

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

TRACY M. MAJERLE, R.N.,
RESPONDENT.

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FINAL DECISION AND ORDER

0003459

Division of Legal Services and Compliance Case No. 13 NUR 688

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

Tracy M. Majerle, R.N.
5047 Evergreen Drive
Sheboygan, WI 53081

Wisconsin Board of Nursing
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Board of Nursing (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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Tracy M. Majerle, R.N., (dob March 2, 1963) is licensed in the State of Wisconsin as a professional nurse, having license number 117013-30, first issued on July 21, 1994 and current through February 29, 2016. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 5047 Evergreen Drive, Sheboygan, Wisconsin 53081.

2. At all times relevant to this proceeding, Respondent was employed as a professional nurse at a health care center (Center) located in Plymouth, Wisconsin.

3. On December 2, 2013, an employee at the Center found an empty sanitary napkin wrapper in a garbage bin, in a locked supply room, where such an item would not usually be found. Upon further inspection, the wrapper was stuffed with papers containing the name of Patient A and an empty medication card.

4. The administrator for the Center checked the medication order for Patient A, which revealed that the empty medication card should have contained five 200 mg tablets of modafinil, a prescription drug used to promote wakefulness.

5. Respondent was the last nurse to sign out the modafinil and was also the only person who had access to the locked supply room on the date and time in question.

6. At 2:00 a.m., Respondent documented withdrawing and administering one (1) tablet of modafinil to Patient A. The medication is normally administered to Patient A at 5:30 a.m. because it was prescribed to promote wakefulness.

7. On December 3, 2013, a camera was installed outside the medication room.

8. On December 4, 2013, the camera captured an image of Respondent popping modafinil out of a medication card and ingesting it.

9. On February 18, 2014, in Sheboygan County case number 2013 CM 1190, Respondent was convicted of theft-movable property $\leq$ \$2500, in violation of Wis. Stat. §943.20(1)(a), and negligent abuse of patients-no harm, in violation of Wis. Stat. §940.295(3)(a)3. One count of possession of a controlled substance, in violation of 961.41(3g)(b), was dismissed but read into the record for purposes of sentencing.

10. In a May 14, 2014 response to a Department investigator, Respondent admitted to diverting modafinil for her own use.

11. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

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

2. Pursuant to Wis. Stat. § 961.20(2m)(bu), modafinil is a schedule IV controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(3).

3. By the conduct described in the Findings of Fact, Tracy M Majerle, R.N., engaged in unprofessional conduct as defined in Wis. Admin. Code § N 7.04(1)¹ by violating any law substantially related to the practice of professional nursing.

4. As a result of the above conduct, Tracy M Majerle, R.N., is subject to discipline pursuant to Wis. Stat. § 441.07(1)(b) and (d)².

5. By the conduct described in the Findings of Fact, Tracy M Majerle, R.N., engaged in unprofessional conduct as defined in Wis. Admin. Code § N 7.04(2) by administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law.

6. As a result of the above conduct, Tracy M Majerle, R.N., is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b), (c) and (d).

ORDER

1. The attached Stipulation is accepted.

2. Respondent Tracy M Majerle, R.N., is REPRIMANDED.

3. The professional nursing license issued to Tracy M Majerle, R.N., (license number 117013-30) and her privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, are LIMITED as follows:

a. Within ninety (90) days of the date of this Order, Respondent shall at her own expense, successfully complete three (3) hours of education on ethics and professionalism in nursing offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the course.

b. Respondent shall submit proof of successful completion of the education in the form of verification from the institution providing the education to the Department Monitor at the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department, and also may not be used in future attempts to upgrade a credential in Wisconsin.

c. This limitation shall be removed from Respondent's license after satisfying the Board or its designee that Respondent has successfully completed all of the ordered education.

4. The professional nursing license issued to Tracy M Majerle, R.N., is further LIMITED as follows:

¹ All references to Wis. Admin. Code § N 7.04 refer to the code as it existed prior to August 1, 2014.

² Wis. Stat. 2011-2012.

- a. For a period of at least two (2) years from the date of this Order:
- i. Respondent shall enroll and participate in a drug monitoring program which is approved by the Department (Approved Program).
 - ii. 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 substantial violation of this Order. The requirements shall include:
 1. Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 2. Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
 3. The Approved Program shall require the testing of specimens at a frequency of not less than 49 times per year, for the first year of this Order. After the first year, Respondent may petition the Board on an annual basis for a modification of the frequency of tests. The Board may adjust the frequency of testing on its own initiative at any time.
 - iii. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug 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, the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
 - iv. Respondent shall report to the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within 24 hours of ingestion or administration of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or

drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.

- v. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that they may take from time to time. Over-the-counter medications and drugs that mask the consumption of controlled substances, create false positive screening results, or interfere with Respondent's treatment and rehabilitation, shall not be taken unless ordered by a physician, in which case the drug must be reported as described in the paragraph 3(a)v.
- vi. All positive test results are presumed valid and may result in automatic suspension of licensure by the Board or the Board's designee. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.
- vii. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances, Respondent shall promptly submit to additional tests or examinations as the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- viii. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances.
- ix. Respondent shall provide her nursing employers with a copy of this Order before engaging in any nursing employment.

5. Pursuant to Uniform Nurse Licensure Compact regulations, Respondent's nursing practice is limited to Wisconsin during the pendency of this limitation. This requirement may be waived only upon the prior written authorization of both the Wisconsin Board of Nursing and the regulatory board in the state in which Respondent proposes to practice.

6. The Board or its designee may, without hearing, suspend Respondent's nursing license upon receipt of information that Respondent is in substantial or repeated violation of any provision of this Order. A substantial violation includes, but is not limited to, a positive drug or alcohol screen. A repeated violation is defined as the multiple violations of the same provision or violation of more than one provision.

7. After two (2) years from the date of this Order, Respondent may petition the Board for the modification or termination of the limitation. The Board may grant or deny the petition, in its discretion, or may modify this Order as it sees fit.

8. Within 120 days from the date of this Order, Tracy M Majerle, R.N., shall pay a COSTS of this matter in the amount of \$700.00

9. Request of approval of courses, proof of successful course completion and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

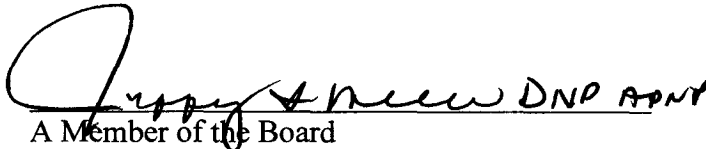
Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

10. 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 Respondent fails to timely submit payment of costs as ordered or fails to submit proof of successful completion of the ordered education as set forth above, Respondent's license (no. 117013-30) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of costs and provided proof of successful completion of the education.

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

WISCONSIN BOARD OF NURSING

by:


A Member of the Board

10-9-14
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

TRACY M. MAJERLE, R.N.,
RESPONDENT.

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STIPULATION

0003459

Division of Legal Services and Compliance Case No. 13 NUR 688

Respondent Tracy M. Majerle, R.N., and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, 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 Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- 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 Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Board of Nursing (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 then be returned to the Division

of Legal Services and Compliance for further proceedings. In the event that the 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 Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such 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. Respondent is further informed that should the Board adopt this Stipulation, the Board's Final Decision and Order would constitute an agency finding within the meaning of Wis. Stat. §§ 48.685 and 50.065. Should Respondent wish to work in a Wisconsin DHS-licensed facility in any role, Respondent will need to pass a Rehabilitation Review through DHS prior to commencement of such employment.

9. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



Tracy M. Majerle, R.N., Respondent
5047 Evergreen Drive
Sheboygan, WI 53081
License no. 117013-30

8-26-14
Date



Amanda L. Florek, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison WI 53707-7190

9/8/14
Date