

## 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 THE APPLICATION FOR :  
REINSTATEMENT OF :  
: ORDER GRANTING  
KELLY BENJAMIN, : LIMITED LICENSE  
APPLICANT. :

006245

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

Kelly Benjamin  
1436 W Mason Street, Unit #3  
Green Bay, WI 54303

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

FINDINGS OF FACT

1. KELLY BENJAMIN (Applicant) filed an application to reinstate her (no. 148595-30) to practice as a Registered Nurse in Wisconsin. Such license, first issued to Applicant on December 22, 2004, and was suspended on July 21, 2011.
2. Applicant's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 1436 W Mason Street, Unit #3, Green Bay, WI 54303.
3. Information received in the application process reflects that Applicant has the following convictions and violations:
  - a. On or about June 23, 2004- Operating While Intoxicated (first offense), an ordinance violation in Wisconsin.
  - b. On or about February 5, 2010- County/Municipality Worthless Check, an ordinance violation in Wisconsin.
  - c. On or about November 16, 2010- Theft of Movable Property <=\$2,500, a misdemeanor in Wisconsin.
  - d. On or about November 16, 2010- Bail Jumping, a misdemeanor in Wisconsin.
  - e. On or about November 16, 2010- Operating While Intoxicated (second offense), a misdemeanor in Wisconsin.
4. Information received in the application process reflects that the applicant has previously been issued the following Order pertaining to Applicant's Wisconsin Registered Nurse

license (no. 148595-30) by the Wisconsin Board of Nursing (Board):

- a. Final Decision and Order 00009999 issued by the Board on July 21, 2011.
  - i. Under this Order, Applicant's license was suspended for an indefinite period, The Order further required treatment, sobriety, drug and alcohol screens, and practice limitations
  - ii. Applicant did not comply with all the required treatment, sobriety, drug and alcohol screens, and practice limitations set forth in the Order and her license remained suspended until expiration on February 29, 2012.
  - iii. Applicant's license has been expired since February 29, 2012.
  - iv. Applicant has not provided documentation of employment requiring a nursing license within the last five (5) years.
  - v. Applicant has not provided education equivalent to a nursing refresher course.

#### CONCLUSIONS OF LAW

5. The Board has jurisdiction to act in this matter pursuant to Wis. Stat. §§ 440.08(4), 441.06, and 441.07 and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. §§ 15.08(5)(c) and 227.44(5).
6. Applicant has not provided evidence of completion of the disciplinary requirements of Order 00009999 as required by Wis. Admin. Code § N 2.41(2).
7. Applicant's prior discipline against her license to practice nursing in Wisconsin resulted in her license being suspended and the disciplinary requirements of the Order are unmet which provides grounds to deny reinstatement pursuant to Wis. Stat. §§ 441.07(1g)(b) and Wis. Admin Code §§ N 2.41 and N 7.03(1)(b).
8. Applicant must complete a Board-approved nursing refresher course before a license to practice professional nursing may be granted. A nursing refresher course requires a limited license for the purpose of completing the clinical component of the course. Wis. Admin. Code §§ N 2.41(1) and 2.40(3)(d).

#### ORDER

9. The attached Stipulation is accepted.
10. Applicant, KELLY BENJAMIN's application to reinstate her Registered Nurse license is granted subject to the following LIMITATIONS:

## NURSING REFRESHER COURSE

X.1. Applicant's license to practice as a Registered Nurse in the state of Wisconsin is for the SOLE PURPOSE of enabling Applicant to complete a Board-approved nursing refresher course.

- a. The Applicant is NOT permitted to use the limited license granted under this paragraph to engage in any employment as a nurse in Wisconsin.
- b. Pursuant to Enhanced Nurse Compact, this LIMITED license for the SOLE PURPOSE of enabling the applicant to complete the refresher course is limited to Wisconsin during the pendency of this limitation.
- c. The limited license shall be valid for one (1) year from the date of issuance. If the refresher course is not completed within one (1) year, the limited license will expire, and the Applicant will need to reapply for a limited license to complete the course.
- d. Within one (1) year from the date of issuance, the Applicant shall submit evidence satisfactory to the Board of successful completion of the Board-approved nursing refresher course.

X.2. Upon receipt of proof of successful completion of the Board-approved nursing refresher course, the limitation of X.1. shall be removed and Applicant's license shall be limited as follows:

## SUSPENSION

A.1. The license of Kelly Benjamin, R.N., (license number 148595-30), to practice as a professional nurse in the State of Wisconsin, and her privilege to practice in Wisconsin pursuant to the Enhanced Nurse Licensure Compact is SUSPENDED for an indefinite period.

A.2. Upon a showing by Applicant of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active nursing for every year the suspension is stayed, the Board may grant a petition by the Applicant under paragraph D.6. for return of full Wisconsin licensure. The Board may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

## STAY OF SUSPENSION

B.1. The suspension of Applicant's Wisconsin nursing license may be stayed upon Applicant petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Applicant is in compliance with the provisions of Sections C and D of this Order.

B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Applicant is in substantial or repeated violation of any provision of Sections C or

D 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 violation of the same provision or violation of more than one provision. The Board or its designee may, in conjunction with any removal of any stay, prohibit the Applicant for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.

B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Applicant either by:

- a. Mailing to Applicant's last-known address provided to the Department of Safety and Professional Services pursuant to Wis. Stat. § 440.11; or
- b. Actual notice to Applicant or Applicant's attorney.

B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Applicant is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.

B.5. If Applicant requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within sixty (60) days of receipt of Applicant's request, unless waived by Applicant. Requesting a hearing does not stay the suspension during the pendency of the hearing process

## CONDITIONS AND LIMITATIONS

### Treatment Required

C.1. Applicant shall enter into, and shall continue, drug and alcohol treatment with a Treater acceptable to the Board or its designee (Treater). Enrollment in the drug and alcohol treatment program shall occur within thirty (30) calendar days of successful completion of the Board-approved nursing refresher course. Applicant shall participate in, cooperate with, and follow all treatment recommended by Treater.

C.2. Applicant shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.

C.3. Treater shall be responsible for coordinating Applicant's rehabilitation and treatment as required under the term of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (see D.1. below). If Treater is unable or unwilling to serve as Treater, Applicant shall immediately seek approval of a successor Treater by the Board or its designee.

C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by D.5., below.

C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Applicant's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

### RELEASES

C.6. Applicant shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department, Division of Legal Services and Compliance to:

- a. obtain all specimen screen results and patient health care and treatment records and reports, and
- b. discuss the progress of Applicant's treatment and rehabilitation with Treater, treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

### AA/NA Meetings

C.7. Applicant shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an approved equivalent program for recovering professional, at the frequency recommended by Treater, but no less than twice per week. Attendance of Applicant at such meetings shall be verified by the speaker or chair and reported quarterly to Treater and the Department Monitor.

### Sobriety

C.8. Applicant 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. Applicant shall disclose Applicant's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Applicant 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 Applicant's treatment with, and provide copies of treatment records to, Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.

C.9. Applicant shall report to Treater and the Department Monitor all prescription medications and drugs taken by Applicant. Reports must be received within twenty-four (24) hours of ingestion or administration, fill or refill 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, Applicant shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.

C.10. Applicant shall provide the Department Monitor with a list of over-the-counter medications and drugs that they may take from time to time. Applicant shall abstain from all use of over-the-counter medications or other substances (including but not limited to natural

substances such as poppy seeds or any products containing alcohol) which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Applicant's test results, treatment or rehabilitation, unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.9. It is Applicant's responsibility to educate herself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.

#### Drug and Alcohol Screens

C.11. Applicant shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department Monitor (Approved Program). Enrollment shall occur within thirty (30) calendar days of successful completion of the Board-approved nursing refresher course.

C.12. At the time Applicant enrolls in the Approved Program, Applicant 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:

- a. Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
- b. 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.

C.13. The Approved Program shall require the testing of specimens at a frequency of not less than forty-nine (49) urine screens 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.

C.14. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Applicant 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.

C.15. In addition to any requirement of the Approved Program, the Board or its designee may require Applicant to do any or all of the following:

- a. submit additional specimens;
- b. furnish any specimen in a directly witnessed manner; or
- c. submit specimens on a more frequent basis.

C.16. All confirmed positive test results shall be presumed to be valid. Applicant must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or

other valid defense.

C.17. The Approved Program shall submit information and reports to the Department Monitor as directed.

#### Practice Limitations

C.18. Applicant shall provide a copy of this Order, all previous Orders and any future Order to her employer's human resources department and direct supervisor at all settings where Applicant works as a registered nurse or care giver or provides health care, currently or in the future, during the duration of the limited license. Applicant shall provide the Department of Safety and Professional Services Monitor (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.19. Applicant shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee, who has received a copy of this Order.

C.20. It is Applicant's responsibility to arrange for quarterly written reports to be submitted to the Department Monitor from his or her supervisor at each setting in which Applicant practiced nursing in the previous quarter. These reports shall be submitted as directed by the Department Monitor, and shall assess Applicant's work performance, and shall include the number of hours of active nursing practice worked during that quarter. If a report indicates poor performance, the Board may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.

C.21 Applicant may not work in a home health care, hospice, pool nursing, assisted living, agency, or as a nurse in a correctional setting.

C.22. Applicant shall practice only in a work setting pre-approved by the Board or its designee. Requests for preapproval must be accompanied by a current job description, name and contact information of the direct supervisor, and written acknowledgment from the employer that a copy of this Order has been received and that the restrictions will be accommodated

C.23. Applicant may not work as provider in a setting in which Applicant has access to controlled substances.

C.24. Pursuant to Nurse Licensure Compact regulations, Applicant's nursing practice is limited to Wisconsin during the pendency of this limitation.

C.25. Applicant shall report to the Department Monitor any change of employment status, residence, address or telephone number within five (5) days of the date of a change.



## MISCELLANEOUS

### Department Monitor

D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

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

You may also submit this information online via DSPS' Monitoring Case Management System, here:

<https://app.wi.gov/DSPSMonitoring>

### Required Reporting by Applicant

D.2. Applicant is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Applicant shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Applicant shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Applicant.

D.3. Applicant shall submit self-reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. The reports shall include a summary of Applicant's compliance with the terms and conditions of the Order in the previous quarter, Applicant's current address and home telephone number. The self-report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

### Change of Treater or Approved Program by Board

D.4. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Applicant continue treatment and rehabilitation under the direction of another Treater or Approved Program

### Petitions for Modification of Limitations or Termination of Order

D.5. Applicant may petition the Board on an annual basis for modification of the terms of this

Order, but no petition for modification shall be considered sooner than one (1) year from the date of submission of proof of successful completion of the Board-approved nursing refresher course. Any petition for modification shall be accompanied by a written recommendation from Applicant's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Applicant shall not have a right to any further hearings or proceedings on the denial.

D.6. Applicant may petition the Board for full, unrestricted licensure upon demonstration of continuous, successful compliance with the terms of the Order for at least five (5) years, including at least 600 hours of active nursing practice each year.

Costs of Compliance

D.7. Applicant shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Additional Discipline

D.8. In the event that Applicant violates any term of this Order, Applicant's license may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Applicant has provided proof, which is determined by the Board or its designee to be sufficient, that Applicant is in compliance with the terms of the Order. The Board may, in addition and/or in the alternative, refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

Dated at Madison, Wisconsin this 18 day of June, 2019

STATE OF WISCONSIN  
BOARD OF NURSING

By Peter Kallio   
Member of the Board

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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF APPLICATION FOR :  
RENEWAL OF REGISTERED NURSE :  
LICENSE :  
: STIPULATION  
KELLY BENJAMIN, :  
APPLICANT. :

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16245

It is stipulated between the Applicant and the Wisconsin Board of Nursing (Board) as follows:

1. The Applicant has filed an application to renew a registered nurse license.
2. Information received by the Board reflects a basis for denial of the reinstatement of the licensure.
3. Based upon the information of record, the Board agrees to issue, and the Applicant agrees to accept, an Order granting a renewal of license as a registered nurse, subject to the terms and conditions set forth in the attached Order adopting the Stipulation.
4. Applicant understands that by signing this Stipulation, Applicant voluntarily and knowingly waives the following rights:
  - the right to request a hearing related to the denial of the application;
  - the right to confront and cross-examine the witnesses against Applicant;
  - the right to call witnesses on Applicant's behalf and to compel their attendance by subpoena;
  - the right to testify on Applicant'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 the Applicant under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.
5. Applicant is aware of Applicant's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.
6. Applicant agrees to the adoption of the attached Order Granting Limited License by the Board. The parties to the Stipulation consent to the entry of the attached Order Granting Limited License without further notice, appearance, or consent of the parties.

7. Applicant waives all rights to any appeal of the Board's Order, as adopted in the form as attached.

8. Applicant is informed that the Order Granting Limited License is a public record and will be published in accordance with standard procedure.

9. Applicant is informed that the Order Granting Limited License is an encumbrance as defined by the Enhanced Nurse Licensure Compact (eNLC) and the Applicant's multi-state license and/or privilege, if any, will be subject to all terms and conditions of the eNLC.

Kelly Benjamin

Kelly Benjamin

1436 West Mason Street Unit #3

Green Bay, WI 54303

License No. ~~116014-30~~ 148595-30

June 30<sup>th</sup>, 2019  
Date 06/03/2019

Peter Kallio (hus)

A Member of the Board of Nursing

Department of Safety and Professional Services

P.O. Box 8366

Madison, WI 53707-7190

6/13/2019  
Date