

BEFORE THE KANSAS STATE BOARD OF NURSING

FILED

DEC 09 2013

KSBN

IN THE MATTER OF
KASEE TUNNELL
License No. 13-107356-031

Case No. 11-239-5
OAH No. 13BN0178

INITIAL ORDER

Now on this 21st day of November 2013, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing (Board/Petitioner). Sandra L. Sharon was duly appointed Presiding Officer pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing, appears by Assistant Attorney General Alma A. Heckler, Disciplinary Counsel for the Board. The Respondent, Kasee Tunnell, appears in person.

Findings of Fact

1. On or about July 28, 2011, the respondent was arrested for unlawfully obtaining a prescription only drug. On or about June 18, 2012, the respondent was found guilty of this charge.
2. On July 28, 2011, the respondent was employed by Interim Healthcare as a home health nurse. The respondent missed work due to her arrest and was terminated. The respondent's employer reported the incident to the Kansas Nurse Assistance Program (KNAP).
3. On or about November 14, 2011, the respondent entered into an Extended Evaluation Agreement with KNAP. An Extended Evaluation Agreement is a one year agreement with KNAP wherein, the respondent agrees to take random urine drug screens. Further, if there is a positive drug screen, the Extended Evaluation Agreement is converted to a full three year monitoring program with KNAP.
4. On January 23, 2012, the respondent tested positive for Hydrocodone and Tramadol. She was moved into a full three year monitoring program with KNAP on February 21, 2012. In the Statement of Understanding for the three year program, the respondent agreed not to use any mood altering drugs including alcohol. She agreed to participate in two twelve-step meetings per week and to attend a monthly monitor meeting.
5. On March 5, 2012, the respondent was notified of her first non-compliance with KNAP. This non-compliance was failure to participate in any twelve-step meetings for the month of February 2012 or to attend a monthly monitor meeting in February 2012. The letter goes on to clarify that the respondent called KNAP seeking clarification of whether she was responsible to participate in these meetings in February 2012. She was told she was required to participate beginning February 21, 2012.

6. In notice dated April 23, 2012, KNAP informed the respondent it had received notice from her treating therapist that she admitted to using marijuana. The last day the respondent used marijuana was April 5, 2012. This was considered a relapse and the respondent's contract with KNAP was extended three years to April 5, 2015.
7. On August 13, 2012, the respondent was notified of her second non-compliance with KNAP for failing to timely submit documentation of two twelve-step meetings per week for the month of July 2012.
8. By notice dated November 14, 2012, the respondent was notified of her second relapse. She tested positive for Barbiturates on November 9, 2012. Her three year contract with KNAP was extended to November 9, 2015.
9. On April 19, 2013, the respondent failed to check-in to see if she had been selected for a urinary drug screen. The respondent was selected but she did not test. This is the respondent's first non-compliance since her contract was extended to November 9, 2015 for testing positive for Barbiturates.
10. For May 2013, the respondent did not attend a monthly monitor meeting. This was determined to be her second non-compliance with KNAP.
11. On June 5, 2013, the respondent checked-in to see if she was selected for a urinary drug screen. The respondent was selected but she did not test. This was the respondent's third non-compliance with KNAP. Because the respondent had three non-compliances with KNAP her KNAP case was closed. KNAP notified the Board of the respondent's case closure.

Applicable Law

1. It is a violation of the Kansas Nurse Practice Act to be guilty of a felony or to be guilty of a misdemeanor involving an illegal drug offense. K.S.A. 65-1120(a)(2).
2. It is a violation of the Kansas Nurse Practice Act to be unable to practice nursing with skill and safety due to current abuse of drugs or alcohol. K.S.A. 65-1120(a)(4).
3. It is a violation of the Kansas Nurse Practice Act to perform unprofessionally by failing to complete the requirements of the impaired provider program of the Board. K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(s).

Discussion

1. When the respondent was found guilty of a misdemeanor involving a drug offense, she violated the Kansas Nurse Practice Act. K.S.A. 65-1120(a)(2).
2. The respondent had positive urinary drug screen on January 23, 2012 and November 9, 2012. She also admitted to personal use of marijuana in April 2012. Because the

respondent has failed to submit to urinary drug tests when she was selected twice, it cannot be determined that she is able to practice nursing with skill and safety due to her use of drugs or alcohol. This is a violation of the Kansas Nurse Assistance Practice Act at K.S.A. 65-1120(a)(4).

3. The respondent's case with KNAP was closed as unsuccessful on June 7, 2013. This is a violation of the Kansas Nurse Practice Act at K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(s).

Conclusion

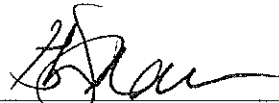
1. The Board had shown by a preponderance of the evidence that the respondent has violated the Kansas Nurse Practice Act. The Board's petition to revoke the respondent's license to practice nursing in the State of Kansas is granted.
2. Cost of this action shall be assessed against the respondent in the amount of \$70.00 pursuant to K.S.A. 65-1120(d).

Appeal Rights and Other Administrative Relief

Pursuant to K.S.A. 77-527, either party may request a review of this initial order by filing a petition for review with the Kansas State Board of Nursing. A petition for review must be filed within 15 days from the date this initial order was served. Failure to timely request a review by the Kansas State Board of Nursing may preclude further judicial review. The petition for review shall be mailed or personally delivered to: Mary Blubaugh, Executive Director, Board of Nursing, Landon State Office Building, 900 SW Jackson, Suite 1051, Topeka, KS 66612-1230.

Pursuant to K.S.A. 77-531, if the initial order is served by mail, three days are added to the time limits set out above.

Pursuant to K.S.A. 77-530, if a request for review is not made in the time and manner stated above, this initial order shall become effective as a final order 30 days after service.



Sandra L. Sharon
Administrative Law Judge/Presiding Officer
Office of Administrative Hearings
1020 S. Kansas Ave.
Topeka, KS 66612
Telephone: 785-296-2433

CERTIFICATE OF SERVICE

On Dec. 6, 2013, I mailed this original document through State Building
Mail to:

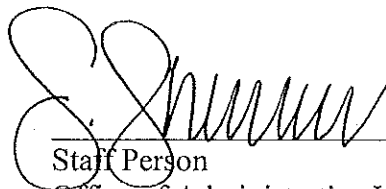
Mary Blubaugh
Executive Administrator
Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612
Telephone: 785-296-4325

and a copy of this document through State Building Mail to:

Alma Heckler
Assistant Attorney General
Disciplinary Counsel for the Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612
Telephone: 785-296-4325

and a copy of this document through first class mail to:

Kasee Tunnell
3713 W. Angel St.
Wichita, KS 67215



Staff Person

Office of Administrative Hearings

FILED

JAN 02 2014

KSBN

KANSAS STATE BOARD OF NURSING
Landon State Office Building
900 SW Jackson, Suite 1051
Topeka, Kansas 66612-1230

IN THE MATTER OF)
)
Kasee Tunnell)
License No. 13-107356-031,)
Respondent.)

Case No. 11-239-5
OAH No. 13BN0178

**ORDER
DENYING REVIEW**

On January 2, 2014, the above-referenced matter comes for consideration of the Petition for Review filed by Kasee Tunnell, pro se. Pursuant to K.S.A. 2013 Supp. 77-527(a)(2)(B), the Kansas State Board of Nursing (Board) has delegated its authority to Board members Jeanne Walsh and Garet King its authority to determine whether to grant or deny a Petition for Review of an Initial Order and to issue an order accordingly.

After considering the Petition for Review and the Initial Order, the Board denies the Petition for review based upon the reasons set forth below.

Findings of Facts

1. On December 9, 2013, the Presiding Officer with the Office of Administrative Hearings issued an Initial Order granting the Board's petition to revoke the nursing license of Kasee Tunnell (Respondent).
2. The factual findings and conclusions in the Initial Order are hereby incorporated by reference. In short, the Presiding Officer found that Respondent violated had committed three violations of the Kansas Nurse Practice Act and that, due to those violations, Respondent's license to practice nursing in Kansas should be revoked.
3. On December 19, 2013, Respondent filed with the Board her Petition for Review of the Initial Order. Respondent did not list any reason or basis for review, such as disputing any factual findings or challenging any interpretation or application of law in the Initial Order.

Conclusions of Law

4. K.S.A. 2013 Supp. 77-527(c) requires a party filing a Petition for Review to state the basis for relief.

5. K.S.A. 2013 Supp. 77-527(d) governs an agency's review of an initial order. It provides in relevant part:

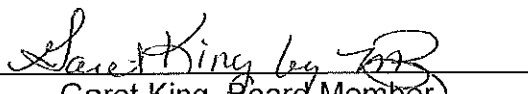
Subject to K.S.A. 77-621, and amendments thereto, in reviewing an initial order the agency head or designee shall exercise all the decision-making power that the agency head or designee would have had to render a final order had the agency head or designee presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the agency head or designee upon notice to all parties. (Emphasis added.)

6. Under K.S.A. 2013 Supp. 77-621(c), there are eight grounds upon which a court, or in this case an agency, may grant relief. Thus, a petition for review filed with an agency should specify the ground for relief by citing to the provision in K.S.A. 2013 Supp. 77-621(c) or to use language that mirrors the provision in K.S.A. 2013 Supp. 77-621(c). See *Friedman v. Kansas State Bd. of Healing Arts*, 296 Kan. 636, 646-47 (2013). It would be a futile act for an agency to grant a petition for review if the petition for review did not include any basis upon which the agency could grant relief under K.S.A. 2013 Supp. 77-621(c).

7. Based upon the above, Respondent has not alleged or shown that a basis exists to grant relief from the Initial Order.

WHEREFORE, it is the decision and order of the Board that Respondent's Petition for Review of the Initial Order in the above-referenced case be denied and that the Initial Order be affirmed.

IT IS SO ORDERED.



Garet King, Board Member
On behalf of the
Kansas State Board of Nursing



Jeanne Walsh, Board Member
On behalf of the
Kansas State Board of Nursing

NOTICE OF ADMINISTRATIVE RELIEF

The above Order denying review of the Initial Order is a final order. Pursuant to K.S.A. 77-529, a party may file with the Board a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

Pursuant to K.S.A. 77-530, a party may file, if applicable, a petition for stay of effectiveness of the order prior to the expiration of the time in which to file a petition for judicial review. The filing of a petition for a stay of effectiveness is not a prerequisite for seeking judicial review.

NOTICE OF JUDICIAL RELIEF

If a petition for reconsideration is not filed pursuant to K.S.A. 77-613, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The designee who may receive service of a petition for reconsideration, petition for a stay, or a petition for judicial review on behalf of the Board is: Mary Blubaugh, Executive Director, Kansas State Board of Nursing, Landon State Office Building, 900 S.W. Jackson, Ste. #1051, Topeka, Kansas 66612-1230.


CERTIFICATE OF SERVICE

This is to certify that on this 2ND day of January 2014, copies of the above Order, Notice of Administrative Relief, and Notice of Judicial Relief were deposited in the United States mail, first-class postage prepaid, and addressed to:

Kasee Tunnell
3713 W. Angel Street
Wichita, KS 67215

and hand delivered to:

Alma Heckler
Assistant Attorney General
Disciplinary Counsel for the
Kansas State Board of Nursing
900 SW Jackson, Suite 1051
Topeka, KS 66612



Staff
Kansas State Board of Nursing