

## 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  
DAVID C. KIRK, R.N., :  
RESPONDENT. :

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**ORDER 0006802**

Division of Legal Services and Compliance Case No. 18 NUR 575

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

David C. Kirk, R.N.  
Madison, WI 53705

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 David C. Kirk, R.N., (DOB xx/xx/1985) is licensed in the state of Wisconsin as a registered nurse, having license number 198077-30, first issued on November 13, 2013, and current through February 28, 2020. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is located in Madison, Wisconsin 53705.

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

3. On February 22, 2018, Hospital staff found two (2) empty Fentanyl vials in a bathroom trash bin. Hospital staff monitored the bin until two (2) more empty Fentanyl vials were discovered on August 14, 2018.

4. A review of Hospital medication dispensing records showed multiple cases where Respondent was part of a procedure team that did not have full accountability of the Fentanyl on-hand for those procedures. Respondent's potential involvement in diversion of Fentanyl vials was confirmed through video evidence from Hospital security cameras.

5. On August 23, 2018, Respondent admitted that he took Fentanyl from the Hospital for personal use.

6. On August 27, 2018, Respondent tested positive for norfentanyl on a urine drug screen.

7. On September 20, 2019, Respondent was convicted of Obtaining a Controlled Substance by Fraud, a felony, in violation of 21 U.S.C. § 843(a)(3), in United States District Court for the Western District of Wisconsin Case Number 0758 3:19CR00078-001.

8. On January 8, 2019, Respondent entered into an impairment program, separate from this Order, and signed the impairment program contract.

9. 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. A nurse who possesses a home multistate license from Wisconsin is ineligible to retain or renew the multistate license should the nurse incur a disqualifying event after the effective date of the Enhanced Nurse Licensure Compact pursuant to Wis. Stat. § 441.51(3)(g); The effective date of the Compact is July 20, 2017.

3. Having been convicted of a felony offense under applicable state or federal criminal law is a disqualifying event pursuant to Wis. Stat. § 441.51(3)(c)7.

4. By the conduct described in the Findings of Fact, David C. Kirk, R.N. is ineligible to retain a Wisconsin multistate license to practice nursing pursuant to Wis. Stat. §§ 441.51(3)(c)7. and 441.51(3)(g).

2. By the conduct described in the Findings of Fact, David C. Kirk, R.N., violated Wis. Admin. Code § N 7.03(2), by violating any law substantially related to the practice of nursing or being convicted of any crime substantially related to the practice of nursing.

3. By the conduct described in the Findings of Fact, David C. Kirk, R.N., violated Wis. Admin. Code § N 7.03(8)(e), by obtaining, possessing or attempting to obtain or possess a drug without lawful authority.

4. As a result of the above conduct, David C. Kirk, R.N., is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b)-(d).

#### ORDER

1. The attached Stipulation is accepted.

2. Respondent's multistate license is deactivated; Respondent retains a Wisconsin single-state license to practice registered nursing.

2. The single-state license of David C. Kirk, R.N., (license number 198077-30) to practice nursing in the state of Wisconsin is SUSPENDED for three (3) months from the date of this Order.

3. The single-state license to practice nursing issued to David C. Kirk, R.N., (license number 198077-30) is LIMITED as follows:

- a. Respondent David C. Kirk, R.N., must comply with the impairment program contract dated January 8, 2019.
- b. Any violation of the terms of the impairment program contract, dated January 8, 2019, is a violation of this order.
- c. Respondent may petition for termination of the limitation upon successful completion of the impairment program.

4. In the event Respondent is discharged from the impairment program prior to successful completion, Respondent's license may, in the discretion of the Board or its designee, be immediately SUSPENDED. In addition to, or instead of, the suspension, the Board may impose additional limitations to address any concerns with the conduct contained in the Findings of Fact and involved in Respondent's discharge from the impairment program.

5. Within 120 days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$526.00.

6. 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)

Or they may be submitted online via the Department's Monitoring Case Management System at

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

7. In the event Respondent violates any term of this Order, Respondent's license (198077-30), or Respondent's right to renew his license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied 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.

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

WISCONSIN BOARD OF NURSING

by: *Peter Kallio*  
A Member of the Board

5/14/2020  
Date

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

DAVID C. KIRK, R.N.,  
RESPONDENT.

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:  
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STIPULATION

**ORDER 0006802**

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Division of Legal Services and Compliance Case No. 18 NUR 575

Respondent David C. Kirk, 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.

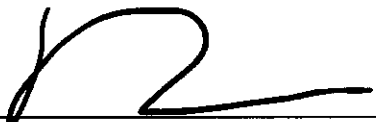
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division

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 or Respondent's attorney, 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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David C. Kirk, R.N., Respondent  
Madison, WI 53705  
License no. 198077-30

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Date

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

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Date