

## 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 APPLICATION FOR  
RENEWAL OF A LICENSED PRACTICAL  
NURSE LICENSE

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ORDER GRANTING  
LIMITED LICENSE

JAY TOLBERT,  
APPLICANT.

**ORDER 0007757**

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

Jay Tolbert  
Madison WI 53704

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 renewal 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. Jay Tolbert (Applicant) was initially granted Applicant's Wisconsin Licensed Practical Nurse credential (#317385-31) on August 6, 2013.
2. Applicant resides in Wisconsin.
3. On or about March 19, 2021, Applicant filed an application to renew his Wisconsin Licensed Practical Nurse credential (#317385-31).
4. Applicant has the following pending charges from an incident alleged to have occurred on or about March 4, 2021:
  - A. Operating While Intoxicated 1<sup>st</sup>, an ordinance violation.
  - B. Operating with a Prohibited Alcohol Concentration 1<sup>st</sup>, an ordinance violation.
  - C. Drive Wrong Way, an ordinance violation.

- i. Applicant states he made the poor decision to drive to his girlfriend's house after he had been drinking. Applicant was pulled over after police observed him swerving, bouncing his car off snowbanks, and driving the wrong way down a one-way street. Police smelled the odor of intoxicants, Applicant's speech was slurred, and he fumbled his wallet while attempting to retrieve his driver's license. Applicant failed the Standard Field Sobriety Tests (SFST) and blew a Preliminary Breath Test (PBT) of .25.
5. Applicant submitted a copy of his Order for Assessment and Driver Safety Plan which contained an assessment finding of Alcohol Dependency in Remission.
  - A. Applicant's Driver Safety Plan Order requires Applicant to undergo Outpatient Treatment including learning coping and relapse prevention skills. Applicant is required to complete six (6) to eight (8) sessions and to follow the recommendations of the treatment provider.
6. In resolution of this 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. The Board may deny or limit the renewal of a license if Applicant committed a violation of Wis. Stat. §§ 441.07(1g)(b), (c), and (d).
3. The Board may deny or limit the renewal of a license 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).
4. By the conduct described in the Finding of Fact, Applicant violated Wis. Stat. §§ 441.07(1g)(b), (c), and (d), and Wis. Admin. Code § 7.03(6)(f) and (g), by committing acts which shows 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 or by reason of psychological impairment or mental disorder
5. Pursuant to Wis. Stat. § 440.08(4), the Board may deny the Applicant's application for renewal of Applicant's Registered Nurse credential to protect the public health, safety, or welfare.
6. By the conduct described in the Findings of Fact, limitations on Applicant's license are necessary to protect the public health, safety, or welfare, pursuant to Wis. Stat. § 440.08(4).

## ORDER

1. The attached Stipulation is accepted.
2. Your Licensed Practical Nurse credential is a Wisconsin single state license and your practice under your license is limited to Wisconsin during the pendency of this order. If you wish to obtain a multistate privilege in the future, you may reapply for multistate privilege at any time after demonstrating complete successful compliance with the terms of this Order and your license has been changed to full, unencumbered status.
3. Limitations upon Applicant's Licensed Practical Nurse credential are necessary to ensure that Applicant is fit and competent to practice as a Licensed Practical Nurse.
4. Applicant's ability to practice as a Licensed Practical Nurse in the state of Wisconsin, and Applicant's privilege to practice pursuant to the Enhanced Nurse Licensure Compact (Compact), is LIMITED as follows:
  - A. For a period of at least two (2) years from the date of this Order Applicant shall comply with the following requirement relating to drug and alcohol monitoring:
    - i. Within thirty (30) days of the date of this Order, Applicant shall enroll and participate in a drug and alcohol monitoring program which is approved by the Department (Approved Program).
    - ii. At the time Applicant enrolls in the Approved Program, Applicant shall review 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, (one (1) of which may be a hair test at the Board's discretion) 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. Applicant shall abstain from all personal use of alcohol.
- iv. 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 ordering the controlled substance. Applicant 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 Applicant'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 of Safety and Professional Services Monitor (Department Monitor).
- v. 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 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, Applicant shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.
- vi. Applicant shall provide the Department Monitor with a list of over-the-counter medications and drugs that he 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 Applicant'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 4.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. Applicant 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, 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.

- B. For a period of at least two (2) years from the date of this Order Applicant shall comply with the following Alcohol and Other Drug Abuse (AODA) support group and counseling:
- i. Within thirty (30) days of the date of this Order, Applicant shall provide proof to the Department Monitor that Applicant is continuing AODA counseling with an AODA counseling provider (Treater), whose credential is in good standing, and approved by the Board. Applicant shall participate in, cooperate with, and follow all treatment recommended by Treater.
  - ii. Applicant shall immediately provide Treater with a copy of this Order and all other subsequent orders.
  - iii. 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:
    1. obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and
    2. discuss the progress of Applicant's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.
  - iv. Applicant's treatment shall include individual and/or group therapy sessions at a frequency to be determined by Treater, but not less than once a month. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification, including a recommendation from Treater expressly approving termination of therapy.
  - v. Treater 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.
  - vi. 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 mental health treatment sessions, abstinence from all substances, and drug and alcohol testing. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

- vii. Applicant shall attend Alcoholics Anonymous meetings, Narcotics Anonymous meetings, or other Board-approved equivalent program for recovering professionals, no less than twice per week. Applicant shall provide proof of attendance on a quarterly basis to the Department Monitor.

C. For a period of at least two (2) years from the date of this Order, Applicant shall comply with the following practice limitations:

- i. Applicant shall provide Applicant's nursing employer with a copy of this Order before engaging in, or continuing to engage in, any nursing employment. Applicant 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.
- ii. It is Applicant's responsibility to arrange for quarterly written reports to be submitted to the Department Monitor from Applicant's supervisor at each setting in which Applicant practiced nursing in the previous quarter. These reports shall be submitted as directed by the Department Monitor, and shall assess Applicant's work performance, and shall include the number of hours of active nursing practice worked during that quarter. If a report indicates poor performance, the Board may institute additional limitations on Applicant's nursing license, in its discretion.
- iii. Applicant **may** work as a nurse or other health care 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.
- iv. Applicant shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of change.
- v. Applicant shall commit no new violations of law and shall report all law enforcement contacts leading to arrest, charge or

conviction, including DWI/OWI and municipal/ordinance violations, to the Department Monitor within forty-eight (48) hours of any such event, including any convictions resulting from pending charges.

5. Applicant may petition the Board on an annual basis for modification of the terms of this Order, however no such petition for modification shall occur earlier 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 modifications 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.

6. After two (2) consecutive years of successful compliance, including at least six hundred (600) hours of approved nursing practice each year, the Applicant 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. Pursuant to the Compact, Applicant may not practice in a Compact state, other than Wisconsin, while Applicant's credential is encumbered by any limitation or restriction imposed by this order.

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

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

9. In the event Applicant violates any term of this Order, Applicant's license, or Applicant's right to renew his 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 Applicant 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. 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.

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

WISCONSIN BOARD OF NURSING

By: Vera Guyton 12/17/2021  
A Member of the Board

12/17/2021  
Date

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF APPLICATION FOR  
RENEWAL OF A LICENSED PRACTICAL  
NURSE LICENSE

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STIPULATION

JAY TOLBERT,  
APPLICANT.

**ORDER 0007757**

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

1. Applicant filed an application to renew a Licensed Practical 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 Licensed Practical 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.

*Jay Tolbert*  
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Jay Tolbert  
Madison WI 53704  
License no. 317385-31

*12-14-21*  
\_\_\_\_\_  
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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\_\_\_\_\_  
Jay Tolbert  
Madison WI 53704  
License no. 317385-31

\_\_\_\_\_  
Date

*Vera Guyton* *ALB*  
\_\_\_\_\_  
A Member of the Board of Nursing  
Department of Safety and Professional Services  
P.O. Box 8935  
Madison, WI 53708-8935

12/17/2021  
Date