

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
SUSAN L. KJELLAND, R.N.,	:	LS0404263NUR
RESPONDENT.	:	

Division of Enforcement Case Nos. 99 NUR 317, 03 NUR 002

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

Susan L. Kjelland, R.N.
2206 Blackbridge Road
Janesville, WI 53545

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Board of Nursing
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board of Nursing. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Susan L. Kjelland, (DOB 8/27/54) is duly licensed as a registered nurse in the state of Wisconsin (license #66868). This license was first granted on 1/14/77.
2. Respondent's most recent address on file with the Wisconsin Board of Nursing is 2206 Blackbridge Road, Janesville, WI 53545.
3. At all times relevant to this action, Respondent was working as a registered nurse at various facilities as described below.

Theft of drug paraphernalia, 1994

4. In early October of 1994, Ms. Kjelland was working as a home health nurse for Beloit Hospice, Inc.

5. On or about October 7, 1994, Ms. Kjelland went to a patient's home with her supervisor.

6. After Ms. Kjelland and her supervisor left the patient's home on October 7, 1994, Ms. Kjelland showed her supervisor a pipe, of the type commonly used for smoking illegal drugs.

7. Ms. Kjelland told her supervisor that she had stolen the pipe from the patient's home.

8. Ms. Kjelland's supervisor required her to immediately return the pipe.

Theft of controlled substances, 1994

9. In or about October 20, 1994, staff at Beloit Hospice, Inc. realized that some Hydrocodone was missing.

10. Beloit Hospice, Inc. kept the Hydrocodone in a locked medication cabinet, that had two locks and keys. On day and evening shifts, two separate nurses were given the two separate keys, so that no one nurse had access to drugs. However, on the night shift, both keys were given to one nurse and a medication count was conducted the next day.

11. Ms. Kjelland was assigned both keys to the locked medication cabinet at Beloit Hospice, Inc. during the overnight shift of October 19-20, 1994, and therefore was the only person with access to the missing Hydrocodone.

12. Beloit Hospice required all employees who were authorized to be assigned the keys to the medication cabinet to undergo drug testing.

13. Ms. Kjelland refused the drug test and quit her job, stating that her test would be positive because she had taken a controlled substance borrowed from a friend.

14. All other employees who were authorized to be assigned the keys to the medication cabinet tested negative for controlled substances.

15. When Ms. Kjelland quit her job at Beloit Hospice, she was angry, crying and yelling, and walked in circles in an agitated manner. She would not sit down. Her supervisor offered to take her to an emergency room or treatment center, but she refused.

Theft of controlled substances, 1999

16. In October of 1999, Respondent worked at Cedar Crest nursing facility in Janesville, Wisconsin.

17. In October of 1999, staff reported that patients K.T., R.S., E.S. and E.N. received PRN controlled substances (Hydrocodone and Oxycodone) only when Respondent was on duty.

18. K.T., R.S., E.S. and E.N. received PRN controlled substances from Respondent at routine times of the day.

19. Respondent altered medication administration reports involving PRN controlled substances.

20. In or about October of 1999, another R.N. found a cup containing two pain pills. When asked about it, Respondent cried and stated that she had gotten the pills out for a particular resident but the resident didn't need them and she forgot to dispose of them. However, that resident's dose was one pill, not two. Respondent resigned when asked to talk to the administrator about the incident.

Theft of controlled substances, 2002

21. In December of 2002, Respondent was working at Home Health United as a home health nurse.

22. During the same week in December, 2002, two patients of Home Health United (Patient A and Patient B) reported that Hydrocodone had been stolen from their homes, and that the Hydrocodone pills had been replaced with Tylenol pills. A pharmacy confirmed that the Tylenol pills from both patients' homes had the same lot number.

23. Respondent was the case manager for both patient A and patient B, and she was the only person who was in both homes.

24. In the case of patient A, only two other people were in the home at the relevant time: patient A's mother, and patient A's boyfriend. Both deny taking the pills and substituting Tylenol.

25. In the case of patient B, only two other nurses were in the home at the relevant time: nurse A, and nurse B. Both nurses deny taking the pills and substituting Tylenol, and both nurses passed a drug test. The medication was kept in patient B's kitchen cabinet, and Respondent was the only nurse who entered the kitchen alone.

26. When confronted about the medication theft, Respondent refused to take a drug test and quit her job.

Mental health impairment

27. Respondent has been diagnosed with Bipolar disorder, rapid cycling.

28. Respondent's medical records note that she has "impulse control issues" and "anger management issues." She was said to be "distractible" and "tangential," with "decreased concentration" and "a poor attention span."

29. According to her treaters, Respondent "tends to not be compliant with treatment, and waits until she is in a crisis."

30. Respondent has identified nursing duties as a stressor and has admitted that her work performance is affected by her illness.

CONCLUSIONS OF LAW

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

2. The conduct described in paragraphs 3 through 26 above constitutes a violation of Wisconsin Administrative Code § N 7.04(2) and Wis. Stat. §441.07.

3. The conduct described in paragraphs 3 through 26 above constitutes a violation of Wisconsin Administrative Code § N 7.03(2) and Wis. Stat. §441.07(1)(c)

4. The conduct described in paragraphs 26 through 30 above constitutes a violation of Wisconsin Administrative Code § N 7.03(3) and Wis. Stat. §441.07(1)(c).

ORDER

IT IS ORDERED, effective the date of this Order:

SUSPENSION

A. The license of Susan L. Kjelland, R.N., to practice as a registered nurse in the State of Wisconsin is indefinitely **SUSPENDED**. After five years of continuous active professional practice under this Order and without relapse, respondent may petition the Board for a termination of all limitations on the license, and restoration of an unlimited license. Such restoration shall be in the sole discretion of the Board.

STAY OF SUSPENSION

- B.1. The suspension shall 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 at least three months.
- B.2. The Board, or its designee, may without hearing remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order.
- 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 Regulation and Licensing pursuant to § 440.11, Stats., 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 inappropriate for the suspension to remain in effect. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in ch. RL 2, Wis. Adm. Code. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITION AND LIMITATIONS

Treatment Required

- C.1. Within 14 days of the date that a copy of this Order is received by Respondent's attorney, D. David Barry, Respondent shall have entered into, and shall continue, in a drug and alcohol treatment program at a treatment facility (Treater) acceptable to the Board, or its designee. Respondent shall participate in, cooperate with and follow all treatment recommended by Treater.
- C.2. Respondent shall provide Treater with a copy of this Final Decision and Order immediately.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program 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 Treater, 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, but not less than once weekly. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., 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 the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases must be valid for the duration of this Order. The

releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings.

C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but not less than twice weekly. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater.

Sobriety

C.8. Respondent shall abstain from all personal use of alcohol.

C.9. Respondent shall abstain from all personal use of controlled substances as defined in § 961.01(4), Stats., except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee.

C.10. Respondent shall refrain from the consumption of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.

C.11. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by Respondent to Treater within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. If Respondent has not provided a release as required by C.9 above, within 24 hours of a request by Treater or the Board or its designee, Respondent shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Respondent's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

C.12. Within thirty (30) days of the date that a copy of this Order is received by Respondent's attorney, D. David Barry, Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11, ("Approved Program"). A list of Approved Programs is available from the Department Monitor.

C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a 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 specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.

C.14. The Approved Program shall require the testing of urine specimens at a frequency of not less than 56 times per year, for the first year of this Order. After the first year, the frequency may be reduced only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.

C.15. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol,

Respondent shall promptly submit to additional tests or examinations as the Treater or the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.

C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, (c) furnish any specimen in a directly witnessed manner.

C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.

C.18. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11. The Approved Program shall immediately report to Treater all specimens suspected to have been tampered with or which are positive or suspected positive for controlled substances or alcohol.

Practice Limitations

C.19. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to narcotics.

C.20. Respondent shall practice only under the general supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee and only in a work setting pre-approved by the Board or its designee. Respondent is informed that the Board will not approve home health care, hospice, pool or agency work.

C.21. Respondent shall provide a copy of this Final Decision and Order immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future.

C.22. It is Respondent responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance.

C.23. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

Mental Health Treatment Required

C 24. Respondent shall provide her current mental health therapist with a copy of this Order. Within fourteen (14) days of the date that a copy of this Order is received by Respondent's attorney, D. David Barry, Respondent shall provide the Board with a letter from her current mental health therapist affirming that in that therapist's opinion, Respondent currently is capable of performing the duties of a registered nurse. Respondent shall, at her own cost, continue treatment for her mental health issues at a treatment facility acceptable to the Board. Respondent shall provide current valid written authorizations for the release of all of her mental health treatment records and shall provide current valid written authorizations permitting all treating physicians and therapists to disclose and discuss the progress of Respondent's treatment with the Board or its designee. Respondent shall arrange for her therapist to provide written quarterly progress reports, as directed, to the Department Monitor, assessing Respondent's progress in treatment.

MISCELLANEOUS

Department Monitor

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

Department Monitor
Department of Regulation and Licensing

Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817
department.monitor@drl.state.wi.us

Required Reporting by Respondent

D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order by Respondent and any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order.

Change of Treater or Approved Program by Board

D.3. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification

D.4. Respondent may petition the Board for modification of the terms of this Order. Any such petition 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 §227.01(3)(a), Stats., and Respondent shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

D.5. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

D.6. Respondent shall pay costs of \$2,500 to the Department of Regulation and Licensing, in the following installments: \$625 will be due on February 1, 2005; \$625 will be due on May 1, 2005; \$625 will be due on August 1, 2005; and \$625 will be due on November 1, 2005.

Additional Discipline

D.7. In addition to being a basis for removal of the stay of this suspension, violation of any term of this Order may be the basis for a separate disciplinary action under § 441.07, Stats.

Dated at Madison, Wisconsin this 4th day of November, 2004.

Jacqueline A. Johnsrud, R.N.
Chair
Board of Nursing