

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
JENNIFER S. BERNING, R.N., :
RESPONDENT. : **ORDER 0008633**

Division of Legal Services and Compliance Case No. 23 NUR 222

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

Jennifer S. Berning, R.N.
Baldwin, WI 54002

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. Jennifer S. Berning, R.N. (Respondent), (Year of Birth 1976) is licensed in the state of Wisconsin as a registered nurse, having license number 135485-30, with multistate privileges pursuant to the Nurse Licensure Compact (Compact), first issued on October 25, 2000 and current through February 29, 2024. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Baldwin, Wisconsin 54002.

2. At all times relevant to this proceeding, Respondent worked as a nurse manager in a medical surgical unit at a hospital located in Menomonie, Wisconsin (Facility).

3. Facility auditors conducted a controlled substance review and found that Respondent's controlled medication, specifically oxycodone, usage was higher than her peers.

4. The auditors noted the following concerns:
 - a. Respondent documented doses of oxycodone hours after administration;
 - b. Respondent was the only RN to administer oxycodone to a patient who had not received the medication for days;
 - c. Respondent suspiciously wasted oxycodone tablets and noted them as being pulled by mistake;
 - d. Respondent suspiciously wasted hydrocodone/acetaminophen 5mg/325mg;
 - e. Respondent frequently volunteered for extra shifts; and,
 - f. Respondent had poor documentation.

5. Facility administrators interviewed Respondent and she admitted to diverting oxycodone for approximately one year due to knee pain. She reported that she had been diverting 2-3 times per week and usually 10mg at a time.

6. Respondent agreed to a urine drug screen and told the compliance officer that it would likely come back positive for fentanyl. Respondent explained that she had purchased what she thought was hydrocodone off the street and, after a few uses, believed it was fentanyl. The results of the urine drug screen came back positive for fentanyl.

7. Respondent underwent a partial hospitalization program for four weeks beginning on March 20, 2023.

8. On April 18, 2023, Respondent entered into an impairment program, separate from this Order, and signed the impairment program contract.

9. 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. The impairment program which Respondent has entered constitutes an “alternative program” under Wis. Stat. § 441.51(2)(b).

3. Pursuant to Wis. Stat. § 441.51(3)(c)9., a licensee enrolled in an alternative program is ineligible to obtain or retain a multistate license.

4. By the conduct described in the Findings of Fact, 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).

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. Respondent's multistate registered nurse license is deactivated; Respondent retains a Wisconsin single-state license to practice registered nursing.

4. Respondent's single-state registered nurse license and any appurtenant right to renew issued to Respondent (license number 135485-30) is LIMITED as follows:

- a. Respondent must comply with the impairment program contract dated April 18, 2023.
- b. Any violation of the terms of the impairment program contract dated April 18, 2023, is a violation of this Order.
- c. Respondent may petition for termination of this limitation upon successful completion of the impairment program.

4. In the event Respondent is discharged from the impairment program prior to successful completion, Respondent's license may, in the discretion of the Board or its designee, be immediately suspended. In addition to, or instead of, the suspension, the Board may impose additional limitations to address any concerns regarding the conduct described in the Findings of Fact and facts leading to Respondent's discharge from the impairment program.

5. Within ninety (90) days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$453.00.

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 135485-30), 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, 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

JENNIFER S. BERNING, R.N.,
RESPONDENT.

:
:
:
:
:

STIPULATION

ORDER 0008633

Division of Legal Services and Compliance Case No. 23 NUR 222

Jennifer S. Berning, R.N. (Respondent) 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.

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

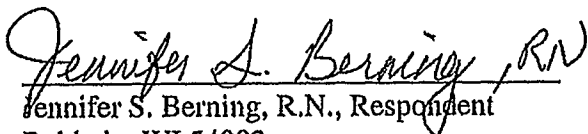
of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

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, 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.

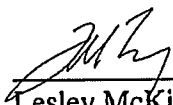
9. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



Jennifer S. Berning, R.N., Respondent
Baldwin, WI 54002
License No. 135485-30

5-19-23

Date



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

5/23/2023

Date