

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

CHERIE M. JESS, R.N.,
RESPONDENT.

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FINAL DECISION AND ORDER

ORDER 0006936

Division of Legal Services and Compliance Case Nos.
17 NUR 669, 18 NUR 379 and 19 NUR 599

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

Cherie M. Jess, R.N.
Jefferson, WI 53538

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 agree to the terms and conditions of the attached Stipulation as the final disposition of these matters, 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 these matters adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent Cherie M. Jess, R.N. (DOB xx-xx-1971) is licensed in the state of Wisconsin as a registered nurse, having license number 200453-30, first issued on May 15, 2014, and current through February 28, 2022. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Jefferson, Wisconsin, 53538.

17 NUR 669

2. At all times relevant to this matter, Respondent was employed as a home health nurse in Madison, Wisconsin.

3. On September 30, 2017, Respondent was at the home of Patient A for a new patient admission. Patient A had been prescribed thirty (30) acetaminophen-codeine 300-30 mg tablets on September 28, 2017.

4. Patient A's stepdaughter was present and reported that Respondent took pills from Patient A's prescription bottle. Respondent denies diverting any medications from Patient A.

5. When Patient A's stepdaughter confronted Respondent about taking the medication, Respondent ran out to her car. Patient A's stepdaughter reported the incident to Respondent's employer immediately.

6. Respondent failed to submit to a drug test and resigned on October 2, 2017.

18 NUR 379

7. At all times relevant to this matter, Respondent was employed as a home health nurse for a healthcare facility located in Madison, Wisconsin (Facility).

8. On May 1, 2018, Respondent provided care in the home of Patient B whom Respondent had never treated before.

9. Respondent left Patient B undressed and alone on the toilet.

10. On May 4, 2018, Patient B's daughter reported to the Facility that Patient B had been in pain all week and Patient B's oxycodone tablets looked wrong. The tablets had the letter "L" on them. Patient B's daughter brought the prescription bottle to a pharmacist who determined it was not oxycodone tablets in the bottle.

11. On May 14, 2018, Patient C saw Respondent pouring his Tramadol into her hand. Patient C reported the theft to the Facility.

12. On May 16, 2018, the Facility asked Respondent to come to the office. Respondent refused to come into the office and otherwise cooperate with the Facility's investigation of the two incidents.

13. Respondent denies diverting any medications from Patient B or Patient C. Respondent resigned on May 16, 2018.

19 NUR 599

14. At all times relevant to this matter, Respondent was employed as a registered nurse at a health and rehabilitation facility located in Waukesha, Wisconsin (Facility).

15. On the morning of October 14, 2019, the Facility Director received several reports that Respondent had stumbled, lost her balance, and slurred her speech during the previous night shift.

16. On October 15, 2019, video surveillance appeared to show Respondent removing a 50 mg tramadol tablet (Pill 24) from the corner of Resident A's medication card and putting it into her pocket. Respondent denies diverting any medication from Resident A.

17. When Respondent punched out another pill to give to Resident A, it fell onto the cart and Respondent picked it up with her bare hand. When confronted by a licensed practical nurse (LPN) for improper medication handling, Respondent yelled at the LPN.

18. On October 15, 2019, Respondent was interviewed by Facility staff where she stated, "I want it to end and I don't want to live anymore." The Facility notified the police, who took Respondent to the Milwaukee Veterans Administration (VA) Hospital.

19. On October 17, 2019, Respondent and the VA physician informed the Facility that Respondent was entering a voluntary 30-day program for depression and substance abuse, and that she had been struggling with addiction since 2012.

20. Respondent never returned to the Facility.

21. As of June 30, 2020, Respondent was diagnosed by the VA with severe benzodiazepine use disorder in sustained remission and has been 100% compliant with treatment. Respondent's last urine drug screen, taken on June 2, 2020, was negative for non-prescribed medications.

22. In resolution of these matters, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to act in these matters 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. Admin. Code § N 7.03(6)(c), by departing from or failing to conform to the minimal standards of acceptable nursing practice that may create unnecessary risk or danger to a patient's life, health, or safety. Actual injury to a patient need not be established.

3. By the conduct described in the Findings of Fact, Respondent violated Wis. Admin. Code § N 7.03(6)(e), by practicing nursing while under the influence of alcohol, illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications.

4. 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 nursing license issued to Respondent (license number 200453-30) 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 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 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 practice only in a work setting pre-approved by the Board or its designee. Respondent may not work in a home health care, hospice, pool nursing, assisted living, agency, or as a nurse in a correctional setting.
- x. 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.
- xi. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances. Respondent shall provide the Department Monitor with written acknowledgment from each nursing employer that Respondent does not have access to controlled substances. Such acknowledgement shall be provided to the Department Monitor within fourteen (14) days from the date of this Order for any current employer and on a quarterly basis thereafter from each nursing employer.

4. Pursuant to the Enhanced Nurse Licensure Compact (Compact), Respondent may not practice in another Compact State, other than Wisconsin, while their license is encumbered by any term or restriction of this Order.

5. 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.

6. 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.

7. 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.

8. Within 120 days from the date of this Order, Respondent shall pay COSTS of these matters in the amount of \$2,470.00.

9. Payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) and any requests, petitions, reports, or other information required by this Order shall be mailed, e-mailed, faxed, or delivered 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

Respondent may also submit this information online via DSPS' Monitoring Case Management System, here:
<https://dpsmonitoring.wi.gov>

10. In the event Respondent violates any term of this Order, Respondent's license (No. 200453-30), 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, 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.

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

WISCONSIN BOARD OF NURSING

By: Peter Kallio, M.D.
A Member of the Board

8/13/2020
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

CHERIE M. JESS, R.N.,
RESPONDENT.

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STIPULATION

ORDER 0006936

Division of Legal Services and Compliance Case Nos.
17 NUR 669, 18 NUR 379 and 19 NUR 599

Respondent Cherie M. Jess, 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 three (3) pending investigations by the Division of Legal Services and Compliance. Respondent consents to the resolution of these investigations 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.

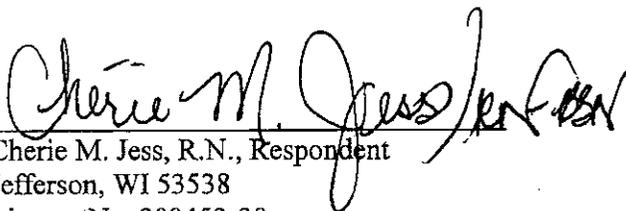
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Board of Nursing (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives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


Cherie M. Jess, R.N., Respondent
Jefferson, WI 53538
License No. 200453-30

7-25-20
Date


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

7-31-2020
Date