

## 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

JESSICA N. ERBY, R.N.,  
RESPONDENT.

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FINAL DECISION AND ORDER

**ORDER 0006412**

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Division of Legal Services and Compliance Case No. 18 NUR 145

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

Jessica N. Erby, R.N.  
205 Brookstone Drive  
Lake Mills, WI 53551

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. Jessica N. Erby, R.N. (Respondent), (DOB August 24, 1987) is licensed in the state of Wisconsin as a registered nurse, having license number 169282-30, first issued on July 21, 2009, and current through February 28, 2020. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 205 Brookstone Drive, Lake Mills, Wisconsin 53551.

2. At all times relevant to this proceeding, Respondent was employed as a registered nurse at a hospital located in Madison, Wisconsin.

3. On February 19, 2018, Respondent self-reported to the Board, a conviction for Operating While Intoxicated (OWI) (1<sup>st</sup>); the self-report was screened by one or more members of the Board, a case opened, and an investigation ensued.

4. The investigation found that on February 15, 2018, Respondent was convicted in Fort Atkinson municipal court, of one (1) count of Operating While Intoxicated (1<sup>st</sup>), an ordinance, in violation of Ordinance 94-1.

5. The investigation further found that on March 14, 2018, Respondent was charged in Jefferson County Circuit Court case number 2018CT101, of one (1) count of Operating While Intoxicated (2<sup>nd</sup>), a Class U misdemeanor, in violation of Wis. Stat. § 346.63(1)(a). On September 28, 2018, Respondent entered a “no contest” plea and was found guilty. She then entered into a deferred prosecution agreement.

6. From November 26, 2017 through November 29, 2017, Respondent was treated as an inpatient at a local hospital for Substance Abuse Detoxification and was diagnosed with alcohol abuse, alcohol use disorder, and moderate and major depressive disorder- recurrent,

7. In January 2018, Respondent was diagnosed with “Alcohol use Disorder; Severe.”

8. In June 2018, Respondent voluntarily entered into the Department’s Professional Assistance Program; In September 2018 Respondent voluntarily withdrew prior to completion of such program.

#### CONCLUSIONS OF LAW

1. The Board 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, Respondent violated Wis. Stat. § 441.07(1g)(c) by engaging in acts which show Respondent to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.

3. As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d).

#### ORDER

1. The attached Stipulation is accepted.

2. Respondent is REPRIMANDED.

3. The registered nurse license issued to Respondent (license number 169282-30) to practice nursing in the state of Wisconsin, and her privilege to practice in Wisconsin pursuant to the Enhanced 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). 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 twenty-eight (28) times per year, for at least the first year of this Order. Two of such specimens shall be a hair sample 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 alcohol.
- iv. 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.
- v. 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.

- vi. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that she 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 3(a)v.
- vii. 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.
- viii. 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.
- 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.

4. Pursuant to the Enhanced Nurse Licensure Compact regulations, Respondent's nursing practice is limited to Wisconsin during the pendency of this limitation.

5. A violation of this order includes a positive drug or alcohol screen.

6. 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.

7. Within 120 days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$684.00.

8. 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](mailto:DSPSMonitoring@wisconsin.gov)

You may also submit this information online via DSPS Monitoring Case management System here:


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

9. In the event Respondent violates any term of this Order, Respondent's license (169282-30), or Respondent's right to renew her license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing. 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. 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.

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

WISCONSIN BOARD OF NURSING

by:

  
A Member of the Board

9/17/19  
Date

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

JESSICA N. ERBY, R.N.,  
RESPONDENT.

STIPULATION

**ORDER 0006412**

Division of Legal Services and Compliance Case No. 18 NUR 145

Respondent Jessica N. Erby, R.N., and the Division of Legal Services and Compliance,  
Department of Safety and Professional Services stipulate as follows:

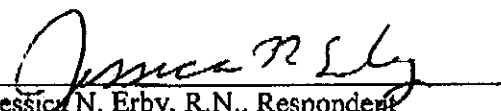
1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.
2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives 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.

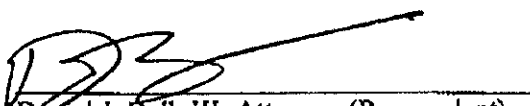
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes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

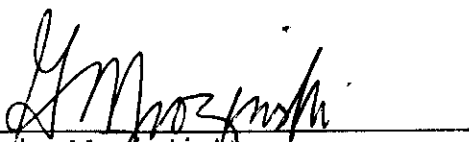
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

  
Jessica N. Erby, R.N., Respondent  
205 Brookstone Dr.  
Lake Mills, WI 53551-1975  
License no. 169282-30

8/2/19  
Date

  
Daniel J. Balk III, Attorney (Respondent)  
von Briesen & Roper, s.c.  
411 E. Wisconsin Ave., Suite 1000  
Milwaukee, WI 53202

8/7/19  
Date

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

8/8/19  
Date