

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
	:	
DIANE M. KUETHER, R.N.,	:	LS0409167NUR
RESPONDENT.	:	02 NUR 64

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

Diane M. Kuether RN
5860 22nd Ave N.
St. Petersburg, FL 33710

Wisconsin Board of Nursing
P.O. Box 8935
Madison, WI 53708-8935

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

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. The Board has reviewed this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Diane Mary Kuether (dob: 8/7/56) is and was at all times relevant to the facts set forth herein a professional nurse licensed in the State of Wisconsin pursuant to license #65685. This license was first granted 9/17/76. This license expired on 2/29/04, but may be renewed at any time before 2/28/09, by paying all fees then due.
2. On a date in late 2001, and while employed as a professional pool nurse assigned to the Lifecare Hospital of Milwaukee, respondent arrived for work with the distinct odor of an alcoholic beverage on her breath. She informed Board staff on 5/12/02, that she had consumed beer the previous night. At the time of the incident, respondent was still on parole, and such consumption violated the rules of her parole. In March, 2003, she informed Board staff in a telephone conversation that the odor was probably due to her having soaked her dentures in a commercial mouthwash product which contained alcohol. The Board finds these explanations to lack credibility.
3. Respondent has previously been convicted of operating a motor vehicle while influenced by an intoxicant on five occasions between 1986 and 1999. As a result of the last incident she was convicted of felony OWI and sentenced to three years in prison (of which she served approximately two years and was released on parole in 2001; her parole term ended on 11/20/02). She was most recently admitted for alcohol detoxification treatment in May, 2003, at a facility in the Milwaukee area, and has a history of many hospitalizations for alcohol detoxification. While on parole following her release from prison, she was discharged from Horizon House on 6/10/02, for possession of alcohol on 5/21/02, when her breath was found to contain 0.98% alcohol by weight, which she claimed was from the consumption of mouthwash, and failure to attend aftercare.
4. Following an evaluation at ARO Counseling, Milwaukee, respondent was diagnosed with alcohol dependence. Respondent has refused to release her full chart to the Board. Therefore, the Board infers that there is unfavorable information about respondent in these records, and infers that this dependence affects her ability to practice.

5. Respondent has applied for a Florida nursing license, which application is pending.

CONCLUSIONS OF LAW

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

B. The conduct described in paragraphs 2 through 4, above, violated § N 7.03(2) and N 7.04(1), (2) and (15) Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED that effective on the date of this Order, the license of Diane M. Kuether, RN, to practice as a professional nurse in the state of Wisconsin is **SUSPENDED** for an **INDEFINITE** period. Respondent may apply at any time to the Board for a stay of suspension for a period of three months, conditioned upon compliance with the conditions and limitations outlined below.

- a. Respondent may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the respondent for rehabilitation and practice during the prior three (3) month period.
- b. The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in ch. RL 1, Wis. Adm. Code upon timely receipt of a request for hearing.
- c. Upon a showing by respondent of continuous, successful compliance for a period of at least five years of active practice with the terms of this order and compliance with all other terms of this Order, the Board may grant a petition by the Respondent for return of full licensure. (See below.)

IT IS FURTHER ORDERED, that the license to practice of respondent shall be **LIMITED** as follows:

REHABILITATION, MONITORING AND TREATMENT

Treatment Required

1. Respondent shall enroll and continue successful participation in all components of a drug and alcohol treatment program at a treatment facility acceptable to the Board as respondent's Supervising Health Care Provider shall determine to be appropriate for respondent's rehabilitation. Respondent shall commence involvement in the drug and alcohol rehabilitation program within 5 days of the date of the Final Decision and Order of the Board.

Therapy. The rehabilitation program shall include and respondent shall participate in individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the supervising physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed suspension, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the license under §§227.01(3) or 227.42, Wis. Stats., or ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

AA/NA Meetings. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent

program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but no less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

Sobriety

2. Respondent shall abstain from all personal use of controlled substances as defined in Sec. 161.01(4), Stats. except when necessitated by a legitimate medical condition and then only with the prior approval of the Supervising Health Care Provider.
3. Respondent shall abstain from all personal use of alcohol.
4. Respondent shall in addition refrain from the consumption of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, or which may create false positive screening results, or which may interfere with respondent's treatment and rehabilitation. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by respondent to the Supervising Health Care Provider within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Within 24 hours of a request by the Supervising Health Care Provider or the Board or its designee, Respondent shall provide releases which comply with state and federal laws authorizing release of all health care records by the person who prescribed, dispensed, administered or ordered this medication for respondent. These releases shall also authorize the Supervising Health Care Provider, the Board or its designee to discuss the Respondent's health care with the person who prescribed, dispensed, administered or ordered this medication. The terms of this paragraph shall not be deemed to modify or negate Respondent's obligations as set forth in this Order.

Department Monitor

5. The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all reports and petitions, and requesting additional monitoring and surveillance. The Department Monitor may be reached as follows:

Department Monitor
Department of Regulation Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
FAX (608) 266-2264
TEL. (608) 267-3817
department.monitor@drl.state.wi.us

Releases

6. Respondent shall provide and keep on file with the Supervising Health Care Provider, all treatment facilities and personnel laboratories and collections sites current releases which comply with state and federal laws authorizing release of all urine, blood and hair specimen screen results and medical and treatment records and reports to, and permitting the Supervising Health Care Provider and all treating physicians and therapists to disclose and discuss the progress of respondent's treatment and rehabilitation with the Board or any member thereof, or with any employee of the Department of Regulation and Licensing acting under the authority of the Board. Copies of these releases shall be filed simultaneously with the Department Monitor.

Drug and Alcohol Screens

7. Within thirty (30) days from the date of the signing of this Order, 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. The Department Monitor, Board or Board designee shall provide respondent with a list of Approved Programs, however, respondent is solely responsible for timely enrollment in any such Approved Program.
 - b. Unless otherwise ordered by the Board, the Approved Program shall require the testing of urine specimens at a frequency of not less than 56 times per year.
 - c. The Department Monitor, Board or Board designee shall determine the tests to be performed upon the urine specimens.
 - d. Respondent shall comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program, including but not limited to;
 - (i.) contact with the Approved Program as directed on a daily basis, including weekends and holidays, and;
 - (ii.) production of a urine specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
 - e. The Board in its discretion without a hearing and without further notice to respondent may modify this Order to require the submission of hair or breath specimens or that any urine or hair specimen be furnished in a directly witnessed manner.
 - f. All expenses of enrollment and participation in the Approved Program shall be borne by respondent. Respondent shall keep any account for such payments current in all respects.
 - g. For purposes of further Board action under this Order it is rebuttably presumed that all confirmed positive test results are valid. Respondent has the burden of proof to establish by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody which causes an invalid confirmed positive test result.
8. 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 Supervising Health Care Provider shall determine to be appropriate to clarify or confirm the positive or suspected positive urine, blood or hair specimen test results.

Required Reporting by Supervising Health Care Provider, and laboratories

9. The Supervising Health Care Provider shall report immediately to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement by FAX or telephonic communication: any failure of Respondent to provide a urine, blood or hair specimen within five (5) hours from the time it was requested; or of any inability to locate Respondent to request a specimen. The laboratory shall immediately report all urine specimens suspected to have been tampered with and all urine, blood or hair specimens which are positive or suspected positive for controlled substances or alcohol to the Department Monitor, and to the Supervising Health Care Provider.
10. The laboratory shall within 48 hours of completion of each drug or alcohol analysis mail the report from **all** specimens requested of Respondent under this Order to the Department Monitor (regardless of whether the laboratory analysis of the specimen was positive or negative for controlled substances, their metabolites or alcohol). Each report shall state the date and time the specimen was requested; the date and time the specimen was collected; the results of the tests performed to detect tampering; and the results of the laboratory analysis for the presence of controlled substances and alcohol.
11. The Supervising Health Care Provider shall submit formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program and summarize the results of the urine, blood or hair specimen analyses. The Supervising Health Care Provider shall report immediately to the Department Monitor [Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935, FAX (608)266-2264, telephone no. (608)267-3817, e-mail department.monitor@drl.state.wi.us] any violation or suspected violation of the Board's Final Decision and Order.

Required reporting by Respondent

12. Respondent is responsible for compliance with all of the terms and conditions of this Final Decision and Order. It is the responsibility of Respondent to promptly notify the Department Monitor, of any suspected violations of any of the terms and conditions of this Order, including any failures of the Supervising Health Care Provider, treatment facility, laboratory or collection sites to conform to the terms and conditions of this Order.

Facility approval

13. If the Board determines that the Supervising Health Care Provider, treatment facility, laboratory or collection sites have failed to satisfy the terms and conditions of this Final Decision and Order, the Board may, at its sole discretion, direct that Respondent continue treatment and rehabilitation under the direction of another Supervising Health Care Provider, treatment facility, laboratory or collection site which will conform to the terms and conditions of this Final Decision and Order.

PETITIONS FOR MODIFICATION OF TERMS

14. Respondent may petition the Board for modification of the terms of this limited license . Any such petition shall be accompanied by a written recommendation from respondent's Supervising Health Care Provider expressly supporting the specific modifications sought. Denial of the 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 any denial in whole or in part of the petition for modification of the limited license.

After five years of continuous active professional practice under this Order and without relapse, and upon recommendation of the Supervising Health Care Provider , 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, and denial of the 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 any denial in whole or in part of the petition for termination of the limitations and restoration of unlimited licensure.

EXPENSES OF TREATMENT AND MONITORING

15. 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.

PRACTICE LIMITATIONS

Controlled Substance Access

16. Respondent is not restricted from access to or administration of controlled substances in her work setting at this time. However, in the event that the Supervising Health Care Provider recommends restrictions upon access to controlled substances, the Board may Order such restrictions and Respondent agrees to comply .
17. Respondent shall practice only under the general supervision of a licensed professional nurse or other licensed health care professional approved by the Board or in a work setting pre-approved by the Board or its designated agent, which shall not include agency or pool nursing, independent practice sites, or home health or hospice care nursing.

Reporting Required

18. Respondent shall arrange for her employer to provide formal written reports to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance.

Change in Address or Work Status

19. 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.
20. Respondent shall furnish a copy of this Order to all present employers immediately upon issuance of this Order, and to any prospective employer when respondent applies for employment as a health care provider.

IT IS FURTHER ORDERED: that respondent shall pay costs of \$750, within 120 days of this Order.

Violation of any of the terms of this Order shall be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license; the Board in its discretion may in the alternative deny a stay of suspension of the license or impose additional conditions and limitations, including additional screening, or other discipline. If the Board receives information from a professional who is treating the respondent or from the work supervisor that indicates that the respondent is not safe to practice, the Board may deny a Stay or suspend the license of the licensee

This Order shall become effective upon the date of its signing.

WISCONSIN BOARD OF NURSING

Jacqueline Johnsrud
Board Chair

9-16-04
Date