

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

BRIAN K. BAILEY, L.P.N.,  
RESPONDENT.

**0004583**

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Division of Legal Services and Compliance Case No. 14 NUR 682

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

Brian K. Bailey, L.P.N.  
2212 S. 9<sup>th</sup> Street  
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 Brian K. Bailey, L.P.N., (dob November 30, 1968) is licensed in the State of Wisconsin as a practical nurse, having license number 314126-31, first issued on July 13, 2011 and current through April 30, 2015. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2212 S. 9<sup>th</sup> Street, Sheboygan, Wisconsin 53081.

2. At all times relevant to this proceeding, Respondent was employed as a practical nurse at a skilled nursing facility (Facility), located in Manitowoc, Wisconsin.

3. On November 27, 2014, Respondent presented at the Facility to work the night shift. As the on-coming nurse, Respondent counted the narcotics with the off-going nurse and no discrepancies were noted.

4. During the course of Respondent's shift, he showed signs of concerning behaviors including slurring his words, dozing off, losing focus and writing illegibly.

5. During his shift, Respondent made illegible entries on Resident N's morphine SR 15 mg controlled drug use record, which he then crossed out.

6. During his shift, Respondent documented two entries incorrectly on Resident G's hydrocodone-APAP 5/325 controlled drug use records. The first entry for November 28, 2014 noted the time as "2430", which is nonexistent and should have been written as "0030". The entry which followed was dated November 29, 2014 at 0500 which was incorrect because he did not work on November 29<sup>th</sup>. In addition, he failed to properly document the remaining count with the second entry.

7. Respondent made an illegible entry on Resident R's lorazepam 0.25 mg controlled drug use record in which he signed out one (1) tablet. However, Respondent did not document administering the medication to Resident R during his shift.

8. Resident A observed that Respondent could not stay awake while wrapping an ACE® bandage on Resident A's legs.

9. Respondent failed to document completion of the treatment on Resident A in the Treatment Administration Record (TAR) even though Respondent did complete the treatment. When questioned why the resident had the impression he did, Respondent stated that Resident A suffers from dementia and is incapacitated. In fact, Resident A does not have a dementia diagnosis, is alert and oriented, and has not been incapacitated.

10. On November 28, 2014, at approximately 2:20 a.m. during Respondent's shift, Resident H fell. Respondent failed to document Resident H's fall. When reporting to the on-coming nurse in the morning, Respondent erroneously stated that Resident H had fallen the previous evening at 2:30 p.m.

11. At approximately 6:00 a.m., Respondent provided the shift report to the on-coming nurse. During shift report, the on-coming nurse observed that Respondent was lethargic, couldn't keep his eyes open, had slurred speech and was unable to finish his sentences.

12. When Respondent and the on-coming nurse performed the narcotics count, there were discrepancies for multiple residents, including the following:

a. Resident A's oxycodone-APAP 5/325 medication cards had 26 tablets remaining when there should have been 28 tablets at the end of the shift. Respondent documented administering two (2) tablets to Resident A on the medication administration record (MAR) during his shift, but four (4) tablets were missing from the cards.

b. Resident D's oxycodone 5 mg medication card had 17 tablets remaining when there should have been 29 tablets at the end of Respondent's shift. Respondent did not document administering any oxycodone 5 mg tablets to Resident D on the MAR during his shift, but 12 tablets were missing from the medication card.

c. Respondent signed out two (2) oxycodone APAP 5/325 tablets for Resident N during his shift, but did not document administering either tablet on the resident's MAR.

13. Staff from the on-coming shift found a half tablet of lorazepam 0.25 mg in an unlabeled plastic bag in the medication cart and two (2) hydrocodone/APAP 5/325 mg tablets were stapled to a plastic drinking cup with two different resident names written on the outside of the cup.

14. On December 23, 2014, investigators from the Department interviewed Respondent as a part of the investigation. During the interview, Respondent admitted that he had ingested Vicodin® tablets that were prescribed to his girlfriend. Respondent did not have a valid prescription for Vicodin®. Respondent states that his ingestion of that medication was inadvertent, resulting from mistakenly grabbing his girlfriend's medication bottle, which was next to his medication bottle, at night in their dark bedroom.

15. Respondent has consistently denied having diverted any medications. He has also denied having been under the influence of drugs or alcohol during his shift on November 27, 2014.

16. No evidence of patient harm has been presented to the Department based on the conduct above.

17. 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. § 961.18(5)(d), hydrocodone of not more than 15 mg per dosage unit, is a schedule III controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(3).

3. Pursuant to Wis. Stat. § 961.16(2)(a)11., oxycodone is a schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(2).

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

5. By the conduct described in the Findings of Fact, Respondent engaged in unprofessional conduct as defined in Wis. Admin. Code § 7.03(8)(d) by making an error in prescribing, dispensing, or administering medication.

6. By the conduct described in the Findings of Fact, Respondent engaged in unprofessional conduct as defined in Wis. Admin. Code § 7.03(8)(e) by administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law.

7. By the conduct described in the Findings of Fact, Respondent violated Wis. Admin. Code. § N 7.03(6)(a) by **engaging** in substandard care.

8. As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(lg)(b), (c) and (d).

#### ORDER

1. The attached Stipulation is accepted.

2. Respondent Brian K. Bailey, L.P.N., is REPRIMANDED.

3. The practical nursing license issued to Brian K. Bailey, L.P.N., (license number 314126-31) to practice nursing in the State of Wisconsin, and his privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, is LIMITED as follows:

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 and alcohol 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 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 forty-nine (49) times per year, for the first year of this Order.

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 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, 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)iv.

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 practice only in a work setting pre-approved by the Board or its designee.

ix. Respondent shall provide his nursing employer with a copy of this Order before engaging in any nursing employment.

4. The practical nurse license issued to Brian K. Bailey, L.P.N., (license number 314126-31) and his privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, are further LIMITED as follows:

a. Within ninety (90) days of the date of this Order, Respondent shall at his own expense, successfully complete five (5) hours of education on the topic of documentation and six (6) hours of education on the topic of preventing medication errors offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the courses.

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.

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 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 any other limitations contained in this Order. The Board may grant or deny the petition, in its discretion, or may modify this Order as it sees fit. 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.

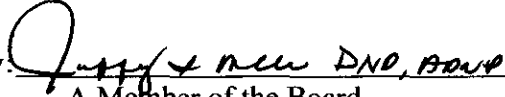
8. Within twelve (12) months from the date of this Order, Brian K. Bailey, L.P.N., shall pay COSTS of this matter in the amount of \$1,400.00.

9. 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 the costs as ordered, or fails to submit proof of successful completion of the ordered education as set forth above, Respondent's license (no. 314126-31) 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 has submitted proof of successful completion of the ordered education.

11. This Order is effective on the date of its  
signing. WISCONSIN BOARD OF NURSING

By:   
A Member of the Board

Date: 3.10.16



STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

BRIAN K. BAILEY, L.P.N.,  
RESPONDENT.

STIPULATION

0004583

Division of Legal Services and Compliance Case No. 14 NUR 682

Respondent Brian K. Bailey, L.P.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. Respondent is represented by attorney Mario D. Mendoza.


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

  
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Brian K. Bailey, L.P.N., Respondent  
2212 S. 9<sup>th</sup> Street  
Sheboygan, WI 53081  
License no. 314126-31

2-9-16  
Date

  
\_\_\_\_\_  
Mario D. Mendoza, Attorney for Respondent  
Murphy Desmond, S.C.  
33 East Main Street, Suite 500  
P.O. Box 2038  
Madison, WI 53703

2-23-16  
Date

  
\_\_\_\_\_  
Kim M. Kluck, Attorney  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison WI 53707-7190

2/23/16  
Date