

# An Opportunity to Update the Disciplinary and Licensure Reinstatement Processes

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Chief Legal Officer  
NC Board of Nursing

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# Objectives

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- Share with you a case that prompted change in discipline and reinstatement processes
- Review the pros and cons of Voluntary Surrenders without findings of fact
- Review the regulatory benefits of final actions with findings of facts

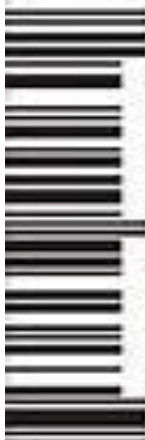
# Background Wimes

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- Licensee was LPN, practicing since 1987
- February 2005 Complaint:
  - Diversion, Failure to Maintain Accurate Record and Impaired on Duty
- Allegations
- Interview



N 3



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50458-515-60

For prescribing information, see accompanying product literature.



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NDC 50458-515-60



100 tablets

**Tylenol<sup>®</sup>**  
**with codeine**  
**ACETAMINOPHEN AND**  
**CODEINE PHOSPHATE**  
**TABLETS No.4**

Each tablet contains:  
codeine phosphate 60 mg  
acetaminophen 300 mg

**Rx only.**

This is a bulk container. Not intended for household use.  
Dispense in light, light-resistant container as defined in the official compendium.  
Store at 20° to 25°C (68° to 77°F).  
(See USP Controlled Room Temperature).  
Keep out of reach of children.

Manufactured by:  
Janssen Ortho, LLC  
Guano, Puerto Rico 00778

Manufactured for:  
PriCara, Division of Ortho-McNeil-Janssen  
Pharmaceuticals, Inc.  
Raritan, NJ 08869

**PriCara**  
Division of Ortho-McNeil-Janssen Pharmaceuticals, Inc.

Control:  
Exp. Date:



# Options for Resolution

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- **Alternative to Discipline Program (AP)**  
Acknowledge Substance Use Disorder
- **Voluntary Surrender**
  - No acknowledgment of violations required
- **Continue with Investigation**

# Voluntary Surrender

Exhibit 3

## CONSENT TO SURRENDER FORM

I, GWENDOLYN FENNEL-WIMES, LPN, Certificate #035385, having been advised by the North Carolina Board of Nursing of pending charges against me and, also, of my right to have an Administrative Hearing do hereby voluntarily waive my right to Hearing.

Further, I hereby surrender, to the North Carolina Board of Nursing, my license to practice as a Licensed Practical Nurse for an indefinite period of time.

This surrender shall constitute my consent to all conditions as explained to me by Sandra O. Best, Certified Investigator for the North Carolina Board of Nursing, on July 25, 2005.

I fully understand, and agree, that I shall not practice nursing during the time my license is held by the Board; and, in turn, the Board agrees to consider my petition for review of my status at some point in the future.

Prior to requesting reinstatement of my license, I must contact the Board to determine what type of evidence will be needed, in order that my petition for reinstatement will be considered. It will be necessary that the requested evidence be submitted with the request for reinstatement.

July 25<sup>th</sup>, 2005 Gwendolyn Fenel Wimes  
DATE SIGNATURE

North Carolina  
Wake County

Gwendolyn Fenel Wimes described and  
personally appeared before me this 25<sup>th</sup> day of  
July, 2005

Seal

Walter H. Coe  
Notary Public

My Commission Expires 11-6-05





# Voluntary Surrender

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## ■ Pros

**Case closed! For now....**

## ■ Cons

**Wording did not prevent a licensee from appealing:**

- 1. The surrender of the license**
- 2. Future decisions of the LRP or NCBON**

# Background Wimes Cont'd

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July 2006

## ■ Requested Reinstatement

- Required 4 months drug screening
- Addiction specialist evaluation
- Resume
- Employment history
- Criminal Record Information
- History of any treatment received
- Pharmacy information
- Healthcare Providers/Diagnoses/Medications prescribed
- Reference Letters and Continuing Ed

# Background Wimes Cont'd

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## § 90-171.37

The Board may reinstate a revoked license, revoke censure or probative terms, or remove other licensure restrictions when it finds that the reasons for revocation, censure or probative terms, or other licensure restrictions no longer exist and that the nurse or applicant can reasonably be expected to safely and properly practice nursing.

# Background Wimes Cont'd

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- February 2007
- January 2010
- September 2010
- May 2011
- November 2011
- June 2012

# What's the Problem??



**NDC 50458-515-60**

100 tablets

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**ACETAMINOPHEN AND CODEINE PHOSPHATE**  
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Raritan, NJ 08869

Control:  
Exp. Date:

For prescribing information, see accompanying product literature.

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Barcode: N 3 50458-515-60 2



# What's the problem?

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## ■ Addictionologist Evaluation

- No Diagnosis
- “Reasonable to continue random urine drug screens while practicing with an unrestricted license”

## ■ Drug screening began late 2011

- Testing positive for Valium and T4
- Cleared with scripts but failing because no Prescription Identification Forms

# Background Wimes Cont'd

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## Licensure Review Panel (LRP)

- **August 2012**

Panel offered relicensure with PL with drug screening for 12 months of employment after successful completion of Refresher program

- **September 2012**

Requested to Appeal and appeared before the Full Board but no evidence presented

No right to appeal existed

Board heard from Wimes but upheld LRP decision

# Appeal from LRP- Problems

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- **Process did not allow for a full hearing before the Board**
- **Oral arguments only**
- **Letter issued, not order, that had no findings of fact or conclusions of law**



# Appeal from LRP

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**§ 150B-42. Final agency decision; official record.**

**(a) After compliance with the provisions of G.S. 150B-40(e), if applicable, and review of the official record, as defined in subsection (b) of this section, an agency shall make a written final decision or order in a contested case. The decision or order shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.**

# Background Wimes Cont'd

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- **November 2012 Appeal to Superior Ct.**
  - NC BON requested remand for full evidentiary hearing
  - Fear reversible error for Oct 2012 decision
- **May 2013 Full evidentiary hearing**
  - Refresher, PL with Screening 6 months

# Background Wimes Cont'd

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## July 2013 Appeal to Superior Court

### ■ Issues appealed:

- Whether the probationary conditions were within the BON's authority
- Whether the BON took official notice that diazepam was an impairing controlled substance
- Whether the record contained evidence supporting a finding that Ms. W had committed medication errors

### ■ February 2014: Decision upheld BON May 2013 Order

# Voluntary Surrender Revised

**NORTH CAROLINA BOARD OF NURSING  
VOLUNTARY CONSENT TO SURRENDER LICENSE/PRIVILEGE TO PRACTICE**

I, \_\_\_\_\_, Licensed Practical Nurse/Registered Nurse, Certificate/License Number \_\_\_\_\_, from the State of North Carolina having been advised by \_\_\_\_\_ (Name of Investigator and credentials), Investigator for the North Carolina Board of Nursing (Board) of the pending charges against me.

- I hereby knowingly and voluntarily waive my right to receive a letter of charges reciting the alleged violations.
- I hereby knowingly and voluntarily waive my right to an Administrative Hearing under G.S. 90-171.37 and G.S. 90-171.37A where I am afforded notice and an opportunity to confront witnesses against me; in exchange for ending investigation into this matter.
- I hereby knowingly and voluntarily waive my right to judicial review of the Board's Decision because of my Voluntary Surrender.
- I understand that the following are the alleged facts and applicable alleged violations:

**Allegation:** (Tie into law: Ex: Licensee failed to maintain accurate records related to controlled substances when she or was impaired on duty)

In violation of N.C. Gen. Stat. 90-171.37: (select all applicable)

And Rule 21 N.C.A.C. 36.0217(c): (select all applicable)

- I understand this surrender shall constitute my consent to all conditions as explained to me by Investigator Name, credentials, Investigator for the North Carolina Board of Nursing on June 19, 2013.
- I understand this surrender of my license will be considered by the Board to be a disciplinary action and will be reported to the appropriate entities as outlined by Board policy, and as required by state and/or federal guidelines. Those entities include, but may not be limited to: NURSIS (National database of licensed nurses-National Council of State Boards of Nursing), National Practitioner Data Bank (NPDB), the Office of the Inspector General (OIG), Health Care Integrity and any other state/jurisdiction in which the licensee is or has been licensed.
- I understand while I may deny these allegations, I am voluntarily surrendering my license/privilege to practice. Based on my waiver of these rights, I hereby surrender, to the Board, my license/privilege to practice as a Registered Nurse/Licensed Practical Nurse for a minimum of one (1) year.
- I understand and agree, that I shall not practice nursing or use any card, title or abbreviation to represent my status as a licensed nurse, in North Carolina or any other state, during the time my license is held by the Board, and, in turn, the Board agrees to consider my petition for review of my status at some point in the future.

- I understand that prior to petitioning for reinstatement of my license, it is my duty to contact the North Carolina Board of Nursing Staff in order to determine what type of documentation will be needed in order that my request for reinstatement will be considered. Such requested documentation shall be submitted with the request for reinstatement and all fees required by law.
- I understand that the review of my petition for reinstatement will be heard before a Licensure Review Panel of Board members.
- I understand that my petition for reinstatement of my license may be denied or granted. If granted, my license may have sanctions or restrictions.
- I understand that any decision regarding my petition for reinstatement made by the Panel will be reported to the Board for ratification at the next regularly scheduled Board meeting.
- I knowingly and voluntarily waive any evidentiary hearing or judicial review by a Superior Court of the Licensure Review Panel's decision or the ratified decision of the full Board with regard to reinstatement of my license with sanctions or restrictions.

This **CONSENT TO SURRENDER LICENSE/PRIVILEGE TO PRACTICE** shall take effect immediately when returned to the Board office after proper execution by both the Licensee and the Board.

Date	Investigator Name and credentials North Carolina Board of Nursing
Date	Amy Fitzhugh, Staff Attorney North Carolina Board of Nursing
Date	Licensee Attorney (if applicable)
Date	Licensee Signature

# Background Wimes Cont'd

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- **Appeal to North Carolina Court of Appeals Upheld NCBON decision**

Wimes v. North Carolina Board of Nursing, 2014  
unpublished opinion

- **Petition North Carolina Supreme Court Discretionary Review- Denied Review**

Wimes v. North Carolina Board of Nursing, 2015



# We Won! But...

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**Voluntary Surrenders even with tweaks  
still not quite working for us**

## **Problems:**

- Still revolving door**
- No acknowledged violations**
- Reciprocal action likely not possible**
- Reinstatement issues**
- Endorsement issues**

# Consent Orders

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- Licensee may still end process at early stage
- Consent to Suspension
- Consent Order Format
- Findings of Facts that are admitted by the Licensee
- Conclusions of Law that delineate the admitted violations
- Minimum time frame given for suspension
- Voluntary Surrender form discontinued

# 2018

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- **Wimes contacted the Board 2018**
- **Only one Voluntary Surrender without acknowledged facts and violations taken since discontinued**
- **Move toward allowing Voluntary Surrenders with acknowledged facts and violations coming**



# Questions?????

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