

BEFORE THE INDIANA STATE
BOARD OF NURSING
CAUSE NO: 2014 NB 057

IN THE MATTER OF THE LICENSE OF)
KIMBERLY JO SEBASTIAN, R.N.)
LICENSE NO: 28135998A)



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

The Indiana State Board of Nursing (“Board”) held an administrative hearing on June 19, 2014, in the Auditorium of the Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana 46204, regarding the Administrative Complaint filed against the Registered Nurse (“R.N.”) license of Kimberly Jo Sebastian (“Respondent”).

On or about April 2, 2014, the Indiana Professional Licensing Agency (“IPLA”) sent notice to Respondent’s last reported address informing Respondent of the date, time, and place of a Pre-Hearing Settlement Conference on April 17, 2014. Respondent did not appear in person or by counsel. The State of Indiana (“Petitioner”) was represented by David Fleischhacker, Deputy Attorney General. The Board then issued a notice of proposed default on May 7, 2014, which ordered Respondent to file a motion opposing a default order within seven (7) days of the notice. Respondent did not respond to the 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 5-0-0, finds Respondent to be in **DEFAULT**. The Board, by another vote of 5-0-0, issues the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Respondent is a Registered Nurse ("R.N.") in the State of Indiana having been issued license number 28135998A by examination in February 1997. Respondent's address on file with the Indiana Professional Licensing Agency is 14 Greenmont Road, P.O. Box 443, Stollings, West Virginia 25646.

2. On December 17, 1996, Respondent was charged in Bartholomew County, Indiana in Cause Number 03D02-9612-CM-1544 ("1544") with criminal conversion, a Class A Misdemeanor. The charge alleged Respondent took property from a retail store.

3. On March 14, 1997, Respondent was charged in Bartholomew County, Indiana in Cause Number 03D02-9703-CM-384 ("384") with driving while license suspended, a Class A Misdemeanor.

4. On August 21, 1997, Respondent was charged in Bartholomew County, Indiana in Cause Number 03D02-9708-CM-1113 ("1113") with check deception, a Class A Misdemeanor.

5. On October 28, 1997, Respondent was charged in Bartholomew County, Indiana in Cause Number 03D02-9710-CM-1458 ("1458") with check deception, a Class A Misdemeanor.

6. On November 14, 1997, Respondent was charged in Bartholomew County, Indiana in Cause Number 03D02-9177-CM-1561 ("1561") with driving while license suspended, a Class A Misdemeanor.

7. On December 1, 1997, Respondent was charged in Bartholomew County, Indiana in Cause Number 03D02-9712-CM-1613 ("1613") with driving while license suspended, a Class A Misdemeanor.

8. On March 18, 1998, Respondent was charged in Bartholomew County, Indiana in Cause Number 03D02-9803-CM-367 ("367") with driving while license suspended, a Class A Misdemeanor; and false informing, a Class B Misdemeanor. The charges alleged Respondent operated a vehicle while her driving privileges were suspended and then gave law enforcement a false date of birth.

9. On August 26, 1998, Respondent was charged in Bartholomew County, Indiana in Cause Number 03D02-9808-CM-1166 ("1166") with check deception, a Class A Misdemeanor.

10. On April 27, 1999, Respondent was charged in Bartholomew County, Indiana in Cause Number 03D02-9904-CM-559 ("559") with three (3) counts of check deception, a Class A Misdemeanor.

11. On July 23, 1999, Respondent entered a guilty plea that covered most of her Bartholomew County criminal matters to date. The court dismissed the charges in 1113 and 1458 because restitution had been paid. The court withheld judgment in 367 and 1613 for a period of four (4) years. Respondent was convicted in 384 of driving while license suspended, a Class A Misdemeanor; in 1561 of driving while license suspended, a Class A Misdemeanor; and in 1544 of conversion, a Class A Misdemeanor. Respondent was sentenced in 384, 1561, and 1544 to one (1) year incarceration each, all suspended, and placed on probation for one (1) year in each matter to be served consecutively.

12. On November 8, 1999, Respondent entered a plea of guilty in 559 and 1166 and the court withheld judgment pursuant to a plea agreement. The court later entered judgment on July 23, 2004.

13. On September 10, 2002, Respondent was charged in Bartholomew County, Indiana in Cause Number 03D01-0209-FD-1338 ("1338") with theft, a Class D Felony;

operating a vehicle as an habitual traffic violator, a Class D Felony; two (2) counts of possession of marijuana less than thirty (30) grams, a Class A Misdemeanor; and false informing, a Class B Misdemeanor. The charges alleged Respondent took property from a retail store, gave false information to law enforcement, and possessed marijuana on two (2) occasions.

14. On June 17, 2003, Respondent pled guilty to and was convicted in 1338 of theft and operating a vehicle as a habitual traffic violator, both Class D Felonies, and false informing, a Class B Misdemeanor; all other charges were dismissed. Respondent was sentenced to two (2) years and nine (9) months incarceration for each felony count and six (6) months for the misdemeanor count, with one (1) year suspended for each felony count, all to be served consecutive to each other with two (2) years of probation after her release from incarceration.

15. On March 5, 2004, the court entered judgment of convictions in 367 and 1613. Respondent was sentenced to thirty (30) days incarceration in both Cause Numbers and was given credit for time served.

16. On August 30, 2004, the court dismissed all counts in 559 and 1166 after determining Respondent complied with the terms of the withheld judgment.

17. On November 2, 2006, Bartholomew County Probation filed a Verified Petition to Revoke Probation in 1338 alleging Respondent violated the terms of her probation by using methamphetamine and cocaine, committing a criminal offense, moving while failing to provide the Probation Department with her new address, and failing to pay probation fees.

18. On October 1, 2008, the court terminated the Respondent's probation in 1338 without successful completion.

19. On January 21, 2009, Respondent was charged in Bartholomew County, Indiana in Cause Number 03D01-0901-FD-92 ("92") with theft, a Class D Felony. The charge alleged Respondent took property from a retail store.

20. On April 27, 2010, Respondent pled guilty and was convicted in 92 of theft, a Class D Felony. Respondent was sentenced to two (2) years and six (6) months incarceration, with one (1) year suspended and 184 days of credit, and one (1) year of probation after release from incarceration.

21. On August 9, 2001, Respondent was charged in Monroe County, Indiana in Cause Number 53C06-0108-CM-03334 ("03334") with check deception, a Class A Misdemeanor.

22. On September 27, 2001, Respondent was charged in Monroe County, Indiana in Cause Number 53C06-0109-CF-00726 ("00726") with forgery, a Class C Felony, and driving while suspended, a Class A Misdemeanor. The charges alleged Respondent signed a check on behalf of another person without authorization.

23. On October 5, 2001, Respondent was charged in Monroe County, Indiana in Cause Number 53C06-0110-DF-00758 ("00758") with theft, a Class D Felony. The charge alleged Respondent used a bad check to purchase merchandise from a retail store.

24. On November 7, 2001, Respondent was charged in Monroe County, Indiana in Cause Number 53C06-0111-DF-00872 ("00872") with auto theft, a Class D Felony. The charge alleged Respondent rented a car by fraudulent means.

25. On May 20, 2002, Respondent entered a guilty plea that covered all of her Monroe County criminal matters to date. The court dismissed the check deception charge in 03334 and the auto theft charge in 00872. Respondent was convicted of forgery, a Class C Felony, in 00726 and of theft, a Class D Felony, in 00758. Respondent was sentenced to three

(3) years and six (6) months incarceration in 00726, with three (3) years suspended and 180 days credit, and placed on probation for three (3) years. Respondent was sentenced to two (2) years incarceration in 00758, all suspended, and placed on two (2) years of probation to run consecutive to 00726.

26. On April 13, 2006, Respondent was charged in Monroe County, Indiana in Cause Number 53C02-0604-FD-00169 ("00169") with failure to return to lawful detention, a Class D Felony. The charge alleged Respondent failed to return to the Monroe County Jail after being released for job search purposes.

27. On June 9, 2006, Respondent was charged in Monroe County, Indiana in Cause Number 53C02-0606-CM-01985 ("01985") with check deception, a Class A Misdemeanor.

28. On February 7, 2007, Respondent entered a guilty plea and was convicted in 00169 of failure to return to lawful detention, a Class D Felony; in 01985 of check deception, a Class A Misdemeanor; and in 00726 of work release violation. Respondent was sentenced in 00169 to six (6) months incarceration, all executed; in 00726 to complete her previous sentence; and in 01985 to one (1) year incarceration, all suspended, and placed on one (1) year probation to run consecutive to her previous sentence.

29. On April 2, 2009, Respondent was charged in Monroe County, Indiana in Cause Number 53C09-0904-FD-00289 ("00289") with receiving stolen property, a Class D Felony; possession of methamphetamine, a Class D Felony; possession of paraphernalia, a Class A Misdemeanor; and public intoxication, a Class B Misdemeanor.

30. On or about November 30, 2010, Respondent pled guilty to and was convicted in 00289 of possession of paraphernalia, a Class A Misdemeanor; all other charges were dismissed. Respondent was ordered to pay various costs and fees.

31. On January 3, 2002, Respondent was charged in Brown County, Indiana in Cause Number 07-C01-0201-CM-0040 ("0040") with check deception, a Class A Misdemeanor.

32. On September 21, 2006, Respondent was charged in Brown County, Indiana in Cause Number 07C01-0609-FD-0393 ("0393") with two (2) counts of fraud, a Class D Felony, and theft, a Class D Felony. The charges alleged Respondent used a fake credit card number to stay at two (2) hotels and order food and drinks.

33. On December 16, 2009, Respondent was charged in Brown County, Indiana in Cause Number 07C01-0912-FD-0468 ("0468") with theft, a Class D Felony, and check fraud, a Class D Felony. The charges alleged Respondent wrote a fraudulent check at a gas station.

34. On December 16, 2009, Respondent was charged in Brown County, Indiana in Cause Number 07C01-0912-FD-0469 ("0469") with two (2) counts of check fraud, a Class D Felony. The charges alleged Respondent wrote a fraudulent check from a bank account she opened with the minimum deposit and then made no deposits thereafter.

35. On September 10, 2010, Respondent entered a guilty plea that covered all of her criminal matters in Brown County, Indiana. The court dismissed the check deception charge in 0040. Respondent was convicted in 0393 of fraud, a Class D Felony; in 0468 of check fraud, a Class D Felony; and in 0469 of check fraud, a Class D Felony; all other remaining counts in these causes were dismissed. Respondent was sentenced to one (1) year and six (6) months incarceration under each cause (with credit for thirty one (31) actual days), with the terms in 0468 and 0469 to run concurrent to each other, and 0393 to run consecutive to the others; all three (3) causes are to run consecutive to the sentence in Cause Number 03D01-0901-FD-92 in Bartholomew County.

36. On June 17, 2010, Respondent was charged in Johnson County, Indiana in Cause Number 41D03-1006-CM-00601 ("00601") with check deception, a Class A Misdemeanor.

37. On August 1, 2011, Respondent pled guilty to and was convicted in 00601 of check deception, a Class A Misdemeanor. Respondent was sentenced to 365 days incarceration, with credit for two (2) days and the remainder suspended, and placed on probation for 363 days; Respondent's sentence was to run consecutive to her sentence in 0468 and 0469.

38. On February 9, 2012, Johnson County Probation filed a Petition to Revoke Probation in 00601 alleging Respondent failed to appear for her probation appointment in Johnson County, Indiana.

39. On March 1, 2012, Respondent was issued R.N. license number 82692 in the State of West Virginia.

40. On September 24, 2013, Respondent was issued R.N. license number 0001-247691 in the Commonwealth of Virginia.

41. On October 23, 2013, the Respondent's West Virginia R.N. license was summarily suspended after the West Virginia Board of Examiners for Registered Professional Nurses ("West Virginia Board") became aware of the Respondent's previous criminal convictions in Indiana as well as allegedly using false or fraudulent information to conceal that from the West Virginia Board and multiple employers in West Virginia.

42. On December 12, 2013, the Respondent's Virginia R.N. license was suspended after the Virginia Department of Health Professions became aware of the Respondent's previous criminal convictions in Indiana.

43. On October 14, 2011, Respondent submitted an application to renew her Indiana nursing license. Respondent answered "No" to question three (3) which asked, "Since you last

renewed, have you been convicted of or pled guilty to a violation of a federal or state law or are criminal charges pending?”

ULTIMATE FINDINGS OF FACT

1. By her conduct in failing to disclose her criminal convictions from April 2010, September 2010, November 2010, and August 2011, as required on her October 2011 Indiana nursing license renewal application, Respondent engaged in or knowingly cooperated in fraud or material deception in order to obtain a license to practice, and is therefore subject to disciplinary sanctions by this Board under Ind. Code § 25-1-9-4(a)(1)(A).

2. By her conduct in pleading guilty to and being convicted of theft, a Class D Felony, in Bartholomew County in April 2010, Respondent has been convicted of a crime that is harmful to the public, and is therefore subject to disciplinary sanctions by this Board under Ind. Code § 25-1-9-4(a)(2)(B).

3. By her conduct in pleading guilty to and being convicted of fraud and two (2) counts of check fraud, all Class D Felonies, in Brown County in September 2010, Respondent has been convicted of a crime that is harmful to the public, and is therefore subject to disciplinary sanctions by this Board under Ind. Code § 25-1-9-4(a)(2)(B).

4. By her conduct in pleading guilty to and being convicted of possession of paraphernalia, a Class A Misdemeanor, in Monroe County in November 2010, Respondent has been convicted of a crime that is harmful to the public, and is therefore subject to disciplinary sanctions by this Board under Ind. Code § 25-1-9-4(a)(2)(B).

5. By her conduct in pleading guilty to and being convicted of check deception, a Class A Misdemeanor, in Johnson County in August 2011, Respondent has been convicted of a

crime that is harmful to the public, and is therefore subject to disciplinary sanctions by this Board under Ind. Code § 25-1-9-4(a)(2)(B).

6. By her conduct in concealing her criminal past from the West Virginia Board resulting in the summary suspension of her West Virginia nursing license in October 2013, Respondent has had disciplinary action taken against her license to practice in any state or jurisdiction on grounds similar to those under Ind. Code § 25-1-9-10, and is therefore subject to disciplinary sanctions by this Board under Ind. Code § 25-1-9-4(a)(7).

7. By her conduct in being convicted of felony charges in the State of Indiana resulting in the suspension of her Virginia nursing license in December 2013, Respondent has had disciplinary action taken against her license to practice in any state or jurisdiction on grounds similar to those under Ind. Code § 25-1-9-(4)(a)(2), and is therefore subject to disciplinary sanctions by this Board under Ind. Code § 25-1-9-4(a)(7).

CONCLUSIONS OF LAW

Respondent's violation is cause for disciplinary sanctions which may be imposed singly or in combination such as a 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

1. Respondent's license to practice as a nurse is hereby **INDEFINITELY SUSPENDED**, without right to petition for reinstatement for at least 25 years.

2. Respondent shall, pursuant to Indiana 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 to the State of Indiana and

submitted to the following address:

Indiana Office of the Attorney General
Attn: Kathryn Shively
302 W. 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 EIGHTY SIX DOLARS AND SIXTY CENTS (\$186.60)** 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 shall, within ninety (90) days of the Final Order, pay a **FINE** in the amount of **\$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

So **ORDERED**, this 29th day of July, 2014.

INDIANA STATE BOARD OF NURSING

By: _____

for Nicholas W. Rhoad
Executive Director
Indiana Professional Licensing Agency

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:

Kimberly Jo Sebastian
14 Greenmont Road
PO Box 443
Stollings, WV 25646
Service by U.S. Mail

Leif Johnson
Deputy Attorney General
Office of the Indiana Attorney General
302 West Washington Street
IGCS – 5th Floor
Indianapolis, Indiana 46204
Service by Email

7.29.14
Date


Lisa Chapman
Lisa Chapman

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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.

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