

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

KAYLEE A. KOWALCHYK, R.N.,
RESPONDENT.

:
:
: FINAL DECISION AND ORDER
:
:

0004914

Division of Legal Services and Compliance Case No. 16 NUR 124

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

Kaylee A. Kowalchyk, R.N.
803 S. 22nd Pl.
Wausau, WI 54401

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 Kaylee A. Kowalchyk, R.N., (dob April 12, 1989) is licensed in the State of Wisconsin as a professional nurse, having license number 179679-30, first issued on August 18, 2011 and current through February 28, 2018.

2. Respondent is also licensed in the State of Wisconsin as a practical nurse, having license number 313073-31, first issued on August 11, 2010. This license expired on April 30, 2013 and has not been renewed. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew upon payment of a fee until April 29, 2018.

3. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 803 South 22nd Place, Wausau, Wisconsin 54401.

4. On September 9, 2015, Respondent's ex-fiancé was found in possession of drugs and drug paraphernalia during a traffic stop and a search warrant was issued to his last known address, which was Respondent's residence. Respondent was not living with her ex-fiancé at this time but he did still occasionally sleep at the Respondent's residence.

5. During the execution of the search warrant at Respondent's residence, the police officers found marijuana/tetrahydrocannabinol (THC), methamphetamine and drug paraphernalia. Respondent was arrested and taken to jail.

6. The police reports reveal that "Numerous items of drug paraphernalia, bags of marijuana/THC, bags of methamphetamine, and prescription pills in plain view in numerous places throughout the home."

7. During the police investigation, Respondent admitted to recreational use of marijuana/THC and history of methamphetamine use. Respondent admitted that she had a pipe on her nightstand and had a pill bottle that contained marijuana/THC and a marijuana/THC grinder on her nightstand.

8. Respondent denied being responsible for the large amounts of marijuana/THC, methamphetamine and prescription pills in her home. Respondent indicated those belonged to her ex-fiancé. The ex-fiancé confirmed this statement.

9. On January 20, 2016, Respondent was convicted in Marathon County circuit court case number 2015CF000804 for possession of THC and possession of drug paraphernalia.

10. Respondent entered a plea agreement that required payment plan of fines and court costs and jail for 30 days with Huber privileges for work, school and treatment.

11. Respondent applied for the Electronic Monitoring Program (EMP) and was approved to serve her sentence on EMP. Respondent served her sentence on EMP from February 19, 2016 to March 12, 2016.

12. On February 19, 2016, Respondent self-reported the January 20, 2016 conviction for possession of THC and possession of drug paraphernalia to the Department, which was beyond the 48 hours notification requirement.

13. Respondent reported using marijuana/THC "a few times recreationally with friends only in a social setting a long time ago" and denied present use of any drugs, unless with a valid prescription.

14. During the Department investigation, Respondent stated that she did not know the drugs were in the home. Police reports confirm that the drugs were found in plain view throughout the home. This constitutes submitting false information to the Board.

15. 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. By the conduct described in the Findings of Fact, Kaylee A. Kowalchyk, R.N., engaged in unprofessional conduct as defined by Wis. Admin. Code § N 7.03(8)(e), by possessing a drug without lawful authority.

3. By the conduct described in the Findings of Fact, Kaylee A. Kowalchyk, R.N., engaged in unprofessional conduct as defined by Wis. Admin. Code § N 7.03(1)(h), by failing to notify the Board of a felony or misdemeanor in writing within 48 hours after the entry of the conviction or finding.

4. By the conduct described in the Findings of Fact, Kaylee A. Kowalchyk, R.N., engaged in fraud, deception or misrepresentation by submitting false information in the course of an investigation.

5. As a result of the above conduct, Kaylee A. Kowalchyk, R.N., is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d).

ORDER

1. The attached Stipulation is accepted.

2. Respondent Kaylee A. Kowalchyk, R.N., is REPRIMANDED.

3. Kaylee A. Kowalchyk's right to renew her practical nursing license (license number 313073-31) is REVOKED.

4. The professional nursing license issued to Kaylee A. Kowalchyk, R.N., (license numbers 179679-30) to practice nursing in the State of Wisconsin, and her privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, are LIMITED as follows:

- a. Within thirty (30) days from the date of this Order, Respondent shall, at her own expense, undergo an AODA assessment with a pre-approved treater.
- b. Prior to the assessment, Respondent shall provide a copy of this Final Decision and Order to the treater.
- c. Respondent shall provide and keep on file with the treater current releases complying with state and federal laws. The releases shall allow the Board,

its designee, and any employee of the Department to obtain a copy of the assessment and communication with the assessor in the event the Board, designee or employee has any follow up questions regarding the assessment or the treater's recommendation. Copies of these releases shall immediately be filed with the Department Monitor.

d. Respondent shall comply with treater's recommendations.

5. The professional nursing license issued to Kaylee A. Kowalchuk, R.N., (license numbers 179679-30) to practice nursing in the State of Wisconsin, and her privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, are LIMITED further 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). Enrollment shall occur within thirty (30) calendar days from the date of this Order.
- 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 forty-nine (49) times per year, for at least the first year of this Order. Thereafter, 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 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 or of alcohol, 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 5(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 or alcohol, 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 her nursing employer with a copy of this Order before engaging in any nursing employment. Respondent shall provide the Department Monitor with written acknowledgment from each nursing employer that a copy of this Order has been received. Such acknowledgment shall be provided to the Department Monitor within fourteen (14) days of beginning new employment and/or within fourteen (14) days of the date of this Order for employment current as of the date of this Order.

6. The professional nursing license issued to Kaylee A. Kowalchyk, R.N., (license number 179679-30) to practice nursing in the State of Wisconsin, and her 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 her own expense, successfully complete four (4) hours of education on the topic of professional ethics 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.

7. 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.

8. 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. The Board or its designee may, in conjunction with the suspension, prohibit Respondent from seeking termination of the suspension for a specified period of time.

9. The Board or its designee may terminate the suspension if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the suspension to be terminated. Whether to terminate the suspension shall be wholly in the discretion of the Board or its designee.

10. After the first year from the date of this Order, Respondent may petition the Board on an annual basis for a modification of the terms of this Order. After two (2) consecutive years of successful compliance, the Respondent may petition the Board for return of full licensure. The Board may grant or deny any petition, in its discretion, or may modify this Order as it sees fit.

11. Within 120 days from the date of this Order, Kaylee A. Kowalchyk, R.N., shall pay COSTS of this matter in the amount of \$518.00.

12. 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

13. 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 enroll in and/or participate in a drug monitoring program, fails to have all work settings pre-approved, fails to show a copy of the order to her employers, fails to provide proof that all nursing employers have been shown a copy of the order, works in a setting where she has access to controlled substances, fails to submit to an AODA assessment, fails to comply with treater recommendations or fails to timely submit payment of the costs as ordered, Respondent's license (no. 179679-30) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with enrollment and participation in a drug monitoring program, sought pre-approval of all work settings, shown a copy of the order to all nursing employers, provided proof that she has shown a copy of the order to all nursing employers, complies with working in a setting where she does not have access to controlled substances and submitted payment of costs.

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

WISCONSIN BOARD OF NURSING

by:

 DNP, APRN
A Member of the Board

9.8.16
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

KAYLEE A. KOWALCHYK, R.N.,
RESPONDENT.

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STIPULATION

0004914

Division of Legal Services and Compliance Case No. 16 NUR 124

Respondent Kaylee A. Kowalchyk, 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. Respondent is represented by Attorney Rick Cveykus.

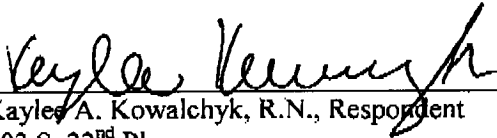
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Board of Nursing (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives 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.

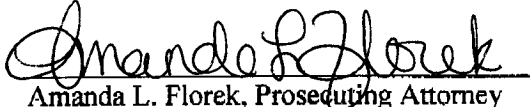
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


Kaylee A. Kowalchuk, R.N., Respondent
803 S. 22nd Plane
Wausau, WI 54401
License nos. 179679-30 and 313073-31

9-2-2016
Date


Rick Cveykus, Attorney for Respondent
301 Grand Ave.
Wausau, WI 54403

9-2-16
Date


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

9/6/16
Date