

BEFORE THE INDIANA STATE
BOARD OF NURSING
CAUSE NUMBER: 2004 NB 0151

STATE OF INDIANA,)
)
 Petitioner,)
)
 v.)
)
 CARA LEIGH SMITH-ELLIS, L.P.N.,)
 License Number: 27035008A,)
)
 Respondent.)

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INDIANA PROFESSIONS
BUREAU

FINDINGS OF FACT AND ORDER

The Indiana State Board of Nursing ("Board"), held an administrative hearing on October 21, 2004 in the Auditorium of the Conference Center, Indiana Government Center South 302 West Washington Street, Indianapolis, Indiana, concerning a disciplinary complaint filed against Cara Leigh Smith-Ellis, L.P.N. ("Respondent").

The State of Indiana was represented by Deputy Attorney General James R. Holden. The Respondent failed to appear in person or by counsel.

The Board, after considering the evidence presented and taking official notice of its file in this matter, by a vote of 7-0-0, found the Respondent to be in default. The Board then held further proceedings in Respondent's absence, and, by a vote of 7-0-0, issues the following Findings of Fact and Order:

FINDINGS OF FACT

1. The Board has jurisdiction to decide this matter, conduct a hearing, and impose discipline upon Respondent's nursing license in accordance with Indiana Code §25-1 *et. seq.* and Indiana Code §25-23-1-7. Respondent was provided adequate notice of the final hearing in accordance with Indiana Code §4-21.5-3-8 and Indiana Code §4-21.5-3-20.

2. Respondent's address on file with the Board is 801 South Ohio Street, Martinsville, IN 46151 and she is a licensed nurse holding Indiana license number 27035008A.

3. The Respondent's employment at Miller's Merry Manor in Mooresville, Indiana was terminated on or about April 7, 2004, when she was discovered to be missing for approximately an hour from the 11 p.m. to 7 a.m. shift. When she was found by other staff, the Respondent was noted to be disoriented and unsteady with bloodshot eyes. She was carrying a bottle of liquid correction fluid or "white out" and mumbling about a missing "patch." A resident's duragesic patch was later found to be missing. The Respondent was immediately clocked out and asked to leave.

4. The Respondent's employment at the Indiana Masonic Home in Franklin, Indiana had been terminated on or about October 13, 2003. Reasons noted for her termination include leaving med carts unlocked and failing to heed multiple written counselings. It was also noted that the Respondent was witnessed to be "roller skating in hallways" on the morning of her termination.

5. On May 15, 2002, the Respondent was charged with Dealing in a Schedule I Controlled Substance, a Class B Felony, in Morgan Superior Court I. According to the Probable Cause Affidavit, the Respondent was arrested after a confidential informant, who was working with the Indiana State Police, purchased a bottle of liquid methadone from the Respondent for \$50.00. The charges were later dismissed without prejudice by the Morgan County Prosecutor on or about October 16, 2002.

6. On December 18, 1999, the Respondent was charged with one Count of Welfare Fraud, a Class C Felony and one Count of Welfare Fraud, a Class D Felony in Morgan County Superior Court I. An additional count of Welfare Fraud, a Class C Felony was added on January

5, 2001. The charges were based on the Respondent's defrauding of the Temporary Assistance for Needy Families (TANF) program in the amount of \$3,249.00 and the Food Stamp program in the amount of \$3,105.00. The Respondent pled guilty to one Count of Welfare Fraud, a Class D Felony, on June 12, 2001 and was convicted. The Respondent was sentenced to a three-year suspended sentence, one year of home detention, 3 years of supervised probation, and court costs. On March 7, 2002, a petition was filed against the Respondent revoking her probation for non-compliance. On May 13, 2002, the Respondent was found to be in violation of her probation and ordered to comply with the order to pay fines and costs. This cause was pending until November 18, 2002, when the State moved to dismiss it. The Respondent was also convicted on two separate occasions (August 28, 2000 and February 2, 2000) of Driving with a Suspended License, a Class A Misdemeanor.

7. On December 18, 2002, the Respondent signed the renewal application for her Indiana nursing license. She responded "NO" to question 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?" In fact, the Respondent had been found guilty of Welfare Fraud on June 12, 2001 and violating her probation on May 13, 2002.

8. On November 7, 2000, the Respondent signed the renewal application for her Indiana nursing license. She answered "YES" to question 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?" The Respondent attached a statement to her renewal which read: "I have criminal charges pending on a check (forgery is the charge), but I have an attorney who tells me not to plead guilty-Cara Smith." The Respondent failed to disclose her pending charges

for Welfare Fraud and her past convictions for Driving with a Suspended License. Her nursing license was renewed on January 24, 2001.

9. The State of Indiana filed its Complaint on July 27, 2004.

10. On or about July 29, 2004, the Health Professions Bureau sent a notice to the Respondent, by certified mail to her address on file, of the date and time of the administrative hearing scheduled for August 19, 2004. The notice was returned marked, "Undeliverable as addressed. No forwarding order on file."

11. Pursuant to Indiana Code §4-21.5-3-20, Respondent was provided adequate notice of the final hearing date and failed to appear for the scheduled hearing on August 19, 2004.

12. On August 27, 2004, the Board issued a notice of Proposed Default Order. That notice was mailed by certified and regular mail to the Respondent at her last known addresses. Notice was signed for by Cody Thacker on September 3, 2004.

13. Respondent failed to respond to the Board's Notice of Proposed Default Order within seven (7) days as required by Indiana Code § 4-21.5-3-24.

14. On October 21, 2004, the Board voted to hold the Respondent in default.

ULTIMATE FINDINGS OF FACT

1. Respondent practitioner has knowingly violated a state statute or rule in violation of Indiana Code § 25-1-9-4(a)(3) federal statute or regulation, regulating the profession in question; namely: 848 IAC 2-2-3(1) in that Respondent used unsafe nursing judgment, technical skills, and inappropriate interpersonal behaviors in providing nursing care.

2. Respondent practitioner has continued to practice although unfit due to addiction to, abuse of, or severe dependency upon alcohol or other drugs that endanger the public by

impairing the practitioner's ability to practice safely in violation of Indiana Code § 25-1-9-4(a)(4)(D).

3. Respondent practitioner has continued to practice although the practitioner has become unfit to practice due to: failure to keep abreast of current professional theory and practice in violation of Indiana Code § 25-9-4(a)(4)(B).

4. The Respondent has knowingly violated a state statute; namely: IC 35-48-4-2(a)(1) by dealing in a Schedule I Controlled Substance in violation of Indiana Code § 25-1-9-4(a)(3). The Respondent has also diverted a legend drug in violation of Indiana Code § 25-1-9-4(a)(8)(A).

5. The Respondent's actions described above constitute a violation of Indiana Code § 25-1-9-4(a)(1)(A), in that the Respondent committed a fraud or material deception in order to maintain a license to practice.

ORDER

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

1. Respondent's Indiana nursing license is hereby placed on **INDEFINITE SUSPENSION**. Respondent may not petition the Board for reinstatement of her nursing license for a period of **FIVE (5) YEARS** from the date of this Order.

2. As a condition precedent to any application for reinstatement of her license, the Respondent must submit proof that she has a current signed Recovery Monitoring Agreement (RMA) with the Indiana State Nurses Assistance Program (ISNAP) and that she has been compliant with such agreement for at least three (3) months.

3. Respondent shall pay a civil fine of \$1500.00 to the Indiana Health Professions Bureau within ninety (90) days of the date of this order.

4. The Respondent shall immediately pay costs in the amount of \$111.52 to the Office of the Attorney General and \$107.10 to the Indiana Health Professions Bureau.

SO ORDERED, this 9th day of November, 2004.

INDIANA STATE BOARD OF NURSING

By: Lisa R. Hayes
Lisa R. Hayes
Executive Director
Health Professions Bureau

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