

# 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
KELLY ANN SCHMIDT, R.N.,	:	
RESPONDENT.	:	ORDER 0000530

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[Division of Enforcement Case Nos. 08 NUR 194 & 10 NUR 197]

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

Kelly Ann Schmidt, R.N.  
1305 ½ 2<sup>nd</sup> Avenue NE  
Menomonie, WI 54751

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 Notice of Hearing and Complaint were filed in this matter on September 9, 2010. Prior to the hearing on the formal complaint, the parties in this matter agreed 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 adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Kelly Ann Schmidt, R.N., Respondent, date of birth May 30, 1968, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 125128, which was first granted January 29, 1997.

2. Respondent's address on record with the Department of Regulation and Licensing is 1305 ½ 2<sup>nd</sup> Ave. NE, Menomonie, WI 54751.

CASE 08NUR194

3. Respondent was employed as a registered nurse by CNA Professional Services L.L.P., a temporary staffing agency in Boyceville, Wisconsin.

4. On January 3, 2008, Respondent was arrested for operating after revocation, third offense, and a probation violation. During the traffic stop, a search of Respondent's vehicle revealed that Respondent possessed multiple tablets of hydrocodone/acetaminophen without a prescription. Pursuant to Wis. Stat. § 961.16(2)(a)(7), hydrocodone is a controlled substance for which a prescription is required.

5. On November 11, 2008, in St. Croix County Circuit Court, Case No. 2008CM4, Respondent pled no contest to one count of Possession of Non-Narcotic Controlled Substance, a misdemeanor, in violation of Wis. Stat. § 961.41(3g)(b). The parties entered a deferred prosecution agreement. The Court found Respondent guilty, but deferred judgment on the conviction until June 23, 2009.

6. Wis. Stat. § 961.41(3g)(b), Possession of Non-Narcotic Controlled Substance, is a law substantially related to the practice of nursing.

7. Respondent never notified the Board of Nursing of the conviction set out in paragraph 5.

8. On May 14, 2008, Respondent was scheduled to work the 2:30 p.m. – 11:00 p.m. shift at Baldwin Care Center (Center) in Baldwin, Wisconsin. Before the start of her shift, two staff members counted Vicodin® (hydrocodone/acetaminophen) and Tylenol #3 and recorded their findings.

9. On May 15, 2008, staff counted the medications again. They discovered that 23 tablets of Vicodin® were missing and not accounted for in the medication administration record.

10. On February 26, 2009, an AODA treatment specialist evaluated Respondent pursuant to a court-ordered assessment and driver safety plan. The evaluator recommended that Respondent complete outpatient treatment and follow recommendations of a counselor for continued care and final follow up. Respondent was to abstain from alcohol and drugs.

11. Respondent denies diverting medications.

12. This was not Respondent's first incarceration related to addictions. Between December 1 and December 5, 2006, Respondent was in custody on a probation hold for illegal drug use.

CASE 10 NUR 197

13. From August 25, 2008 to April 6, 2010, Respondent was employed by Cumberland Memorial Hospital in Cumberland, Wisconsin.

14. On March 13, 2010, Patient AD presented to the Cumberland Memorial Hospital's emergency room for attempted suicide by overdose of Seroquel®. Patient AD presented with all of her medications in their prescription bottles. Upon admission, Patient AD gave all medications to Respondent.

15. On March 19, 2010, the Chief Nursing Officer (CNO) suspected Respondent of misconduct and suspended her during an internal investigation. The CNO alleged Respondent had violated hospital policy by:

- a. Taking a suicidal patient outside the building to smoke;
- b. Administering two Percocet® tablets to the patient without an order;
- c. Suspected theft of a missing bottle of the patient's Percocet.

16. On March 23, 2010, Respondent submitted a sample for toxicology screening at the employer's request. On March 27, 2010, toxicology screening of a urine sample Respondent provided was positive for methamphetamine, amphetamine, norpropoxyphene, hydrocodone, oxycodone and oxymorphone.

17. On April 6, 2010, Respondent resigned from her position. Although she initially denied it, Respondent admitted to taking the patient's Percocet® due to a relapse. Respondent asked that the Board of Nursing be informed she is going into treatment.

#### 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 possessing controlled substances without a valid prescription, has violated a law substantially related to practice under her license, which is misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(1), and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

3. Respondent, by possessing controlled substances without a valid prescription, has obtained drugs other than in the course of legitimate practice and as otherwise prohibited by law, which is misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(2), and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

4. Respondent, by failing to report her conviction for violation of a law substantially related to practice under her license, has committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(3) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

5. Respondent, by using a drug to an extent that such use impairs the ability of the licensee to safely or reliably practice, has committed negligence as defined by Wis. Admin. Code § N 7.03(2) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(c).

ORDER

IT IS HEREBY ORDERED that the attached Stipulation is accepted.

IT IS FURTHER ORDERED effective the date of this Order, that:

1. The SURRENDER by Kelly Ann Schmidt, R.N., Respondent, of her license to practice as a registered nurse in the state of Wisconsin and her right to renew that license is hereby ACCEPTED.
2. If Respondent applies for licensure with the Board in the future:
  - a. Respondent shall provide proof sufficient to satisfy the Board that she does not suffer from any addiction or other psychological condition that tends to impair her ability to function as a nurse, or that compromises her ability to practice with reasonable skill or safety.
  - b. The Board retains sole discretion in determining whether or not it will: grant a credential; condition, restrict or limit any credential granted; or require physical, psychological or skill evaluation(s) before considering whether or not to grant licensure.
  - c. Respondent shall, prior to becoming credentialed in the future, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$1,000.00 pursuant to Wis. Stat. § 440.22(2).
3. This Order is effective on the date of its signing.

Wisconsin Board of Nursing

By: Kate Ann Schmidt  
A Member of the Board

11-4-10  
Date

Schmidt/08NUR194,10NUR197/Nowack/LG/10-1-10