

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF APPLICATION FOR A REGISTERED NURSE CREDENTIAL :
: ORDER GRANTING
: LIMITED LICENSE
: **ORDER 0007448**
RACHEL R. MALMQUIST, :
APPLICANT. :

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

Rachel R. Malmquist
Marquette MI 49855

Wisconsin Board of Nursing
Department of Safety and Professional Services
4822 Madison Yards Way
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the resolution of this application. The Wisconsin Board of Nursing (Board) adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On or about November 30, 2020, Rachel R. Malmquist (Applicant) filed an application (#743594) for a Wisconsin Registered Nurse license.
2. Applicant has the following conviction:
 - A. On or about October 7, 2019 – Operating While Impaired by Alcohol, a misdemeanor conviction in Michigan.
 - i. Applicant attended a get together with friends and imbibed. Applicant made the poor decision to drive. Applicant’s vehicle was reported to police as driving recklessly. Upon observing Applicant drive, police engaged in a traffic stop. Applicant emitted a strong odor of intoxicants on her breath, had blood-shot glassy eyes, and was slurring as she spoke. Applicant admitted drinking, performed poorly on the Standardized Field Sobriety Test (SFST), and blew a Preliminary Breath Test (PBT) of .18/.16.

- ii. Applicant paid a fine, court costs, was placed on probation for nine (9) months, attended a victim impact panel, completed an Alcohol and Other Drug Abuse (AODA) assessment, and followed recommendations.

3. On or about February 14, 2020, Applicant was discharged from outpatient treatment. Applicant's discharge summary noted:

- A. Applicant met the criteria for successful completion of treatment and attained her treatment goals.
- B. Applicant's diagnosis was Alcohol Use Disorder, Mild.
- C. Applicant needed to continue maintaining abstinence from all mood-altering substances, continue abiding by the terms of her probation, continue attending mental health services, continue taking medications as prescribed, and continue to pursue her educational goals.

4. On or about March 8, 2021, Applicant was granted Temporary Registered Nurse license #258962-30.

5. On or about April 26, 2021, Applicant submitted a current usage of alcohol statement which noted the following:

- A. Applicant was sober during the pendency of case, but now drinks casually on the weekends or with a dinner/date.
- B. Applicant has a strong support system in her significant other, family, and friends.
- C. Applicant is not currently in therapy or counseling.

6. On or about May 6, 2021, the Board sent Applicant an offer for a one (1) year impairment limited license, based on the above Findings of Fact.

7. On or about May 7, 2021, the Department of Safety and Professional Services (Department), received a complaint alleging that Applicant engaged in unprofessional conduct while working under temporary Registered Nurse license (#258962-30). According to the complaint:

- A. Applicant showed up for an assigned shift. It was reported that Applicant was not acting appropriately during report and falling asleep. Applicant's behavior met policy and procedure for fit for duty testing.
- B. Final results of drug and alcohol testing showed Applicant was under the influence of alcohol.

- C. Applicant did have contact with a patient prior to the drug and alcohol test completion.

8. On or about May 15, 2021, Applicant provided a detailed, written response to the allegations of the complaint. Applicant admitted the allegations and stated:

I made the worst decision of my life. I allowed personal stressors and triggers blind my judgment and my commitment to my coworkers, patients, and myself – I again chose to drink and drank prior to going in for a night shift. I recognize the pure irresponsibility and recklessness I exercised in that decision. I put my patients lives at risk and I let down not only myself, coworkers, bosses, patients [sic] family, and the DSPS; I let down the profession -- the army of my fellow nurses.

9. A search of the Wisconsin Circuit Court Access system shows Applicant has the following pending criminal charges resulting from an offense that occurred on March 19, 2021:

- A. Operating While Intoxicated 2nd, a misdemeanor charge.
- B. Operating with a Prohibited Alcohol Concentration 2nd, a misdemeanor charge.
 - i. Applicant states that after being notified of her NCLEX passage, Applicant went out for drinks with friends in celebration. Applicant made the horrific decision to drive. While driving, Applicant experienced light headedness, an episode of syncope, felt confused and lost. EMS were called and Applicant was taken to the hospital. When asked by police if she had consumed alcohol, Applicant said yes.
 - ii. Applicant states that these charges were a red flag that she needed to admit her alcohol use was a problem and needed to be addressed. Applicant found a treater and set up an appointment for May 3, 2021. However, Applicant admits that she chose to continue drinking, including showing up to work under the influence of alcohol on May 1, 2021.

10. Applicant states that on May 6, 2021, Applicant admitted herself into a residential treatment facility. Applicant states she is attending lectures, group therapy, Alcoholics Anonymous meetings, counseling, and individual therapy.

11. In resolution of the matter, Applicant consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 441.07 and is authorized to enter the attached Stipulation pursuant to Wis. Stat. §§ 15.08(5)(c) and 227.44(5).
2. Pursuant to Wis. Stat. § 441.07(1g)(b), the Board may deny an initial license or revoke, limit, suspend, or deny the renewal of a license of a registered nurse for one or more violations of this subchapter or any rule adopted by the Board under the authority of this subchapter.
3. Pursuant to Wis. Stat. § 441.07(1g)(c), the Board may deny an initial license or revoke, limit, suspend, or deny the renewal of a license due to acts which show the registered nurse, nurse-midwife or licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.
4. Pursuant to Wis. Stat. § 441.07(1g)(d), the Board may deny an initial license or revoke, limit, suspend, or deny the renewal of a license of a registered nurse for misconduct or unprofessional conduct.
5. The Board may deny or limit an application for licensure if Applicant is unable to practice safely by reason of alcohol or other substance use pursuant to Wis. Admin. Code § N 7.03(6)(f).
6. By the conduct described in the Findings of Fact, Applicant violated Wis. Stat. §§ 441.07(1g)(b),(c), and (d), and Wis. Admin. Code § N 7.03(6)(f), by committing acts which show Applicant to be unfit or incompetent by reason of abuse of alcohol or other drugs; and Applicant is unable to practice safely by reason of alcohol or other substance abuse.
7. By the conduct described in the Findings of Fact, Applicant violated Wis. Stat. §§ 441.07(1g)(b) and (d), and 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.
8. By the conduct described in the Findings of Fact, Applicant violated Wis. Stat. §§ 441.07(1g)(b),(c), and (d), and 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.
9. As a result of the above conduct, Applicant is subject to limitations on her license pursuant to Wis. Stat. §§ 441.07(1g)(b),(c), and (d), and Wis. Admin. Code §§ N 7.03(6)(c), (e), and (f).

ORDER

NOW, THEREFORE, IT IS ORDERED that Rachel R. Malmquist's application for a REGISTERED NURSE LICENSE is GRANTED subject to the following LIMITATIONS, TERMS AND CONDITIONS:

SUSPENSION

A.1. The Registered Nurse license of Rachel R. Malmquist, 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) consecutive years with the terms of this Order, including at least six hundred (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 Registered Nurse 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 has demonstrated complete successful compliance with the provisions of Sections C. and D. of this Order for a period of at least two (2) consecutive months.

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

Practice Limitations

C.1. 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 and 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.2. It is Applicant's responsibility to arrange for written reports from her direct supervisor to be provided to the Department Monitor on a quarterly basis. These reports shall assess Applicant's work performance, attendance and include the number of hours of active nursing practice worked during that quarter.

C.3. Applicant shall **not** work in a home health care, hospice, pool nursing, assisted living, agency-setting, or as a nurse in a correctional setting.

C.4. Applicant shall practice only in a work setting pre-approved by the Board or its designee and only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee.

C.5. Applicant may work as provider in a setting in which Applicant has access to controlled substances. If Treater subsequently recommends restrictions on such access, the Board or its designee may impose such restrictions.

C.6. Pursuant to Nurse Licensure Compact regulations, Applicant's nursing practice is limited to Wisconsin during the pendency of this limitation.

C.7. 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. This report shall be provided in addition to formal change of address notification pursuant to Wis. Stat. § 440.11.

Treatment Required

C.8. Within thirty (30) days of the date of this Order, Applicant shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee (Treater). Applicant shall participate in, cooperate with, and follow all treatment recommended by Treater.

C.9. Applicant shall immediately provide Treater with a copy of this Order and all other subsequent orders.

C.10. Treater shall be responsible for coordinating Applicant's rehabilitation, alcohol/drug monitoring and treatment program 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. 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.11. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by D.5., below.

C.12. 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.13. 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 Division to:

- a. obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and
- b. discuss the progress of Applicant's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

C.14. Applicant shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or a Board-approved equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Applicant at such meetings shall be verified and reported quarterly to Treater and the Department Monitor.

Sobriety

C.15. Applicant shall abstain from all personal use of alcohol.

C.16. 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 prescribing the controlled substance. Applicant shall, at the time the controlled substance is prescribed, 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. Applicant shall disclose the name and address of such practitioner to the Department Monitor within five (5) business days of receipt of a prescription for controlled substances.

C.17. 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 otherwise 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.18. 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.

C.18. Applicant shall report to the Department Monitor all prescription medications and drugs taken by Applicant. Reports must be received within twenty-four (24) hours of administration, fill, or refill of the medication(s) or drug(s), and shall identify the person(s) who prescribed, dispensed, administered, or ordered said medication(s) or drug(s). 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.

Drug and Alcohol Screens

C.19. Within 30 days of the date of this Order, Applicant shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department Monitor (Approved Program).

C.20. 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, and

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.21. The Approved Program shall require the testing of specimens at a frequency of not less than forty-nine (49) times per year (one (1) of which may be a hair test at the Board's discretion), for at least the first year of the Order. Thereafter the Board may adjust the frequency of testing on its own initiative at any time, and/or the Applicant may petition for a modification of the frequency per paragraph D.5. below.

C.22. 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.23. 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 urine specimens;
- b. submit blood, hair or breath specimens;
- c. furnish any specimen in a directly witnessed manner.

C.24. 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.25. The Approved Program shall submit information and reports to the Department Monitor as directed.

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://dspsmonitoring.wi.gov>

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 Respondent's compliance with the terms and conditions of the Order in the previous quarter, Applicant's current address, and home telephone number.

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, however, no petition for modification shall be considered sooner than one (1) year from the date of this Order. Any petition for modification shall be accompanied by a written recommendation from Applicant's Treater expressly supporting the specific modification(s) 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 termination of this Order after demonstrating five (5) years of continuous, successful compliance with the terms of the Order, including at least six hundred (600) hours of approved nursing practice each year. The Board may, on its own motion, grant full Wisconsin licensure at any time.

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 16th day of June, 2021.

WISCONSIN BOARD OF NURSING

By: Rosemary Delatowski *RDE*
A Member of the Board

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF APPLICATION FOR A REGISTERED NURSE CREDENTIAL

RACHEL R. MALMQUIST,
APPLICANT.

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STIPULATION

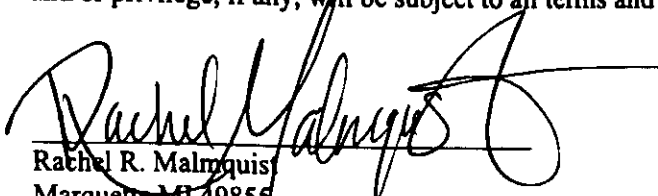
ORDER 0007448

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

1. Applicant filed an application for a Registered Nurse license.
2. Information received by the Board reflects a basis for denial of licensure.
3. Based upon the information of record, the Board agrees to issue, and Applicant agrees to accept, an Order granting a Registered Nurse license, 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 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 (Compact) and Applicant's multi-state license and/or privilege, if any, will be subject to all terms and conditions of the Compact.



Rachel R. Malmquist
Marquette MI 49855
Application no. 743594

06/10/2021
Date

A Member of the Board of Nursing
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

Date

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Rachel R. Malmquist
Marquette MI 49855
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Date

Rosemary Dolatowski /s/

A Member of the Board of Nursing
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

06/16/2021

Date