

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscga>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov



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

In the Matter of the Disciplinary Proceedings
Against Christopher M. Heinen, R.N., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0007628**

Division of Legal Services and Compliance Case No. 19 NUR 349

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 14th day of October, 2021.

Gregory P. Jalotauskis

Member
Board of Nursing



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Christopher M. Heinen, R.N., Respondent

DHA Case No. SPS-21-0039
DLSC Case No. 19 NUR 349

PROPOSED DECISION AND ORDER

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

Christopher M. Heinen, R.N.
1555 Satellite Blvd., Apt. 107
San Diego, CA 92154

Wisconsin Board of Nursing
P.O. Box 8366
Madison, WI 53707-8366

Department of Safety and Professional Services,
Division of Legal Services and Compliance, by:

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

PROCEDURAL HISTORY

The Notice of Hearing and the Complaint were served on Christopher M. Heinen, R.N. (Respondent), by the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division) on May 7, 2021, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. An answer to a complaint must be filed within 20 days from the date of service of the complaint. Wis. Admin. Code § SPS 2.09(4). No answer was filed.

Following the expiration of the 20-day period to file an answer, Administrative Law Judge Andrea Brauer scheduled a telephone prehearing conference for June 29, 2021, at 9:00 a.m. Notice of this prehearing conference was sent to Respondent via regular mail to his most

recent address on file with the Department and was then forwarded by the U.S. Postal Service to a different apartment number at the same address.

The Respondent failed to provide ALJ Brauer with a telephone number as directed and failed to appear at the prehearing conference on June 29, 2021. ALJ Brauer attempted to reach Respondent at approximately 9:10 a.m. at a telephone number that was on file with the Department. Respondent did not answer the telephone, whereupon the ALJ left a voicemail for him indicating that he should contact her at the telephone number provided by 9:20 am, failing which, the ALJ would proceed with the conference without the Respondent. The ALJ called Respondent again at approximately 9:25 a.m., but he did not answer the telephone. Respondent also did not contact ALJ Brauer.

Based on Respondent's failure to file an answer to the Complaint and failure to appear at the June 29, 2021 prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). The ALJ granted the Division's motion and found Respondent in default.

On July 9, 2021, ALJ Brauer issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order by July 20, 2021. On July 14, 2021, the Division requested an extension to file its submission. ALJ Brauer granted the Division's request and ordered that the Division file a recommended proposed decision and order by July 30, 2021. The Division timely filed its submission pursuant to the extension.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-12 are taken from the Division's Complaint filed against Respondent in this matter.

1. The Respondent, Christopher M. Heinen, R.N., is licensed in the state of Wisconsin as a registered nurse, having license number 232650-30, first issued on January 4, 2017, and current through February 28, 2022.

2. Respondent's most recent address on file with the Department is 1555 Satellite Boulevard, Apartment 114, San Diego, California 92154.

3. In 2018, Respondent was working as a registered nurse at a medical facility in Milwaukee, Wisconsin (Facility).

4. A Facility review found that Respondent was the highest remover of Oxycodone 5mg from the Pyxis machine in his work area between June 1, 2018, and September 19, 2018. During this period, Respondent removed 691 tablets of Oxycodone 5mg, as compared to the next highest remover who removed 252 tablets of Oxycodone 5mg.

5. On September 24, 2018, Respondent underwent a reasonable suspicion drug test and tested positive for opiates and amphetamines.

6. On October 3, 2018, Respondent resigned from Facility.

7. On July 16, 2019, the Facility notified the Department of the review and findings alleged above.

8. On April 9, 2020, the Department, on behalf of the Wisconsin Board of Nursing (Board), sent a letter and an email to Respondent at his mailing and email addresses on record with the Department, requesting a response to the Facility review and findings alleged above.

9. On May 22, 2020, the Department sent a letter via certified mail to Respondent's address on record with the Department and left a voicemail at Respondent's telephone number on record with the Department requesting a response to the Facility review and findings alleged above.

10. On September 3, 2020, the Department again emailed Respondent at his email address on record with the Department, requesting a response to the Facility review and findings alleged above.

11. On October 2, 2020, the Department, on behalf of the Board, left another voicemail at Respondent's telephone number on record with the Department, requesting a response to the Facility review and findings alleged above.

12. Respondent has failed to respond to all the Department's requests for a response.

Facts Related to Default

13. On May 7, 2021, the Division served the Notice of Hearing and the Complaint in this matter on Respondent by both certified and regular mail to his address on file with the Department.

14. The Respondent failed to file an answer to the Complaint.

15. After the expiration of the 20-day period to file an answer, ALJ Brauer scheduled a telephone prehearing conference for June 29, 2021, at 9:00 a.m. Notice of the prehearing conference was sent to Respondent via regular mail to his most recent address on file with the Department and was then forwarded by the U.S. Postal Service to a different apartment number at the same address. The Notice directed Respondent to "contact the undersigned ALJ no later than June 28, 2021, by electronic mail, telephone, or written correspondence (see contact information above) for the sole purpose of providing the telephone number at which the Respondent may be reached for the telephone conference on June 29, 2021. The Respondent's failure to appear at a scheduled conference or hearing may result default judgment being entered against the Respondent." (Emphasis in original).

16. Respondent failed to provide the ALJ with a telephone number and failed to appear at the prehearing conference on June 29, 2021.

17. Respondent has not contacted the ALJ or the Division following the prehearing conference on June 29, 2021.

18. Based on Respondent's failure to file an answer to the Complaint and failure to appear at the June 29, 2021 prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). The ALJ granted the Division's motion and found Respondent in default.

19. On July 9, 2021, ALJ Brauer issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order by July 20, 2021.

20. On July 14, 2021, the Division requested an extension to file the proposed decision and order which the ALJ approved and then ordered the Division to file it by July 30, 2021.

21. The Division timely filed the proposed decision and order.

DISCUSSION

Jurisdictional Authority

The Board has jurisdiction over this matter pursuant to Wis. Stat. § 441.07(1c) and (1g). The Department "may promulgate rules defining uniform procedures to be used by the department . . . and all examining boards and affiliated credentialing boards attached to the department or an examining board, for . . . conducting [disciplinary] hearings." Wis. Stat. § 440.03(1). These rules are codified in chapter SPS 2 of the Wisconsin Administrative Code. The undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1). Wis. Admin. Code § SPS 2.10(2).

Default

The Division properly served the Notice of Hearing and Complaint upon Respondent by mailing a copy to his address on file with the Department. Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1). If a respondent "fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence." Wis. Admin. Code § SPS 2.14.

Respondent violated Wis. Admin. Code § SPS 2.09(4) by failing to file an answer to the Complaint within 20 days from the date of service. Respondent also failed to appear at the prehearing telephone conference on June 29, 2021. Therefore, Respondent is in default, and findings and an order may be entered based on the Complaint and other evidence.

Burden of Proof

The burden of proof in disciplinary proceedings before the Board is a preponderance of the evidence. *See* Wis. Stat. § 440.20(3). Given Respondent's failure to answer the allegations in the Complaint and resulting finding of default, the allegations in the Complaint are deemed admitted. Wis. Admin. Code § SPS 2.09(3).

Violations

The Board has the authority to impose discipline against the Respondent pursuant to Wis. Stat. § 441.07(1g). Following an investigation, if the Board determines that a nurse has committed "[o]ne or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter," or has committed "[m]isconduct or unprofessional conduct," it may "revoke, limit, suspend or deny a renewal of a license of a registered nurse..." Wis. Stat. § 441.07(1g)(b) and (d).

Wisconsin Administrative Code § N 7.03 provides the Board with grounds for taking disciplinary action on a license. Conduct that is grounds for the Board to take disciplinary action on a license includes, but is not limited to:

- a. After request of the Board, failing to cooperate in a timely manner with the Board's investigation of a complaint filed against a license holder. Wis. Admin. Code § N 7.03(1)(c).
- b. Unsafe practice or substandard care by practicing nursing while under the influence of alcohol, illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications. Wis. Admin. Code § N 7.03(6)(e).
- c. Improper prescribing, dispensing, or administering medication by obtaining, possessing, or attempting to obtain or possess a drug without lawful authority. Wis. Admin. Code § N 7.03(8)(e).

By failing to cooperate in a timely manner with the Board's investigation and failing to respond to the Department or Board within 30 days of a request for information in connection with an investigation of alleged misconduct, Respondent engaged in conduct that constitutes grounds for disciplinary action on his license. Wis. Admin. Code §§ N 7.03(1)(c) and Wis. Stat. § 440.20(5)(a). Between April and October 2020, the Department contacted the Respondent four times on behalf of the Board requesting a response to the allegations in this matter. These contacts were made via mail, email, and telephone to the Respondent's most recent contact information on file with the Department. The Respondent did not respond to any of the Department's requests and has, to date, still provided no response to the Facility's allegations. He also failed to participate in these proceedings and did not file an answer to the Division's Complaint as required by Wis. Admin. Code § SPS 2.09.

In addition, Respondent is subject to discipline pursuant to Wis. Admin. Code § N 7.03(8)(e) by obtaining, possessing, or attempting to obtain or possess a drug without lawful

authority; and 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. On September 24, 2018, Respondent tested positive for opiates and amphetamines during a reasonable suspicion drug test, which was performed after a medical facility at which he was working as a registered nurse found he had removed significantly more Oxycodone from the Pyxis machine in his work area than other staff members.

Based on the above, the Respondent has engaged in conduct which is grounds for disciplinary action on his license, along with the Respondent's failure to make any argument to the contrary and the deemed admission of all properly pled allegations, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d), and Wis. Admin. Code § N 7.03.

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 Respondent's license be suspended until he complies with the Order below. The recommended discipline is consistent with the purposes articulated in *Aldrich*. Although promoting rehabilitation is one of the purposes of discipline, the potential for rehabilitation is unknown in this case. Respondent has failed to participate in the Board's investigation and these disciplinary proceedings and so the Board cannot determine whether any rehabilitative measures would be effective. Respondent's total lack of cooperation and accountability demonstrates a lack of respect for Board authority.

Respondent's failure to cooperate with the Board's investigation constitutes serious misconduct which has impeded the Board's efforts to protect patients and the public. Respondent maintains an active license to practice as a registered nurse in Wisconsin and therefore the Order below is necessary to ensure that Respondent cannot practice until he meets the Order conditions by demonstrating a commitment to rehabilitative measures.

Suspending Respondent's license indefinitely under these conditions protects the public from other potential instances of misconduct. "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, Wisconsin 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 state 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). Registered nurses are licensed to care for the sick and injured, a vulnerable population.

Suspension is also necessary and appropriate to deter other licensees from engaging in similar conduct. Misuse of controlled substances, practicing while impaired, and failing to

cooperate with the licensing authority constitutes serious misconduct that should not be ignored. Suspension of Respondent's license will serve to deter others from committing similar violations.

Finally, the discipline imposed is appropriately significant as compared with other Board decisions. See *In the Matter of Disciplinary Proceedings Against Stephanie Y. Gaines, L.P.N.*, Board Order No. 04686 (April 29, 2016) (Board revoked a nurse's right to renew her license and privilege to practice nursing pursuant to the Nurse Licensure Compact for failure to cooperate with the Board's investigation into a complaint that the nurse took financial advantage of a patient and was convicted of forgery-uttering, unauthorized use of personal identifying information to obtain money, possession of narcotics, and bail jumping);¹ *In the Matter of Disciplinary Proceedings Against Kelly L. Kowalkowski, R.N.*, Board Order 04613 (March 18, 2016) (Board revoked a nurse's right to renew her license and privilege to practice nursing pursuant to the Nurse Licensure Compact for failure to cooperate with an investigation by the Board after being charged with several drug-related offenses).²

Additionally, precedent from other licensing boards shows that a suspension for failing to cooperate with the respective licensing board is appropriate. See *In the Matter of Disciplinary Proceedings Against Manuel J. Thomas, M.D.*, Order Number 0007046 (October 21, 2020) (Medical Examining Board suspended the license indefinitely for failure to cooperate with the Board's investigation and proceedings);³ See *In the Matter of Disciplinary Proceedings Against Michael N. Mangold, M.D.*, Order Number 0002433 (May 15, 2013) (Medical Examining Board suspended the license indefinitely or until a showing that the licensee recognized the authority of the Board and understood his obligations to comply with the Board's orders for practicing medicine without a valid license);⁴ and *In the Matter of Disciplinary Proceedings Against Ossama Abdellatif, M.D.*, Order Number LS0904201MED (September 16, 2009) (Medical Examining Board suspended the license indefinitely for failure to cooperate with the Board's investigation and for practicing medicine under another name).⁵

In light of the facts of this case, the factors set forth in *Aldrich*, and prior Board decisions, it is appropriate to suspend Respondent's license until he complies with the terms of the order below.

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*

¹ *In the Matter of Disciplinary Proceedings Against Stephanie Y. Gaines, L.P.N.*, Board Order No. 04686

² *In the Matter of Disciplinary Proceedings Against Kelly L. Kowalkowski, R.N.*, Board Order 04613

³ *In the Matter of Disciplinary Proceedings Against Manuel J. Thomas, M.D.*, Order Number 0007046

⁴ *In the Matter of Disciplinary Proceedings Against Michael N. Mangold, M.D.*, Order Number 0002433

⁵ *In the Matter of Disciplinary Proceedings Against Ossama Abdellatif, M.D.*, Order Number LS0904201MED

& *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 to determine which of these factors to consider and how much weight to give any factors.

Considering the above factors, it is appropriate for the Respondent to pay the full costs of these proceedings. He is in default, and thus the allegations in the Complaint are deemed admitted. His violations were serious, involved misuse of controlled substances, and put patients at risk. He also failed to cooperate with the Board's investigation, failed to file an answer to the Complaint, and failed to appear at the prehearing conference. Finally, 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.

Consequently, the Respondent should be required to pay the full costs of the investigation and this proceeding, as determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

1. IT IS ORDERED that Respondent's license to practice as a registered nurse in the state of Wisconsin (license No. 232650-30) is SUSPENDED as follows:

SUSPENSION

- A.1. Respondent's license to practice as a registered nurse in the state of Wisconsin (license No. 232650-30) 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 Enhanced Nurse Licensure Compact (Compact) is also SUSPENDED for an indefinite period.

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, for a period of at least thirty (30) consecutive days.
- 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 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 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 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 Alcoholics Anonymous and/or Narcotics 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 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 she 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.10. 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 (Approved Program).
- C.12. At the time Respondent enrolls in the Approved Program, Respondent shall review all 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 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.13. 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 may be a hair test at the Board's discretion), 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 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.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 Approved 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 as a nurse in the following settings: home health care, hospice, pool nursing, assisted living, agency, or 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 less than satisfactory 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, mailing address, email 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, payment of costs (made payable to Department of Safety and Professional Services), and other information required by this Order shall be submitted 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) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Respondent may also submit this information online at: <https://dpsmonitoring.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 Treater, the treatment facility, the Approved Program, or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.
- D.3. 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 mailing address, email 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 Treater or the Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board, or its designee, may direct that Respondent continue 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 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 a full Wisconsin license 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.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.

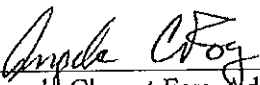
D.10. Should Respondent have a Wisconsin multistate license, Respondent may not practice in any Compact state, other than Wisconsin, while Respondent's license is encumbered by any term(s) of this Order.

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 this Order are effective the date the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin, on September 1, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Tel. (608) 266-7709
Email: Angela.ChaputFoy@wisconsin.gov

By: 
Angela Chaput Foy, Administrative Law Judge