

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

LUKUS J. MALZAHN, R.N.,
RESPONDENT.

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FINAL DECISION AND ORDER

0005123

Division of Legal Services and Compliance Case No. 16 NUR 084

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

Lukus J. Malzahn, R.N.
801 West Spence Street
Colby, WI 54421

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 Lukus J. Malzahn, R.N., (dob August 5, 1979) is licensed in the State of Wisconsin as a professional nurse, having license number 166703-30, first issued on February 12, 2009 and current through February 28, 2018. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 801 West Spence Street, Colby, Wisconsin 54421.

2. At all times relevant to this proceeding, Respondent was employed as a professional nurse at a hospital (Hospital), located in Marshfield, Wisconsin.

3. The Hospital uses a program called Rx Auditor which generates statistical outlier reports based on the number of transactions that one user has compared to their peers for specific controlled medications.

4. Based upon a review of the December 2015 to January 2016 report, Respondent was identified as being a statistical outlier in several areas for greater than one month.

5. The report indicated that Respondent wasted medications that were administered by his colleagues in the day more frequently than his peers; administered medications close to the time of hospital admission; administered two rapid acting (intravenous or by mouth) narcotics within a short time period (less than 30 minutes); and was not consistently charting pain severity scales prior to administration of narcotics.

6. On January 26, 2016, Hospital staff met with Respondent regarding the information generated by the report. Respondent admitted that he administered medicine close to admission times and that he may have made some charting mistakes due to a busy schedule.

7. Hospital staff asked Respondent to take a drug test. Respondent declined the drug test and was terminated for his refusal.

8. Respondent was previously diagnosed with drug addiction and continues to engage in rehabilitation.

9. Respondent is not currently employed as a nurse.

10. 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, Lukus J. Malzahn, R.N., engaged in unprofessional conduct as defined by Wis. Admin. Code § N 7.03(6)(a), by failing to perform nursing with reasonable skill and safety.

3. As a result of the above conduct, Lukus J. Malzahn, 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 Lukus J. Malzahn, R.N., is REPRIMANDED.

3. The professional nursing license issued to Respondent Lukus J. Malzahn, R.N., (license number 166703-30) and his privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, are LIMITED as follows:

- a. Within sixty (60) days from the date of this Order, Respondent shall, at his own expense undergo an AODA assessment with a pre-approved provider.
- b. Prior to the assessment, Respondent shall provide a copy of this Order to the treater. Respondent shall provide the Department Monitor with written acknowledgment from the treater that a copy of this Order has been received. Such acknowledgment shall be provided to the Department Monitor prior to the assessment.
- 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. Copies of these releases shall immediately be filed with the Department Monitor.
- d. Respondent shall identify and provide the evaluator with authorizations to communicate with all physicians, mental health professionals, and facilities at which Respondent has been treated or evaluated.
- e. Respondent shall comply with the treaters recommendations.
- f. The Board, or its designee, may limit Respondent's license in a manner to address concerns of the Board and address recommendations resulting from the assessment.

4. The professional nursing license issued to Respondent Lukus J. Malzahn, R.N., (license number 166703-30) 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, at his own expense, shall complete five (5) hours of education on the topic of documentation. Respondent is responsible for finding an appropriate course and submitting the course information to the Board or its designee for approval prior to taking the course and in sufficient time to obtain Board approval within the ninety (90) day time frame, taking into account the Board's meeting schedule. Respondent shall provide proof of completion of the education to the Department Monitor.
- b. Respondent shall provide his 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.

- c. Respondent shall notify the Department Monitor of any change of nursing employment during the time in which the Order is in effect. Notification shall occur within fifteen (15) days of a change of employment and shall include an explanation of the reasons for the change.
- d. After two (2) years of working at least half-time as a nurse, 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.

5. Pursuant to 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. Within 120 days from the date of this Order, Lukus J. Malzahn, R.N., shall pay COSTS of this matter in the amount of \$675.00.

7. Request for approval of courses, proof of successful course completion, acknowledgment that employers have reviewed the Order, petitions for modification or termination of the terms of this Order, notifications of changes in employment 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

8. 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 complete an AODA assessment, show the Order to the treater prior to the assessment, keep releases and authorizations on file with the Department and treater, comply with treaters recommendations, to show this Order to employers, fails to submit acknowledgment that his employers have reviewed a copy of the order, fails to notify the Department Monitor of a change in employment, 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. 166703-30) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has completed an AODA assessment, show the Order to the treater prior to the assessment, provided releases and

authorizations to the Department Monitor and treater, shown a copy of the Order to his employers, submitted acknowledgment that his employers have reviewed a copy of the Order, notified the Department Monitor of all changes in employment, complied with payment of costs and has submitted proof of successful completion of the ordered education.

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

WISCONSIN BOARD OF NURSING

by: Sheryl Krause
A Member of the Board

1-12-17
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

LUKUS J. MALZAHN, R.N.,
RESPONDENT.

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STIPULATION

0005123

Division of Legal Services and Compliance Case No. 16 NUR 084

Respondent Lukus J. Malzahn, 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.

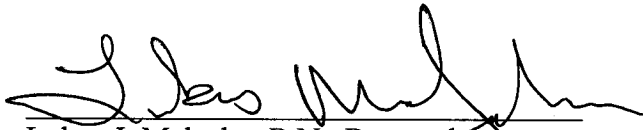
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division

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.

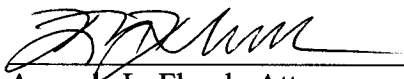
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes 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. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


Lukus J. Malzahn, R.N., Respondent
801 West Spence Street
Colby, WI 54421
License no. 166703-30

12/22/2016
Date

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

12/28/16
Date