

IN THE MATTER OF THE LICENSE OF:)
)
KAREN S. DUNNING, R.N., A.P.N.,)
)
LICENSE NO: 28099757A, 71000497A&B)



The State of Indiana (“Petitioner”) was represented by Deputy Attorney General Jessica W. Krug. The Respondent appeared in person and was represented by counsel.

The Board, after considering the evidence presented and taking official notice of its file in this matter, by a vote of 6-0-1, issues the following Findings of Fact and Order:

1. Respondent is a Registered Nurse ("R.N.") in the State of Indiana, having been granted R.N. license number 28099757A on or about August 31, 1987 by the Board. Respondent was granted her Advanced Practice Nurse ("A.P.N.") license number 71000497A on or about July 31, 1998 by the Board.

2. Respondent's address on file with the Board is 667 West 100 South, Hebron, Indiana 46341.

3. Indiana State Trooper Kathy Franko is a 26 year veteran of the Indiana State Police. She has been trained and educated in law enforcement and drug diversion. She has been assigned to an investigation into the Kouts Family Health Care Clinic in order to determine if there have been any violations of state or federal laws or violations of the rules or regulations governing nurses in the State of Indiana.

4. Trooper Franko was assisted in her investigation by Diversion Investigators from the Drug Enforcement Administration.

5. At times during these proceedings, Respondent was charged with multiple felonies in Porter County related to the basis of this action, and as such, declined to testify in this matter, instead asserting her rights against self-incrimination. Respondent was advised of her right to do so and of the Board's ability to draw from her refusal to answer a question the negative inference that the answer would not be favorable to her. The Board has chosen to draw this inference where appropriate.

6. During the relevant time periods, Respondent was employed by Kathy Lynch, R.N. at the Kouts Health Clinic (KHC). Respondent treated patients at KHC on a part-time schedule.

7. Indiana State Police and DEA Investigators conducted an investigation and determined that Respondent and Kathy Lynch were prescribing phentermine, a Schedule IV controlled substance, and phendimetrazine, a Schedule III controlled substance, to patients in violation of Indiana Code 35-48-3-11. Respondent did possess an Indiana Controlled Substance Registration and a DEA Registration, however, Kathy Lynch did not. In order to fulfill these prescriptions, Lynch was calling them into pharmacies and utilizing the name and DEA Registration number of her collaborative physician. In addition to using the name of her

collaborative physician, staff at KHC were instructed to call in these prescriptions utilizing the name and licensure information of Respondent. This instruction to staff was conspicuously posted at the clinic on a clipboard. While Respondent stated that she was unaware of this, this Board finds that Respondent either did or should have known that this practice was occurring.

8. Trooper Franko and DEA Investigators advised Kathy Lynch and Respondent that these prescription practices were not authorized by law and that they should cease immediately when they visited the clinic during a regulatory inspection in February 2014. Respondent continued to proceed with these illegal prescriptions. Respondent claims to have no knowledge of why the DEA staff were inquiring at the clinic, however, Respondent also acknowledged taking no affirmative steps to try to determine why the DEA staff had questions about the clinic and its activities. A reasonably prudent practitioner would have sought additional information.

9. KHC operated a weight loss program for a significant number of patients. KHC operated a similar "Biggest Loser" type program for both patients and community members. "Biggest Loser" participants were incentivized to join and win by being eligible to receive a money award at the end of the program. Patients receiving the illegal controlled substance prescriptions were eligible to participate in this money reward program.

10. Sometime after Trooper Franko had advised KHC that these weight loss prescriptions were being issued illegally, area pharmacies were also learning that controlled substance prescriptions of this type for the purposes of treating weight loss or obesity could only be issued by physicians. As such, pharmacists began refusing to fill these prescriptions where they were issued by non-physicians or for patients of KHC.

11. Subsequently, Kathy Lynch secured a supply of phentermine for dispensing out of the KHC office. Kathy Lynch lacked any legal authority to possess or dispense controlled

substances. Respondent was the only provider employed at KHC with a DEA Registered address at KHC's location. As such, Respondent was solely responsible for the use and maintenance of all controlled substances on site.

12. At a prior hearing, Respondent offered the testimony of a medical assistant, Nicole Born, who testified regarding matters of procedure at the clinic and the posting of signs regarding the prescribing of narcotics. It was determined through her testimony that patients were being treated with controlled substances for the purposes of weight loss in contravention of the statute. Further, Ms. Born testified that she was performing injections on patients that exceeded her scope and training.

13. Despite being advised on several occasions that her actions were in violation of both state statutes and nursing regulations, Respondent continued to commit these acts, and as such, has shown a disregard for the need to follow the rules and regulations that govern the safe practice of nursing. While Respondent maintains that no one specifically told her about these concerns, Respondent acknowledges knowing that there was a DEA regulatory visit, two (2) executed search warrants at the clinic location, and three (3) separate collaborating physicians terminated their collaborative agreements with her. Respondent maintains that she never suspected anything was wrong, however, this testimony seems incredible. At a minimum, Respondent chose not to ask the pertinent questions that a reasonable practitioner would in order to be assured that all of her actions were legal and appropriate.

14. The pending criminal charges against Respondent were dismissed without prejudice.

15. Based on all of the testimony and evidence received, it is clear that this Board cannot be assured that Respondent can exercise the needed care and attention in order to safely prescribe legend drugs.

ULTIMATE FINDINGS OF FACT

1. Respondent violated Ind. Code §25-1-9-4(a)(3), (2 violations), by knowingly violating any state statute or rule, or federal statute or regulation;
2. Respondent violated Ind. Code § 25-1-9-4(a)(1)(B), by engaging in fraud or material deception in the course of professional services or activities; and
3. Respondent violated Ind. Code § 25-1-9-4(a)(4)(B), by failing to keep abreast of current professional theory practice.

CONCLUSIONS OF LAW

4. 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's APN – Prescriptive Authority license is hereby **REVOKED**.
2. Respondent's Indiana Registered Nurse license is hereby placed on **INDEFINITE SUSPENSION** with no right to petition for reinstatement for at least **THREE (3) YEARS** from the date of this Order.
3. Respondent may not petition to withdraw the suspension from her license until she has completed the following terms:

a. twenty-four (24) credit hours of continuing education in the area of professionalism and ethics;

c. twenty-four (24) credit hours of continuing education in the area of legal issues related to nursing;

d. twenty-four (24) credit hours of continuing education in the area of critical thinking for nurses;

e. twenty-four (24) credit hours of continuing education in the area of prescribing of controlled substances by advanced practice nurses; and

f. twenty-four (24) credit hours of continuing education in the area of medication administration.

4. 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:

Indiana Office of the Attorney General
Attn: Teresa Henson
302 West Washington Street, 5th Floor
Indianapolis, IN 46204.

5. 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.

SO ORDERED, this 29th day of November, 2016.

INDIANA STATE BOARD OF NURSING

By:

Herbert W. Price

Natalie Hall, R.N.

Board President

Indiana State Board of Nursing

for

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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:

Karen Dunning
667 West 100 South
Hebron, IN 46341
Service by U.S. Mail

Elliott Pinkie
Counsel for Respondent
50 S. Meridian St, Suite 302
Indianapolis, IN 46204

Jessica Krug
8005 Castleway Drive
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Jessica.Krug@atg.in.gov
Service by Email

11. 29. 2016
Date

Lisa Chapman
Lisa Chapman, Litigation Specialist

Indiana State Board of Nursing
Indiana Government Center South
402 West Washington St., Room W072
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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.

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