



U.S. Department of Justice

Civil Rights Division

*Disability Rights Section
4 Constitution Square
Washington, DC 20530*

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VIA EMAIL

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Administrative and Regulatory Enforcement Litigation
Office of Attorney General Todd Rokita
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Re: The United States' Findings and Conclusions Based on Its Investigation of the Indiana State Board of Nursing under Title II of the Americans with Disabilities Act, DJ # 204-26S-205

Dear Ms. Szyper:

The United States Department of Justice (the Department) has completed its investigation of the Indiana State Board of Nursing (Nursing Board) under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35. The Nursing Board administers the Indiana State Nursing Assistance Program (ISNAP), which rehabilitates and monitors nurses with drug or alcohol addiction. The Department opened this investigation in response to a complaint from a nurse alleging that she was denied participation in the ISNAP monitoring program because she takes prescribed medication for Opioid Use Disorder (OUD). Participation in ISNAP is a requirement, in many cases, for nurses recovering from drug or alcohol addiction to maintain, or have reinstated, an active nursing license necessary for employment.

Under Title II of the ADA, no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). The Nursing Board is a public entity as defined by the statute. 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104. Title II prohibits public entities from discriminating on the basis of disability in providing any aid, benefit, or service, either directly or through contractual means. 28 C.F.R. § 35.130(b)(1). The Complainant's OUD is a disability under the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 35.108. As a person with an OUD disability who has been rehabilitated successfully and is no longer engaging in the illegal use of drugs, the Complainant is an individual with a disability. 42 U.S.C. § 12110. Title II authorizes the United States to investigate complaints, make findings of fact and conclusions of law, and attempt to secure voluntary compliance where violations are found. 42 U.S.C. § 12133; 28 C.F.R. pt. 35, subpt. F.

The Department has determined that the Nursing Board violated Title II of the ADA by prohibiting the Complainant from participating in the ISNAP program based on her use of prescribed medication to treat OUD. The Nursing Board discriminated against Complainant in violation of the ADA by denying her the benefits of ISNAP services, programs, or activities because of her disability. *See* 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130(a), 35.130(b)(1). This letter sets forth the Department’s findings of fact and conclusions of law and the minimum steps the Nursing Board must take to meet its legal obligations and remedy the violations the Department has identified.

Medication for Opioid Use Disorder

Methadone and buprenorphine (including brand names Subutex and Suboxone) are medications approved by the Food and Drug Administration to treat OUD. According to the U.S. National Institute on Drug Abuse (NIDA), methadone and buprenorphine help diminish the effects of physical dependency on opioids, such as withdrawal symptoms and cravings, by activating the same opioid receptors in the brain targeted by prescription or illicit opioids without producing euphoria. NIDA, *How do medications to treat opioid use disorder work?* (April 2021).¹ When taken as prescribed, these medications are safe and effective.

How long a patient receives OUD medication is tailored to the needs of each patient, and in some cases, treatment can be indefinite. According to the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA): “OUD medication can be taken on a short- or long-term basis, including as part of medically supervised withdrawal and as maintenance treatment.” SAMHSA, *Treatment Improvement Protocol 63: Medications for Opioid Use Disorder* at ES-3 (July 2021).² SAMHSA recommends that individuals taking medication to treat OUD “receive[] medication for as long as it provides a benefit,” an approach referred to as “maintenance treatment.” *Id.* at 1-8. “OUD medication gives people the time and ability to make necessary life changes associated with long-term remission and recovery,” “minimizes cravings and withdrawal symptoms,” and “lets people better manage other aspects of their life, such as parenting, attending school, or working.” *Id.*

SAMHSA cautions that “patients who discontinue OUD medication generally return to illicit opioid use.” *Id.* If a patient plans to stop use of OUD medication, SAMHSA advises that they and their providers base decisions “on knowledge of the evidence base for the use of these medications, individualized assessments, and an individualized treatment plan they collaboratively develop and agree upon. Arbitrary time limits on the duration of treatment with OUD medication are inadvisable.” *Id.*

¹ Available at <https://www.drugabuse.gov/publications/research-reports/medications-to-treat-opioid-addiction/how-do-medications-to-treat-opioid-addiction-work>.

² Available at <https://store.samhsa.gov/product/TIP-63-Medications-for-Opioid-Use-Disorder-Full-Document/PEP21-02-01-002>.

Findings of Fact

1. The Nursing Board's Statutory Mandate to Assist in the Rehabilitation of Impaired Nurses

The Nursing Board is mandated by state statute to “assist in the rehabilitation of an impaired registered nurse or licensed practical nurse.”³ The statute also provides that noncompliance in a Board-designated rehabilitation program may be used in any disciplinary or criminal proceedings instituted against the impaired registered nurse or licensed practical nurse.⁴ The statute does not prohibit the use of medications for OUD in Board-designated rehabilitation programs.

2. Regulatory Authority Establishing the Indiana State Nursing Assistance Program

In 2006, the Nursing Board established the Indiana State Nursing Assistance Program (“ISNAP”).⁵ ISNAP is defined as “an abstinence based program for the rehabilitation and monitoring of: (A) impaired registered nurses; or (B) licensed practical nurses; that have been affected by the personal use or abuse of alcohol or other drugs.”⁶ The regulation defines “treatment program” as “an abstinence based program or facility...”⁷ In order to participate in ISNAP, a nurse “must sign an abstinence based [Recovery Monitoring Agreement],”⁸ and “[t]he treatment plan referenced in the [Recovery Monitoring Agreement] must be abstinence based.”⁹ The regulation also states that “[f]ailure to comply with the terms of a [Recovery Monitoring Agreement] may subject the nurse to termination from participation in ISNAP.”¹⁰ Neither the term “abstinence” nor “abstinence based” is defined by regulation.

3. ISNAP Written Policies on the “Abstinence Based” Requirement

The Nursing Board contracts with vendors to administer ISNAP. From January 1, 2013 through June 30, 2018, the program was administered by the Indiana State Nurses Association (ISNA). Since June 2018, the program has been administered by Parkdale Aftercare LLC, under the name Indiana Professional Recovery Program (IPRP).

Both vendors utilized policy manuals and participation handbooks that require nurses to taper off any medication used for OUD as a condition of ISNAP participation. For example, the ISNAP policy manual utilized by ISNA required participants to “demonstrate full abstinence from all mood-altering chemicals” and required nurses to “agree to taper off all controlled substances within an approved time frame designated by ISNAP.” Similarly, the participant handbook utilized by IPRP defines abstinence as “refraining from the use of any mood-altering or controlled substance.” The handbook states “[a]nyone who must be on controlled substances for an extended period will not be eligible for monitoring with IPRP because this is an abstinent

³ Ind. Code § 25-23-1-31(b).

⁴ *Id.* at § 25-23-1-31(f).

⁵ 848 Ind. Admin. Code § 7-1-1(2).

⁶ *Id.*

⁷ *Id.* at § 7-1-1(6).

⁸ *Id.* at § 7-1-2(b).

⁹ *Id.* at § 7-1-6(a)-(b).

¹⁰ *Id.* at § 7-1-2(b).

based [sic] program.” The Recovery Monitoring Agreement (RMA) template, updated in July 2018, requires participants to acknowledge that “I must refrain from taking any controlled substances including the use of TRAMADOL/ULTRAM or SUBOXONE while in monitoring, to remain in compliance with IPRP.”

4. Complainant

Complainant was prescribed opioid pain medication throughout her teenage years, and developed a dependency on opioids by her early adulthood. In 2011, Complainant became a licensed registered nurse in Indiana. During this time, Complainant tried various methods to treat her OUD, including total abstinence, outpatient treatment, therapy, and taking methadone. None of these treatments provided lasting results.

In July 2013, Complainant self-reported her opioid abuse to ISNAP at the recommendation of her employer. At the time, she was on a methadone maintenance program, but was told that she would have to taper off the methadone to participate in ISNAP. In September 2013, Complainant entered into an RMA with ISNAP where she was required to agree to “total abstinence” from controlled substances, which was defined as “no use, whatsoever, of any amount or kind of alcohol, any illicit drug, any narcotics, and controlled substances (Schedule I-V drugs), some prescription medications and other mood-altering substances.” Complainant did not successfully complete ISNAP and her nursing license was placed on indefinite suspension in late 2014. To petition for reinstatement, Complainant is required to have one year of complete and continuous compliance with an ISNAP RMA.

In 2016, Complainant sought new treatment for her OUD and was prescribed buprenorphine for the first time. Since starting buprenorphine, Complainant has not illegally used opioids. Complainant has, at all times, been prescribed buprenorphine through a doctor licensed by the state of Indiana to prescribe buprenorphine for OUD. Complainant describes the buprenorphine as lifesaving, allowing her to function completely normally, be a good mother to her children, and feel whole again. Complainant reports that she has no impairment from taking the medication for her OUD. Complainant, consistent with the advice of her doctor, intends to remain on buprenorphine indefinitely. Complainant and her doctor believe that tapering off buprenorphine would come with a significant risk of relapse, which could result in death.

Having successfully remained in recovery for approximately a year while on buprenorphine, Complainant became determined to become reemployed as a nurse. In October 2017, Complainant contacted the ISNAP vendor to inquire whether she could reenroll in ISNAP while taking buprenorphine for OUD. Complainant was told she would have to fully taper off the buprenorphine within three months after enrolling in ISNAP. Complainant was very distressed and questioned the merits of this policy, and ISNAP discouraged her from enrolling. Because of this policy, Complainant did not enroll. While Complainant believes that nursing is her calling in life, she believes remaining on her OUD medication is a life or death decision. As such, Complainant still has not enrolled in ISNAP. Because Complainant cannot participate in ISNAP while taking her prescribed OUD medication, she is unable to petition for reinstatement of her nursing license. This has prevented her from becoming reemployed as a nurse.

Conclusions of Law

By requiring Complainant to taper off her prescribed OUD medication as a condition to ISNAP participation, the Nursing Board discriminated against Complainant on the basis of disability and denied her an equal opportunity to benefit from ISNAP's services, programs, or activities. 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130(a), (b)(1). Under the ADA, the Nursing Board is required to make reasonable modifications to its policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity. *Id.* § 35.130(b)(7). Discriminating against a person because that person takes medication to treat a disability constitutes discrimination on the basis of disability.

The Nursing Board's prohibition on ISNAP participants' use of OUD medication in ISNAP penalized Complainant for her disability and was not justified by any individualized medical assessment. The Nursing Board's prohibition directly conflicts with prevailing medical guidance on OUD medication. Additionally, Complainant's doctor recommended against Complainant tapering off her buprenorphine because tapering off would come with a significant risk of relapse.

Moreover, ISNAP's policy requiring Complainant to stop using buprenorphine is not necessary to ensure that she achieve rehabilitation and monitoring for the illegal use of opioids. On the contrary, Complainant was prescribed buprenorphine because she had struggled to remain sober without the assistance of OUD medication. Her treatment experience and needs align with medical research showing that long-term use of OUD medication minimizes cravings and withdrawal symptoms, and lets individuals better manage other aspects of their lives, including parenting, attending school, and working.

The Nursing Board also violated the ADA by imposing eligibility criteria that screened out or tended to screen out individuals with OUD who require medication for their OUD, such as the Complainant, from fully and equally enjoying the Nursing Board's programs, when the criteria were not necessary for the provision of its program. 28 C.F.R. § 35.130(b)(8). The Nursing Board's bans and limitations on the use of OUD medication in ISNAP also constitute a discriminatory method of administration that violates Title II of the ADA. 28 C.F.R. § 35.130(b)(3). These bans and limitations subject qualified individuals with OUD to discrimination and impair or defeat accomplishment of the objectives of ISNAP, which is designed to assist in the rehabilitation of impaired registered and licensed practical nurses.

The Nursing Board has violated and continues to violate Title II of the ADA in its treatment of individuals with OUD, including the Complainant. To remedy these violations, and to protect the civil rights of individuals with OUD going forward, the Nursing Board should promptly implement corrective measures, including the following:

1. Adopt or revise written policies to eliminate the ban on ISNAP participants using medication to treat OUD and to explicitly state that the Nursing Board, and its contracted vendors, may not discriminate against, exclude from participation, or deny the benefits of its services, programs, or activities—including ISNAP—to qualified individuals with disabilities because they have OUD.

2. Appropriately train and educate all Nursing Board staff and the staff of ISNAP vendors about OUD and the nondiscrimination requirements of Title II of the ADA.
3. Pay compensatory damages to the Complainant and other aggrieved individuals for injuries caused by the Nursing Board's actions described in this letter.
4. Provide the United States with written status reports delineating all steps taken to comply with these requirements, including the date(s) on which each step was taken, and, where applicable, information sufficient to demonstrate compliance.

We hope to work cooperatively with you to resolve the Department's findings in this matter. If the Nursing Board declines to enter into voluntary compliance negotiations or if our negotiations are unsuccessful, the United States may take appropriate action, as described at 28 C.F.R. §§ 35.173 and 35.174. We will also share a copy of this letter with Complainant. A complainant may file a private suit pursuant to 42 U.S.C. § 12133, whether or not we find a violation.

Please contact Jane Andersen, Trial Attorney at the Disability Rights Section of the Civil Rights Division, at Jane.Andersen2@usdoj.gov within seven days of receipt of this letter if the Nursing Board is interested in working with the United States to reach an appropriate resolution along the lines described above.

Please note that this letter is a public document and will be posted on the Civil Rights Division's website. If you have any questions as you review this letter, please feel free to contact us.

Sincerely,

/s/ Rebecca B. Bond
Rebecca B. Bond
Chief
Disability Rights Section

cc: Zachary A. Myers
United States Attorney
Southern District of Indiana