

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
MOLLY M. FITZGERALD, L.P.N., :
RESPONDENT. : **ORDER 0008632**

Division of Legal Services and Compliance Case No. 22 NUR 331

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

Molly M. Fitzgerald, L.P.N.
Manitowoc, WI 54220

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 in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board of Nursing (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent Molly M. Fitzgerald, L.P.N., (Year of Birth 1985) is licensed in the state of Wisconsin as a licensed practical nurse, having license number 313449-31, with multistate privileges pursuant to the Nurse Licensure Compact (Compact), first issued on January 19, 2011, and current through April 30, 2025. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Manitowoc, Wisconsin 54220.

2. At all times relevant to this matter, Respondent worked as a licensed practical nurse for a home healthcare agency located in Sheboygan, Wisconsin (Agency).

3. Respondent provided home healthcare, including dialysis treatments, for Patient A (male born in 1939). Respondent and a male certified nursing assistant (CNA B), who also worked for the Agency and who Patient A terminated as one of his care providers in April 2022, accompanied Patient A when he traveled. Respondent and CNA B typically traveled with Patient A multiple times a month and the trips varied in length of stay from 3 to 20 days. During these trips, Respondent provided health care services to Patient A, including dialysis.

4. CNA B reported to the Agency that he witnessed Patient A touch Respondent in a manner CNA B perceived to be inappropriate and make comments toward Respondent that CNA B perceived were inappropriate, and that Respondent violated the Agency's alcohol consumption policy when they traveled.

5. On April 26, 2022, the Agency, which later terminated its contract with Patient A, interviewed Respondent. Respondent denied drinking alcohol while working, but admitted to crossing boundaries with Patient A. Respondent was instructed to have another staff member present with her and Patient A at all times and to immediately stop all allegedly inappropriate behavior.

6. On April 28, 2022, the Agency interviewed CNA B, who reported the following:
- a. He consistently instructed Respondent how to respond when Patient A initiated inappropriate touches or comments towards her; however, Respondent typically chose to ignore the behavior.
 - b. He walked into Patient A's room and witnessed Respondent and Patient A sitting on the couch together. Respondent's head was on Patient A's shoulder and Patient A's hand was on Respondent's thigh.
 - c. Respondent consumed three (3) or more alcoholic drinks with dinner while traveling with Patient A and the consumption led to "overly friendly comments".
 - d. Respondent assisted Patient A with bathing and showering even though CNA B was available to perform those tasks. Patient A made sexually suggestive and inappropriate comments to Respondent while she was assisting him in the shower, and Respondent did not stop or address his behavior.
 - e. Respondent told CNA B that Patient A expressed feelings for her, and that she said, via text message, "I love him [Patient A] too not that way and not sure how to stop it".

7. On April 29, 2022, the Agency interviewed Respondent again. This time, Respondent admitted to consuming alcohol on trips with Patient A while off duty, contrary to the Agency's policy, assisting Patient A with his showers even though CNA B was available, and that she slept on the sofa bed in Patient A's room outside the presence of his wife, who was never present during Patient A's hemodialysis treatment,, despite having her own room, because it "comforted" Patient A.

8. Respondent used her Agency work phone to send numerous text messages in January through May 2022 in which she discussed Patient A by name with friends and family in violation of the Health Insurance Portability and Accountability Act. Respondent's text messages also confirmed that she consumed alcohol on work trips in violation of the Agency's policy, described Patient A's inappropriate behavior and confirmed that she ignored Patient A's behavior instead of addressing it.

9. As part of its investigation, the Department interviewed Respondent's co-workers who confirmed they had observed inappropriate behavior between Patient A and Respondent on several occasions and that they did not observe Respondent do anything to stop the behavior. The witnesses also confirmed that Respondent had consumed alcohol while on work trips with Patient A in violation of the Agency's policy.

10. Respondent asserts that CNA B was the only other employee from the Agency who traveled with Patient A on trips when Respondent traveled with Patient A. Respondent claims that she could not take measures during treatment of Patient A to address allegedly inappropriate behavior because she was required to maintain a sterile field during treatment and could not take measures that could break the sterile field. Respondent claims that she addressed any alleged inappropriate behavior by Patient A outside the presence of CNA B or other staff members and that Patient A did not exhibit inappropriate behavior after she addressed it. Respondent denies that she consumed alcohol while on duty or before providing nursing services.

11. On April 30, 2022, the Agency suspended Respondent's employment until a decision could be made on how to proceed. On May 2, 2022, Respondent resigned from the Agency.

12. In resolution of this matter, Respondent 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 into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent knowingly, recklessly, or negligently divulged a privileged communication or other confidential patient health care information within the meaning of Wis. Admin. Code § N 7.03(3)(b).

3. By the conduct described in the Findings of Fact, Respondent made statements or disclosures that created a risk of compromising a patient's privacy, confidentiality or dignity including statements or disclosures via electronic or social media within the meaning of Wis. Admin. Code § N 7.03(3)(c).

4. By the conduct described in the Findings of Fact, Respondent failed to establish, maintain, or communicate professional boundaries with a patient, and engaged in relationships with patients that could impair the nurse's professional judgment, within the meaning of Wis. Admin. Code § N 7.03(4)(e).

5. 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 is REPRIMANDED.
3. Within sixty (60) days of the date of this Order, Respondent shall, at her own expense, undergo a fitness for practice evaluation with a pre-approved psychiatrist or psychologist (Evaluator) who has not provided treatment to Respondent and is experienced in evaluating whether a health care professional is fit to practice:
 - a. Prior to evaluation, Respondent shall provide a copy of this Final Decision and Order to the Evaluator.
 - b. 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.
 - c. Within fifteen (15) days of the completion of the evaluation, a written report regarding the results of the assessment shall be submitted to the Department Monitor at the address below. The report shall address whether Respondent suffers from any condition(s) that may interfere with her ability to practice safely and competently and, if so, shall provide any recommended limitations for safe and competent practice.
 - d. Respondent shall execute necessary documents authorizing the Division to obtain records of the evaluation, and to discuss Respondent and her case with the Evaluator. Respondent shall execute all releases necessary to permit disclosure of the final evaluation report to the Board or its designee. Certified copies of the final evaluation report shall be admissible in any future proceeding before the Board.
 - e. If the Evaluator determines that Respondent is not fit to practice or is fit for practice with limitations, the Board or its designee may suspend Respondent's license until Respondent provides proof sufficient to convince the Board or its designee that Respondent is able to practice with reasonable skill and safety of patients and the public and does not suffer from any condition which prevents Respondent from practicing in that manner.
 - f. If the Evaluator determines that Respondent is fit to practice or is fit to practice with limitations, the Board or its designee may limit Respondent's license in a manner to address any concerns the Board or its designee has as a result of the conduct set out in the Findings of Fact and to address any recommendations resulting from the evaluation, including, but not limited to:

6. 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>.

7. Pursuant to Wis. Stat. § 441.51(5)(b), Respondent's multistate licensure privilege to practice in all Compact states besides Wisconsin is deactivated during the pendency of this Order.

8. In the event Respondent violates any term of this Order, Respondent's license (number 313449-31), or Respondent's right to renew her license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

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

WISCONSIN BOARD OF NURSING

By: 
A Member of the Board of Nursing

7/13/2023
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MOLLY M. FITZGERALD, L.P.N.,
RESPONDENT.

:
:
:
:
:

STIPULATION

ORDER 0008632

Division of Legal Services and Compliance Case No. 22 NUR 331

Respondent Molly M. Fitzgerald, L.P.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 a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation 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 Attorneys Lawrence Gosewisch, James Koehler, and Kristin Hoffman.

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 matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not

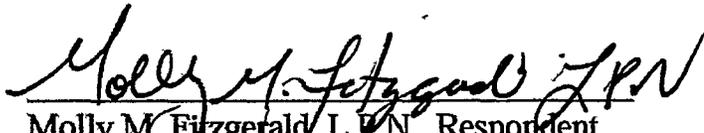
accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

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 this investigation 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.

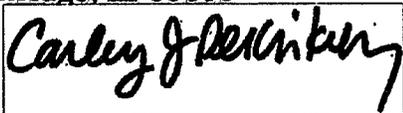

Molly M. Fitzgerald, L.F.N., Respondent
Manitowoc, WI 54220
License No. 313449-31

7/2/23
Date

James S. Koehler

James Koehler, Attorney for Respondent
Hinshaw & Culbertson, LLP
151 N. Franklin St., Ste. 2500
Chicago, IL 60606

07.03.2023
Date



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

07/05/2023
Date