

BEFORE THE INDIANA STATE  
BOARD OF NURSING  
CAUSE NUMBER: 2011 NB 223

IN THE MATTER OF THE LICENSE OF )  
 )  
MELISSA L. TOMLINSON, R.N. )  
 )  
LICENSE NO: 28170340A )



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

The Indiana State Board of Nursing (“Board”) held an administrative hearing on December 15, 2011 in the Auditorium of Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana 46204 concerning an administrative complaint issued against the nursing license of Melissa L. Tomlinson, R.N. (“Respondent”) on October 4, 2011.

Deputy Attorney General Mark E. Mader represented the State of Indiana (“Petitioner”). Respondent did not appear in person or by counsel.

The Board voted 8-0-0 in Respondent’s absence, to hold Respondent in **DEFAULT**. The Board then held further proceedings in Respondent’s absence and, after taking official notice of its file in this matter and reviewing Petitioner’s evidence, by another vote of 8-0-0, issues the following Findings of Fact, Ultimate Findings of Fact, Conclusions of Law, and Order:

**FINDINGS OF FACT**

1. Respondent’s last reported address on file with the Indiana State Board of Nursing (“Board”) is 2133 Foxfire Lane, Kokomo, Indiana 46902. Respondent is a licensed Registered Nurse (“R.N.”) in the State of Indiana having been issued license number 28170340A on September 5, 2006.

2. On August 5, 2008, Respondent began her employment with Witham Memorial Hospital (“Witham”) located in Lebanon, Indiana.

3. Respondent tested positive for Tramadol during her pre-employment physical. Respondent was unable to provide proof of prescription. Respondent had to sign a Statement of Understanding for Random Drug Testing. The agreement indicated Witham would send Respondent for random drug testing for a minimum of six (6) months during which she must demonstrate no less than three (3) consecutive, verified tests.

4. On April 8, 2009, Witham staff told Respondent to report to Witham's Toxicology Department ("Toxicology") for random drug testing, but she failed to report to Toxicology on April 8, 2009.

5. On April 9, 2009, Respondent reported to Toxicology on her way to work for her random drug test even though she was told to report on April 8. The test came back negative, but dilute. The test was invalidated.

6. On April 13, 2009, Witham personnel escorted Respondent to the Witham's Occupational Health Department ("Occupational Health") for random drug testing. The test results were negative.

7. On June 29, 2009, Witham personnel met with Respondent to discuss a staff member's claim that Respondent had asked for another staff member's urine to use for a urine drug screen ("UDS"). Witham personnel also informed Respondent that co-workers observed she had fallen asleep during surgical cases. Based on her behavior, Witham staff escorted Respondent to Occupational Health for random drug testing.

8. On June 30, 2009, the initial results of Respondent's UDS came back positive, and Witham immediately suspended her until the final results were received. Subsequently, the final results of her UDS came back positive for Methadone and Tramadol. She was unable to provide an acceptable explanation.

9. On July 2, 2009, Respondent resigned from her employment with Witham.
10. On October 12, 2010, Respondent began intake with the Indiana State Nurses Assistance Program ("ISNAP"). Respondent reported she was taking Subutex ("Suboxone") 0.08 mg to 0.16 mg. daily, prescribed by Larry Ley, M.D. Suboxone is a Schedule III Controlled Substance. ISNAP informed Respondent she could not remain on Suboxone while in a recovery monitoring agreement ("RMA").
11. On November 10, 2010, Stephen Peterson ("Peterson"), LCSW, CADAC IV, ICAC II, assessed and diagnosed Respondent with opioid dependence and a depressive disorder. Peterson noted in his assessment that Respondent was being treated by Larry Ley, M.D. in his Suboxone Clinic.
12. On December 8, 2010, Respondent entered into a three (3) year ISNAP RMA.
13. On May 3, 2011, Respondent was in significant noncompliance with her ISNAP RMA due to a missing addictionist report and missing three (3) UDS's.
14. On May 17, 2011, ISNAP extended Respondent's ISNAP RMA three (3) months due to noncompliance and informed her any further noncompliance would result in case closure.
15. On June 28, 2011, Respondent's Quarterly Addictionist Report from Larry Ley, M.D. indicated he had continued to prescribe Suboxone for Respondent. Dr. Ley noted he had decreased Respondent's Suboxone from 0.16 mg. to 0.12 mg. daily and that she was stable on 0.12 mg. as of January 27, 2011.
16. On July 5, 2011, ISNAP closed Respondent's case and referred her non-compliance to Petitioner. ISNAP noted Respondent never effectively engaged in monitoring and it could not assure her safety to practice.

17. On July 19, 2011, Petitioner filed a Petition for Emergency Suspension against Respondent. On July 21, 2011, the Board voted 7-0-0 to Summarily Suspend Respondent's nursing license. On July 27, 2011, the Board issued its Summary Suspension Order with the effective date of July 21, 2011.

18. Petitioner filed an administrative complaint against Respondent's nursing license in this matter on or about October 4, 2011.

19. On November 2, 2011, IPLA sent notice to Respondent, by certified and regular mail to her address on file with IPLA of the date, time, and place of the Pre-Hearing/Settlement Conference scheduled for November 17, 2011.

20. Pursuant to Ind. Code § 4-21.5-3-20, Respondent was provided adequate notice of the hearing and failed to appear for the Pre-Hearing/Settlement Conference scheduled on November 17, 2011.

21. On November 17, 2011, the Board voted 7-0-0 to issue a Notice of Proposed Default Order. On December 1, 2011, the Board issued its NPD Order which Order was mailed by certified mail, return receipt requested, and by regular mail, to Respondent at her last reported address filed with IPLA.

22. Respondent failed to respond to the Notice of Proposed Default Order within seven (7) days as required by Ind. Code § 4-21.5-3-24.

#### **CONCLUSIONS OF LAW**

1. Respondent's actions constitute a violation of Ind. Code § 25-1-9-4(a)(4)(B) in that she has continued to practice although the Respondent has become unfit to practice due to failure to keep abreast of current professional theory or practice.

2. Respondent's actions constitute a violation of Ind. Code § 25-1-9-4(a)(4)(D) in that she has continued to practice although the Respondent has become unfit to practice due to an addiction to, abuse of, or severe dependency upon alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely.

#### **ULTIMATE FINDINGS OF FACT**

Respondent's failure to comply with the above referenced standards is cause for disciplinary sanctions which could include censure, a letter of reprimand, a fine up to the amount of \$1,000.00, probation, suspension, or a revocation of license as detailed at Ind. Code § 25-1-9-9.

#### **ORDER**

1. Respondent's license shall be placed on **INDEFINITE SUSPENSION**. Respondent shall not petition for reinstatement for a minimum of one (1) year.

2. Prior to petitioning for reinstatement, Respondent shall reenroll in ISNAP and execute a recovery monitoring agreement ("RMA"). Respondent must have one year (1) of full, complete, and continuous compliance with her ISNAP RMA prior to petitioning for reinstatement.

3. Respondent shall cause her addictionist or other ISNAP approved practitioner to provide a quarterly INSPECT report to ISNAP for the duration of her RMA.

4. Prior to petitioning for reinstatement, Respondent shall complete twenty-four (24) hours of continuing education with six (6) CEU's in ethics, six (6) CEU's in Medication management, six (6) CEU's in charting and records documentation, and six (6) CEU's in assessment.

5. Respondent shall pay a FINE in the amount of **TWO HUNDRED FIFTY DOLLARS (\$250.00)**, within six (6) months after reinstatement, payable to:

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

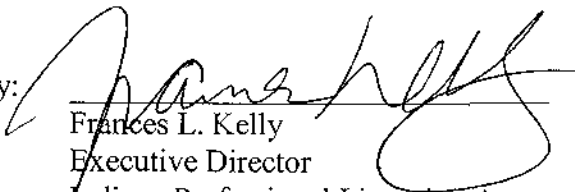
6. Prior to petitioning for reinstatement, pursuant to Ind. Code § 4-6-14-10(b), Respondent shall pay a fee of **FIVE DOLLARS (\$5.00)** to be deposited into the Health Records and Personal Identifying Information Protection Trust Fund. This fee shall be paid by check or money order payable to the State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

Indiana Office of the Attorney General  
ATTN: Katherine Thorpe  
302 W. Washington St., 5<sup>th</sup> Floor  
Indianapolis, IN 46204

7. Respondent's violation of the Final Order, or any non-compliance with the statutes or regulations regarding the practice of nursing, may result in the State requesting additional sanctions, up to and including a revocation of Respondent's license.

SO ORDERED, this 19 day of January, 2012.

INDIANA STATE BOARD OF NURSING

By:   
Frances L. Kelly  
Executive Director  
Indiana Professional Licensing Agency

Copies:

Melissa L. Tomlinson

2133 Foxfire Lane

Kokomo, Indiana 46902

**CERTIFIED MAIL NO: 91 7190 0005 2720 0015 4191**

**RETURN RECEIPT REQUESTED**

Mark E. Mader

Deputy Attorney General

Office of the Attorney General

Indiana Government Center South

302 West Washington Street, Fifth Floor

Indianapolis, Indiana 46204-2770