

15BN0011

BEFORE THE KANSAS STATE BOARD OF NURSING

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

FILED

AUG 03 2015

KSBN

FILED OAH

30 JUL '15 AM 9:34

**IN THE MATTER OF
KERRY A. HELTEN
License No. 13-114113-082**

Case No. 12-1175-5

AMENDED INITIAL AGREED ORDER

NOW ON THIS 23 day of July, 2015, the Kansas State Board of Nursing, represented by Assistant Attorney General, Michael R. Fitzgibbons, and the Respondent, Kerry A. Helten with her attorney Tracie R. England, hereby enter into this agreement and proffer evidence and the hearing 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 8/31/2016. 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 11310 W. Delano, Wichita, Kansas 67212.
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.
4. Respondent acknowledges that this agreement is an open record pursuant to the Kansas Open Records Act, K.S.A 45-215 et seq., and may be published or disseminated notwithstanding any state or federal law otherwise restricting public access to, or dissemination of, any personal or health care information, or any information or records of substance abuse evaluation and/or treatment contained herein.
5. 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.

6. 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.

7. A petition was filed on July 8, 2014 to take disciplinary action against the Respondent's license and states the following:

a. The respondent renewed her license on 7/9/2012. Respondent answered "yes" to the question on the renewal application "Is this a new action not previously reported? (If yes, mail a certified copy of board order and or governmental agency disciplinary action and an explanatory letter for each conviction.)"

b. Respondent also answered "yes" to the question "Are criminal proceedings pending in any federal or state court? (if answer is yes mail a certified copy of court documents and an explanatory letter for each conviction.)"

c. Respondent failed to send the certified copies of the board order, governmental action or criminal conviction and explanatory letters to the board. Furthermore, respondent did not respond to letters from the investigator dated March 12, 2013 and August 17, 2012 asking her to comply with the investigator's requests that she send certified copies of a board order, disciplinary action and criminal conviction and an explanatory letter for each incident. K.S.A. 65-1117(c) requires each licensee to notify the board in writing of a conviction of any felony or misdemeanor, that is specified in rules and regulations adopted by the board, within 30 days from the date the conviction becomes final to include under K.A.R. 60-3-112 any convictions of crimes related to alcohol or drugs.

d. Respondent did not communicate with the Board and ignored the Board's efforts to obtain copies of any new actions against her. The Board filed a summary order on or about June 18, 2014.

e. Respondent responded to the summary order with a request for a hearing and certified copies of two criminal convictions. Respondent was convicted of Misdemeanor Driving Under the Influence (DUI) (Second Offense) on January 29, 2013 in Sedgwick County District Court Case No. 2011CR003734. She was charged with the crime on December 21, 2011. The crime was committed on March 2, 2011. Regarding the second conviction, respondent was convicted in Sedgwick County District Court in Case No. 2012CR234 of Felony Driving Under the Influence (DUI)(Third Offense) on December 19, 2012. The crime occurred on June 27, 2011.

f. Respondent did not report to the Board until she appealed the summary order, that both recent convictions were DUI convictions and that one of those was a felony conviction. Respondent admits to the facts as stated in the petition.

VIOLATIONS

8. 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)(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)(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...;

Count 3: K.S.A. 65-1120(a)(6), to be guilty of unprofessional conduct as defined by rules and regulations of the board, specifically K.A.R. 60-3-110(t) failing to furnish the board, its investigators, or its representatives with any information legally requested by the board;

9. 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

10. 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.

11. 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)(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...;

Count 3: K.S.A. 65-1120(a)(6), to be guilty of unprofessional conduct as defined by rules and regulations of the board, specifically K.A.R. 60-3-110(t) failing to furnish the board, its investigators, or its representatives with any information legally requested by the board;

POLICY STATEMENT

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

DISPOSITION

13. By entering into this Initial Agreed Order (Agreement) and consenting to the entry of the Final Order, 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.

14. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that this Initial Agreed Order 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 Initial Agreed Order remaining in effect until Respondent completes each of the conditions and requirements of this agreement.

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 suspended. The suspension will be stayed as long as the requirements and conditions of this agreement are met.

16. 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.

17. 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 which when verified by the public will show Suspended with a Stay to indicate that the license is suspended but such suspension is stayed so long as she continues to meet the requirements of this Agreed Order. The license will have limitations on the practice as stated below:

(b) Respondent shall participate in and complete the reasonable recommendations and requirements of the Kansas Nurses Assistance Program (KNAP); sign releases of information necessary for KNAP to evaluate and monitor respondent and for KNAP to report information to the board. Respondent will be deemed to have completed the KNAP program when KNAP issues written notification that respondent has completed the program.

Respondent must enroll in the KNAP program within thirty (30) days of entering this

agreement. The Board is notified by KNAP when the respondent has enrolled in their program. 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. 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 immediately notify the Legal Division of any use of alcohol, if prohibited by KNAP, or controlled substances, or any violation of this Initial Agreed Order.

(e) The respondent shall immediately inform all employers and prospective employers of this Initial Agreed Order.

(f) The Respondent shall only work in nursing positions where she is supervised by an RN at all times.

(g) Respondent shall not work as a director of nursing or in a charge or supervising position while these restrictions on her license continue.

(h) 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:

If the Respondent is unemployed, prior to respondent securing employment that utilizes her 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 Initial Agreed Order. (A statement from the respondent that she has not yet secured employment in nursing, is not a nursing performance report).

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 each of the following months; ~~January 2015, April~~

KK
September (TRE)

December (TRE)

(TRC) March, 2016 (TRC) June 2016
2015, July 2015 and October 2015 or until respondent has caused the submission of four (4) separate nursing performance reports. K*

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) The evaluation should be submitted by respondent's supervisor on respondent's employer's **facility letterhead stationary**.
- (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.
- (i) Respondent shall send a money order for \$70 to the Board upon entering into this agreement to pay the cost of this action.
- (j) Respondent shall not violate the Kansas Nurse Practice Act during the duration of this agreement.
- (k) Respondent shall not violate the laws of the United States, of State, or of any political subdivision of any State during the term of this agreement. Traffic infractions shall not be considered violations of the law.

(l) The respondent will complete the following Continuing Nurse Education (CNE) within ninety days of the effective date of this Agreement:

2 hours on the Kansas Nurse Practice Act (which may be accessed through the Via Christi web site at www.via-christi.org/cne or call 316-268-8551).

Respondent shall not use these hours to meet the CNE requirements of any renewal period.

(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. All such notifications shall be made in writing within fourteen (14) days of such a change.

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

20. 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 Initial Agreed Order, but Respondent could not contest the violations listed in this agreement.

21. All parties understand that if an action based on failure to meet the conditions and requirements of this Initial Agreed Order 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.

22. Respondent acknowledges and agrees that if any action based on failure to meet the conditions and requirements of this Initial Agreed Order is filed during the term of this Initial

Agreed Order, or within 30 days after the expiration date, the conditions of this Initial Agreed Order 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.

23. Respondent acknowledges and agrees that upon a first finding of Respondent not complying with any of the conditions or requirements of this Initial Agreed Order, the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, may be lifted for a period of at least six months from the date of said finding or other disciplinary action may be taken consistent with K.S.A 65-1120(a). Respondent will not be allowed to practice nursing in the state of Kansas during any period of suspension. Respondent acknowledges and agrees that all conditions and requirements of this Initial Agreed Order to remain in effect during any period of suspension.

24. Respondent acknowledges and agrees that upon a second or subsequent finding of Respondent not complying with any of the conditions or requirements of this Initial Agreed Order the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, shall be lifted for at least a period of one year from the date of said finding or other disciplinary action may be taken consistent with K.S.A 65-1120(a). Respondent will not be allowed to practice nursing in the state of Kansas during any period of suspension. Respondent acknowledges and agrees that all conditions and requirements of this Initial Agreed Order remain in effect during the period of suspension.

25. Respondent acknowledges and agrees if the Stay of Suspension is lifted due to a finding of non-compliance with any of the conditions or requirements of this Initial Agreed Order, 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 Initial Agreed Order. Upon the Respondent providing said written verification the suspension will again be stayed.

26. The Board will inactivate this case file once respondent satisfies this agreement. 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.

27. 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.

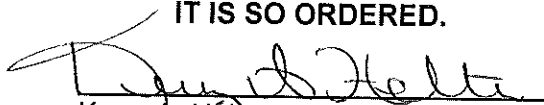
28. After successful completion of all of the conditions and requirements of this Initial Agreed Order by the respondent, the Initial Agreed Order will be satisfied and the case will be inactivated.

29. By signing this Initial Agreed Order, Respondent acknowledges that Respondent has read and understands the entire document, and agrees to be bound by its terms. This Initial Agreed Order 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 Initial Agreed Order is the date shown on the certificate of service.

30. 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 INITIAL AGREED ORDER.

IT IS SO ORDERED.



Kerry A. Helten
Respondent
11310 W. Delano
Wichita, Kansas 67212

Kerry A. Helten must sign before a Notary Public.

State of Kansas, County of *Sedgwick*

Rebecca L. Murray
REBECCA L. MURRAY
Notary Public - State of Kansas
My Appt. Expires *10-23-2018*

Tracie R. England

HITE FANNING & HONEYMAN LLP
Tracie R. England #20297
100 N. Broadway Suite 950
Wichita, Kansas 76202-7803
Attorney for Respondent

Michael R. Fitzgibbons

Michael R. Fitzgibbons #12287
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612

Sandra Sharon

Sandra Sharon, Presiding Officer

Pursuant to K.S.A. 77-529, either party may request a review of this initial order by filing a petition for reconsideration with the Kansas State Board of Nursing. A petition for reconsideration must be filed with 15 days from the date this initial order was served. Failure to timely request a reconsideration by the Kansas State Board of Nursing may preclude further judicial review. The petition for reconsideration shall be mailed or personally delivered to: Mary Blubaugh, Executive Director, Board of Nursing, Landon State Office Building, Suite 1051, 900 SW Jackson, 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.

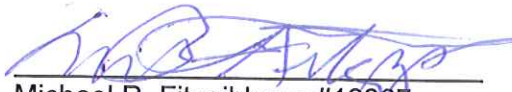
Pursuant to K.S.A. 77-530, if a request for reconsideration is not requested in the time and manner stated above, this initial order shall become effective as a final order 30 days after service.

CERTIFICATE OF SERVICE

On the 5th day of August, 2015, I mailed a copy of the file stamped INITIAL AGREED ORDER to:

Kerry A. Helten
11310 W. Delano
Wichita, Kansas 67212

HITE FANNING & HONEYMAN LLP
Tracie R. England
100 N. Broadway Suite 950
Wichita, Kansas 76202-7803
Attorney for Respondent



Michael R. Fitzgibbons #12287
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612