

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
NICOLE A. MARTINEZ, R.N., :
RESPONDENT. : **ORDER 0008750**

Division of Legal Services and Compliance Case No. 22 NUR 090

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

Nicole A. Martinez, R.N.
Racine, WI 53402

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 Wisconsin 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. Nicole A. Martinez (Respondent), (Year of Birth 1979) is licensed in the state of Wisconsin as a registered nurse with multistate privileges pursuant to the Nurse Licensure Compact (Compact), having license number 197519-30, first issued on August 30, 2013, and current through February 29, 2024. Respondent's most recent address on file with the Department of Safety and Professional Services (Department) is in Racine, Wisconsin 53402.

2. At all times relevant to this proceeding, Respondent was employed as a registered nurse at a medical clinic located in Kenosha, Wisconsin (Facility).

3. On January 13, 2022, a physician at the Facility (Physician A) received a letter from a pharmacy regarding a rejected prescription for Zolpidem Tartrate for Respondent.

4. The Facility began an investigation, and on January 17, 2022, interviewed Respondent who acknowledged that she did not have a treating physician at the Facility. When presented with a copy of the handwritten prescription, Respondent acknowledged that it was her handwriting on the prescription and admitted that she wrote a prescription for herself for Zolpidem 5mg #90 1po qhs on October 25, 2021 using Physician A's DEA number on a Facility paper prescription pad.

5. Respondent maintains that Physician A told her to complete the prescription and he would sign it when they discussed it in late October 2021.

6. Pharmacy records confirm that Respondent picked up prescriptions for Zolpidem on October 27, 2021 and December 20, 2021. The pharmacy also reported that Respondent called in a prescription for "Spironolactone, #90 with three refills" and picked it up on December 22, 2021.

7. Physician A was not Respondent's treating physician, and he did not prescribe any medications for her. Physician A confirmed he does not write prescriptions in the manner that either of the above-noted prescriptions were prescribed, nor would he write a prescription for anyone without an appointment to evaluate their medical condition.

8. On January 17, 2022, the Facility reported the theft to the Kenosha County Sheriff's Department. On January 25, 2022, the Facility terminated Respondent's employment.

9. On February 11, 2022, Respondent was criminally charged with one count of Misappropriation of Personal Identifying Materials – Obtain Money, a class H felony, in violation of Wis. Stat. § 943.201(2)(a), one count of Making a False or Forged Prescription Order, a class U misdemeanor, in violation of Wis. Stat. § 450.11(7)(e), and one count of Obtaining a Prescription Drug by Fraud or Forgery, a class U misdemeanor, in violation of Wis. Stat. § 450.11(7)(a) in Kenosha County Circuit Court Case No. 2022CF000190.

10. On November 14, 2022, Respondent pleaded guilty to Misappropriation of Personal Identifying Materials – Obtain Money and Obtaining Prescription Drug by Fraud or Forgery. Respondent entered into a Deferred Prosecution Agreement which required her to successfully and actively participate in substance abuse counseling, not consume any alcohol or illegal drugs, and submit to an alcohol and drug assessment and comply with the treatment program, among other things. If Respondent complies with the Deferred Prosecution Agreement, at the conclusion of the hold open period (one year), the State will dismiss the charges and issue a citation to Respondent for Theft contrary to Kenosha County Ordinance 9.943.20.

11. In January 2023, Respondent submitted a copy of her AODA assessment to the Department which indicated that she is not positive for any DM 5 substance related diagnosis, and therefore was not recommended for further treatment.

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 violated or aided and abetted a violation of any law substantially related to the practice of nursing, within the meaning of Wis. Admin. Code § N 7.03(2).
3. 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. By the conduct described in the Findings of Fact, Respondent impersonated another licensee, within the meaning of Wis. Admin. Code § N 7.03(5)(f).
6. 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 license to practice as a registered nurse in the state of Wisconsin (license number 197519-30), and privilege to practice in Wisconsin pursuant to the Compact, is **SUSPENDED** for fourteen (14) days, beginning ten (10) calendar days from the date of this Order.
3. Respondent's license to practice as a registered nurse in the state of Wisconsin (license number 197519-30), and privilege to practice in Wisconsin pursuant to the Compact, are further **LIMITED** as follows:

Education

- a. Within ninety (90) days of the date of this Order, Respondent shall at her own expense, successfully complete six (6) hours of education on the topic of ethics. Each course attended in satisfaction of this Order must be pre-approved by the Board or its designee. Respondent shall be responsible for locating course(s) satisfactory to the Board and for obtaining the required approval of the course(s) from the Board or its designee. Respondent must take and pass any exam offered for the course(s).
- b. Respondent shall submit proof of successful completion of the education in the form of verification from the institution providing the education to the Department Monitor at the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department, and also may not be used in future attempts to upgrade a credential in Wisconsin.

- c. The Board's monitoring liaison may change the number of credit hours and/or education topics in response to a request from Respondent. The monitoring liaison may consider the topic availability and/or hours of education when determining if a change to the ordered education should occur.
- d. This limitation shall be removed from Respondent's license after satisfying the Board or its designee that Respondent has successfully completed all the ordered education.

Fitness to Practice Evaluation

- a. Within ninety (90) days of the date of this Order, Respondent shall, at her own expense, undergo a fitness to 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.
- b. Prior to evaluation, Respondent shall provide a copy of this Final Decision and Order to the Evaluator.
- c. 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.
- d. 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.
- e. 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.
- f. 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.
- g. 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:

- i. Psychotherapy, at Respondent's expense, by a therapist approved by the Board or its designee, to address specific treatment goals, with quarterly reports to the Board by the therapist.
 - ii. Additional professional education in any identified areas of deficiency.
 - iii. Restrictions on the nature of practice, practice setting, or requirements for supervision of practice by a professional approved by the Board, with periodic reports to the Board by the supervisor.
- h. Respondent is responsible for ensuring that the results of the evaluation are sent to the Department Monitor at the address listed in this Order.
4. Within ninety (90) days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$4,042.00.
5. 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://dpspsmonitoring.wi.gov>.

6. 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.

7. In the event Respondent violates any term of this Order, Respondent's license (number 197519-30), 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.

WISCONSIN BOARD OF NURSING

By: 

 A Member of the Board

9/14/2023

 Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

NICOLE A. MARTINEZ, R.N.,
RESPONDENT.

:
:
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:
:
:

STIPULATION

ORDER 0008750

Division of Legal Services and Compliance Case No. 22 NUR 090

Nicole A. Martinez (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. Respondent is represented by Attorney Kristen Nelson.

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.

Nicole MTZ

Nicole A. Martinez, R.N., Respondent
Racine, WI 53402
License No. 197519-30

8/29/23
Date

Kristen N. Nelson

Kristen Nelson, Attorney for Respondent
Gimbel Reilly Guerin Brown, LLP
330 East Kilbourn Avenue, Suite 1170
Milwaukee, WI 53202

8/29/2023
Date

Matthew E. Valley

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

8/30/23
Date