



AUDITOR & INVESTIGATOR  
CONFERENCE



# ANATOMY OF A FRAUD CASE: FROM AUDIT TO PROSECUTION

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## Panelists:

**Gina Gambaiani, *Fraud Investigator, State Board of Accounts***

**Mark Mitchell, *Special Agent/Director of Investigations, Office of Inspector General***

**Lori Torres, *Inspector General, Office of Inspector General***

## Moderator:

**Jen Cooper, *State Ethics Director, Office of Inspector General***

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# AUDIT

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# Evansville State Hospital (ESH)

A joint Audit and Special Investigation with the Indiana State Board of Accounts (SBOA), Office of Inspector General (OIG) and Indiana Family of Social Services, Administration (FSSA)

# BACKGROUND OF ESH

- One of Indiana State Psychiatric Hospitals
- Consists of 168 beds
- Provides treatment for various types of mental illness
- Financial operations of the facility are handled both at the State level and local level.
- State appropriations handle almost all expenses of the facility
- Patient Trust and Employee funds are handled by ESH directly

# BACKGROUND OF ESH Cont.

## Revenues handled directly by ESH-Patient Trust Money

- Social Security Administration benefits, Medicare, Medicaid, personal payments from patients and/or their families, and patient wage earnings
- All payments are received through EFT except for payments from patients and/or their families
- All payments are posted to a Patient Trust control ledger as well as individual subsidiary ledgers
- Money held in the Patient Trust Fund is used for a patient's medical treatment, shopping, outings, and personal bills

# BACKGROUND OF ESH Cont.

Revenues handled directly by ESH-Employee Recognition Funds

- Revenue for the fund comes from fundraisers and sale of clothing to employees
- Employee Recognition funds are used to purchase the employee clothing, supplies for fundraisers, and employee recognition gifts
- SBOA was not aware of this fund at the beginning of the audit

# Employee Responsibilities

- Multiple employees had the ability to receive Patient Trust Fund money
- Multiple employees had access to the safe which held Patient Trust Funds before deposit
- Multiple employees had access to post to Patient Trust accounts
- Multiple employees had access to sign checks for Patient Trust funds
- The Business Administrator had access to the items above **AND** was responsible for reconciling the bank account and the Patient Trust Fund ledgers



## Employee Responsibilities Cont.

- One employee was in charge of organizing the Employee Recognition Fund fundraisers and sale of clothing, but the Business Administrator handled the money, wrote checks, maintained the ledgers, and reconciled the bank account and records.
- Patient Trust Fund bank reconciliations were initialed they were reviewed, however Employee Recognition Fund bank reconciliations were not initialed reviewed
- Overall, there was a lack of internal controls over the receipt and reconciling processes with the Patient Trust and Employee Recognition Funds

# Initial Audit conducted by SBOA State Assignments

Started in August 2018 for the review period of July 1, 2017 to June 30, 2018

## Discrepancies Found:

- Negative Patient balances
- Unaccounted for checks
- Checks out of sequence
- Delays in receiving requested documents
- Reconciling items-DIT items appeared to be growing larger and were shown in the opposite manner a DIT would be shown. One DIT appeared in more than month and was labeled "direct deposits in April not posted until July"
- FE received no response from the Business Manager when they inquired of this

# Initial Audit conducted by SBOA State Assignments

Started in August 2018 for the review period of July 1, 2017 to June 30, 2018

## Reconciliations

- Financial Statements didn't agree to the ledger for the Patient Trust
- The financial statements had a June 30, 2018 Bal of \$169,081.02
- The ledger had a June 30, 2018 Bal of \$177,629.75
- Variance of \$8,548.73

## Reconciliations cont.

- The FE inspected the ledger and compared the items posted to the items that cleared on the bank statement
- FE noted SSA benefit deposits did not agree between the ledger and bank statement
- FE noted one disbursement amount differed between the ledger and bank statement
- FE noted the ledger did not show withdrawals that cleared the bank
- FE noted two DDA transfers to an unidentified bank account  
(turned out to be the Employee Recognition bank account)

## Inquiries

- As noted earlier, as the SBOA made inquiries for records and try to determine the differences observed. Many items requested had still not been received.
- One item that was questioned was a \$1,500 disbursement at the end of June 2018 that was not on the ledger. The Business Manager provided a different ledger that had been modified for the \$1,500 disbursement.
- In total, the SBOA received two or three sets of ledgers and reconcilements for each month being reviewed

# Determination for Special Investigation

After reviewing the discrepancies, receiving multiple sets of records and receiving no response for the additional information requested, State Assignments contacted the SBOA Special Investigations Director, Mark Mahon



## Special Investigation

- A subpoena was issued for the Patient Trust bank account as well as the unknown bank account (Employee Recognition account)
- Once the subpoenaed bank records were received, they were reviewed to try identify the Patient Trust discrepancies noted by the State audit team
- SBOA was able to identify a detailed list of the discrepancies totaling \$8,548.73-the same difference as the variance in the first set of financial statements and ledgers that were presented for the Patient Trust fund

## Detail of Patient Trust account Discrepancies

Check No.	Date	Amount	Description
N/A	7/5/2017	\$ 738.80	Deposit Not Posted Correctly
Auto Transfer	10/31/2017	500.00	Transfer Not Posted; Deposit Not Posted Correctly
23480	11/3/2017	500.00	Disbursements Not Posted; Deposit Not Posted Correctly
23569	12/20/2017	150.00	Disbursements Not Posted; Deposit Not Posted Correctly
23578	12/28/2017	2,500.00	Disbursements Not Posted; Deposit Not Posted Correctly
23641	1/31/2018	500.00	Disbursements Not Posted; Deposit Not Posted Correctly
Auto Transfer	3/15/2018	200.00	Transfer Not Posted; Deposit Not Posted Correctly
24000	4/30/2018	647.00	Disbursements Not Posted; Deposit Not Posted Correctly
N/A	4/2/2018	301.97	Deposit Not Posted Correctly
Auto Transfer	5/25/2018	500.96	Transfer Not Posted; Deposit Not Posted Correctly
N/A	6/1/2018	10.00	Deposit Not Posted Correctly
Auto Transfer	6/22/2018	500.00	Transfer Not Posted; Deposit Not Posted Correctly
23937	6/29/2018	<u>1,500.00</u>	Disbursements Not Posted; Deposit Not Posted Correctly
Total		<u><u>\$ 8,548.73</u></u>	



## Employee Recognition Account

- The unknown bank account was the Employee Recognition account
- Once the records for the account were received, it was determined the Business Manager maintained two sets of ledgers for the account
- The difference between the ledgers were identified and consisted of:

Date	Check # Or Deposit	Item	Amount	Description
1/24/2018	1675	Cash for Event Supplies	\$ 600.00	Not included on recap
2/1/2018	1674	Cash for Event Supplies	100.00	Not included on recap
4/5/2018	Deposit	Smorgasboard/Grill Raffle	915.00	Included in recap but not deposited
4/26/2018	Deposit	Grill Raffle (Less: \$50 for meat & \$178.70 for cups for YOS)	146.30	Included in recap but not deposited
5/25/2018	Deposit	Deposit	(60.65)	Deposited but not included in recap
6/18/2018	Deposit	Health fair snacks	133.10	Included in recap but not deposited
6/20/2018	1671	Cash for Event	154.81	Not included on recap and no supporting documentation
7/5/2018	1669	Reimbursement of Supplies	200.00	No supporting documentation
8/2/2018	1676	Cash for T-Shirt Order	66.00	No supporting documentation
	Total		<u>\$ 2,254.56</u>	

## Meeting with the Office of the Inspector General

- At this point, the SBOA wanted to meet with the OIG to inform them of the situation
- It was decided that the SBOA and the OIG would jointly interview the Business Manager and question her on the discrepancies found
- FSSA also attended the meeting and was on site while the SBOA and OIG interviewed the Business Manager

## Conclusion

- After the interview, the SBOA continued their work and reviewed into the months of July, August, September, and October up until the day of the interview
- SBOA found additional discrepancies in the Patient Trust account totaling \$3,554
- Total amount in the SBOA report that the Business Manager was requested to repay, including Special Investigation Costs was \$26,439.43



# Investigation

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# Evansville State Hospital



# The Plan

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- Go in together
- Contact Superintendent
- Secure Fiscal
- Interview Byam
- Collect evidence

# The Team

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- Gina Gambaiani, SBOA
- Jonathon Bennington, SBOA
- Roger Booth, FSSA Audit
- Kathy Troiani, FSSA Audit
- Mark Mitchell, OIG
- Darrell Boehmer, OIG

# Individual Roles

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- Agency/institutional knowledge and assistance: Roger Booth and Kathy Troiani (FSSA)
- Secure records and devices in Finance office: SA Mark Mitchell (OIG); Gina Gambaiani (SBOA)
- Lead interview with Byam: SA Darrell Boehmer (OIG)
- Go through financial records with Byam: Jonathon Bennington (SBOA)



# Staging Area

When meeting multiple people coming from different areas you need a staging area.

- You do not want to show up piece meal
- And you do not want to go in hangry



# The Interview

# Interview

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- Do not put suspect into a defensive posture, BE NICE.
- Start with introduction
- Explain the Purpose of the interview
- If Miranda is not used it is on the investigator to show that suspect knew they were not in custody
- Only one person talk at a time, let the lead lead
- Take notes and wait for follow up
- If the interview is not recorded it might as well not have happened

# Starting the Interview



# Take Away the Alibis

- Go through duties and responsibilities
- Procedures
- Identify who else could have been involved
  - Password security
  - Permissions
- Be aware of their posture, attitude, voice, and actions. This is a good time to find out what a truthful response is like

# Take Away the Alibis



# During the Interview

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- Let them try and explain
- Do they have an explanation?
- Does the tone of their voice change?
- Is there a change in posture?

Lead up to  
Confession





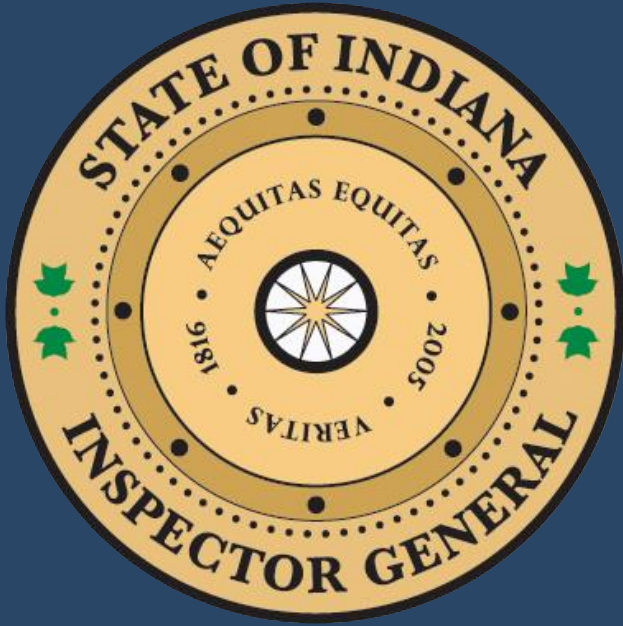
# During the Interview

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- Give them a choice for their actions give them a seemingly less serious choice, rationalize their actions
  - E.g. You are not a bad person you were just in a bad situation; or are you a thief
- Establish the elements of the crime
  - Did you do know that taking the money was a crime?
  - Did you take actions to hide this from being discovered?

# Confession





# Prosecution

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# Criminal Charges

On January 14, 2019, the OIG sent a certification letter to Vanderburgh County Prosecutor for consideration of charges against Byam.

On February 7, 2019, Vanderburgh County Prosecutor charged:

- 4 counts of felony Theft
- 1 count of misdemeanor Theft
- 1 count of felony Official Misconduct

INDIANA  
**OFFICE OF INSPECTOR GENERAL**  
315 WEST OHIO STREET, ROOM 104, INDIANAPOLIS, IN 46202 317.232.3850

January 16, 2019

Malcolm Gwinn  
Deputy Prosecutor  
Vanderburgh County Prosecutor's Office  
1 NW Martin Luther King Jr. Blvd., Suite #108  
Evansville, IN 47708

RE: Jennifer Dawn Byam  
Certification for criminal charges by the Indiana Inspector General

Dear Mr. Gwinn:

This letter is a certification of the above case to you and a request that you consider criminal charges against Jennifer Dawn Byam. IC 4-2-7-7(a) requires the Indiana Inspector General to certify information to an appropriate prosecuting attorney when an investigation suggests criminal activity.

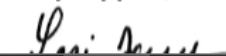
Following a criminal investigation performed by Special Agent/Director of Investigations Darrell Boehmer of our office, we believe the evidence would show the above referenced individual committed the following criminal acts:

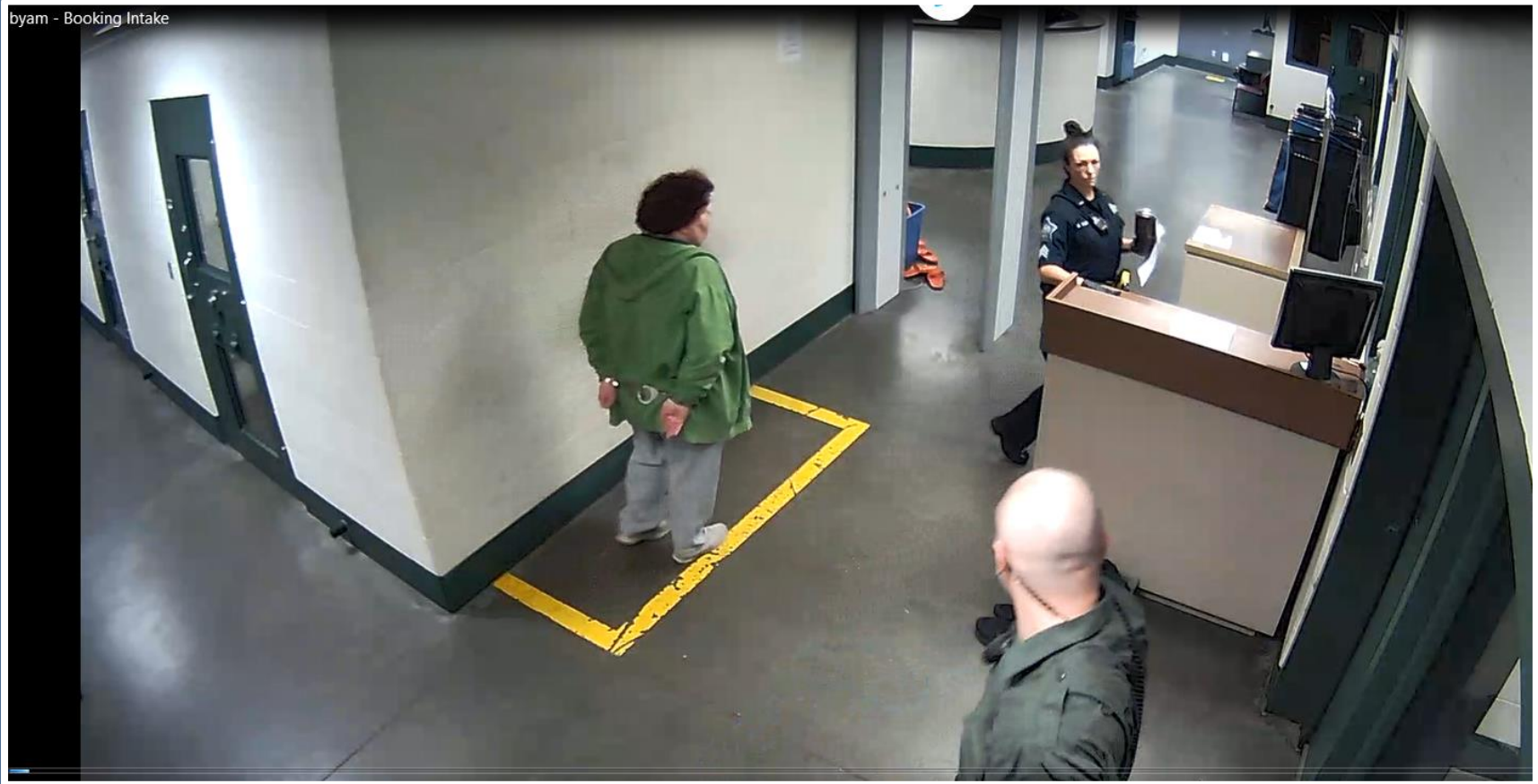
1. THEFT over \$750, Level 6 Felony, IC 35-43-4-2
2. OFFICIAL MISCONDUCT, Level 6 Felony, IC 35-44.1-1-1

Our office is providing you with investigatory records as well.

Thank you for your consideration. Please let us know how we can be of any further assistance. We stand ready to cooperate with you in any way possible. Please keep us advised as to the progress of the case.

Very truly yours,





Byam booking intake by Vanderburgh County Sheriff's Office

**IC 33-39-10-3****Inspector general or attorney general assistance in criminal proceedings**

Sec. 3. (a) With the consent of the inspector general, a prosecuting attorney may appoint the inspector general or a deputy inspector general who is licensed to practice law in Indiana as a special deputy prosecuting attorney to assist in any criminal proceeding involving public misconduct.

(b) With the consent of the attorney general, a prosecuting attorney may appoint the attorney general or a deputy attorney general who is licensed to practice law in Indiana as a special deputy prosecuting attorney to assist in any criminal proceeding involving environmental law.

*As added by P.L.57-2014, SEC.10.*

## Appointment as Special Deputy Prosecutor

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- Qualification as special deputy prosecuting attorney on Feb. 25.
- Amended to 30 counts of misdemeanor and felony Theft and left the 1 felony Official Misconduct.

# Amended Charges

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- Charges were amended on April 3, 2019
- Byam pled guilty on May 20, 2019

STATE OF INDIANA            )  
  ) SS:            VANDERBURGH CIRCUIT COURT  
COUNTY OF VANDERBURGH )            CAUSE NO: 82C01-1902-F6-000950

STATE OF INDIANA

vs.

JENNIFER DAWN BYAM

**STATE'S NOTICE OF INTENT TO FILE ADDITIONAL CHARGES**

Comes now the State of Indiana by Special Deputy Prosecuting Attorney, Lori A. Torres, and notifies the Defendant that the State intends to file additional charges against the Defendant in this case. Such additional charges are timely, in that the Amended Information will be filed more than thirty (30) days before the omnibus date herein, which is May 11, 2019. Pursuant to Ind. Code 35-34-1-5(b), the Information may be amended in matters of substance upon giving written notice to the defendant at any time up to thirty (30) days before the omnibus date if the defendant is charged with a felony.

The State requests the court set the matter for an advisement of rights for the new charges

# Keys:



- Great work by SBOA audit and special investigations team
- Defendant kept a record of her thefts
- Great work by special agent Boehmer
- Confession in a non-custodial environment
- Overwhelming financial records. Took 8 emails to send just the SBOA records to defense counsel, who couldn't or wouldn't figure out how to use a cloud platform to get the discovery
- Defendant's records and SBOA's totals of embezzled funds matched to the penny
- Witnesses were identified, experts and available



## Keys: (continued)



- Having a special deputy prosecuting attorney from the IG's office was intimidating.
- Lawyer she hired plainly stated that his usual stock in trade was drugs, burglaries, DUIs, etc., not white collar financial crimes.
- Once it was clear that jail time was not likely, she couldn't plead guilty fast enough.
  - Waived advisement of rights on amended charges, waived presentence report.
  - \$14K of financial losses with no criminal record was not likely to result in jail time in a larger county like Vanderburgh County. As I watched initial advisements of rights at each of the court sessions I attended, there were just so many people arrested for drug crimes, minor thefts, probation violations, etc.

# Sticky Issue

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## Official Misconduct

- is a felony; and
- it cannot be modified later like most other felony charges (IC 35-50-2-7)
- I chose to give alternate misdemeanor treatment at the time of sentencing under IC 35-38-1-1.5.

- Some prosecutors interpret 35-50-2-7 as prohibiting AMS.
- IPAC agreed it was unclear.
- Vanderburgh DPA was not opposed.
- It was a key part of the incentive package.
- Byam was concerned about:
  - Not going to jail; and
  - Having a felony criminal record.
- Without this upfront AMS treatment, she would always have the felony on her record.

# Sentencing

VANDERBURGH CIRCUIT COURT  
**FILED**  
May 21, 2019  
*S. Had* --ERK  
DC



STATE OF INDIANA  
COUNTY OF VANDERBURGH

**SENTENCING ORDER**

<b>Case Name</b> State of Indiana v. Jennifer Dawn Byam		<b>Case Number</b> 82C01-1902-F6-000950	<b>Court</b> Vanderburgh Circuit Court
<b>Judicial Officer</b> Cox, Michael J- Mag	<b>Prosecutor</b> Lori Ann Torres	<b>Defense Attorney</b> Christian Michael Lenn	
<b>Date of Offense</b> 07/05/2017	<b>Date of Sentencing</b> 05/20/2019	<b>TCN Number</b> 8210156060	

**The Defendant was charged with the following crimes, resulting in the following Dispositions under the above-referenced cause:**

PART I CHARGES				
COUNT	CRIME	GOC	STATUTORY CITATION	DISPOSITION
I	35-43-4-2(a)/F6: Theft where value of property is between \$750 & \$50k.		35-43-4-2(a)	Dismissed
II	35-43-4-2(a)/F6: Theft where value of property is between \$750 & \$50k.		35-43-4-2(a)	Dismissed
III	35-43-4-2(a)/F6: Theft where value of property is between \$750 & \$50k.		35-43-4-2(a)	Dismissed
IV	35-43-4-2(a)/F6: Theft where value of property is between \$750 & \$50k.		35-43-4-2(a)	Dismissed
V	35-44.1-1-1(1)/MA: Official Misconduct def., a public servant, knowingly or intentionally commits an		35-44.1-1-1(1)	Plea by Agreement
VI	35-43-4-2(a)/MA: Theft		35-43-4-2(a)	Dismissed
VII	35-43-4-2(a)/MA: Theft		35-43-4-2(a)	Dismissed
VIII	35-43-4-2(a)/MA: Theft		35-43-4-2(a)	Dismissed
IX	35-43-4-2(a)/MA: Theft		35-43-4-2(a)	Dismissed
X	35-43-4-2(a)/MA: Theft		35-43-4-2(a)	Dismissed
XI	35-43-4-2(a)(1)(A)/F6: Theft		35-43-4-2(a)(1)(A)	Plea by Agreement
XII	35-43-4-2(a)/MA: Theft		35-43-4-2(a)	Dismissed
XIII	35-43-4-2(a)/MA: Theft		35-43-4-2(a)	Dismissed
XIV	35-43-4-2(a)(1)(A)/F6: Theft		35-43-4-2(a)(1)(A)	Dismissed
XV	35-43-4-2(a)/MA: Theft		35-43-4-2(a)	Dismissed
XVI	35-43-4-2/MA: Theft		35-43-4-2	Dismissed

Excerpt from Sentencing Order

# Sentencing Considerations

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- Defendant received no jail time, and has a chance to convert the felony theft to misdemeanor.
- Seems relatively light.
- Suspended sentence for 2 years.

## Primary:

1. Incentive to pay back the money she stole from patients and coworkers.
2. Had worked at ESH since mid-2013 with no other known problems.
3. Had no criminal record.
4. Cooperated with investigators
5. Willing to enter into a plea agreement.
6. Her husband died several years before this started.
  - a. Irony is that she probably lost the best job she ever had or will have in the future.

# Sentencing Considerations

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- Defendant received no jail time, and has a chance to convert the felony theft to misdemeanor.
- Seems relatively light.
- Suspended sentence for 2 years.

## Cons:

1. Once she started stealing the money, she never stopped until she was terminated. This went on for 15 months.
2. She stole from patients and State of Indiana co-workers.
  - a. Employee Recognition Committee bank account: The June 30, 2018 balance presented in the June recap was \$2,219.19. The actual bank balance, however, was only \$230.63, so she stole nearly \$2K of collected money.

# Current Status

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## **Vanderburgh County Probation Officer:**

1. Defendant is on reporting probation;
2. She is doing fine on probation;
3. 1 year, 1 month completed, 11 months to go;
4. No Petitions to Revoke have been filed;
5. She is paying regularly.

Paid court costs, filing fees and probation fees of \$1,105

Just started restitution payments to the State. Has paid \$430 of restitution to the State. Is paying \$50 about once a week. She will only receive right to modify if she pays the entire \$14K before May 2021. Not looking good for her.

# Q&A

(Time Permitting)

**Thank you for  
attending!**





AUDITOR & INVESTIGATOR  
CONFERENCE