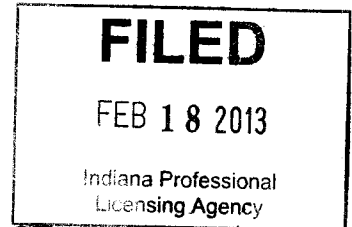


BEFORE THE INDIANA STATE
BOARD OF NURSING
CAUSE NUMBER: 2012 NB 400

IN THE MATTER OF THE LICENSE OF:)
)
TONEY LEON MCELROY, L.P.N.,)
)
LICENSE NO: 27038076A)



**FINDINGS OF FACT, ULTIMATE FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

The Indiana State Board of Nursing ("Board") held a pre-hearing/settlement conference on December 6, 2012, in the Auditorium of the Indiana State Government Center South, 302 West Washington Street, Indianapolis, Indiana 46204, concerning an Administrative Complaint ("Complaint") filed against Toney Leon McElroy, L.P.N. ("Respondent"), on September 26, 2012.

The State of Indiana ("Petitioner") was represented by Joshua W. Timmons, Deputy Attorney General. Respondent did not appear in person or by counsel.

On or about October 29, 2012, the Indiana Professional Licensing Agency sent notice to Respondent's last reported address informing Respondent of the date, time, and place of the Settlement/Pre-Hearing Conference scheduled for December 6, 2012.

A Notice of Proposed Default Order was issued by the Board on December 6, 2012, after Respondent failed to appear for the scheduled Settlement/Pre-Hearing Conference. The Notice of Proposed Default Order was sent via certified mail to Respondent on or about December 19, 2012. Respondent did not respond to the Notice of Proposed Default Order within the time specified by Indiana law.

The Board, after considering the evidence presented and taking official notice of its file in this matter, by a vote of 7-0-0, finds Respondent to be in DEFAULT. The Board, by another

vote of 7-0-0, issues the following Findings of Fact, Ultimate Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Respondent is a Licensed Practical Nurse ("LPN") in the State of Indiana having been issued license number 270382076A on February 1, 1994. Respondent's address on file with the Indiana Professional Licensing Agency is 874 County Road 1350 North, Carmi, Illinois 62821.
2. On or around May 13, 2008, Respondent began employment as a LPN at Golden Living Center, Woodbridge ("Woodbridge") located in Evansville, Indiana.
3. On or around November 10, 2008, Respondent's employment with Woodbridge was terminated for allegations of abuse or neglect. Subsequent investigation by the Indiana Office of the Attorney General could not substantiate the allegations. (Respondent failed to admit the termination on his 2010 license renewal and was disciplined in Cause Number 2011 NB 014.)
4. On or about January 12, 2009, Respondent applied for employment as a LPN at Pine Haven Health and Rehabilitation ("Pine Haven") located in Evansville, Indiana. On his application for employment Respondent stated his reason for leaving Woodbridge was "Personal Conflict" rather than his termination.
5. On or about February 3, 2009, Respondent was hired as a LPN at Pine Haven.
6. On or about September 8, 2011, Respondent's random urine drug screen ("UDS") was positive for methamphetamines, amphetamines, and marijuana.
7. On or about October 18, 2011, Respondent contacted the Indiana State Nurses Assistance Program ("ISNAP").

8. On or about October 26, 2011, Donna Lilly, L.C.S.W., C.A.C., diagnosed Respondent with cannabis and amphetamine abuse.

9. On or about December 8, 2011, Respondent entered into a one year recovery monitoring agreement ("RMA").

10. On or about June 5, 2012, Respondent was partially compliant with his RMA due to a missing therapist report.

11. In or about December 2012, Respondent successfully completed his ISNAP RMA.

ULTIMATE FINDINGS OF FACT

1. Respondent is in violation of one (1) count of Ind. Code § 25-1-9-4(a)(1)(B).

CONCLUSIONS OF LAW

Respondent's violation is cause for disciplinary sanctions which may be imposed singly or in combination such as censure, a letter of reprimand, probation, suspension, or revocation and a fine up to the amount of one thousand dollars (\$1,000) per violation as detailed in Ind. Code § 25-1-9-9.

ORDER

Based upon the above Findings of Fact, the Board issues the following Order:

1. Respondent, within ninety (90) days of the Final Order, shall pay a **FINE** in the amount of **TWO HUNDRED FIFTY DOLLARS (\$250.00)** payable to the Indiana Professional Licensing Agency. The fine, payable by check or money order, should be sent to:

Indiana Professional Licensing Agency
Attn: Nursing, Group 2
402 West Washington Street, Room W072
Indianapolis, Indiana 46204

2. Respondent shall, within ninety (90) days of the Final Order, pursuant to Ind. Code § 4-6-14-10(b), pay a **FEE of FIVE DOLLARS (\$5.00)** to be deposited into the Health Records and Personal Identifying Information Protection Trust Fund. This fee shall be paid by check or money order payable to the State of Indiana, and submitted to the following address:

Office of the Indiana Attorney General
Attn: Katie Lee
302 West Washington Street, 5th Floor
Indianapolis, IN 46204

3. Respondent shall, within ninety (90) days of the Final Order, pay **COSTS** in the amount of **ONE HUNDRED SEVENTY-ONE DOLLARS AND SIXTY CENTS (\$171.60)** payable to the Indiana Professional Licensing Agency. The costs, payable by check or money order, should be sent to:

Indiana Professional Licensing Agency
Attn: Nursing, Group 2
402 West Washington Street, Room W072
Indianapolis, Indiana 46204

4. Respondent's violation of this Final Order or any non-compliance with the statutes or regulations regarding the practice of nursing may result in Petitioner requesting a summary suspension of Respondent's license, an Order to Show Cause as may be issued by the Board, or a new cause of action pursuant to Ind. Code § 25-1-9-4, any or all of which could lead to additional sanctions, up to and including a revocation of Respondent's license.

CERTIFICATE OF SERVICE

I certify that a copy of the "Findings of Fact, Ultimate Findings of Fact, Conclusions of Law and Order" has been duly served upon:

Toney Leon McElroy
874 County Road 1350 North
Carmi, Illinois 62821
Service by U.S. Mail

Joshua W. Timmons
Deputy Attorney General
Office of the Attorney General
Indiana Government Center South
302 West Washington Street, Fifth Floor
Indianapolis, Indiana 46204-2770
josh.timmons@atg.in.gov
Service by Email

2-18-13
Date

Lia Chapman
First/Last Name of Person Mailing

Indiana State Board of Nursing
Indiana Government Center South
402 West Washington St., Room W072
Indianapolis, IN 46204
Phone: 317-234-2043
Fax: 317-233-4236
Email: pla2@pla.in.gov

Explanation of Service Methods

Personal Service: by delivering a true copy of the aforesaid document(s) personally.

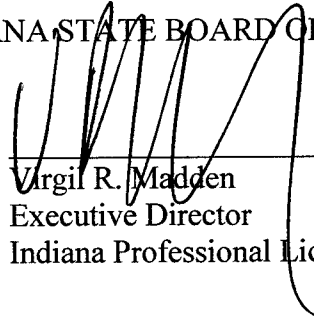
Service by U.S. Mail: by serving a true copy of the aforesaid document(s) by First Class U.S. Mail, postage prepaid.

Service by Email: by sending a true copy of the aforesaid document(s) to the individual's electronic mail address.

SO ORDERED this 18 day of February 2013.

INDIANA STATE BOARD OF NURSING

By: _____


Virgil R. Madden
Executive Director
Indiana Professional Licensing Agency