The attached are Primary Source Documents of the Idaho Board of Nursing for:

MARGARET KIRBY
PN-13838

Idaho Board of Nursing – PO Box 83720 – Boise, Idaho 83720-0061 – (208) 334-3110
July 26, 2010

Margaret Kirby
2140 McPherson
Grace ID 83241

Dear Ms. Kirby:

During their meeting on July 22-23, 2010, the Board of Nursing members took action to accept the Findings of Fact, Conclusions of Law and Final Order in which your practical nurse license, PN-13838 was revoked. During the period of revocation, you may not practice nursing in the State of Idaho. Enclosed is a copy of the Final Order.

The Order became effective July 23, 2010. Please be advised that you may not apply for reinstatement until you have satisfied all terms and conditions of the April 26, 2010 Minute Entry and Order in Bannock County Case No. CR-2009-20215-FE.

Sincerely,

SANDRA EVANS, MAEd, RN
Executive Director

SE:the enclosure
BEFORE THE IDAHO STATE BOARD OF NURSING

In the Matter of the License of: MARGARET KIRBY,
License No. PN-13838, Respondent. ) Case No. BON 09-084

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

Having reviewed the documents and correspondence contained in the administrative file in this matter, the Idaho State Board of Nursing (hereinafter the “Board”) hereby enters the following Findings of Fact, Conclusions of Law, and Final Order:

FINDINGS OF FACT

1. Margaret Kirby (“Respondent”) is licensed by the Idaho State Board of Nursing under License No. PN-13838 to engage in the practice of nursing in the State of Idaho.

2. On or about November 11, 2009, the Board received information that Respondent had been calling in hydrocodone prescriptions for inmates and then substituting the pills.

3. On November 18, 2009, a criminal complaint was filed charging Respondent with two (2) counts of Obtaining a Controlled Substance by Deception, Misrepresentation, Fraud or Forgery, a felony, in violation of Idaho Code § 37-2734(A)(3), and two (2) counts of Adulterating a Drug, a felony, in violation of Idaho Code § 37-117(1)(A) in Bannock County Case No. CR-2009-20215-FE. A true and correct copy of the criminal complaint is attached hereto as Exhibit A.

4. On March 8, 2010, Respondent pled guilty to one (1) count of Obtaining a Controlled Substance by Deception, Misrepresentation, Fraud or Forgery, a felony, in violation of Idaho Code § 37-2734(A)(3), and one (1) count of Adulterating a Drug, a felony, in violation of Idaho Code § 37-117(1)(A) in Bannock County Case No. CR-
2009-20215-FE. The remaining counts were dismissed. Pursuant to her guilty plea, a Minute Entry and Order was entered on April 26, 2010, placing Respondent on probation for four (4) years. A true and correct copy of the Minute Entry and Order is attached hereto as Exhibit B.

4. On May 13, 2010, Respondent voluntarily surrendered her nursing license. In the course of voluntarily surrendering her license, Respondent did not admit that she violated any of the Board’s laws or rules. She did, however, acknowledge that the Board has sufficient evidence from which it might find and conclude that such a violation occurred. She also waived her rights to a hearing, and she consented to the Board entering an order accepting her voluntary surrender and revoking or otherwise disciplining her license as the Board deemed appropriate in its discretion. A true and correct copy of the voluntary surrender form signed by Respondent is attached hereto as Exhibit C.

5. Respondent knowingly and freely waived his/her right to a hearing, and waived all rights granted to Respondent pursuant to the Administrative Procedures Act, chapter 52, title 67, Idaho Code.

CONCLUSIONS OF LAW

1. As a licensed nurse in the State of Idaho, Respondent is subject to the jurisdiction of the Board and to the provisions of title 54, chapter 14, Idaho Code, and the rules and regulations promulgated by the Board thereunder.

2. The allegations in the complaint, if proven, would constitute violations of the Nurse Practice Act and constitute grounds for revocation or suspension of Respondent’s license to practice nursing pursuant to Idaho Code § 54-1413, specifically:
   a. Idaho Code § 54-1413(1)(d) and Board Rule (IDAPA 23.01.01) 100.05 (gross negligence or recklessness in performing nursing functions);
   b. Idaho Code § 54-1413(1)(g) and Board Rule 100.08 (a nurse shall not violate the Board’s laws, rules or standards of conduct and practice);
c. Idaho Code § 54-1413(1)(h) and Board Rule 100.09 (a nurse shall not engage in conduct of a character likely to deceive, defraud or endanger patients or the public);

d. Board Rule 101.04.d (a nurse shall act to safeguard the patient from the incompetent practice, verbal or physical abusive acts or illegal practice of any person);

e. Board Rule 101.04.e (a nurse shall not obtain, possess, furnish or administer prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs); and

f. Board Rule 101.05.f (a nurse shall respect the property of the patient and employer and shall not take or divert equipment, materials, property, or drugs without prior consent or authorization).

3. Pursuant to Idaho Code § 54-1413(3)(a), Respondent’s voluntary surrender of his license empowers the Board, without a hearing, to accept Respondent’s voluntary surrender and to revoke or suspend Respondent’s license and/or impose such conditions, limitations, or restrictions on her license as the Board in its discretion may deem appropriate.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause being shown, it is hereby ordered that:

1. The Board accepts the voluntary surrender of License No. PN-13838 issued to Respondent Margaret Kirby.

2. License No. PN-13838 issued to Respondent, Margaret Kirby is hereby:

   X Revoked: Respondent may not apply for reinstatement until she has satisfied all terms and conditions of the April 26, 2010, Minute Entry and Order in Bannock County Case No. CR-2009-20215-FE.

///
Suspended: ____ days ____ year(s) ____ indefinitely.

Respondent’s license shall be a single-state license during the term of suspension and Respondent shall not be eligible to practice on the Compact privilege in any other state participating in the Nurse Licensure Compact with the State of Idaho.

3. At such time as Respondent requests reinstatement of licensure, she shall comply with the requirements of Idaho Code § 54-1411(3). Respondent shall further comply with the provisions of IDAPA 23.01.01, Sections 61.04 and 120, as applicable. This will include, but is not limited to, providing the following information to the Board:

a. Documentation that she has been released from and successfully completed her term of probation in Bannock County Case No. CR-2009-20215-FE.

b. Evidence of abstinence from the use of non-medically prescribed drugs and alcohol;

c. Documentation that she is rehabilitated and able to practice nursing safely and competently by submitting:

i. A comprehensive drug/alcohol evaluation completed by a qualified health care provider at the time of application for reinstatement.

ii. A detailed summary of employment since licensure revocation or suspension; and

iii. Documentation of activities engaged in to address drug/alcohol issues, to include documentation of an active recovery program;

d. Any other information requested deemed necessary by the Board in its discretion to demonstrate Respondent’s fitness to practice nursing.

4. The Board reserves the right to assess investigative costs incurred in this matter as a condition of reinstatement, and to impose such other conditions upon Respondent’s reinstated license as the Board may deem appropriate in its discretion.

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This order is effective immediately.

DATED this 23 day of July, 2010.

IDAHO STATE BOARD OF NURSING

By

Susan Odom, Ph.D., R.N.
Chair

NOTICE OF DUE PROCESS RIGHTS

NOTE: THIS NOTICE IS PROVIDED SOLEY FOR COMPLIANCE WITH IDAHO CODE § 67-5248, AND IS NOT INTENDED TO REINSTATE ANY RIGHTS PREVIOUSLY WAIVED BY RESPONDENT.

This is a final order of the Board. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the issuance date of this order. The Board will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

a. A hearing was held,
b. The final Board action was taken,
c. The party seeking review of the order, resides, or
d. The real property or personal property that was the subject of the Board action is located.

An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of July, 2010, I caused to be served a true and correct copy of the foregoing by the following method to:

Margaret Kirby
2140 McPherson
Grace, ID 83241

☐ U.S. Mail
☐ Hand Delivery
☒ Certified Mail, Return Receipt Requested
☐ Overnight Mail
☐ Facsimile: __________________________
☐ Statehouse Mail

Karin Magnelli
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

☐ U.S. Mail
☐ Hand Delivery
☐ Certified Mail, Return Receipt Requested
☐ Overnight Mail
☐ Facsimile: __________________________
☒ Statehouse Mail

Linda Coley
Management Assistant
Idaho Board of Nursing

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER - 6
IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

MARGARET ROBINSON KIRBY,

03/10/70

Defendant.

Personally appeared before me this 18 day of November, 2009, VIC A. PEARSON in the County of Bannock, who, first being duly sworn, complains of MARGARET ROBINSON KIRBY and charges the defendant with the public offense of TWO COUNTS OBTAINING A CONTROLLED SUBSTANCE, BY MISREPRESENTATION, FRAUD, FORGERY, DECEPTION, OR SUBTERFUGE, Idaho Code §37-2734(a)(3) and TWO COUNTS ADULTERATING A DRUG, Idaho Code §37-117, committed as follows, to-wit:
COUNT I
OBTAINING A CONTROLLED SUBSTANCE, BY MISREPRESENTATION, FRAUD, FORGERY, DECEPTION, OR SUBTERFUGE

That the said MARGARET ROBINSON KIRBY, in the County of Bannock, State of Idaho, on or about the 24th day of September, 2009, did obtain HYDROCODONE from WALMART PHARMACY, by fraud, forgery, misrepresentation, deception or subterfuge.

COUNT II
OBTAINING A CONTROLLED SUBSTANCE, BY MISREPRESENTATION, FRAUD, FORGERY, DECEPTION, OR SUBTERFUGE

That the said MARGARET ROBINSON KIRBY, in the County of Bannock, State of Idaho, on or about the 30th day of October, 2009, did obtain HYDROCODONE from WALMART PHARMACY, by fraud, forgery, misrepresentation, deception or subterfuge.

COUNT III
ADULTERATING A DRUG

That the said MARGARET ROBINSON KIRBY, in the County of Bannock, State of Idaho, on or between the 31st day October and the 1st day of November, 2009, did intentionally adulterate a drug that was held for sale or distribution and/or that was to be administered or dispensed.

COUNT IV
ADULTERATING A DRUG

That the said MARGARET ROBINSON KIRBY, in the County of Bannock, State of Idaho, on or between the 31st day October and the 1st day of November, 2009, did intentionally adulterate a drug that was held for sale or distribution and/or that was to be administered or dispensed.
All of which is contrary to the form of the statute in said State made and
provided and against the peace and dignity of the State of Idaho.

Said complainant prays that a Summons be issued for the said MARGARET
ROBINSON KIRBY directing the defendant to appear and answer to said charge that the
defendant may be dealt with according to law.

______________________________
VIC A. PEARSON

SUBSCRIBED AND SWORN to before me this 18th day of November,
2009.

______________________________
MAGISTRATE

STATE OF IDAHO    }  ss.
County of Bannock

I hereby certify that the foregoing is a full, true and
correct copy of an instrument as the same now
remains on file and of record in my office,
WITNESS my hand and official seal hereto affixed
this 24th day of May 2010.

DALE HATCH, CLERK OF THE DISTRICT COURT,
EX OFFICIO AUDITOR AND RECORDER.
By Deputy ____________________________

Exhibit A   Page 3 of 3
IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

STATE OF IDAHO, Plaintiff,  

vs.  

MARGARET R KIRBY, Defendant.  

Case No: CR-2009-0020215-FE

MINUTE ENTRY & ORDER

The above named Defendant appeared in Court on the 26th day of April, 2010, with her counsel, Ian Service, for sentencing. Ian Service, Bannock County Deputy Prosecuting Attorney, appeared on behalf of the State of Idaho. Stephanie Morse was the Court Reporter.

The Defendant having heretofore on the 8th day of March, 2010 entered a plea of GUILTY to the charge of 1 COUNT OBTAINING A CONTROLLED SUBSTANCE BY MISREPRESENTATION, FRAUD, FORGERY, DECEPTION, OR SUBTERFUGE, IDAHO CODE §37-2734(A)(3) AND 1 COUNT ADULTERATING A DRUG, IDAHO CODE §37-117; a pre-sentence investigation report having been
ordered and received, the Defendant and counsel were given the opportunity to make corrections to the report; the Court having heard comments and recommendations from respective counsel and being fully advised in the premises,

NOW, THEREFORE, IT IS THE JUDGMENT of this Court that the Defendant be and he is herewith sentenced to the custody of the Idaho Department of Corrections pursuant to I.C. 19-2513, for a FIXED TERM OF TWO (2) YEARS and a SUBSEQUENT INDETERMINATE TERM OF TWO (2) YEARS (1 COUNT OBTAINING A CONTROLLED SUBSTANCE BY MISREPRESENTATION, FRAUD, FORGERY, DECEPTION, OR SUBTERFUGE, IDAHO CODE §37-2734(A)(3)) and a FIXED TERM OF THREE (3) YEARS and a SUBSEQUENT INDETERMINATE TERM OF SEVEN (7) YEARS (1 COUNT ADULTERATING A DRUG, IDAHO CODE §37-117). Each Count to run CONCURRENT with each other. During the fixed term of confinement, said Defendant shall not be eligible for parole or discharge, credit or reduction of sentence for good conduct, except for meritorious service. Said Defendant may be considered for parole or discharge at any time during the indeterminate period of said sentence.

IT IS FURTHER ORDERED that the execution of said sentence be and the same is hereby SUSPENDED and the Defendant is hereby placed on probation to the Idaho State Board of Corrections for a period of FOUR (4) YEARS.

IT IS FURTHER ORDERED that in addition to the terms and conditions to be
imposed by the Board of Corrections, this Court imposes the following terms and conditions:

1. You shall comply with any and all directives of your probation officer.

2. You will pay the cost of supervision fee to the Department of Probation and Parole unless that fee is waived.

3. You may be required to maintain full-time employment or be enrolled in a full-time vocational or educational program. This term and condition will be left to the discretion of your probation officer.

4. You shall obey all city, county, state and federal laws and shall not commit any offense where a jail term or a fine of more than $50 could be imposed.

5. You will refrain from associating with any person designated by your probation officer or the Court as an inappropriate companion.

6. You will abstain from the use of alcohol and the use of drugs unless prescribed by a doctor. You will not have alcohol or drugs in your possession, your home or automobile.

7. During the term of your probation you will not frequent any bar or business establishment where the primary source of income is from the sale of alcohol.

8. You will submit to random testing of your blood, breath or urine at the request of any law enforcement official your probation officer or the Court.

9. You are to undertake such counseling and treatment as recommended by your probation officer.
10. The Defendant shall be responsible for the payment of restitution to the victim in this matter. The total amount of restitution due is $550.00. The name and address of each victim with the amount due each is as follows:

Drug Interdiction Unit
Attn: Tom Foltz
Bannock County Sheriff's Dept.
P.O. Box 4666
Pocatello, Idaho 83205

11. The Defendant shall reimburse the Sixth District Court Fund for maintenance of the Courts the sum of $750.00.

12. The Defendant shall pay the following:

<table>
<thead>
<tr>
<th>Statutory Court Costs</th>
<th>$50.00</th>
<th>Victim’s Comp. Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug Hotline Fee</td>
<td>$10.00</td>
<td></td>
</tr>
<tr>
<td>Fine (Count 1)</td>
<td>$2,500</td>
<td></td>
</tr>
<tr>
<td>Fine (Count 2)</td>
<td>$2,500</td>
<td></td>
</tr>
</tbody>
</table>

Payments shall commence on the 5th day of June, 2010, at the rate of $50 per month.

PAYMENTS ARE TO BE MADE AT THE OFFICE OF BONDS & FINES, BANNOCK COUNTY COURTHOUSE, POCATELLO, IDAHO 83201.

13. Should the Defendant fail to pay restitution or other court-ordered financial obligations before the expiration of probation, the term of probation will be extended, without further order of the Court, until such time as the Defendant has
COMPLETED PAYMENT OF SAID COURT-ORDERED OBLIGATIONS.

14. Your probation officer will be granted ONE HUNDRED TWENTY (120) DAYS of discretionary jail time.

15. Your probation officer will have THIRTY (30) HOURS of discretionary community service to use for any violation of your terms of probation.

16. You will be required to perform ONE HUNDRED TWENTY (120) HOURS of community service.

17. You shall have only one primary care physician and that physician will be the only one to prescribe any medication for you.

18. You will submit to random searches of your property by the probation officer without a search warrant.

19. You shall not possess any weapons of any kind during the term of your probation.

20. The Defendant shall not leave the State of Idaho or the assigned district without first obtaining written permission of Defendant’s probation officer. The assigned district consists of the following counties: Bannock, Caribou, Franklin, Bear Lake, Oneida and Power County. If the Defendant leaves the State of Idaho and/or the assigned district with or without permission the Defendant does hereby waive extradition to the State of Idaho and will not contest any effort to return Defendant to the State of Idaho.

DEFENDANT IS HEREWITH ADVISED THAT VIOLATION OF ANY OF THE
TERMS AND CONDITIONS SET FORTH HEREIN, THOSE SET FORTH IN THE PROBATION AGREEMENT ENTERED INTO WITH THE DEPT. OF CORRECTIONS AND ANY CONDITIONS SET FORTH IN ANY ORDER FOR WORK RELEASE GRANTED THE DEFENDANT SHALL BE CONSIDERED BY THE COURT AS A VIOLATION OF HER PROBATION.

IT IS FURTHER ORDERED that if the Defendant lives up to all of the terms and conditions of her probation, the provisions of I.C. 19-2604(1) shall apply. However, in the event, the Defendant violates any of the terms and conditions of her probation, she will be brought back into Court and the sentence heretofore suspended will be reinstated.

IT IS FURTHER ORDERED that the pre-sentence investigation report shall be sealed by Court order, and thereafter cannot be opened without a Court order authorizing release of the report or parts thereof.

IT IS FURTHER ORDERED that any surety, cash, or property bond posted, if any, is hereby EXONERATED.

Defendant is herewith advised that in the event said Defendant desires to appeal the foregoing sentence, said appeal must be filed with the Idaho Supreme Court no later than forty-two (42) days from the date said sentence is imposed.
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of April, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bannock County Prosecutor
- U.S. Mail
- E-Mail
- Courthouse Box
- Fax: 236-7288

Ron Bird
- U.S. Mail
- E-Mail
- Courthouse Box
- Fax:

Probation & Parole
- U.S. Mail
- E-Mail
- Courthouse Box
- Fax: 237-2624

Bannock County Sheriff
- U.S. Mail
- E-Mail
- Courthouse Box
- Fax:

Idaho State Police - BCI
- U.S. Mail
- E-Mail
- Courthouse Box
- Fax:

Case No. CR-2009-0020215-FE
MINUTE ENTRY & ORDER
Page 7 of 8
I, MARGARET KIRBY, hereby voluntarily surrender my license to practice nursing, License No. PN-13838, to the Idaho State Board of Nursing (the “Board”) and will immediately discontinue practicing as a nurse in the State of Idaho. By affixing my signature hereto, I acknowledge that:

1. I have been advised that, without my consent, no legal action can be taken against me except as allowed by the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code and the laws and rules governing the practice of nursing, Title 54, Chapter 14, Idaho Code.

2. I have been advised of and I understand the nature of the allegations against me.

3. I understand that I have the following rights, among others: the right to representation by legal counsel, the right to a formal hearing, to reasonable notice of such hearing, to present evidence and testimony on my behalf, to compel the testimony of witnesses, to cross-examine the witnesses against me, and the right to request reconsideration or to appeal this matter to district court. I waive all such rights afforded to me without further process as a resolution of any claims or allegations which might otherwise be brought against me by the Board.

4. I also waive the right to contest this surrender and the right to challenge the Board for bias in any subsequent proceedings concerning this matter.

5. I understand that upon acceptance by the Board of the voluntary surrender of my license to practice as a nurse, the Board of Nursing will enter an order pursuant to Idaho Code §54-1413 revoking, suspending or otherwise disciplining my license to practice nursing. The Board’s Order may include a civil penalty and/or the imposition of costs and attorney fees incurred by the Board in its investigation and prosecution of any claims or allegations against me. I hereby consent to the imposition of such discipline.

6. In surrendering my license to practice nursing for imposition of discipline by the Board, I am not making any admissions; however, I agree that the allegations against me, if the same had been proven true in a disciplinary hearing would constitute grounds for the imposition of a disciplinary action against me.

7. I understand that by surrendering my license to practice nursing, I am also surrendering all of the privileges associated with that licensure, until such time as I am again properly licensed.

8. I understand that to obtain a license to practice nursing in the state of Idaho, I must re-apply to the Idaho State Board of Nursing pursuant to the provisions of Title 54, Chapter 14, Idaho Code and all applicable rules and orders entered by the Board.

9. I understand and agree that any decision regarding reinstatement of my license is a discretionary decision for the Board. I understand and agree that the Board may rely on factors set forth in this document or other than those set forth in this document as grounds for denial of a petition for reinstatement.

10. I agree that there will be no rebate or refund, either in full or in part, of any sums previously made by me in connection with my licensure, including but not limited to payments of license application or renewal fees.

Name of Licensee: Margaret Kirby
License No.: PN-13838
Address: 2140 McPherson, Grace, ID 83241
Signature of Licensee: Margaret Kirby
Date: 5-13-10
Signature of Witness: [Signature]
Date: 5/13/10

Exhibit C
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