

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 : FINAL DECISION AND ORDER  
ROBERTA J. KLIMEK, L.P.N., : LS0706213NUR  
RESPONDENT. :

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[Division of Enforcement Case # 04 NUR 363]

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

Roberta J. Klimek, L.P.N.  
256 Pleasantview Drive  
Cashton, WI 54619

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 and 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 this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Roberta J. Klimek, L.P.N., Respondent, date of birth December 12, 1977, is licensed by the Wisconsin Board of Nursing as a licensed practical nurse in the state of Wisconsin pursuant to license number 304832, which was first granted March 25, 2004.

2. Respondent's last address reported to the Department of Regulation and Licensing is 256 Pleasantview Drive, Cashton, WI 54619.

3. From October 2003 until her employment was terminated on November 5, 2004, Respondent was employed as a licensed practical nurse at Mulder Health Care Facility (Mulder) in West Salem, Wisconsin.

4. In August 2001, while Respondent was pregnant, she was diagnosed with migraine headaches which had been exacerbated by her pregnancy and her physician prescribed hydrocodone for the pain. In May 2002, following the pregnancy, the migraines continued, but were controlled with Imitrex and Zomig prescription medication for the treatment of acute migraine attacks.

5. In May 2004, Respondent had pre-pregnancy counseling regarding her migraines. Her physician recommended that she not take Imitrex while trying to become pregnant or while pregnant. In June, she was having migraine attacks and the physician prescribed Tylenol with codeine #3. In August, she was having hip pain from the pregnancy and migraines. The migraines appeared to be reasonably controlled by the Tylenol with codeine but the hip pain was only moderately controlled.

6. In October and November 2004, the prescribed medication did not relieve her pain and over those two months, Respondent took from her employment, without the order of a practitioner, tablets of hydrocodone, an analgesic and a class III controlled substance. When Respondent was confronted by Mulder administrators, she admitted taking the medications.

7. The police were informed and on November 8, 2004, as a result of her conduct, Respondent was charged in LaCrosse County Wisconsin Circuit Court case number 2004CF000694. On March 29, 2005, pursuant to a plea agreement:

- a. Respondent pled guilty to Count I - Acquire or Obtain Controlled Substance by Fraudulent Means, in violation of Wis. Stat. 961.43(1)(a), a felony.
- b. Respondent pled guilty to Count II - Illegal Possession of Prescription Drug, a misdemeanor, in violation of Wis. Stat. 450.11(7)(h).
- c. No conviction was entered on Count I and pursuant to a diversion agreement, that count would be dismissed if Respondent complied with the conditions of the agreement. [Respondent did comply with the required conditions and Count I was dismissed on March 29, 2007.]
- d. Respondent was convicted of Count II, given a stayed sentence and placed on two years probation, with conditions including:

Undergo Alcohol and Drug Assessment and comply with treatment recommendations.  
No consuming or possessing alcohol or controlled substances without a prescription from a licensed physician.  
Random screenings to ensure abstinence.  
Enter into Pain Management program – to be set up through treating physician.

8. Respondent completed the Alcohol and Drug Assessment which determined that no treatment was needed. The physician determined that no pain management program was needed. Respondent complied with all conditions of probation and on July 13, 2006, was notified that she had received an Early Discharge ending her probation more than eight months early, based upon the recommendation of her probation agent.

9. Prior to the events in Findings of Fact 6 and 7, Respondent had accepted a position as an L.P.N. at Franciscan Skemp Healthcare in LaCrosse and had given notice of ending her employment at Mulder. She began working at Franciscan Skemp Healthcare on November 16, 2004 and is still employed there. During her employment:

- a. Respondent advised her supervisors of the criminal charges against her.
- b. She has had access to controlled substances, with no problems.
- c. Her annual performance evaluations have all been excellent.
- d. In March 2006, the physician she works with, in nominating her for an award, described her as “by far the best nurse I have ever had. She is kind, caring, energetic, helpful and a true team player.”
- e. In April 2006, the Professional Nurse Practice Committee awarded her the Y.E.S. Nursing Practice Award.
- f. In January 2007, her supervisor indicated that she “is a fantastic role model and is frequently utilized as a preceptor/mentor to new staff.”

#### CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and authority to enter into this stipulated resolution pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by engaging in the conduct set out above, has violated a law substantially related to practice under her license and obtained a drug as prohibited by law, and has committed misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(1) & (2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Respondent, Roberta J. Klimek, L.P.N., is hereby REPRIMANDED for the above conduct.
2. Respondent shall, within 120 days of the date of this Order, pay to the Department of Regulation and Licensing

costs of this proceeding in the amount of \$980.00, pursuant to Wis. Stat. § 440.22(2).

3. All payments required by this Order shall be mailed 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

4. Violation of any of the terms of this Order may 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 impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event that Respondent fails to pay costs as ordered, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

5. This Order is effective on the date of its signing.

Wisconsin Board of Nursing

By: Marilyn Kauffman  
A Member of the Board

6/21/07  
Date

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 :  
 : STIPULATION  
ROBERTA J. KLIMEK, L.P.N., : LS \_\_\_\_\_ NUR  
RESPONDENT. :

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[Division of Enforcement Case # 04 NUR 363]

It is hereby stipulated and agreed, by and between Roberta J. Klimek, L.P.N., Respondent; Thomas H. Taylor of Johns, Flaherty & Collins, S.C., attorneys for Respondent; and John R. Zwieg, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement (file 04 NUR 363). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, she voluntarily and knowingly waives her rights, including the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has obtained advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or her attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

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Roberta J. Klimek, L.P.N.

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Date

Respondent  
256 Pleasantview Drive  
Cashton, WI 54619

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Thomas H. Taylor  
Johns, Flaherty & Collins, S.C.  
Attorneys for Respondent  
P.O. Box 1626  
LaCrosse, WI 54602-1626

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Date

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John R. Zwieg  
Attorney for Complainant  
Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935

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Date