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

CHARLES M. BOWER II, R.N., RESPONDENT.

ORDER 0 0 0 6 6 4 7

Division of Legal Services and Compliance Case Nos. 17 NUR 483, 18 NUR 294, 19 NUR 257

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

Charles M. Bower II, R.N. East Troy, WI

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

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

The parties agree to the terms and conditions of the attached Stipulation as the final disposition of these matters, subject to the approval of the Wisconsin Board of Nursing (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in these matters adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

- 1. Respondent Charles M. Bower II, R.N., (DOB xx-xx-1990) is licensed in the state of Wisconsin as a registered nurse, having license number 196241-30, first issued on June 19, 2013 and current through February 29, 2020.
- 2. At all times relevant to these proceedings, Respondent was employed as a registered nurse in Wisconsin.

17 NUR 483

- 3. On or about August 12, 2017, the Department of Safety and Professional Services (Department) received a complaint from Respondent's employer, a medical center in Milwaukee, that discrepancies were found in Respondent's controlled substance reports.
- 4. Respondent's employer conducted an investigation after an open rapid sequence intubation kit was found in the soiled utility room with missing narcotics. A Pyxis history report was done on the nurses having access to that room, including Respondent.
- 5. The Pyxis report found that Respondent had discrepancies regarding the removal and administration of lorazepam. One discrepancy involved Respondent's withdrawal of two (2) vials of lorazepam containing 2 mg each in two (2) incidences, two (2) minutes apart for the same patient, which exceeded the prescribed dose. Another discrepancy involved the Pyxis machine expecting nine (9) vials of lorazepam and Respondent recorded that eleven (11) vials were found. The next nurse found only eight (8) vials of lorazepam.
- 6. During the interview with his employer on August 23, 2017, Respondent admitted that he removed a vial of lorazepam and documented that he administered it to a patient, but he did not give it to the patient.
 - 7. On August 25, 2017, Respondent was terminated.

18 NUR 294

- 8. By letter dated May 8, 2018, the Department received a complaint from Respondent's employer, a travel staffing agency (Agency), indicating that Respondent was terminated from a travel assignment after exhibiting signs of impairment at work and refusal to provide a urine sample for testing.
- 9. On April 27, 2018, Respondent's coworkers at a Wisconsin facility reported that Respondent was "acting weird" during his shift and slurring his speech.
- 10. The facility began an investigation and informed Respondent an outside testing company would come to perform a urine drug screen. Respondent was unable to produce a urine sample when the testing company arrived, so he was given 40 oz of water to drink and three (3) hours to provide a specimen. At the end of the three (3) hours, Respondent was still unable to provide a specimen, which was considered a refusal. Respondent offered to take a blood test but was told that was not acceptable procedure.
- After receiving a call from the facility on April 27, 2018 that there were impairment concerns, the Agency notified Respondent at 10:39 a.m. that he needed to complete a urine drug screen at a nearby facility immediately. At 2:49 p.m., the Agency texted Respondent and told him to call, but no call was received. Respondent had fallen asleep after working three (3) night shifts. At 4:20 p.m., the Agency left Respondent a voicemail message and sent another text message. This time Respondent texted back stating that he "can't get in there tonight" because the testing facility

closed at 5:00 p.m. and was more than 40 minutes away. The Agency then set up a drug screen for the following morning.

- 12. Respondent did submit to a urine drug test on April 28, 2018, which was negative.
- 13. The facility investigation found inconsistencies in Respondent's April 27, 2018 charting. Respondent removed three (3) units of ziprasidone 20 mg injections from the Pyxis for Patient E.S., but documented that he administered only 10 mg to Patient E.S. The remaining 50 mg of ziprasidone was unaccounted for.
- 14. On April 25, 2018, Respondent removed one (1) lorazepam 2 mg from Pyxis at 10:42 p.m. Over two (2) hours later, at 1:18 a.m. on April 26, 2018, Respondent documented that he administered the medication at 9:10 p.m. to Patient E.S. Respondent also documented that he administered one (1) lorazepam 2 mg to Patient E.S. at 1:22 a.m., but there was no documented removal of lorazepam for Patient E.S. around that time.
- 15. Respondent was terminated on May 3, 2018 for failing to submit to a urine drug test when originally asked on April 27, 2018.

19 NUR 257

- 16. On April 9, 2019, Respondent was arrested for operating a motor vehicle while under the influence of intoxicants. Respondent told police that he was driving home from work and that he had taken lorazepam earlier that day.
- 17. Respondent failed the standard field sobriety test and the vehicle search incident to his arrest found three (3) plastic syringes, one of which contained a foggy white liquid, and a glass bottle labeled Diprivan®. Respondent admitted he had obtained the Diprivan® from the trash at work and had injected himself with it. Respondent did not have a prescription for Diprivan®.
- 18. Respondent was arrested and charged with three (3) misdemeanors: Operating While Intoxicated (2nd), possession of an illegally obtained prescription, and theft in a business setting (<=\$2500) in Waukesha County. Respondent's drug test taken pursuant to his arrest found 94 ng/mL of lorazepam in his blood. Respondent had a valid prescription for lorazepam.
- 19. On January 8, 2020, Respondent pled guilty and was convicted of Operating While Intoxicated (2nd) and theft in a business setting (<=\$2500) in Waukesha County Circuit Court Case No. 2019CT000436. Respondent reported his conviction within 48 hours to the Department.
- 20. In resolution of these matters, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction to act in these matters pursuant to Wis. Stat. § 441.07, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

- 2. By the conduct described in the Findings of Fact, Charles M. Bower II, R.N. violated Wis. Admin. Code § N 7.03(8)(e), by obtaining, possessing or attempting to obtain or possess a drug without lawful authority.
- 3. By the conduct described in the Findings of Fact, Charles M. Bower II, R.N. violated Wis. Admin. Code § N 7.03(6)(c), by departing from or failing to conform to the minimal standards of acceptable nursing practice that may create unnecessary risk or danger to a patient's life, health, or safety.
- 4. By the conduct described in the Findings of Fact, Charles M. Bower II, R.N. violated Wis. Admin. Code § N 7.03(6)(e), by practicing nursing while under the influence of alcohol, illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications.
- 5. By the conduct described in the Findings of Fact, Charles M. Bower II, R.N. violated Wis. Admin. Code § N 7.03(2), by violating or aiding and abetting a violation of any law substantially related to the practice of nursing or being convicted of any crime substantially related to the practice of nursing.
- 6. By the conduct described in the Findings of Fact, Charles M. Bower II, R.N. violated Wis. Admin. Code § N 7.03(5)(b), by intentionally making incorrect entries in a patient's medical record or other related documents.
- 7. As a result of the above conduct, Charles M. Bower II, R.N., is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d).

ORDER

- 1. The attached Stipulation is accepted.
- 2. The professional nursing license issued to Respondent Charles M. Bower II, R.N., (license number 196241-30) is SUSPENDED as follows:

SUSPENSION

- A.1. The license of Charles M. Bower II, R.N., (license number 196241-30), to practice as a nurse in the state of Wisconsin is SUSPENDED for an indefinite period.
- A.2. The privilege of Charles M. Bower II, R.N., to practice as a nurse in the state of Wisconsin under the authority of another state's license pursuant to the Enhanced Nurse Licensure Compact is also SUSPENDED for an indefinite period.
- A.3. 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 Wisconsin nursing license may be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent is in compliance with the provisions of Sections C and D of this Order.
- 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 the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
 - (a) Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within sixty (60) days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

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 they 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 twenty-four (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 forty-nine (49) times per year (one of which must be a hair test), 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 <u>not</u> work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances.
- C.20. Respondent may not work in a home health care, hospice, assisted living, agency, or as a nurse in a correctional setting. Respondent may not work in a pool nursing setting, except for employment within the Davita Dialysis system.
- C.21. 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.22. It is Respondent's responsibility to arrange for quarterly written reports to be submitted to the Department Monitor from his or her 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.23. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

MISCELLANEOUS Department Monitor

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

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services

P.O. Box 7190, Madison, WI 53707-7190 Telephone (608) 267-3817; Fax (608) 266-2264 <u>DSPSMonitoring@wisconsin.gov</u>

You may also submit this information online via the Department's Monitoring Case Management System at https://app.wi.gov/DSPSMonitoring

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 non-payment is a violation of this Order.

Costs of Proceeding

D.8. Respondent shall pay costs of \$2,450.00 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, the Respondent's license (#196241-30) 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.
 - 3. This Order is effective on the date of its signing.

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By:

A Member of the Board

Date

2/12/20

STATE OF WISCONSIN - BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST

STIPULATION

CHARLES M. BOWER II, R.N., RESPONDENT.

ORDER 0006647

Division of Legal Services and Compliance Case Nos. 17 NUR 483, 18 NUR 294, 19 NUR 257

Respondent Charles M. Bower II, R.N., and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

- 1. This Stipulation is entered into as a result of three (3) pending investigations by the Division of Legal Services and Compliance. Respondent consents to the resolution of these investigations by Stipulation.
- 2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:
 - the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
 - the right to confront and cross-examine the witnesses against Respondent;
 - the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
 - the right to testify on Respondent's own behalf;
 - the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
 - the right to petition for rehearing; and
 - all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.
- 3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent is represented by Attorney Stacie H. Rosenzweig.
- 4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Board of Nursing (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

- 5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.
- 6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in these investigations may appear before the Board in open or closed session, without the presence of Respondent or Respondent's attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
- 7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.
- 8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Charles M. Bower II, R.N., Respondent	01/09/20			
Charles M. Bower II, R.N., Respondent	Date			
License No. 196241-30				
AUZ	1/9/2000			
Stacic H. Rosenzweig, Attorney for Respondent	Date /			
Halling & Cayo, S.C.				
320 East Buffalo Street, Suite 700				
Milwaukee, WI 53202				
N -				

1/10/2020

Julie Zimmer, Prosecuting Attorney

Department of Safety and Professional Services Division of Legal Services and Compliance

P.O. Box 7190

Madison, WI 53707-7190