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BEFORE THE KANSAS STATE BOARD OF NURSING  
Landon State Office Building, 900 S.W. Jackson #1051  
Topeka, Kansas 66612-1230

FILED

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KSBN

IN THE MATTER OF  
SCOTT A. KEITH  
License No. 13-100063-032

Case No. 09-1386-5, 10-717-5, 10-855-5

FINAL ORDER AND CONSENT AGREEMENT

NOW ON THIS 18<sup>th</sup> day of November, 2011, the Kansas State Board of Nursing, represented by Assistant Attorney General, Alma A. Heckler, and the Respondent, Scott A. Keith, by and through counsel, Maren K. Ludwig, hereby enter into this agreement and proffer evidence and the presiding officer adopts those recommendations and makes the following findings of fact and orders:

AGREED FINDINGS OF FACT

1. Respondent is licensed to practice nursing in Kansas through 3/31/2012. The Kansas State Board of Nursing (KSBN) has jurisdiction over the Respondent and the subject matter of this action.
2. Respondent's address of record is 204 N. Heather, Maize, KS 67101.
3. The Respondent understands that pursuant to K.S.A. 77-515, respondent may be represented at respondent's expense by, an attorney during these proceedings. Respondent acknowledges that this agreement will be an open record pursuant to the Kansas Open Records Act, K.S.A 45-215 et seq., and the respondent stipulates to the allegations made herein.

4. After an investigation, the Board's investigative committee found reasonable grounds to believe that the respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1120, and referred this matter for further proceedings.

5. The Kansas State Board of Nursing has the authority under K.S.A. 74-1106 et seq. to examine, license and renew license for duly qualified applicants and may limit, deny, suspend or revoke a license or authorization to practice nursing, may issue a public or private censure and levy administrative fines consistent with K.S.A. 74-1110, if a violation of K.S.A. 65-1120 is established.

6. A petition was filed 3/25/2011 to take disciplinary action against the respondent's license.

(a) In Case No. 09-1386-5, while employed by Via Christi Regional Medical Center, Wichita, Kansas, on or about 9/16/09 respondent's activity in Omnicell was so frequent, respondent's coworkers became suspicious. Respondent's employment was terminated.

(b) In Case No. 10-717-5, while respondent was employed at the Sedgwick County Jail in Wichita, Kansas on or about 4/26/2010, by Conmed Healthcare Management, respondent allegedly diverted 40 tablets of Percocet and repackaged 320 tablets of Percocet. Respondent's security clearance was pulled by law enforcement and his employment was terminated. Respondent admitted to taking some of the Percocet and admitted he had planned on taking the pills but decided not to and trashed the pills.

(c) In Case No. 10-855-5, while employed by Wesley Medical Center, Wichita, Kansas, it is alleged respondent diverted Fentanyl and accessed the PYXIS system on

his day off (5/30/2010). Respondent claimed he had left his badge and his behavior was so erratic security was contacted . Respondent was escorted by house supervisor for a urine screen which came back positive for hydrocodone and hydromorphone. Respondent did not provide a prescription for the controlled substances to his employer. Respondent has supplied a letter from his physician for the period of March 2010 to September 2010, to show he had valid prescriptions for both hydrodocone and hydromorphone.

7. The above incidents are violations of the nurse practice act. The Respondent agrees that the board is prepared to prove that respondent has violated:

Count 1: K.S.A. 65-1120(a)(6), unprofessional conduct, by drug diversion K.A.R. 60-3-110(n);

Count 2: K.S.A. 65 – 1120(a)(6), unprofessional conduct by inaccurately recording, falsifying, or altering any record of a patient or agency or of the board; K.A.R. 60-3-110(d).

(Parties have agreed to dismiss without prejudice Count 3: K.S.A. 65 1120(a)(4) to be unable to practice with skill and safety due to current abuse of drugs or alcohol.)

8. Respondent has the right to a hearing with evidence and witnesses and to seek review of the findings from that hearing in accordance with the Kansas Administrative Procedure Act and the Act for Judicial Review and Civil Enforcement of agency actions. Respondent is waiving those rights and voluntarily entering into this agreement instead of proceeding to such a hearing.

### CONCLUSIONS OF LAW

9. The Kansas State Board of Nursing has the authority under K.S.A. 74-1106 et seq. to examine, license and renew license for duly qualified applicants and may limit, deny, suspend or revoke a license or authorization to practice nursing, may issue a public or private censure and levy administrative fines consistent with K.S.A. 74-1110, if a violation of K.S.A. 65-1120 is established.

10. Respondent has violated the Kansas Nurse Practice Act as follows:

Count 1: K.S.A. 65-1120(a)(6), unprofessional conduct, by drug diversion  
K.A.R. 60-3-110(n);

Count 2: K.S.A. 65 – 1120(a)(6), unprofessional conduct by inaccurately recording, falsifying, or altering any record of a patient or agency or of the board; K.A.R. 60-3-110(d).

### POLICY STATEMENT

11. The role of the Kansas State Board of Nursing is to protect citizens of Kansas.

### DISPOSITION

12. By entering into this Final Order and Consent Agreement, both parties waive their right to full administrative proceedings pursuant to K.S.A. 65-1120 and K.S.A. 77-501 et seq. and to judicial review.

13. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that this Final Order and Consent Agreement will continue through any renewal periods of respondent's nursing license until respondent completes each of the conditions and requirements of this agreement. Further, the parties agree that in the event of a lapse of Respondent's nursing license, reinstatement

of Respondent's nursing license shall be contingent upon this Final Order and Consent Agreement remaining in effect until Respondent completes each of the conditions and requirements of this agreement.

14. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that the Respondent's license to practice nursing in Kansas is immediately suspended. The suspension will be stayed as long as the requirements and conditions of this agreement are met.

15. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that the Respondent's license to practice nursing in Kansas is immediately limited. The limitations placed on the license and described below will remain in place until the requirements and conditions of this agreement are met or until the requirements and conditions of this agreement call for the modification of the limitations.

16. The Kansas State Board of Nursing will not take additional disciplinary action against respondent's nursing license for the violations stated above as long as respondent completes each of the following conditions and requirements:

(a) Respondent shall receive a license that is suspended with a Stay.

(b) Respondent will participate in and complete the reasonable recommendations and requirements of the Kansas Nurses Assistance Program (KNAP) until at least October 22, 2013 consistent with his contract with KNAP; sign releases of information necessary for KNAP to evaluate and monitor respondent and for KNAP to report information to the board. Respondent understands and agrees that his contract with KNAP is subject to extension if he violates the terms of that contract and relapses,

fails to complete urinary drug screens, attend 12 step or monitoring meetings or fails to meet any of the other contractual requirements. Respondent will be deemed to have completed the KNAP program when KNAP issues written notification that respondent has completed the program. Respondent understands that this Final Order and Consent Agreement will remain in effect until he has successfully completed KNAP. Noncompliance with KNAP is a violation of this agreement.

(c) Respondent must submit to random drug screens as determined or selected by the Board or by KNAP until he completes all of the requirements of KNAP and he is released from the program. The costs of the drug screens will be paid by the respondent. Respondent agrees that a Positive Drug Screen is a violation of this agreement.

(d) Respondent shall have a narcotic key restriction on respondent's license for the one year after respondent secures employment that requires a nursing license. The narcotic key restriction prohibits the respondent from passing of narcotics, wasting of narcotics or having access to narcotics. The narcotic key restriction also prohibits the respondent from supervising nurses or others that have access to narcotics. After respondent completes one year of employment that requires a nursing license, without violating any terms of this agreement, respondent may request that the narcotic key restriction be removed from respondent's license. Respondent's request shall include written verification from respondent's employer, to the Kansas State Board of Nursing, as to whether the respondent has been employed in a position that requires a nursing license; as to whether the respondent has held that position for at least one year; as to whether the respondent has passed, wasted, had access to, or supervised others that

had access to narcotics. With a showing that the narcotic key restriction term of this agreement has been met by the respondent, and the respondent is compliant with all other terms of this agreement, the narcotic key restriction will be removed from respondent's license.

(e) For the duration of this Agreement, Respondent shall immediately notify the Legal Division of any misuse of alcohol, if prohibited by KNAP, or controlled substances, or any violation of this Final Order and Consent Agreement.

(f) During the duration of this Agreement, Respondent shall immediately inform all employers and prospective employers of this Final Order and Consent Agreement .

(g) Respondent shall send a money order for \$70 to the Board upon entering into this agreement to pay the cost of this action.

(h) Respondent shall not violate the Kansas Nurse Practice Act during the term of this Agreement.

(i) Respondent shall not violate the laws of the United States, of a State, or of any political subdivision of any State during the duration of this Agreement. Traffic infractions shall not be considered violations of the law.

(j) Respondent will Submit Reports from the respondent's employer to the attention of the Legal Division, Kansas State Board of Nursing, Landon State Office Building, 900 S.W. Jackson, Suite 1051, Topeka, Kansas 66612-1230 on the following schedule:

Prior to respondent securing employment that utilizes his nursing license, respondent is to mail to the Kansas State Board of Nursing a statement indicating that

respondent has not yet secured employment which utilizes respondent's nursing license. This statement is due by the 10th day of each month beginning the next month after signing this consent agreement.

Once respondent is employed in a position that utilizes his or her nursing license, or if respondent is currently employed in a position that utilizes his or her nursing license, a nursing performance report is due by the 10th day of every third Month until respondent has caused the submission of four (4) separate nursing performance reports.

The report shall be prepared and signed by respondent's immediate supervisor or by an R.N. who evaluates respondent's performance on a regular basis and be based on the following guidelines:

- (1) Incorporation of information on facility letterhead stationary is preferred.
- (2) Letter format is acceptable, with the date of the report identified.
- (3) Evaluator's name, telephone number, address, license number and nursing credentials.
- (4) Respondent's name, address, telephone number, license number.
- (5) A short explanation of the respondent's work performance in the following areas:
  - (a) Standards met regarding facility policies and procedures.
  - (b) Compliance with the Kansas Nurse Practice Act.
  - (c) Supervisor evaluations.
  - (d) Overall appropriateness.
  - (e) Interactions with patients.



(f) Interactions with staff and administration.

(k) Respondent shall not practice without onsite supervision by a qualified nurse, for a period of one year from the date of nursing employment. The parties agree that this provision prohibits the Licensee from practicing nursing unless the supervising nurse is present within the same facility as the Licensee and the supervising nurse is available for periodic inspection of Licensee's nursing tasks.

(l) While Respondent is under this Agreement he shall not seek or accept employment with a nursing registry, a temporary nursing service or agency, a home health care service or agency, or as a private duty nurse without prior written consent of the Board.

(m) Respondent agrees to notify the Legal Division of any changes in address and phone number as well as all employment terminations or employer changes or additions during the duration of this Agreement. All such notifications shall be made in writing within fourteen (14) days of such a change.

17. Respondent acknowledges and agrees that Respondent is responsible for the costs related to satisfying the conditions and requirements of this Final Order and Consent Agreement. Respondent further acknowledges and agrees that to provide the Board with false information regarding compliance with this Consent Agreement is a violation of this Consent Agreement.

18. If Respondent does not meet these conditions and requirements, the Kansas State Board of Nursing may request additional sanctions against Respondent's license or application for a license. Respondent would be sent notice of such action and would be entitled to a hearing as to whether Respondent had complied with this Final Order

and Consent Agreement, but Respondent could not contest the violations listed in this agreement.

19. All parties understand that if an action based on failure to meet the conditions and requirements of this Final Order and Consent Agreement is filed, K.S.A. 77-531 requires the Notice of Hearing to be served upon the Respondent and the Respondent's attorney of record, if any. All parties agree that only serving the Notice of Hearing upon the Respondent will be proper service and it is the Respondent's responsibility to contact his or her attorney, if any, in reference to the action.

20. Respondent acknowledges and agrees that if any action based on failure to meet the conditions and requirements of this Final Order and Consent Agreement is filed during the term of this Final Order and Consent Agreement, or within 30 days after the expiration date, the conditions of this Final Order and Consent Agreement shall continue in effect until the Board or a hearing/presiding officer designated pursuant to K.S.A. 77-514 and K.S.A. 77-526, rules on the action.

21. Respondent acknowledges and agrees that upon a first finding of Respondent not complying with any of the conditions or requirements of this Final Order and Consent Agreement, the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, shall be lifted for a period of six months from the date of said finding. Respondent will not be allowed to practice nursing in the state of Kansas during the period of suspension. Respondent acknowledges and agrees that all conditions and requirements of this Final Order and Consent Agreement remain in effect during the period of suspension.

22. Respondent acknowledges and agrees that upon a second or subsequent finding of Respondent not complying with any of the conditions or requirements of this Final Order and Consent Agreement the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, shall be lifted for a period of one year from the date of said finding. Respondent will not be allowed to practice nursing in the state of Kansas during the period of suspension. Respondent acknowledges and agrees that all conditions and requirements of this Final Order and Consent Agreement remain in effect during the period of suspension.

23. Respondent acknowledges and agrees that upon the Stay of Suspension being lifted due to a finding of non-compliance with any of the conditions or requirements of this Final Order and Consent Agreement, the Suspension will not again be Stayed until the Respondent has, following the prescribed time period of suspension, provided written verification to the Board that Respondent is in compliance and has remained in compliance during the period of suspension, with all conditions and requirements of this Consent Agreement. Upon the Respondent providing said written verification the suspension will again be stayed.

24. The Board will inactivate this case file once respondent satisfies this order. This agreement does not prohibit the agency from taking disciplinary action against Respondent's license for any additional or cumulative violation of the Kansas Nurse Practice Act committed by the Respondent before or after this agreement is entered into.

25. This agreement is a discipline and must be reported on any future renewal or reinstatement applications. This agreement is a contract entered into by the parties to

resolve an investigative case. The original of this agreement shall be placed in the Agency Record. This Agreement is a public record and will be reported to national disciplinary data banks.

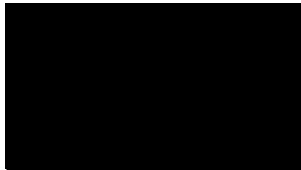
26. The duration of the Agreement shall be from the date shown on the certificate of service until Respondent's successful completion of all of the conditions and requirements of this Final Order and Consent Agreement and those set out in paragraph 16, items a-m. After successful completion of all of the conditions and requirements of this Final Order and Consent Agreement by the Respondent, the Agreement will be satisfied and the case will be inactivated.

27. By signing this Final Order and Consent Agreement, Respondent acknowledges that Respondent has read and understands the entire document, and agrees to be bound by its terms. This Final Order and Consent Agreement constitute the entire agreement of the parties and may not be modified except in writing and approved by all parties. The effective date of this Final Order and Consent Agreement is the date shown on the certificate of service.

28. The hearing/presiding officer whose signature appears below has been designated pursuant to K.S.A. 77-514 and K.S.A. 77-526 to act on behalf of the Board/agency head and to hear discipline cases on behalf of the Board/agency head and to render either initial orders or final orders, if by agreement of both parties, in those discipline cases.

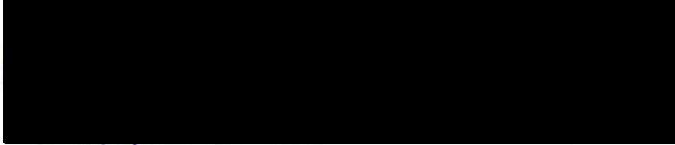
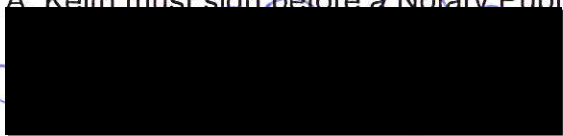
IN WITNESS WHEREOF, the parties hereto execute this FINAL ORDER AND CONSENT AGREEMENT.

IT IS SO ORDERED.



(Scott A. Keith must sign before a Notary Public)

Scott A. Keith  
Respondent  
204 N. Heather  
Maize, KS 67101



Maren K. Ludwig, #23922  
Law Offices of Morris Laing  
800 SW Jackson, Suite 1310  
Topeka, Ks. 66612  
Counsel for Respondent



Alma A. Heckler, #11555  
Assistant Attorney General  
Kansas State Board of Nursing  
Landon State Office Building  
900 SW Jackson #1051  
Topeka, KS 66612



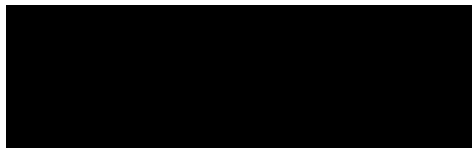
Sandra L. Sharon, Presiding Officer

CERTIFICATE OF SERVICE

On the 21<sup>st</sup> day of November, 2011, I mailed a copy of this  
CONSENT AGREEMENT AND FINAL ORDER to:

Scott A. Keith  
204 N. Heather  
Maize, KS 67101

Maren K. Ludwig  
Law Offices of Morris Laing  
800 SW Jackson, Suite 1310  
Topeka, Ks. 66612



Alma A. Heckler, #11555  
Assistant Attorney General  
Kansas State Board of Nursing  
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