

BEFORE THE KANSAS STATE BOARD OF NURSING

Landon State Office Building, 900 S.W. Jackson #1051
Topeka, Kansas 66612-1230

FILED

MAY 24 2010

**IN THE MATTER OF
DANA L. HUBER
License No. 13-092743-102**

KSBN

Case No. 10-084-9

SUMMARY ORDER

Now this 24th day of May 2010, the above matter comes before the Kansas State Board of Nursing (Board) pursuant to authority granted to the Board by K.S.A. 65-1120. The Board hereby proposes to find facts and DENY the registered nurse reinstatement application of Dana L. Huber (Applicant) by way of Summary Order as provided by K.S.A. 77-537.

FINDINGS OF FACT

1. Applicant was previously licensed to practice nursing in the state of Kansas as a registered nurse. Applicant's previous license lapsed on October 31, 2008.
2. On or about February 2, 2010, the Board received Applicant's application for reinstatement of her license to practice nursing in the state of Kansas as a registered nurse.
3. Applicant was subject to a Consent Agreement and Final Order entered in the Board's case number 05-913-9, effective December 6, 2006, and the findings of that order are incorporated by reference as if fully set forth herein.
4. In addition to other provisions of the Consent Agreement and Final Order, Applicant agreed to complete the requirements of the [REDACTED]
5. [REDACTED]
6. On or about April 14, 2008, [REDACTED] notified the Board that Applicant had tested positive for Tramadol [REDACTED]
7. On or about September 10, 2008, Applicant's [REDACTED] case was closed for noncompliance, including another positive drug screen.
8. On September 10, 2008, a petition was filed in the Board's case number 08-839-9 alleging that Applicant had failed to comply with the Consent Agreement and Final Order.
9. Applicant did not appear to dispute the allegations, and a default order effective September 30, 2008, lifted the stay of suspension pursuant to the terms of the Consent Agreement and Final Order, suspending Applicant's license for a minimum of six months.
10. At the time Applicant's previous license lapsed, the license was suspended and Applicant was not in compliance with the provisions of the Consent Agreement and Final Order entered in the Board's case number 05-913-9.

CONCLUSIONS OF LAW

11. The Board may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization upon making any of the findings listed under K.S.A. 65-1120(a).

12. The Board has jurisdiction of Applicant and the subject matter of this proceeding.

13. The Board may deny Applicant's application for reinstatement based on K.S.A. 65-1120(a)(4), to be unable to practice with skill and safety due to current abuse of drugs or alcohol.

14. The Board may deny Applicant's application for reinstatement based on K.S.A. 65-1120(a)(6), unprofessional conduct as defined by K.A.R. 60-3-110(s), failing to complete the requirements of the impaired provider program of the board.

15. The Board may deny Applicant's application for reinstatement based on K.S.A. 65-1120(a)(6), unprofessional conduct as defined by K.A.R. 60-3-110(r), failing to comply with any disciplinary order of the Board.

16. Pursuant to *Vakas v. Kansas State Board of Healing Arts*, 248 Kan. 589 (1991), the factors to be considered in determining whether a license should be reinstated after a disciplinary finding has been made are the following:

- The present moral fitness of the petitioner;
- The demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
- The extent of petitioner's rehabilitation;
- The nature and seriousness of the original misconduct;
- The conduct subsequent to discipline;
- The time elapsed since the original discipline;
- The petitioner's character, maturity, and experience at the time of the original revocation;
- The petitioner's present competence in medical skills.

17. In failing to complete requirements of the Consent Agreement and Order, including but not limited to the requirement of completing the impaired provider program of the Board, Applicant has failed to demonstrate positive change in any of the areas identified in *Vakas*.


18. K.S.A. 77-511(a)(2)(A) and 77-527 of the Kansas Administrative Procedure Act authorizes the use of summary proceedings by a state agency when denying an application in whole or in part.

19. The role of the Kansas State Board of Nursing is to protect citizens of Kansas, and the proposed order serves that purpose by requiring a showing of rehabilitation following a disciplinary finding of drug impairment, unprofessional conduct, and professional incompetency based on a pattern of behavior.

IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF NURSING THAT

Applicant's reinstatement application to practice nursing in the state of Kansas is denied.

Notice of Right to Hearing: Pursuant to K.S.A. 77-537, this decision is subject to your request for a hearing. If you desire a hearing, you must submit a written request for hearing to the following: Kansas State Board of Nursing, Legal Division, 900 SW Jackson, Suite 1051, Topeka, Kansas 66612-1230, (785) 296-4325. THIS REQUEST MUST BE SUBMITTED WITHIN FIFTEEN (15) CALENDAR DAYS FROM THE DATE OF THIS ORDER, or by the first business day after the passage of 15 days if the last day falls on a Saturday, Sunday, or legal holiday. If a hearing is not requested in the time and manner stated, this Summary Order becomes effective as a final order, without further notice, upon the expiration of the time for requesting a hearing. Pursuant to K.S.A. 77-531, if the Summary Order is served by mail, three days are added to the time limits set out above.


 PN

Janet Jacobs, LPN
Investigative Committee, Chair
Kansas State Board of Nursing

CERTIFICATE OF SERVICE

I certify that on the 21st day of May, 2010, a true and correct copy of the foregoing Summary Order was deposited in the United States Mail, first-class postage prepaid, addressed to the following:

Dana L. Huber
201 North Street
Seneca, KS 66538



Brenda J. Clary, #18770
Assistant Attorney General #11555