

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 :
: FINAL DECISION AND ORDER
ERIN M. KUNZ, R.N., : ORDER NO. 0007372
RESPONDENT. :

Division of Legal Services and Compliance Case Nos. 20 NUR 604 and 22 NUR 401

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

Erin M. Kunz, R.N.
Milwaukee, WI 53223

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 Erin M. Kunz, R.N., (Year of Birth 1982) is licensed in the state of Wisconsin as a registered nurse with multistate privileges pursuant to the Nurse Licensure Compact (Compact), having license number 157175-30, first issued on February 5, 2007, and current through February 28, 2022. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to apply to renew her license through February 28, 2027.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Milwaukee, Wisconsin 53223.

Prior Discipline

3. On August 13, 2020, the Board issued Order No. 0006930 reprimanding Respondent and ordering her to complete five hours of education for suspected diversion and documentation discrepancies. On February 3, 2021, the Board restored Respondent's license to full, unrestricted status.

Case No. 20 NUR 604

4. At all times relevant to this proceeding, Respondent was employed as a registered nurse at a home hospice facility in Brookfield, Wisconsin (Hospice).

5. On December 16, 2020, the Department received a complaint from the Hospice alleging Respondent was diverting oxycodone from Patient A, a female born in 1953, by coordinating with the pharmacy that deliveries be made directly to her outside of Patient A's home and falsifying Patient A's medical records to reflect she was taking oxycodone when she was not.

6. On March 25, 2021, Respondent was charged with Obtain Controlled Substance by Fraud, a felony in violation of Wis. Stat. § 961.43(1)(a), and Theft-Moveable Property >=\$2500-\$5000, a felony in violation of Wis. Stat. § 943.20(1)(a), in Milwaukee County Circuit Court Case No. 2021CF001121 (Milwaukee County Criminal Case).

7. On May 13, 2021, the Board issued an Interim Order suspending Respondent's license during the pendency of this matter.

8. According to the Department's investigation:

- a. Respondent was assigned as Patient A's hospice nurse. Her duties were to visit Patient A once a week to evaluate her condition and implement care plans. Respondent's duties included ordering Patient A's medications, with a physician sign-off, but did not include accepting medication deliveries.
- b. On December 11, 2020, the Hospice interviewed the pharmacy delivery manager who confirmed Respondent would call him directly to coordinate deliveries of medication to Patient A, which were made to Respondent outside Patient A's home. The manager correctly identified Respondent's vehicle.
- c. On December 11, 2020, the Hospice interviewed Patient A who said she had not taken any oxycodone because of the way it makes her feel.
- d. According to the West Allis Police report, Patient A's husband said Oxycontin had never been delivered to their home nor had he signed off on any delivery of Oxycontin. Patient A confirmed she only took aspirin and Tylenol for pain.
- e. According to the pharmacy's delivery manifests, between July 2 and December 8, 2020, Respondent accepted delivery of over 4,000 tablets of oxycodone ordered for Patient A. On at least four delivery dates, Respondent accepted deliveries outside of Patient A's home but did not have a scheduled visit with Patient A. On one

delivery date, Respondent accepted the delivery outside Patient A's home but was not scheduled to work at all.

- f. Respondent charted in Patient A's visit notes that she educated Patient A about taking MS Contin as prescribed rather than as needed, noted that Patient A forgets to keep track of her medications, and indicated Patient A's pain was controlled with oxycodone.
- g. On December 11, 2020, Respondent resigned her employment at the Hospice after being asked to meet with Hospice staff.
- h. On December 14, 2020, Respondent met with Hospice staff and agreed to submit to a urine drug screen, the results of which were negative. Respondent denied diverting any medication.

9. On October 21, 2022, the Milwaukee County Criminal Case was dismissed on the state's motion without prejudice.

10. Respondent denies diverting Patient A's oxycodone or falsifying her medical records.

Case No. 22 NUR 401

11. On May 12, 2021, Respondent was charged with one count of Possession of Narcotic Drugs, a felony in violation of Wis. Stat. § 961.41(3g)(am), and one count of Misdemeanor Theft, in violation of Wis. Stat. § 943.20(1)(a) and (3)(a), in Waukesha County Circuit Court Case No. 2021CF000746 (Waukesha County Criminal Case).

12. The charges in the Waukesha County Criminal Case were based on the underlying facts recited in the Board's prior disciplinary order, Order No. 0006930, dated August 13, 2020, as it related to Case No. 19 NUR 481.

13. On June 17, 2022, the Court in the Waukesha County Criminal Case entered a Judgment of Conviction against Respondent for two counts of Disorderly Conduct, both misdemeanors in violation of Wis. Stat. § 947.01(1), after a plea deal was reached.

14. Respondent timely reported her conviction to the Department.

15. 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 or aided and abetted a violation of any law substantially related to the practice of nursing or was convicted of

any crime substantially related to the practice of nursing, within the meaning of Wis. Admin. Code § N 7.03(2)

3. A nurse who possesses a 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 Compact pursuant to Wis. Stat. § 441.51(3)(g). The effective date of the Compact is July 20, 2017.

4. Being convicted of a misdemeanor offense substantially related to the practice of nursing is a disqualifying event pursuant to Wis. Stat. § 441.51(3)(c)8.

5. By the conduct described in the Findings of Fact, Respondent is ineligible to retain or renew a Wisconsin multistate license to practice nursing, pursuant to Wis. Stat. §§ 441.51(3)(c)8. and 441.51(3)(g).

6. By the conduct described in the Findings of Facts, Respondent solicited, borrowed, misappropriated, obtained, or attempted to obtain money or property from a patient, within the meaning of Wis. Admin. Code § N 7.03(4)(a).

7. By the conduct described in the Findings of Facts, Respondent intentionally made incorrect entries in a patient's medical record or other related documents, within the meaning of Wis. Admin. Code § N 7.03(5)(b).

8. By the conduct described in the Findings of Facts, Respondent obtained, possessed or attempted to obtain or possess a drug without lawful authority, within the meaning of Wis. Admin. Code § N 7.03(8)(e).

9. As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d), and Wis. Admin. Code. § N 7.03.

ORDER

1. The attached Stipulation is accepted.

2. Respondent's multistate license is deactivated and will not be renewed. Respondent retains the right to renew a Wisconsin single-state registered nurse license, subject to the terms below.

3. Respondent's license to practice as a registered nurse in the state of Wisconsin (license number 157175-30), and her right to renew such license, is **SUSPENDED** for three (3) months from the date of this Order.

4. Respondent's license to practice as a registered nurse in the state of Wisconsin (license number 157175-30), and her right to renew such license, 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 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:
 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 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. 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. Respondent 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.
- iv. Respondent shall report to the Department Monitor all prescription medications and drugs taken by Respondent. 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, 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. Respondent shall abstain from all use of over-the-counter medications, products, 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 alcohol, create false positive screening results, or otherwise interfere with Respondent'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 3(a)v. It is Respondent's responsibility to educate herself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- 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. 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.
- viii. Respondent shall practice only in a work setting and/or work position pre-approved by the Board or its designee.
- ix. Respondent shall provide his or her nursing employer with a copy of this Order and any subsequent order modifying 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 and any subsequent order modifying 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 and any subsequent order modifying 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 acknowledgment from each nursing employer that Respondent does not have access to controlled substances. Such acknowledgment 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.

b. Within sixty (60) days from the date of this Order:

i. Respondent shall, at her own expense, undergo an AODA assessment with an evaluator pre-approved by the Board or its designee who has experience conducting these assessments.

ii. Prior to the assessment, Respondent shall provide a copy of this Order to the evaluator. Respondent shall provide the Department Monitor with written acknowledgment from the evaluator that a copy of this Order has been received by the evaluator. Such acknowledgment shall be provided to the Department Monitor prior to the assessment.

iii. Respondent shall provide and keep on file with the evaluator current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department to obtain a copy of the assessment. Copies of these releases shall immediately be filed with the Department Monitor.

iv. Respondent shall identify and provide the evaluator with authorizations to communicate with all physicians, mental health professionals, and facilities at which Respondent has been treated or evaluated.

v. The Board, or its designee, may impose additional limitations upon Respondent's license based on the results of the assessment and/or the evaluator's recommendations.

vi. Respondent shall comply with the evaluator's recommendations.

5. A violation of this Order includes a positive drug screen.

6. 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.

7. Within 120 days from the date of this Order, Respondent shall pay the COSTS of these matters in the amount of \$1,678.00.

8. Any requests, petitions, payments of costs (made payable to Department of Safety and Professional Services), and other information required by this Order shall be submitted to:

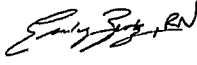
Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

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

9. In the event Respondent violates any term of this Order, Respondent's license (number 157175-30), 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.

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

WISCONSIN BOARD OF NURSING

By: 
A Member of the Board

12/8/2022
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
ERIN M. KUNZ, R.N.,	:	ORDER NO. 0007372
RESPONDENT.	:	

Division of Legal Services and Compliance Case Nos. 20 NUR 604 and 22 NUR 401

Respondent Erin M. Kunz, 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 two 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. Respondent is represented by Attorney Jamie J. Pagac.

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

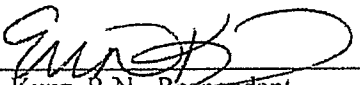
accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

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 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.

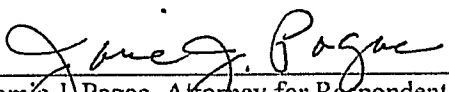
8. Respondent is further informed that should the Board adopt this Stipulation, the Board's Final Decision and Order will be reported as required by the National Practitioner Databank (NPDB) Guidebook and as otherwise required by any licensure compact or any other state or federal law.

9. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.




Erin M. Kunz, R.N., Respondent
Milwaukee, WI 53223
License No. 157175-30

11-15-22
Date



Jamie J. Pagac, Attorney for Respondent
Kim & LaVoy, S.C.
2360 N. 124th St., Suite 200
Wauwatosa, WI 53226

11-16-22
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

11/18/2022
Date