

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 E. HOLTON, R.N., :
RESPONDENT. :

ORDER 0008784

Division of Legal Services and Compliance Case No. 21 NUR 513

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

Nicole E. Holton, R.N.
Milwaukee, WI 53222

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 E. Holton, R.N. (Respondent), (Year of Birth 1978) is licensed in the state of Wisconsin as a registered nurse with multistate privileges pursuant to the Nurse Licensure Compact (Compact), having license number 141810-30, first issued on July 31, 2002, and current through February 29, 2024. Respondent's most recent address on file with the Department of Safety and Professional Services (Department) is in Milwaukee, Wisconsin 53222.

Prior Discipline

05 NUR 022

2. On November 16, 2006, the Board issued Order Number LS-0605301-NUR, which indefinitely suspended Respondent's license. Respondent had failed to fully document the use of oxycodone and hydrocodone, including withdrawing two dosage units from the secured supply system and then documenting the administration of only one dosage unit to the patient and withdrawing medications for a patient that had been discharged on multiple occasions.

3. On January 29, 2009, Respondent was granted full licensure.

08 NUR 219

4. On June 3, 2010, the Board issued Order Number 0000232, which Reprimanded Respondent and ordered her to complete education on preventing medical errors. The Board found that Respondent administered the incorrect blood type to a patient during a blood transfusion.

10 NUR 637

5. On May 22, 2012, the Board issued Order Number 0001588, which suspended Respondent's license for nine months and ordered her to complete education on nursing ethics. The Board found Respondent had taken a resident's \$500 gift card and used it for personal expenses.

6. On November 23, 2015, Respondent was granted full licensure.

Current Case

7. At all times relevant to this proceeding, Respondent was employed as the director of nursing at an assisted care facility located in Milwaukee, Wisconsin (Facility).

8. On August 8, 2021, a Facility staff member found eleven narcotic medication punch cards in Respondent's office desk drawer. The medication belonged to residents who were previously discharged or deceased, including a female patient born in 1949 (Patient A) and a female patient born in 1969 (Patient B). A Facility investigation found that five oxycodone pills were missing from Patient A's punch card and 15 oxycodone pills were missing from Patient B's punch card. The Facility's narcotic destruction log was also found in Respondent's office, and had not been updated since April 15, 2021.

9. Facility staff members interviewed Respondent as part of the investigation. The Respondent admitted that the narcotic medications were from residents that had been discharged and that she had taken them out of the locked disposal box. Respondent could not identify the last time that controlled substances had been destroyed.

10. On August 9, 2021, Respondent provided a urine sample for a drug test, which resulted positive for oxycodone. The results were sent out for final review and ultimately resulted negative on August 12, 2021.

11. On August 13, 2021, Respondent was terminated from her position at the Facility.

12. Respondent denies taking or using any of the medication for her own personal use.

13. 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 dispensed a drug other than in the course of legitimate practice or as otherwise prohibited by law within the meaning of Wis. Admin. Code § N 7.03(8)(b).

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).

4. 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. This Final Decision and Order (Order) is effective on the date of its signing.

3. Respondent's license to practice as a registered nurse in the state of Wisconsin (license number 141810-30), and Respondent's right to renew such license, is **SUSPENDED** as follows:

SUSPENSION

A.1. The license of Respondent to practice as a nurse in the state of Wisconsin is **SUSPENDED** for an indefinite period.

A.2. The privilege of Respondent to practice as a nurse in the state of Wisconsin under the authority of another state's license pursuant to the Nurse Licensure Compact (Compact) is also **SUSPENDED** for an indefinite period.

STAY OF SUSPENSION

B.1. The suspension of Respondent's Wisconsin nursing license, and the right to renew such license, may be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent is in compliance with the provisions of Sections C and D of this Order, for a period of at least six (6) months.

B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in violation of any provision of this Order. The Board or

its designee may, in conjunction with any removal of any stay, prohibit Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.

- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
- (a) Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services (Department) pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, drug treatment with a treater acceptable to the Board or its designee (Treater). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and 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 (See D.1., below). If Treater is unable or unwilling to serve as required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by D.5., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collection sites, current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the

Department to: (a) obtain all specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation with Treater, treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous meetings or an approved equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified by the speaker or chair and reported quarterly to Treater and the Department Monitor.

Sobriety

- C.8. 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 history and the existence and nature of this Order to the practitioner prior to the practitioner prescribing the controlled substance. Respondent shall, at the time the controlled substance is prescribed, 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, Treater and 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.
- C.9. 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) which may mask consumption of controlled substances, 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 C.11. 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.
- C.10. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within twenty-four (24) hours of administration, fill, or refill 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 the prescription to the Department Monitor.

Drug Screens

- C.11. Respondent shall enroll and begin participation in a drug monitoring program which is approved by the Department (Approved Program).
- C.12. At the time Respondent enrolls in the Approved Program, Respondent shall review all rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug monitoring established by the Approved Program is a violation of this Order. The requirements shall include:
- (a) Contact with the Approved Program as directed on a daily basis, including vacations, weekends, and holidays.
 - (b) Production of a urine, blood, sweat, nail, hair, saliva, or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.13. 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, and/or Respondent may petition for modification of testing frequency per paragraph D.5.
- C.14. If any urine, blood, sweat, nail, hair, saliva, or other specimen is positive or suspected positive for any controlled substances, 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.
- C.15. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional specimens; (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.
- C.16. All confirmed positive test results shall be presumed valid. Respondent must prove, by a preponderance of the evidence, an error in collection, testing, fault in the chain of custody, or other valid defense.
- C.17. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- C.18. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances.

- C.19. Respondent shall practice only under the direct supervision of a licensed nurse or other licensed health care professional, approved by the Board or its designee, who has received a copy of this Order.
- C.20. Respondent shall practice only in a work setting pre-approved by the Board or its designee. Requests for pre-approval must be accompanied by a current job description, name and contact information of the direct supervisor, and written acknowledgment from the employer that a copy of this Order and any subsequent orders modifying this original Order have been received and that the restrictions will be accommodated.
- C.21. Respondent may not work as a nurse in the following settings: home health care, hospice, pool nursing, assisted living, agency, skilled nursing facilities, or in a correctional setting.
- C.22. Respondent shall provide a copy of this Order, and any subsequent order modifying this original Order, immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future. Within fourteen (14) days from the date of this Order, including any subsequent order modifying this original Order, Respondent shall provide the Department Monitor with written acknowledgment from the employer that a copy of this Order, and any subsequent order modifying this original Order, have been received and that the restrictions will be accommodated.
- C.23. It is Respondent's responsibility to arrange for quarterly written reports to be submitted to the Department Monitor from his or her supervisor at each setting in which Respondent practiced nursing in the previous quarter. These reports shall be submitted as directed by the Department Monitor, and shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that quarter. If a report indicates less than satisfactory performance, the Board may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.
- C.24. Respondent shall report to the Board any change of employment status, residence, mailing address, email address, or telephone number within five (5) days of the date of a change. This report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

MISCELLANEOUS
Department Monitor

- D.1. Any requests, petitions, reports, payment 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>.

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of Treater, the treatment facility, the Approved Program, or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.
- D.3. Respondent shall submit self-reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. The reports shall include a summary of Respondent's compliance with the terms and conditions of the Order in the previous quarter, Respondent's current mailing address, email address, and home telephone number. The self-report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

Change of Treater or Approved Program by Board

- D.4. If the Board, or its designee, determines Treater or the Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board, or its designee, may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent 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 the initial stay of the suspension. Any petition for modification shall be accompanied by a written recommendation from Respondent'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 Respondent shall not have a right to any further hearings or proceedings on the denial.
- D.6. Respondent may petition the Board for termination of this Order after demonstrating five (5) years of successful compliance with all terms, including at least 600 hours of approved nursing practice each year. The Board may, on its own motion, grant a full Wisconsin license at any time.

Costs of Compliance

D.7. Respondent 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.

Costs of Proceeding

D.8. Within 120 days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$2,271.00.

Additional Discipline

D.9. In addition to any other action authorized by this Order or law, the Board, in its discretion, may impose additional limitations or pursue separate disciplinary action for violation of any term of this Order.

D.10. 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.

WISCONSIN BOARD OF NURSING

By: Aloysius Rohmeyer DSPS Chief Legal Counsel, September 20, 2023
A Member of the Board Delegatee Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

NICOLE E. HOLTON, R.N.,
RESPONDENT.

:
:
:
:
:
:

STIPULATION

ORDER 0008784

Division of Legal Services and Compliance Case No. 21 NUR 513

Nicole E. Holton, 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. 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.

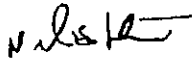
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by 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, 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.

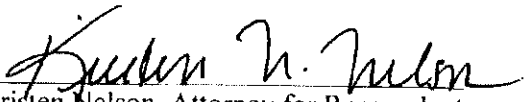
9. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.



Nicole E. Holton, R.N., Respondent
Milwaukee, WI 53222
License No. 141810-30

09 / 11 / 2023

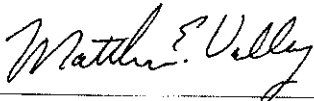
Date



Kristen Nelson, Attorney for Respondent
Gimbel Reilly Guerin Brown, LLP
330 E. Kilbourn Ave., Ste. 1170
Milwaukee, WI 53202

9/11/23

Date



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

9/13/2023

Date