

BEFORE THE INDIANA STATE
BOARD OF NURSING
CAUSE NUMBER: 2019 NB 0069

IN THE MATTER OF THE LICENSE OF:)

KRISTOPHER J. NOVAK, L.P.N.,)

LICENSE NO: 27071441A)

FILED

NOV 30 2020

Indiana Professional
Licensing Agency

FINAL ORDER ACCEPTING PROPOSED SETTLEMENT AGREEMENT

The State of Indiana ("Petitioner"), by Natalie Stidd, Deputy Attorney General, and Kristopher J. Novak, L.P.N. ("Respondent"), personally and by counsel Todd Ess executed a Proposed Settlement Agreement ("Agreement") in disposition of all issues raised in the Administrative Complaint filed with the Indiana State Board of Nursing ("Board") in this cause on February 26, 2019. This Agreement was submitted to the Board for its consideration on August 28, 2020.

The Board, after reviewing the Agreement at its September 17, 2020, meeting held via WebEx Audio and Video Conferencing through the Indiana Professional Licensing Agency, now finds it has been entered into fairly and without fraud, duress, or undue influence, and is fair and equitable between the parties. The Board hereby incorporates the Agreement, which is attached hereto and incorporated herein as "**Exhibit A**," and approves and adopts in full the Agreement as a resolution of this matter. The Board approved this Agreement by a vote of 8-0-0. Incorporated into the Agreement was the consensus of both parties to Stipulated Facts, Stipulated Conclusions of Law, and Agreed Disposition. The Stipulated Conclusions of Law address all of the allegations raised in the Administrative Complaint filed on February 26, 2019, which charged violations of Ind. Code § 25-1-9-4(a)(1)(A), Ind. Code § 25-1-9-4(a)(1)(B), Ind. Code § 25-1-9-4(a)(4)(A), and Ind. Code § 25-1-9-4(a)(3) for unprofessional conduct pursuant to 848 IAC 2-3-3(1),(6).

WHEREFORE, the Board hereby accepts and approves the Agreement settling all matters in this case consistent with the terms of the Agreement between the parties, and Respondent is hereby ORDERED to abide by all the terms of the Agreement.

WHEREFORE, by the Board's Acceptance of the Agreement, and upon the issuance of this Order, Respondent's license will immediately be subject to Indefinite Suspension and its terms and conditions as set forth in the Agreement.

SO ORDERED, this 30th day of November 2020.

INDIANA STATE BOARD OF NURSING

By: *Maureen Bennett*
for Kim Cooper
Board President
Indiana State Board of Nursing

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CERTIFICATE OF SERVICE

I certify that a copy of the "Final Order Accepting Proposed Settlement Agreement" has been duly served upon:

Kristopher Novak
7048 Canvasback Dr., Apt. 2313
Fishers, IN 46038
Service by U.S. Mail

Todd Ess
Brown Law Office, P.C.
6214 Broadway Street
Indianapolis, IN 46220
Service by U.S. Mail

Natalie R. Stidd
Deputy Attorney General
Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204-2770
natalie.stidd@atg.in.gov
Service by Email

11.30.2020
Date

Lisa Chapman
Lisa Chapman, Litigation Coordinator

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

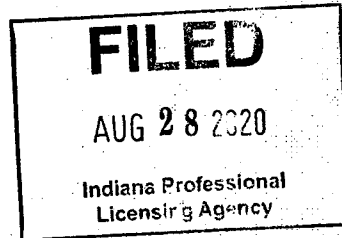
Personal Service: by delivering a true copy of the aforesaid document(s) personally.

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.

BEFORE THE INDIANA STATE
BOARD OF NURSING
CAUSE NO.: 2019 NB 0069

IN THE MATTER OF THE LICENSE OF)
KRISTOPHER J. NOVAK, L.P.N.)
LICENSE NO: 27071441A)



PROPOSED SETTLEMENT AGREEMENT

The State of Indiana ("Petitioner"), by Natalie Stidd, Deputy Attorney General, and Kristopher J. Novak, L.P.N. ("Respondent"), by Counsel Todd Ess, Brown Law, LLC, hereby execute this Proposed Settlement Agreement ("Agreement") as a proposed disposition of the Administrative Complaint filed in this cause on February 26, 2019. This Agreement is subject to the review and approval of the Indiana State Board of Nursing ("Board") pursuant to Ind. Code § 25-1-9 et seq. and the Administrative Orders and Procedures Act, Ind. Code ch. 4-21.5-3.

STIPULATED FACTS

1. Respondent is a Licensed Practical Nurse ("LPN") in the State of Indiana, having been granted License Number 27071441A on May 30, 2014, by the Indiana State Board of Nursing ("Board").
2. Respondent's address on file with the Board is 7048 Canvasback Dr., Apt. 2313, Fishers, Indiana 46038.

Criminal History

3. On April 13, 2015, Respondent was charged in Carmel City Court, under cause number 29H01-1504-CM-000567, with one (1) count of driving while suspended, a Class A Misdemeanor.

4. On July 20, 2015, Respondent plead guilty to one (1) count of driving while suspended, a Class A Misdemeanor, under cause number 29H01-1504-CM-000567. He was fined \$6.50 and ordered to pay costs of \$183.50.

5. On October 29, 2015, Respondent was charged in Carmel City Court, under cause number 29H01-1510-CM-001432, with one (1) count of Driving While Suspended requires a knowing violation and a prior conviction of Sec. 1, a Class A Misdemeanor.

6. On January 25, 2016, Respondent entered into a plea agreement wherein he pled guilty to one (1) count of Driving While Suspended requires a knowing violation and a prior conviction of Sec. 1, a Class A Misdemeanor, under cause number 29H01-1510-CM-001432. He was sentenced to ten (10) days in the Hamilton County Jail with two (2) days credit, and fined \$200.

Carmel Senior Living Center

7. On January 9, 2017, Respondent began his employment as an L.P.N. with Carmel Senior Living Center ("CSLC"), a long term care facility located in Carmel, Indiana.

8. On May 22, 2017, Respondent received a coaching form for failing to adhere to CSLC's core values, and a lack of professionalism.

9. During the week of June 26, 2017, Resident M.B. informed Rita Shrew, Executive Director for CSLC, that Respondent had been in her room and taken her Tramadol.

10. During an interview with Shrew, Respondent stated "M.B. wasn't in her apartment so how did she know [I] was in there removing medication."

11. On July 2, 2017, J.C. alleged Respondent had taken fifteen (15) Vicodin from a prescription bottle in her room.

12. In a voluntary statement, dated July 3, 2017, Respondent admitted that he had been

in J.C.'s room but denied taking the medication.

13. On July 3, 2017, Respondent was suspended pending investigation regarding the missing medication.

14. On July 5, 2017, Respondent took a for cause drug screen, which tested negative.

15. On July 11, 2017, Respondent was terminated for poor job performance.

Heart of Cardon

16. On August 23, 2017, Respondent began his employment as an L.P.N. with Heart of Cardon, a long term care facility located in Carmel, Indiana.

17. On October 3, 2017, Respondent received a verbal warning for "failure to do medicare charting as scheduled."

18. On November 7, 2017, Respondent received a verbal warning for giving Resident C the wrong strength Norco.

19. On November 8, 2017, Respondent received a verbal warning for giving alprazolam to Resident M without an active physician's order.

20. Respondent received a "teachable moment" form for preparing medication in advance and leaving the medication on the medication cart unattended.

21. Respondent received another "teachable moment" form for signing out medication without administering it, and then telling the Resident who requested the medication that it was unavailable.

22. On January 5, 2018, Respondent took a reasonable suspicion drug screen that tested positive for hydrocodone. At the time, Respondent was unable to provide a prescription for the medication and he was terminated.

23. On January 16, 2018, the drug screen results were changed to negative, after

Respondent provided a prescription filed on August 9, 2016, for sixteen (16) Hydrocodone-Acetaminophen.

McGivney Health Care Center

24. On Respondent's employment application for McGivney Health Care Center ("McGivney"), he failed to list Carmel Senior Living Center as a place of employment.

25. On Respondent's employment application, he noted his reason for leaving Heart of Cardon as "personal".

26. On Respondent's employment application, when asked "Have you been discharged or asked to resign from a previous employer?" and "Have you ever been disciplined by a former employer?", Respondent answered "No".

27. On November 20, 2018, Respondent began his employment as an L.P.N. with McGivney Health Care Center.

28. On November 21, 2018, during Respondent's second shift, Respondent gave a Norco that was prescribed for Resident P.F. to Resident R.G. by accident.

29. On November 25, 2018, Cynthia Coleman, L.P.N. notified administration that someone had forged her signature on Resident D.W.'s Norco medication administration record ("MAR").

30. On or about November 26, 2018, Respondent was suspended pending investigation.

31. The investigation, completed by Debra Merchant, DON of McGivney, found the following:

- a. On November 24, 2018, at 7 P.M. an end of shift narcotic count was conducted by Coleman and Karen Decker, R.N. At that time Resident D.W. had fifteen tablets (15) of Norco;

- b. On November 24, 2018, at 11 P.M. an end of shift narcotic count was conducted by Decker and Kelly Everhart, L.P.N. At that time Resident D.W. had fifteen (15) tablets of Norco;
- c. On or about November 25, 2018, at 12 A.M. Respondent received the medication cart keys from Everhart. At that time, Resident D.W. had fifteen (15) tablets of Norco;
- d. On November 25, 2018, at 5:12 A.M., video footage showed Respondent removing narcotics from the narcotic box and signing them out with two (2) different pens;
- e. Respondent charted one (1) tablet of Norco as administered at 4:18 A.M.;
- f. On November 24, 2018, Resident D.W.'s MAR had one (1) Norco signed out at 4 P.M. using Coleman's signature; and
- g. On November 24, 2018, Resident D.W.'s MAR had one (1) Norco signed out at 8 P.M., which was one (1) hour after Coleman's shift had ended.

32. On November 26, 2018, Respondent took a for cause urine drug screen, which tested negative.

33. On December 7, 2018, Respondent was terminated for medication errors and suspected diversion.

IPLA Renewals

34. On Respondent's 2016 renewal form, he answered "No" to question number three (3), which asks "[s]ince you last renewed, and except for minor violations of traffic laws resulting in fines and arrests or convictions that have been expunged by a court, have you been arrested, entered into a diversion agreement, been convicted of, pled guilty to, or pled nolo contendere to

any offense, misdemeanor, or felony in any state?"

35. On Respondent's 2018 renewal form, he answered "No" to question number five (5), which asks "[s]ince you last renewed, have you ever been terminated, reprimanded, disciplined, or demoted in the scope of your practice as a Nurse or as another health care professional?"

STIPULATED CONCLUSIONS OF LAW

36. Respondent's conduct violates certain laws and rules regulating her profession and are cause for disciplinary sanctions, which may be imposed singularly or in combination, such as censure, letter of reprimand, probation, suspension, and permanent revocation, and the imposition of a fine in any amount up to \$1,000.00 per violation, all as available in accordance with Ind. Code § 25-1-9-9.

37. Respondent violated Ind. Code § 25-1-9-4(a)(1)(A) in that Respondent engaged in or knowingly cooperated in fraud or material deception in order to obtain a license to practice as evidenced by his answering "No" to question number three (3) on his 2016 license renewal application.

38. Respondent violated Ind. Code § 25-1-9-4(a)(1)(A) in that Respondent engaged in or knowingly cooperated in fraud or material deception in order to obtain a license to practice as evidenced by his answering "No" to question number five (5) on his 2018 license renewal application.

39. Respondent violated Ind. Code § 25-1-9-4(a)(1)(B) in that Respondent engaged in or knowingly cooperated in fraud or material deception in the course of professional services or activities as evidenced by his failure to report his termination and prior disciplines from former employers on his application for employment with McGivney Health Care Center.

40. Respondent violated Ind. Code § 25-1-9-4(a)(4)(3) in that Respondent has knowingly violated a state statute or rule, or federal statute or regulation, regulating the profession in question. Specifically, Respondent's conduct, as stipulated above, constitutes unsafe judgment and/or technical skills in providing nursing care in violation of 848 IAC 2-3-3(1), a rule regulating Respondent's profession.

41. Respondent violated Ind. Code § 25-1-9-4(a)(3) in that Respondent has knowingly violated a state statute or rule, or federal statute or regulation, regulating the profession in question. Specifically, Respondent's conduct, as stipulated above, constitutes falsifying, omitting, or destroying documentation of nursing actions on the official patient/client record, in violation of 848 IAC 2-3-3(6).

42. Respondent violated Ind. Code § 25-1-9-4(a)(4)(A) in that Respondent continued to practice as although he had become unfit to practice due to professional incompetence.

ADDITIONAL RELEVANT FACTORS

43. On September 30, 2019, Respondent was charged with three (3) level six (6) felonies under Hamilton County Cause 29D06-1909-F6008470, related to events that occurred while he was employed at McGivney. These charges, which remain pending at the time of the filing of this Agreement, include Obtaining a Controlled Substance by Fraud or Deceit, Furnishing False or Fraudulent Information, and Forgery.

44. On July 31, 2020, Respondent engaged in intake with the Indiana State Nurses Assistance Program ("ISNAP"), and it awaiting their recommendation at the time of the filing of this Agreement.

AGREED DISPOSITION

The agreement of the Parties as stated above establishes a sufficient factual and legal basis

for the imposition of discipline upon Respondent's nursing license.

WHEREAS, this matter is pending before the Board; and

WHEREAS, the Respondent, with counsel, and Petitioner wish to resolve this matter prior to a hearing and have reached this resolution.

The Parties hereby agree to the following:

1. The Board has jurisdiction over Respondent and the subject matter in this disciplinary action.
2. The parties execute this Agreement voluntarily.
3. Both parties voluntarily waive their rights to a public hearing on the Administrative Complaint and all other proceedings in this action to which either party may be entitled by law, including judicial review.
4. The Parties agree that the terms of this Agreement will resolve any and all pending claims or allegations relating to disciplinary action against Respondent's Indiana nursing license.
5. Respondent's license shall be placed on **INDEFINITE SUSPENSION** for not less than **SIX (6) MONTHS** of *full, complete and continuous compliance* with a Recovery Monitoring Agreement ("RMA") with ISNAP.
6. If it is determined that Respondent is not a candidate for monitoring through ISNAP, Respondent's license shall be placed on **INDEFINITE SUSPENSION** for not less than **SIX (6) MONTHS** from the date of this Board's Final Order Accepting this Agreement, and Respondent shall provide documentation from ISNAP that he was not a candidate for monitoring.
7. Respondent shall comply with the following **TERMS** and **CONDITIONS** while his license is on indefinite suspension, whether in an RMA or not:
 - a. Respondent shall keep the Board informed of his residential address, email

address, and telephone number at all times;

- b. Respondent shall, within ten (10) days, notify the Board of the resolution of his pending criminal charges;
- c. Respondent shall, within ten (10) days, notify the Board of any new criminal charges filed against him.

8. Prior to petitioning for reinstatement of his license, Respondent shall submit proof to the Board of completion of Eighteen (18) hours of Continuing Education, within the following categories:

- a. Not less than six (6) hours in Impaired Nursing;
- b. Not less than six (6) hours in Medication Administration;
- c. Not less than six (6) hours in Documentation.

All continuing education courses must be approved by the Board prior to being accepted for credit.

9. Prior to petitioning for reinstatement of his license, Respondent shall pay a FINE in the amount of ONE THOUSAND DOLLARS (\$1,000) to be paid to the order of the Indiana Professional Licensing Agency via check or money order, submitted to the following address:

Indiana Professional Licensing Agency
Attn: Indiana State Board of Nursing
402 W. Washington Street, Room W072
Indianapolis, IN 46204

The \$1,000 fine is in total for a fine of five hundred dollars (\$500) for each violation related to Respondent's fraud or material deception in renewing his license, specifically in 2016 and 2018.

10. Pursuant to Ind. Code § 4-6-14-10(b), Respondent shall 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 within ninety (90) days of the issuance of the Final Order in this matter, submitted to the following address:

Indiana Office of the Attorney General
Attn: Executive Assistant, Consumer Protection Division
302 West Washington Street, IGCS 5th Floor
Indianapolis, IN 46204

11. Any and all reports and documentation shall be sent to the following address or as otherwise directed by the Board:

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

12. Respondent has carefully read and examined this Agreement and fully understands its terms and that, subject to a Final Order issued by the Board, this Agreement is a final disposition of all matters and not subject to further review.

13. Respondent further understands that a violation of the Final Order, any non-compliance with the statutes or regulations regarding the practice of nursing, or any violation of this Agreement 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. A violation includes failing to comply with any terms or conditions of a RMA with ISNAP, if applicable.

14. The parties agree to the continuing jurisdiction of the Board and that the discipline agreed to, terms of discipline, and licensure status will apply even if the Board renews Respondent's license at a later date.

Kristopher J. Novak, L.P.N.
Kristopher J. Novak, L.P.N.
Respondent

8/27/2020
Date

Todd Ess, R.N., J.D.
Todd Ess, R.N., J.D.
Counsel for Respondent
Atty. No. 22842-49

8/28/2020
Date

Natalie R. Stidd
Natalie R. Stidd
Deputy Attorney General
Atty. No. 28081-55

August 28, 2020
Date

STATE OF Indiana)
COUNTY OF Hamilton) SS:

Before me a Notary Public for said County and State, personally appeared Kristopher J. Novak, L.P.N., first duly sworn by me upon his oath, says that the facts alleged in the foregoing instrument are true.

Signed and sealed this 27th day of August, 2020.

Tracy Michelle Price
Signature

Tracy Michelle Price
Printed

My Commission Expires:
County of Residence:

01/21/2023
Hamilton

