for February 15, 2018.

29. On February 15, 2018, Respondent failed to appear at the telephone prehearing conference, whereupon the Division moved for default judgment based on Respondent's failure to appear and failure to file an Answer to the Complaint. The ALJ granted the motion for default.

30. On February 15, 2018, the ALJ issued a Notice of Default and Order which required the Division to file and serve, no later than March 9, 2018, a recommended proposed decision and order.

31. The Division filed its recommended proposed decision and order on March 6, 2018.

32. Respondent did not file a response to either the ALJ's Notice of Default and Order or to the Division's March 6, 2018 submission.

## DISCUSSION AND CONCLUSIONS OF LAW

### Default

As stated in the February 15, 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 telephone prehearing conference held on February 15, 2018. As a result, 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)(b) and (c).

### 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. Police found several Adderall, flurazepam and oxycodone tablets in Respondent’s vehicle. Respondent admitted to police that he did not have a prescription for flurazepam and that he had diverted these medications from the Center where he worked. Respondent admitted to police that he did not have prescription for oxycodone. Respondent admitted to police that he obtained the oxycodone on the street. A prescription is required in order to possess flurazepam and oxycodone. Respondent did not have a prescription for the flurazepam or oxycodone that were found in his possession and which he admitted to ingesting. As a result of this conduct, Respondent was charged in Sheboygan County circuit court case number 2016CF0429 with one count of possession of narcotic drugs, in violation of Wis. Stat. § 961.41(3g)(am) (a felony), and one count of possession of a controlled substance, in violation of Wis. Stat. § 961.41(3g)(b) (a misdemeanor). On September 16, 2016, Respondent entered into a deferred prosecution agreement, and on September 21, 2016, the court entered a judgment of conviction in Sheboygan County case number 2016CF0429.<sup>1</sup>

Respondent also violated Wis. Admin. Code § N 7.03(6)(f), by being unable to practice safely by reason of alcohol or other substance use. On June 26, 2016 to June 27, 2016, Respondent was working the overnight shift at the Center. Respondent admitted to ingesting medication that was not prescribed to him immediately before his shift. Respondent exited the building during his shift, failed to return after his break and was found unresponsive in his car.

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

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<sup>1</sup> While acknowledging that Respondent entered into a deferred prosecution agreement in its proposed statement of facts, the Division asserts in its proposed discussion section that Respondent was convicted of both counts charged. However, I take official notice of the electronic court records in Respondent’s criminal matter which suggest that as of the date of this decision, the judgment of conviction was entered for the misdemeanor only and that the felony charge remains pending as part of Respondent’s deferred prosecution agreement. *See* <https://wcca.wicourts.gov>.

## Discipline

The three purposes of discipline are (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division requests that Respondent's license to practice nursing be suspended indefinitely, and that his license be subject to conditions and limitations designed to promote his rehabilitation and the protection of the public. Given that the recommended discipline is consistent with the purposes articulated in *Aldrich* and because Respondent has made no argument to the contrary, I adopt the Division's recommendations, which are set forth in the Order section below.

Respondent's license should be suspended indefinitely to protect the public and deter other licensees from similar conduct. Further, in order to promote rehabilitation, the discipline imposed against Respondent should include drug and alcohol testing to ensure Respondent is abstaining from all drug and alcohol use. 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. Respondent has unlawfully obtained prescriptions in the past. These prescriptions were obtained unlawfully from his employer as well as bought on the street. His alcohol use needs to be monitored to ensure he does not substitute illicit drug use with alcohol abuse after he is monitored for and prohibited from illicit substance use. Respondent should also provide a list of all over-the-counter medications and prescribed medications he takes because the medications may contain alcohol or other substances that the drug testing may detect.

Based on his failure to cooperate and participate in these proceedings, Respondent's past treatment history is unknown. Therefore, it is necessary to require Respondent to enter into treatment, show a copy of this Order to the treater, and submit quarterly reports from the treater to the Department Monitor to ensure Respondent is complying with his treatment limitations and progressing in his treatment. Respondent should also keep releases on file with the treater and other treatment facilities so that the Department Monitor can ensure compliance and progression in his treatment. Respondent should attend AA/NA meetings or an approved equivalent at least twice a week and report quarterly to his treater and the Department Monitor.

In order to protect the public, Respondent should be required to provide a copy of the final order to all nursing employers to ensure he is adequately monitored and so that any usual behavior can be brought to the attention of the Board or its designee. 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. Respondent's suspension will ensure Respondent is successfully obtaining treatment before he is able to return to work. The work reports and direct supervision will also ensure Respondent is practicing safely and not placing patients at risk if and when he is able to return to work.

To further protect the public, Respondent should not have access to controlled substances. Respondent admitted to obtaining at least one of the drugs illegally from his employer. As a nurse, Respondent would have access to controlled substances. Therefore, it is imperative that Respondent be prohibited from having access to controlled substances and that his employer submit an acknowledgment when he begins new employment and on a quarterly basis to monitor that Respondent does not have access to controlled substances. Respondent should also only work under direct supervision in a setting that is pre-approved by the Board or its designee. Respondent should not be allowed to work in home health care, hospice, pool nursing, assisted living, or agency, or as a nurse in a correctional facility because those work settings cannot provide adequate supervision for Respondent, who diverted medications from work and passed out in his car during a time he was tasked with caring for patients.

The discipline imposed here is consistent with prior Board decisions. For example, in *In the Matter of Disciplinary Proceedings Against Amanda R. Adams, R.N.*, Order No. 003900 (April 9, 2015),<sup>2</sup> 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 a 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.

Further, in *In the Matter of Disciplinary Proceedings Against Lindsay F. Mohrbacher, R.N.*, Order No. 2596 (Dec. 11, 2014),<sup>3</sup> 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 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.

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<sup>2</sup>A copy of this order may be found at <https://online.drl.wi.gov/decisions/2015/ORDER0003900-00011144.pdf>.

<sup>3</sup>A copy of this order may be found at <https://online.drl.wi.gov/decisions/2014/ORDER0002596-00010589.pdf>.



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

### Costs

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. The Boards have also, in previous orders, considered many factors when determining if all or part of the costs should be assessed against a Respondent. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS0802183 CHI) (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.

The following facts are particularly relevant to the instant case. The factual allegations were deemed admitted in this matter and there is no argument to indicate any factual findings and litigation were unnecessary. Additionally, Respondent’s conduct and violations are serious, as is the discipline imposed. Moreover, Respondent has failed to cooperate with the disciplinary process and has made no argument concerning whether costs should be assessed against him. Finally, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs heavily in favor of requiring Respondent to pay the costs of this proceeding which resulted in significant discipline rather than spreading the costs among all licensees.

Based on the foregoing, I conclude that all of the costs of this proceeding shall be assessed against Respondent and that the amount of costs be determined pursuant to Wis. Admin. Code § SPS 2.18.

### ORDER

Accordingly, IT IS ORDERED that Respondent James R. Campbell, R.N.’s, professional nursing license (license number 160223-30), his privilege to practice nursing in the State of Wisconsin pursuant to the Nurse Licensure Compact and his privilege to practice in the State of Wisconsin pursuant to the 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 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 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](mailto: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 of this matter to the Department of Safety and Professional Services, within 120 days of this Order. Payment should be directed to the attention of the Department Monitor at the address in paragraph D.1., above. In the event Respondent fails to timely submit any payment of costs, Respondent's license (#160223-30) 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 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:

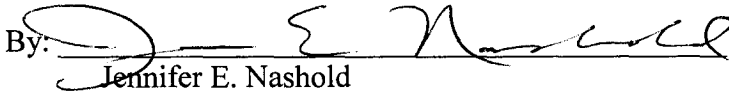
Department Monitor  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

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 March 8, 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