

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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**Before the  
State Of Wisconsin  
Board of Nursing**

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In the Matter of the Disciplinary Proceedings  
Against Alicia R. Krisher-Behm, R.N.

FINAL DECISION AND ORDER

Order **ORDER 0007250**

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**Division of Legal Services and Compliance Case No. 18 NUR 076**

The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Board of Nursing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 11 day of March, 2021.

A handwritten signature in black ink, appearing to be "V. J. ...", written over a horizontal line.

Member  
Board of Nursing



Before The  
State of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

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In the Matter of the Disciplinary Proceedings  
Against Alicia R. Krisher-Behm, R.N.

DHA Case No. SPS-20-0020  
DLSC Case No. 18 NUR 076

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**PROPOSED DECISION AND ORDER**

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Attorney Daniel L. Icenogle  
Icenogle & Associates, LLC  
S7563 Riley Road  
Readstown, WI 54652

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

Department of Safety and Professional Services, Division of Legal Services and Compliance, by

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

PROCEDURAL HISTORY

On August 14, 2020, the Wisconsin Department of Safety and Professional Services, Division of Legal Services and Compliance (Department) issued a Complaint seeking disciplinary action against the Respondent, Alicia R. Krisher-Behm, R.N. The Respondent filed an Answer on August 28, 2020. The matter was referred to the Division of Hearings and Appeals for the appointment of a hearing official to preside over the hearing. Administrative Law Judge Kristin P. Fredrick was assigned as the hearing official and a prehearing conference was held on September 14, 2020. Pursuant to the scheduling order entered on that date, the Department filed a Motion for Summary Judgment on November 2, 2020. The Respondent did not contest the Department's Motion and stipulated to the Statement of Facts; likewise, the Respondent indicated on November 20, 2020 that she was withdrawing any objection to the Department's motion. On December 21, 2020, the ALJ issued a Decision and Order granting the Department's motion for partial summary judgment. Because the parties agree that the matter no longer

involves any disputed material issues of fact or law, the sole issue of discipline can be decided on the basis of the parties' respective briefs pursuant to Wis. Admin. Code § HA 1.11(3).

#### FINDINGS OF FACT

1. Respondent Alicia R. Krisher-Behm, R.N. is licensed in the state of Wisconsin as a registered nurse, having license number 130447-30, first issued on August 14, 1998, and current through February 28, 2022. (Complaint and Answer)
2. The most recent address on file with the Department of Safety and Professional Services (Department) for the Respondent is 701 Water Street, Ogdensburg, Wisconsin 54962. (Complaint and Answer)
3. At all times relevant to this proceeding, Respondent was employed as a registered nurse at a nursing home located in King, Wisconsin (King Facility) and at a nursing home located in Manawa, Wisconsin (Manawa Facility). (Complaint and Answer)
4. On or around January 16, 2018, Respondent assisted with the transfer of Patient A from the Manawa Facility to the King Facility. (Complaint and Answer)
5. Respondent was the night nurse whose duties involved providing nursing care to Patient A at the Manawa Facility. (Mrozinski Affidavit, Ex. 4, hereinafter "Respondent's Statement")
6. Based in part on allegations of diversion of controlled substances by Respondent, on January 21, 2018, officers with the Waupaca County Sheriff's Department executed a search warrant on Respondent's residence at 701 Water Street, Ogdensburg, Wisconsin, 54962. (Mrozinski Aff., Exs. 6 and 7)
7. While executing the search warrant described in paragraph 6, the following was located in Respondent's residence:
  - a. Prescription drug paperwork with the name of Patient A.
  - b. Empty prescription bottle belonging to Patient A for oxycodone.
  - c. A label from Patient A's oxycodone prescription bottle found in Respondent's purse. (Mrozinski Aff., Exs. 6 and 8)
8. Respondent advised a Waupaca County Sheriff's Deputy that she intended to return the prescription paperwork to Patient A. (Mrozinski Aff., Ex. 6)
9. Respondent admitted that she took home to her residence nursing shift notes which contained personal information concerning Patient A, including Patient A's medication lists, labels of empty prescription bottle(s) belonging to Patient A, and a diagnosis list pertaining to Patient A. She further admitted that she took home to her residence other residents' information. (Respondent's Statement)

10. Respondent admitted that she was at fault for having Patient A's documents at her residence. (Id.)
11. Respondent admitted to ingesting a tablet of Ambien that had been given to her by her sister-in-law the night before the search warrant was executed. Respondent did not have a prescription for Ambien at that time. (Complaint and Answer; Mrozinski Aff., Ex. 6)
12. On October 8, 2018, in Waupaca County Circuit Court Case No. 2018CF000056, Respondent was convicted of one (1) count of Resisting or Obstructing an Officer, a class A misdemeanor, in violation of Wis. Stat. § 946.41(1). The conviction is related to the allegations in ¶ 6 of the Complaint. (Complaint and Answer; Mrozinski Aff., Ex. 1)
13. On October 8, 2018, in Waupaca County Circuit Court case number 2018CF000056, Respondent entered an Alford plea to one (1) count to Misappropriate ID info – Obtain Money, a class H felony in violation of Wis. Stat. § 943.201(2)(a). Such charges were later dismissed on the prosecutor's motion following completion of a deferred prosecution agreement. (Complaint and Answer)
14. Respondent did not report the conviction in Waupaca County Circuit Court Case No. 2018CF000056 to the Board of Nursing or the Department within 48 hours of entry of the judgment of conviction. (Complaint and Answer)
15. Ambien is a brand name for zolpidem. Pursuant to Wis. Stat. § 961.20(2)(p), zolpidem is a schedule IV controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(3). (Complaint and Answer)

### DISCUSSION

The present matter involves the following undisputed facts and established legal conclusions: (1) the Respondent failed to safeguard a patient's right to privacy contrary to Wis. Admin. Code § N 7.03(3)(a); (2) the Respondent failed to report her criminal conviction to the Board of Nursing within 48 hours of entry of the judgment of conviction in violation of Wis. Admin. Code § N 7.03(1)(h); and (3) the Respondent obtained, possessed or attempted to possess a drug without lawful authority contrary to Wis. Admin. Code § N 7.03(8)(e). (Complaint, ¶¶ 12-14) On December 21, 2020, a Decision and Order was issued granting the Department's motion for partial summary judgment based, in part, on the Respondent's not contesting the allegations in the complaint. The only outstanding issue involves what discipline should be imposed as a result of the Respondent's undisputed violations. The Respondent contests just one section of the Department's recommended discipline, specifically that Respondent not work as a nurse or health care provider in a setting where Respondent has access to controlled substances and requiring that she provide written acknowledgement of same from her employer. (Section 2(a)(x) of the Department's recommended Final Order).

### Burden of Proof

The burden of proof in disciplinary proceedings is on the Department to show by a preponderance of the evidence that the events constituting the alleged violations occurred. Wis. Stat. § 440.20(3); *see also* Wis. Admin. Code § HA 1.17(2). To prove by a preponderance of the evidence means that it is “more likely than not” that the examined action occurred. *See State v. Rodriguez*, 2007 WI App. 252, ¶ 18, 306 Wis. 2d. 129, 743 N.W.2d 460, citing *United States v. Saulter*, 60 F.3d 270, 280 (7<sup>th</sup> Cir. 1995). As set forth in the Decision and Order granting partial summary judgment, the Department has already met the burden of proving the alleged violations occurred. And the Respondent does not contest those violations. The issue remaining is not whether discipline should be imposed, but what discipline is appropriate.

### Discipline

Consistent with the December 21, 2020 Order, the Department submitted a post summary judgment decision brief in support of recommended discipline against the Respondent. The Department recommends that the Respondent be reprimanded and that her license to practice nursing in Wisconsin along with her privilege to practice under the Enhanced Nurse Licensure Compact (Compact), be limited. The Department’s submission included a proposed Final Order setting forth the recommended disciplinary sanctions against the Respondent’s nursing license and the terms and conditions upon which the Respondent must comply before being allowed to practice nursing again during the disciplinary period. As stated above, the Respondent is disputing only one section of the Department’s recommended discipline terms, specifically characterized as the “employment restriction”, which limits Respondent’s ability to work in a setting where she may have access to controlled substances. The Respondent believes that this condition will limit her ability to obtain employment in the future despite acknowledging she is not currently working in the nursing field.

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976). When a license is granted to an individual, the Board is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep’t of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). Thus, the primary purpose of assessing discipline is to “protect the public interest and assure the moral fitness and professional competency” of the license holder. *See State v. MacIntyre*, 41 Wis. 2d 481, 484, 164 N.W.2d 235 (1969). The Department asserts that restricting Respondent’s ability to work in a setting where she has access to controlled substances is necessary to rehabilitate the Respondent, to protect the public, and to deter other licensees from committing similar offenses. The Department cites numerous prior disciplinary actions, including orders wherein the Board approved conditions restricting a licensee’s ability to work in a setting with access to controlled substances.

In her response brief, the Respondent distinguishes the Department’s cited precedent for imposing employment restrictions in those cases where the licensee was convicted for a drug offense and/or admitted to diversion of drugs from the employer. As pointed out by the Respondent, she was not convicted of a drug offense or for diverting drugs from her employer.

However, the Respondent did admit to taking prescription medication belonging to a relative for which she did not have a prescription. The Respondent's situation is factually similar to the case cited by the Department, *In the Matter of Disciplinary Proceedings Against Tara Holman*, Order No. 0004589 (2018).<sup>1</sup> The licensee in the *Holman* case admitted to taking her husband's prescribed morphine for her tooth pain although she did not have a prescription for it for herself. She also tested positive for other controlled substances. In that case the Board imposed an identical employment restriction that prohibited the licensee from working as a nurse or health care provider in a setting where she had access to controlled substances. *Id.* However, the *Holman* Order also restricted that licensee from working in home healthcare, hospice, pool nursing, assisted living, agency, or as a nurse in a correctional setting. *Id.* Unlike in the *Holman* action, the Department's proposed Order does not seek to restrict the Respondent from working in particular settings, only that she not have access to controlled substances in any setting she works as a nurse or healthcare provider.

It is undisputed that the Respondent had taken a prescription bottle and confidential healthcare documentation belonging to a patient. The Respondent also admitted to ingesting an Ambien pill that she had been given by her sister-in-law but for which she did not have her own prescription. Based upon the undisputed facts and the cited precedent, I agree with the Department's recommendation to reprimand and limit the Respondent from having access to controlled substances in any setting she is working as a nurse or healthcare provider for a two year period of time. The Department is not limiting where the Respondent works, only that she work in a setting pre-approved by the Board and that she not have access to controlled substances in her place of employment.

### Costs

The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings. The Respondent does not raise any argument contesting an imposition of costs in this matter. The Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against the Respondent. See, Wis. Stat. § 440.22(2). Section 440.22(2) of the Wisconsin Statutes reads in part:

In any disciplinary proceeding against a holder of a credential in which the department or examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder...

Similarly, Wis. Stat. § 441.51 reads in part:

(5) Additional authorities invested in party state licensing boards.

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<sup>1</sup> <https://online.drl.wi.gov/decisions/2016/ORDER0004589-00012435.pdf>

(a)(6) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

The above statutes do not require any particular analysis when determining whether to assess all or part of the costs in a proceeding against the Respondent. However, in exercising its discretion, the Board must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, 30-32, 311 Wis. 2d 237, 751 N.W.2d 385.

The Board has also, in previous orders, considered the following factors when determining if all or part of the costs should be assessed against the Respondent: 1) the number of counts charged, contested and proven; 2) the nature and seriousness of the misconduct; 3) the level of discipline sought by the prosecutor; 4) the Respondent's cooperation with the disciplinary process; 5) prior discipline, if any; 6) the fact that the Department is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and 7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, (LS0802183 CHI) (Aug. 14, 2008). It is within the Board's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

Given that the Department has proven all of the alleged counts, which involve serious violations, given that the Department is a program-revenue agency and because the Respondent does not dispute the Department's recommendation for assessment of costs in this matter, I conclude that all of the costs of this proceeding should be assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

#### CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the licensing board under Wis. Stat. § 441.51(3). The Division of Hearings and Appeals has authority to issue this decision under Chapter 227 of the Wisconsin Statutes.
2. The Respondent violated Wis. Admin. Code § N 7.03(3)(a) by failing to safeguard Patient A's right to privacy.
3. The Respondent violated Wis. Admin. Code § N 7.03(1)(h) by failing to notify the Board of Nursing of a felony or misdemeanor in writing within 48 hours after the entry of judgment of conviction.



4. The Respondent violated Wis. Admin. Code § N 7.03(8)(e) by obtaining, possessing or attempting to possess a drug without lawful authority.
5. The Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d).

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that:

1. Respondent Alicia Krisher-Behm, R.N., is REPRIMANDED.
2. The registered nurse license issued to Respondent (license number 130447-30), to practice nursing in the state of Wisconsin, and her privilege to practice in Wisconsin pursuant to the Enhanced Nurse Licensure Compact (Compact), are LIMITED as follows:
  - a. For a period of two (2) years from the date of this Order:
    - i. Respondent shall enroll and participate in a drug monitoring program which is approved by the Department (Approved Program). Enrollment shall occur within thirty (30) calendar days from the date this Order is executed by the Board of Nursing (Board).
    - ii. At the time Respondent enrolls in the Approved Program, Respondent shall review and comply with all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug 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 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.

- iv. 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 nor 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.
- v. 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, 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 paragraph 3(a)v.
- vi. 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.
- vii. In any urine, blood, sweat, fingernail, hair, saliva, or other specimen is positive or suspected positive for any controlled substances, Respondent shall promptly submit to additional tests or examination as the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- viii. Respondent shall practice only in a work setting pre-approved by the Board or its designee.
- ix. Respondent shall provide his or her nursing employer with a copy of this Order before engaging in any nursing employment. Respondent shall provide the Department Monitor with written acknowledgement from each nursing employer that a copy of this Order has been received. Such acknowledgement 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.

- x. 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 acknowledgement 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.
3. Pursuant to the Compact, Respondent may not practice in a Compact State, other than Wisconsin, during the pendency of these limitations.
4. A violation of this Order includes a positive drug screen,
5. 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.
6. Any requests, petitions, reports, and other information required by this Order shall be mailed, emailed, faxed, or delivered to:

Department Monitor  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190  
Telephone (608) 267-3817; Fax (608) 266-2264  
[DSPSMonitoring@wisconsin.gov](mailto:DSPSMonitoring@wisconsin.gov)

Respondent may also submit this information online at: <https://dspsmonitoring.wi.gov>

7. In the event Respondent violates any term of this Order, Respondent's license (130447-30), 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.
8. **IT IS FURTHER ORDERED** that Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18.

After the amount is established, payment shall be made by certified check or money order (or other means preapproved by the Department Monitor) payable to the Wisconsin Department of Safety and Professional Services and sent to the address listed in paragraph 6 above.

9. IT IS FURTHER ORDERED that the terms of this Order are effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on this 12<sup>th</sup> day of February, 2021.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_

Kristin P. Fredrick  
Administrative Law Judge