

BEFORE THE INDIANA
BOARD OF PHARMACY
CAUSE NUMBER: 2013 IBP 0016

IN THE MATTER OF THE INDIANA
PHARMACY LICENSE OF:

KATHRYN SCHOLTZ TOLEN, R.PH.
LICENSE NUMBER: 26019870A.

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FILED

MAR 22 2013

Indiana Professional
Licensing Agency

**FINAL ORDER ACCEPTING PROPOSED FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

The State of Indiana ("Petitioner"), by the Office of the Attorney General, by Deputy Attorney General Darren R. Covington and Kathryn Scholtz Tolen ("Respondent"), by counsel, Chad Wilson, signed a Proposed Settlement Agreement ("Agreement") which purports to resolve all issues involved in the action by the Petitioner and the Indiana Board of Pharmacy ("Board") regarding the Respondent's license, and which Agreement has been submitted to the Board for approval.

The Board, after reviewing the Agreement at the March 11, 2013 meeting held in Room W064 of the Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana 46204, 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 5-0-0. Incorporated into the Agreement was the consensus of both parties to Findings of Fact, Conclusions of Law and Order.

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.

ORDERED, this 22 day of March, 2013.

INDIANA BOARD OF PHARMACY

By:

A handwritten signature in black ink, appearing to read 'V. R. Madden', is written over a horizontal line.

Virgil R. Madden
Executive Director
Indiana Professional Licensing Agency

CERTIFICATE OF SERVICE

I certify that a copy of the "Final Order Accepting Proposed Findings of Fact, Conclusions of Law, and Order" has been duly served upon:

Kathryn Tolen
3400 Wright Ct.
West Lafayette, IN 47906
Service by U.S. Mail

Kathryn Tolen
4321 N. 800 W.
West Lafayette, IN 47906
Service by U.S. Mail

Chad Wilson, Hall Render
One American Sq. Ste. 2000
Box 82064
Indianapolis, IN 46282
Service by U.S. Mail

Darren R. Covington, Deputy Attorney General
Office of the Indiana Attorney General
Indiana Government Center South
302 West Washington Street, Fifth Floor
Indianapolis, IN 46204
Service by Email

3/22/13
Date

Jackie Day
Jackie Day

Indiana Board of Pharmacy
Indiana Government Center South
402 West Washington St., Room W072
Indianapolis, IN 46204
Phone: 317-234-2067
Fax: 317-233-4236
Email: pla4@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
BOARD OF PHARMACY
2013 IBP 0016**

**IN THE MATTER OF THE LICENSE OF)
KATHRYN SCHOLTZ TOLEN, R.PH.)
LICENSE NO. 26019870A (ACTIVE))**

FILED

MAR 11 2013

Indiana Professional
Licensing Agency

PROPOSED SETTLEMENT AGREEMENT

The State of Indiana (Petitioner), by Darren R. Covington, Deputy Attorney General, and Kathryn Scholtz Tolen, R.Ph. (Respondent), by counsel, Chad Wilson, hereby execute this Agreement to a disposition of the Complaint filed in this cause. This Agreement is subject to the review and approval of the Indiana State Board of Pharmacy (Board) pursuant to Ind. Code § 25-1-9 et seq. and the Administrative Orders and Procedures Act, Ind. Code § 4-21.5-3 et seq.

STIPULATED FACTS

1. Respondent's address on file with the Indiana Professional Licensing Agency is 3400 Wright Court, West Lafayette, Indiana 47906.
2. Respondent is a licensed pharmacist in the State of Indiana having been issued license number 26019870A on July 15, 1999.
3. At all times relevant herein, Respondent was employed as a pharmacist with Franciscan St. Elizabeth Health in Lafayette, Indiana.
4. On or around August 12, 2011, Respondent received a "final written warning" from Franciscan St. Elizabeth Health after she accessed her niece's electronic

EXHIBIT A

medical record on April 3, 2011, from home, without a work-related need to access the record.

5. Respondent has had no prior discipline at Franciscan St. Elizabeth Health.

6. In a letter to the Petitioner, Respondent indicated that she accessed her niece's electronic record while reading work emails from home. Respondent stated she did this so that she could check on her niece's condition and send her a card. Respondent also indicated she did not share this information with anyone else.

7. The Health Insurance Portability and Accountability Act (HIPAA) makes it an offense to access medical records without a legitimate business reason to do so, despite the purpose of the person accessing the record.

STIPULATED CONCLUSIONS OF LAW

The parties further stipulate:

1. Respondent violated Ind. Code § 25-1-9-4(a)(3) in that Respondent knowingly violated privacy laws found in HIPAA, 42 U.S.C. 300gg *et seq.*

AGREED DISPOSITION

It is now therefore agreed by the Respondent and Petitioner as follows:

1. The Board has jurisdiction over the 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 Complaint.

4. Petitioner agrees that the terms of this Agreement will resolve any and all

pending claims or allegations relating to disciplinary action against the Respondent's Indiana pharmacist license.

5. Respondent's Indiana pharmacist license shall be issued a **LETTER OF REPRIMAND** attached as Exhibit A.

6. Within thirty (30) days of the Board's Order, Respondent shall pay a **FINE** in the amount of **FIVE HUNDRED DOLLARS (\$500.00)** payable to the Indiana Professional Licensing Agency.

7. Within thirty (30) days of the date of the Board's Order, Respondent shall, pursuant to Indiana Code 4-6-14-10 (b), pay a fee of Five Dollars (\$5.00) within thirty (30) days of the date of the Final Order in this matter, to be deposited into the Health Records and Personal Identifying Information Protection Trust Fund. This fee shall be paid by check or money order made payable to the State of Indiana, and submitted to the following address:

Indiana Office of the Attorney General
Attn: Katherine Lee
302 West Washington Street, 5th Floor
Indianapolis, IN 46204

8. The 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.

9. The Respondent further understands that a violation of the Final Order, any non-compliance with the statutes or regulations regarding the practice of pharmacy, or any violation of the Agreement may result in the Petitioner requesting an emergency

suspension of the 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 the Respondent's license.

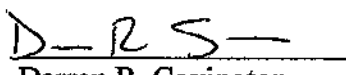
10. The parties agree to the continuing jurisdiction of the Board and that the discipline agreed to, terms of discipline, and licensure status will apply even if the Board renews the Respondent's license at a later date.


Kathryn Tolen, R.Ph.
Respondent

3/4/13
Date


Chad Wilson
Attorney for Respondent
Atty. No. 30209-29

3/07/13
Date


Darren R. Covington
Deputy Attorney General
Atty. No. 28511-16

3/11/13
Date

[DATE]

Kathryn Tolen
3400 Wright Ct.
West Lafayette, IN 47906

Re: In the Matter of the License of Kathryn Scholtz Tolen, R.Ph.
Before the Indiana Board of Pharmacy

Dear Ms. Tolen:

This letter of reprimand is issued as part of the Settlement Agreement reached between you and the State resulting from charges filed by the Office of the Attorney General on February 8, 2013 with the Indiana Board of Pharmacy.

The purpose of this reprimand is to stress the important responsibility that you have by reason of possessing a license to practice as a pharmacist in this state. As a pharmacist, you are responsible for ensuring that your practice is in accordance with the standards of the profession.

The Findings of Fact, Conclusions of Law and Order is attached hereto and incorporated herein as part of this official reprimand.

Sincerely,

By: _____
Virgil R. Madden
Executive Director
Indiana Professional Licensing Agency

Exhibit A