

BEFORE THE KANSAS STATE BOARD OF NURSING

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

**IN THE MATTER OF
BENJAMIN COSTELLO
License No. 13-112953-092**

Case No. 12-1500-3

FILED

FEB 03 2014

KSBN

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PROPOSED DEFAULT ORDER TO REVOKE LICENSE

NOW ON THIS 28th day of January, 2014, petitioner, the Kansas State Board of Nursing, appears by disciplinary counsel, Alma A. Heckler, Assistant Attorney General, for a Hearing on the Petition. Respondent does not appear.

Wherefore, the Presiding Officer finds as follows:

1. Respondent is licensed to practice nursing as an RN in Kansas through 9/30/2014 and was licensed to practice nursing at the time of the misconduct alleged in the petition. The Kansas State Board of Nursing has jurisdiction over the Respondent and the subject matter of this action.
2. Respondent was sent a copy of the petition and notice of this hearing to respondent's last known address and service is proper. Respondent does not appear.
3. Petitioner moves for issuance of a proposed default order revoking respondent's RN license. The petitioner's request is granted by default pursuant to K.S.A. 77-520.
4. The petition is hereby granted and incorporated into this order as if set forth herein. Respondent violated the Nurse Practice Act as alleged in the petition.
5. Per Petitioner's request, Respondent's license to practice nursing is revoked. Respondent may not practice nursing in Kansas.
6. Costs of the action of \$70 are assessed to respondent to be paid to the board by cash or money order within 30 days of the effective date of this order.
7. Respondent shall immediately forward his or her original Kansas nursing certificate and any license cards in his or her possession to the Kansas State Board of Nursing.

8. This Proposed Default Order shall become effective seven days after service or ten days after mailing of this order unless the Respondent files a written motion with the Board stating why the Proposed Default Order should be vacated and the order is then vacated.

9. If this Proposed Default Order becomes effective, the Respondent's request for administrative hearing is dismissed pursuant to K.S.A. 77-520(d).

10. Disciplinary counsel shall mail a copy of this proposed default order to respondent's last known address.

IT IS SO ORDERED.



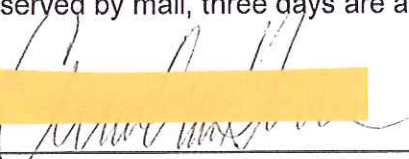
Sandra Sharon, Presiding Officer
Office of Administrative Hearings
1020 S Kansas Ave.
Topeka, KS 66612-1327

NOTICE

Pursuant to K.S.A. 77-527, either party may request a review of this order by filing a petition for review with the Kansas State Board of Nursing. The petition for review shall state its basis. A petition for review must be filed within 7 days from the date this order becomes effective. 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: State Board of Nursing - Legal Division, Landon State Office Building, 900 SW Jackson, Ste 1051, Topeka, KS 66612-1230.

Pursuant to K.S.A. 77-530, if neither party requests a review by the Kansas State Board of Nursing, then this initial order becomes final and binding on both parties on the 30th day following its service.

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.

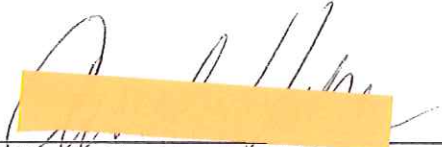



Alma A. Heckler, #11555
Disciplinary Counsel
Kansas State Board of Nursing
900 S.W. Jackson, Suite #1051
Topeka, KS 66612-1230
785-296-4325

CERTIFICATE OF SERVICE

I certify that on the 3rd day of February, 2014, the foregoing copy of the PROPOSED DEFAULT ORDER TO REVOKE LICENSE was served by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Benjamin Costello
1110 Turkey Creek Dr.
McPherson, Kansas 67460



Alma A. Heckler, #11555
Assistant Attorney General

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**IN THE MATTER OF
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License No. 13-112953-092**

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Case No. 12-1500-3

PETITION

COMES NOW the petitioner, the Kansas State Board of Nursing, by and through Assistant Attorney General assigned to the Board, Alma A. Heckler, and for its cause of action states that:

1. Respondent, Benjamin Costello, is licensed to practice nursing in Kansas through 9/30/2014. The Board has jurisdiction over the respondent and the subject matter of this action.
2. Respondent's address of record is 1110 Turkey Creek Drive, McPherson, Kansas 67460.
3. 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.
4. 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(a) is established.

FACTS COMMON TO ALL COUNTS

5. The facts below are common to all counts:

(a) Respondent was convicted in the District Court of McPherson County, Kansas in Case No. 11 TR 983 on or about the 5th day of June 2012 of the crime of Driving Under the Influence, K.S.A. 8-1567(a)(2):

(a) Driving under the influence is operating or attempting to operate any vehicle within this state while:

...
(2) the alcohol concentration in the person's blood or breath, as measured within three hours of the time of operating or attempting to operate a vehicle, is .08 or more;

(b) Respondent was referred to the Kansas Nurse Assistance Program (KNAP) by the Board on or about October 29, 2012. Respondent failed to enroll.

(c) Respondent requested the Board review its decision to refer him to KNAP. The Board reviewed but declined to modify the decision to refer the Respondent to KNAP.

VIOLATIONS

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

Count 1: K.S.A. 65 1120(a)(4) to be unable to practice with skill and safety due to current abuse of drugs or alcohol;

Count 2: K.S.A. 65-1120(a)(6), unprofessional conduct, by failing to complete the requirements of the impaired provider program of the board; K.A.R. 60-3-110 (s);



Count 3: K.S.A. 65-1120(a)(2), to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust...;

WHEREFORE, petitioner requests a finding that the respondent has violated the Nurse Practice Act, that respondent's license to practice nursing in Kansas be revoked, and that costs of this action be assessed to the respondent in the at least the amount of \$70.00.

Respectfully submitted,

Derek Schmidt
Kansas Attorney General

By:

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