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**Before the  
State Of Wisconsin  
Board of Nursing**

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In the Matter of the Disciplinary Proceedings  
Against Kristin L. Frea, R.N., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0006973**

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**Division of Legal Services and Compliance Case No. 18 NUR 238**

The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

**ORDER**

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Board of Nursing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 10th day of September, 2020.

A handwritten signature in black ink, appearing to be "K. Frea", written over a horizontal line.

Member  
Board of Nursing



Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings  
Against Kristin L. Frea, R.N., Respondent.

DHA Case No. SPS-20-0010  
DLSC Case No. 18 NUR 238

**PROPOSED DECISION AND ORDER**

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

Kristin L. Frea, R.N.

Milwaukee, WI 53204

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

PROCEDURAL HISTORY

The proceedings were initiated on April 1, 2020, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint against Respondent Kristin L. Frea, R.N. (Respondent). The Complaint alleged that Respondent engaged in unprofessional conduct 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, in violation of Wis. Admin. Code § N 7.03(6)(c); by practicing nursing while under the influence of illicit drugs or while impaired by the use of legitimately prescribed pharmacological agents or medications, in violation of Wis. Admin. Code § N 7.03(6)(e); by committing acts which show the registered nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency, in violation of Wis. Stat. § 441.07(1g)(c); by 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 by failing to

cooperate in a timely manner with the board's investigation, in violation of Wis. Admin. Code § N 7.03(1)(c).

The Division served Respondent on April 1, 2020, by sending a copy of the Notice of Hearing and Complaint to Respondent's address on file with the Department via certified and regular first-class mail, pursuant to Wis. Admin. Code § SPS 2.08. Pursuant to Wis. Admin. Code § SPS 2.08(1), the complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the Respondent at the last known address of the Respondent. Service by mail is complete upon mailing. On April 3, 2020, the Notice of Hearing and the Complaint were received and signed for on behalf of "K.F."

Respondent was required to file an Answer to the Complaint twenty (20) days from the date of service. No Answer was filed.

After the expiration of the 20-day time period to file an Answer, the undersigned Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for April 30, 2020. The ALJ sent notice of the prehearing conference by U.S. mail to Respondent. The notice ordered Respondent to contact the ALJ no later than April 29, 2020, to provide a telephone number at which she could be reached for the conference. The notice also stated that if Respondent failed to appear at the scheduled conference, default judgment may be entered against her.

Respondent failed to contact the ALJ by April 29, 2020 with a telephone number. At the prehearing conference on April 30, 2020, Respondent failed to appear. The Division provided the ALJ with Respondent's telephone number on file with the Department, and the ALJ left a voice mail message for Respondent, informing her to return the call. Respondent failed to do so. The Division moved for default based on Respondent's failure to file an Answer and failure to appear for the prehearing conference, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

On May 1, 2020, the ALJ granted the Division's motion and issued a Notice of Default and Order which required the Division to file and serve a recommended proposed decision and order by June 1, 2020. The Division timely filed its submission.

### FINDINGS OF FACT

#### Facts from the Complaint Related to the Alleged Violations

1. Respondent Kristin L. Frea, R.N., is licensed in the state of Wisconsin to practice registered nursing, having license number 218401-30, first issued on July 18, 2014, and current through February 28, 2022.
2. Respondent's most recent address on file with the Department is Milwaukee, Wisconsin 53204.
3. At all times relevant to this proceeding, Respondent was employed as a registered nurse at a hospital (Hospital) located in Waukesha, Wisconsin.

4. On January 3, 2018, Respondent could not be located by the charge nurse for at least 30 minutes while she was on duty as an emergency department (ED) nurse and had an active patient assignment.

5. Respondent was eventually found, by the charge nurse, seated at a workstation and appearing to be asleep at the computer. The charge nurse observed that Respondent appeared somnolent and her speech was slurred.

6. Respondent was interviewed by the Vice President of Operations (VP) of the Hospital and ED Patient Care Manager (Manager), during which Respondent exhibited slow, slurred speech and a noticeably flat affect.

7. The VP and Manager concluded, based on their observations, that Respondent appeared to be impaired and that immediate drug testing of Respondent was warranted.

8. Respondent provided a urine sample and was suspended pending the conclusion of the Hospital's investigation.

9. Respondent's urine drug screen was positive for cocaine metabolites and diphenhydramine.

10. Respondent was terminated by the Hospital.

11. Respondent has failed to respond to multiple contacts by the Department as follows:

- a. On October 28, 2019, a Department investigator sent a request for a response to the allegations to the Respondent, via first-class mail sent to the most recent address on file with the Department (Milwaukee, Wisconsin 53204). Respondent did not reply.
- b. On October 28, 2019, a Department investigator sent a request for a response to the allegations to the Respondent, via email sent to the most recent email address on file with the Department ( ). Respondent did not reply.
- c. On November 12, 2019, a Department investigator sent a request for a response to the allegations to the Respondent, via first-class mail sent to the most recent address on file with the Department (Milwaukee, Wisconsin 53204). Respondent did not reply.
- d. On November 12, 2019, a Department investigator sent a request for a response to the allegations to the Respondent, via email sent to the most recent email address on file with the Department ( ). Respondent did not reply.
- e. On December 9, 2019, a Department investigator called Respondent at the most recent phone number on file with the Department ( ) and left a voicemail requesting a response to the allegations. Respondent did not reply.
- f. To date, Respondent has not replied to the Department's requests for a response to the allegations in this matter.

12. On February 21, 2020, Respondent renewed her nursing license online with the Department and did not change or update her address, phone number, or email address.

#### Facts Related to Default

13. On April 1, 2020, the Notice of Hearing and Complaint were served on Respondent by both certified and first-class 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 to be 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."

14. On April 3, 2020, the Notice of Hearing and the Complaint were received and signed for on behalf of "K.F." at Respondent's address on file with the Department.

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

16. After the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for April 30, 2020. The ALJ sent notice of the conference by U.S. mail to Respondent. The notice ordered Respondent to contact the ALJ no later than April 29, 2020, to provide a telephone number at which she could be reached for the conference. The notice also stated that if Respondent failed to appear at the scheduled conference, default judgment may be entered against her.

17. Respondent failed to contact the ALJ by April 29, 2020, with a telephone number at which she could be reached for the prehearing conference.

18. At the prehearing conference on April 30, 2020, Respondent failed to appear. The Division provided the ALJ with Respondent's telephone number on file with the Department, and the ALJ left a voice mail message for Respondent, informing her to return the call. Respondent did not call back. The Division moved for default based on Respondent's failure to file an Answer and failure to appear for the prehearing conference, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

19. On May 1, 2020, the ALJ granted the Division's motion and issued a Notice of Default and Order, ordering that the Division file and serve a recommended proposed decision and order by June 1, 2020.

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

#### DISCUSSION AND CONCLUSIONS OF LAW

##### Jurisdictional Authority

Pursuant to Wis. Admin. Code § SPS 2.10(2), the undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1).

##### Default

As stated in the May 1, 2020, Notice of Default and Order, Respondent is in default for failing to file an Answer and for failing to appear at the prehearing conference on April 30, 2020. *See* Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code HA 1.07(3)(c). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14.

### Violations

Respondent is subject to discipline pursuant to Wis. Stat. §§ 441.07(1g)(b), (c) and (d), which grant the Board the authority to discipline any licensee for violating the standards of conduct established by the examining board under Wis. Stat. § 440.03(1), and engaging in unprofessional conduct under Wis. Admin. Code § N 7.03.

The undisputed facts in this matter demonstrate the following:

Respondent violated Wis. Stat. § 441.07(1g)(c) and Wis. Admin. Code § N 7.03(6)(e), respectively, by committing acts which show the registered nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency, and by practicing nursing while under the influence of illicit drugs or while impaired by the use of legitimately prescribed pharmacological agents or medications. On January 3, 2018, Respondent could not be located by the charge nurse for at least thirty minutes while she was on duty as an ED nurse and had an active patient assignment. Respondent was eventually found, by the charge nurse, seated at a workstation and appearing to be asleep at the computer. The charge nurse observed that Respondent appeared somnolent and her speech was slurred. Respondent was interviewed by the VP of the Hospital and ED Manager, during which Respondent exhibited slow, slurred speech and a noticeably flat affect. The VP and Manager concluded, based on their observations, that Respondent appeared to be impaired and that immediate drug testing of Respondent was warranted. Respondent provided a urine sample which tested positive for cocaine metabolites and diphenhydramine.

Practicing as a nurse while under the influence of illicit drugs also constitutes a violation of Wis. Admin. Code § N 7.03(6)(c), as such conduct departs from or fails 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.

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's urine drug screen showed the presence of cocaine. Pursuant to Wis. Stat. § 961.16(2)(b)1., cocaine is a schedule II controlled substance, possession of which is subject to a fine and imprisonment under Wis. Stat. § 961.41(3g)(c).

Finally, Respondent violated Wis. Admin. Code § N 7.03(1)(c) by failing to cooperate in a timely manner with the Board's investigation after a request by the Board. On October 28, 2019, a Department investigator sent a request for a response to the Respondent, via first-class mail sent to the most recent address on file with the Department, and via email sent to the most recent email address on file with the Department. Respondent did not reply. On November 12, 2019, a Department investigator sent a request for a response to the Respondent, via first-class mail sent to the most recent address on file with the Department, and via email sent to the most

recent email address on file with the Department. Respondent did not reply. On December 9, 2019, a Department investigator called Respondent at the most recent phone number on file with the Department and left a voicemail requesting a response. Respondent did not reply. To date, Respondent has not replied to the Department's requests for a response to the allegations in this matter. On February 21, 2020, Respondent renewed her nursing license online with the Department and did not change or update her address, phone number, or email address.

By violating these rules of professional conduct, Respondent is subject to discipline pursuant to Wis. Stat. §§ 441.07(1g)(b), (c) and (d).

#### Appropriate Discipline

The three purposes of discipline in a professional misconduct case are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976).

The Division recommends that the license of Respondent, and her privilege to practice under the Enhanced Nurse Licensure Compact (Compact), be suspended pursuant to the terms and conditions of the Order section below. Given that the Respondent has made no argument to the contrary and because the recommended discipline is consistent with the purposes articulated in *Aldrich* and case law, I adopt the Division's recommendation.

The recommended discipline is consistent with the purposes articulated in *Aldrich*. Promoting rehabilitation is one of the purposes of discipline. However, it is unknown if rehabilitation is plausible in this case, as Respondent has a significant history of failure to cooperate with Board efforts. Still, the Order below provides ample opportunity for rehabilitation. Requiring supervision and monitoring will allow Respondent to maintain her license while she gets the necessary treatment to overcome substance abuse issues.

"Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, the Board is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the Board, via the Department, cannot assure the public of the licensee's competence to practice the profession, then suspension is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984). In the present case, the Board cannot assure the public that an individual who fails to cooperate with lawful investigations into conduct and who obtains and uses unlawful controlled substances is competent or safe to practice. The Board cannot ensure that Respondent will practice nursing safely if she is not monitored and required to participate in a treatment program.

Suspension of Respondent's privilege to practice nursing in Wisconsin and limitations on her ability to renew her Wisconsin license are necessary to protect the public from other instances of misconduct. Respondent's alleged misconduct was serious. Practicing nursing while under the influence of illicit drugs shows that Respondent is not safe or competent to practice nursing. Practicing under the influence of illicit drugs shows a disregard for the public's trust and Respondent's responsibilities to her patients, and a disregard of the law. Imposing anything less than suspension would not aid in deterrence but may instead imply that such conduct by a

licensed nurse is tolerable. Accordingly, suspension remains the only appropriate way in which to safeguard the public.

Moreover, suspension of Respondent's license and privilege to practice under the Compact in this case is necessary to deter other licensees from engaging in similar conduct. Respondent has demonstrated a lack of respect for the Board's authority as well as a wanton disregard of the law and public welfare. Therefore, suspension of Respondent's privilege to practice in Wisconsin and limitations on her ability to renew her Wisconsin license are an appropriate response to her disrespect for the law, the public welfare, and the licensing authority governing her profession.

The recommended discipline is consistent with Board precedent. *See In the Matter of Disciplinary Proceedings Against Christine A. Hamilton, R.N.*, Order Number 0006579 (December 12, 2019) (nurse whose drug screen at work tested positive for fentanyl and norfentanyl after empty vials were found in the bathroom garbage had license suspended by the Board and was allowed to petition for a stay of the suspension after three months upon providing proof to the Board that she was in compliance with conditions and limitations placed on her license)<sup>1</sup>; *In the Matter of Disciplinary Proceedings Against Jennifer Civitarese, R.N.*, Order Number 0005586 (January 11, 2018) (nurse who smelled of alcohol at work and had a blood alcohol concentration of 0.28 had license suspended by the Board and was allowed to petition for a stay of the suspension after three months upon providing proof to the Board that she was in compliance with conditions and limitations placed on her license)<sup>2</sup>; *In the Matter of Disciplinary Proceedings Against Ann M. Lenck, R.N.*, Order Number 0005386 (July 27, 2017) (nurse who diverted controlled substances had license suspended by the Board and was allowed to petition for a stay after three months upon providing proof to the Board that she was in compliance with conditions and limitations placed on her license)<sup>3</sup>; *In the Matter of Disciplinary Proceedings Against Jennifer A. Rosenbaum, R.N.*, Order Number 0005018 (November 10, 2016) (nurse who was impaired at work had a blood alcohol level above the legal limit and a later drug screen that tested positive for unprescribed oxycodone had license suspended by the Board and was allowed to petition for a stay of suspension upon providing proof to the Board that she was in compliance with conditions and limitations placed on her license)<sup>4</sup>; and, *In the Matter of Disciplinary Proceedings Against Elizabeth M. Krajewski, R.N.*, Order Number 0004648 (April 14, 2016) (nurse who smelled of alcohol at work had license suspended by Board and was allowed to petition for a stay of suspension after three months upon providing proof to the Board that she was in compliance with conditions and limitations placed on her license).<sup>5</sup>

Based upon the facts of this case and the factors set forth in *Aldrich*, suspension of Respondent's license and the privilege to practice nursing in Wisconsin under the Compact, as set forth in the Order section below, is warranted.

#### 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,

<sup>1</sup> This decision is available online at: <https://online.drl.wi.gov/decisions/2019/ORDER0006579-00016242.pdf>

<sup>2</sup> This decision is available online at: <https://online.drl.wi.gov/decisions/2018/ORDER0005586-00014312.pdf>

<sup>3</sup> This decision is available online at: <https://online.drl.wi.gov/decisions/2017/ORDER0005386-00013924.pdf>

<sup>4</sup> This decision is available online at: <https://online.drl.wi.gov/decisions/2016/ORDER0005018-00013246.pdf>

<sup>5</sup> This decision is available online at: <https://online.drl.wi.gov/decisions/2016/ORDER0004648-00012558.pdf>

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, Boards have considered the following factors when determining if all or part of the costs should be assessed against the Respondent: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the 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, funded by other licensees; and (7) any other relevant circumstances. See *In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, LS0802183CHI (Aug. 14, 2008). It is within the Board's discretion as to which of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

When considering the above factors, it is appropriate in this matter for Respondent to pay the full costs of the investigation and of these proceedings. Respondent defaulted, and the factual allegations, identified in this decision, were deemed admitted. Thus, the Division met its burden of proof. Respondent's conduct was serious; the positive drug screen results indicated Respondent was impaired at work. Drug abuse by a nurse poses a threat to the health and safety of patients, as well as to the nurse. Respondent failed to cooperate with the Board's investigation and disciplinary process and has not offered any acceptable justification for her actions in this regard. Lastly, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. It would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay the full costs of the investigation and this proceeding, as determined pursuant to Wis. Admin. Code § SPS 2.18.

### ORDER

For the reasons set forth above, IT IS ORDERED that the license of Respondent Kristin L. Frea, R.N., License No. 218401-30, and her privilege to practice in Wisconsin under the Enhanced Nurse Licensure Compact (Compact), are suspended and limited as follows:

### SUSPENSION

- A.1. The license of Respondent, (license number 218401-30), to practice as a registered nurse in the state of Wisconsin is SUSPENDED for an indefinite period.
- A.2. The privilege of Respondent, to practice as a nurse in the state of Wisconsin under the authority of another state's license pursuant to the Compact is also SUSPENDED for an indefinite period.

### STAY OF SUSPENSION

- B.1. The suspension shall not be stayed for the first three (3) months, but any time after three (3) months the suspension may be stayed upon Respondent providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) consecutive months.

- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in violation of any provision of this Order. 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 (Department) 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.

### 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 will be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and 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 treatment program shall include both of the following:
- (a.) individual treatment sessions at a frequency to be determined by Treater; and
  - (b.) participation in either (i) group therapy sessions at a frequency to be determined by the Treater; and/or (ii) participation in a community based substance abuse/recovery program (e.g. NA/AA) at a frequency to be determined by Treater and with verification of attendance reported to the Treater.

The treatment program may end only with the recommendation of the Treater and the approval of the Board or its designee, after receiving a petition for modification as required by D.5., below.

- C.5. The Respondent shall execute a release authorizing the Treater to submit formal written reports to the Department Monitor on at least quarterly basis, or as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment and verify compliance with the program requirements set forth in paragraph C.4 above.

#### 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 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.

#### Sobriety

- C.7. Respondent shall abstain from all personal use of alcohol.
- C.8. 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 prescribing the controlled substance. Respondent shall, at the time the controlled substance is prescribed, 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. Respondent shall disclose the name and address of such practitioner to the Department Monitor within five (5) business days of receipt of a prescription for controlled substances.
- C.9. 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 herself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- C.10. 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 the prescription to the Department Monitor.

#### Drug and Alcohol Screens

- C.11. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department (Screening Program).
- C.12. At the time Respondent enrolls in the Screening Program, Respondent shall review all rules and procedures made available by the Screening Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Screening Program is a violation of this Order. The requirements shall include:
- (a) Contact with the Screening 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 Screening Program within five (5) hours of notification of a test.
- C.13. The Screening 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, and/or Respondent may petition for modification of testing frequency per paragraph D.5.
- C.14. 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.15. In addition to any requirement of the Screening 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.16. All confirmed positive test results shall be presumed 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.17. The Screening Program shall submit information and reports to the Department Monitor as directed.

#### Practice Limitations

- C.18. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances.

- C.19. 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.20. Respondent shall practice only in a work setting pre-approved by the Board or its designee. Requests for pre-approval 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.21. Respondent may not work in a home health care, hospice, pool nursing, assisted living, agency, or as a nurse in a correctional setting.
- C.22. Prior to commencing practice, Respondent shall provide a copy of this 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.23. 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.24. 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. This report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

#### 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)

You may also submit this information online via DSPS' Monitoring Case Management System, here: <https://dspsmonitoring.wi.gov>.

#### Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all 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, Screening 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 Screening Program by Board

- D.4. If the Board, or its designee, determines the Treater or Screening 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 Screening 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 after demonstrating five (5) years of successful compliance with all terms, including at least 600 hours of approved nursing practice each year. The Board may, on its own motion, grant full Wisconsin licensure at any time.

#### 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.

#### Additional Discipline

D.8. 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 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 the address listed in paragraph D.1. above.

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

Dated at Madison, Wisconsin on July 23, 2020.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
4822 Madison Yards Way, 5<sup>th</sup> Floor North  
Madison, Wisconsin 53705  
Tel. (608) 266-7709  
Fax (608) 264-9885

By: 

Kristin P. Fredrick  
Administrative Law Judge