

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

IN THE MATTER OF
LINDA J. PHELPS
License No. 13-32583-081

Case No. 10-1365-2

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FINAL ORDER
AND CONSENT AGREEMENT

NOW ON THIS 7th day of July, 2011, the Kansas State Board of Nursing, represented by Assistant Attorney General, Danielle R. Sanger, and the Respondent, Linda J. Phelps, 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 08/31/2011. 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 PO Box 192, Ransom KS 67572-0192.
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.
5. The Kansas State Board of Nursing shall examine, license and renew licenses of duly qualified applicants under the authority of K.S.A. 74-1106 *et seq.* Under the authority of K.S.A. 65-1120, the Kansas State Board of Nursing may deny, revoke, limit or suspend a license or authorization to practice nursing or 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. On or about 11/5/2010, the Board received a report regarding Respondent, alleging that on or about 9/27/2010, while employed at Ness County Hospital, Ness City Kansas, Respondent forced a resident, R.C., to take a shower against her will
7. Review of the report and other information gathered by the Board revealed the following information upon which this action is based.
8. On 3/2/2011, in a phone interview with Board investigator, Kathleen Chalkley, Kelle Schniepp, LPN, stated that on 9/27/2010, she was in her office when she heard R.C. screaming in protest. When she (Kelle) came out of her office, she saw Respondent bringing R.C. out of her room in her wheelchair, pulling her backwards down the hall. R.C. was screaming that she did not want to be taken to the shower.
9. The above incidents are violations of the Nurse Practice Act. The Respondent agrees that the Board is prepared to prove that Respondent has violated:
 - a. Count 1: K.S.A. 65-1120(a)(6), to be guilty of unprofessional conduct as defined by rules and regulations of the board, by KAR 60-3-110(e)(3), any threat , menacing conduct , or other nontherapeutic or inappropriate action that results in or might reasonably be expected to result in a patient's unnecessary fear or emotional or mental distress.
10. 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

11. The Kansas State Board of Nursing has the authority under K.S.A. 74-1106 *et seq.* to examine, license and renew licenses for duly qualified Respondents and deny, revoke, limit or suspend 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.
12. Respondent has violated the Kansas Nurse Practice Act as follows:
 - a. Count 1: K.S.A. 65-1120(a)(6), to be guilty of unprofessional conduct as defined by rules and regulations of the board, by KAR 60-3-110(e)(3), any threat , menacing conduct , or other nontherapeutic or inappropriate action that results in or might reasonably be expected to result in a patient's unnecessary fear or emotional or mental distress.

POLICY STATEMENT

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

DISPOSITION

14. By entering into this Consent 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.
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 with a stay.
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's license is suspended with a stay.**

- b. Licensee shall complete a three to six (3-6) hour CNE on "Nursing Ethics" and submit a certificate of completion within 90 days of the date of this Consent Agreement.
- c. Licensee shall complete a three to six (3-6) hour CNE on "Elder Care or Elder Abuse" and submit a certificate of completion within 120 days of the date of this Consent Agreement.
- d. Respondent shall not violate the Kansas Nurse Practice Act during the term of this agreement.
- e. Respondent shall not violate the laws of the United States, of any 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.
- f. Respondent shall send a money order for \$70 to the Board upon entering into this agreement to pay the cost of this action.
- g. Respondent shall 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.
- h. 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 Final Order and Consent Agreement is a violation of this Final Order and Consent Agreement.
- i. Respondent shall 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:

- i. Prior to Respondent securing employment that utilizes his or 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 Final Order and Consent Agreement.
- ii. 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. These reports are due by the 10th day of every third month beginning the next month after signing this Final Order and Consent Agreement.
- iii. 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 required.
 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.**

17. 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.

18. 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.

19. 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.

20. 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 on 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. If Respondent is currently suspended, her suspension shall be extended for an additional six months. 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.
21. 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. If Respondent is currently suspended, her suspension shall be extended for an additional twelve months. 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 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 Final Order and Consent Agreement. Upon the Respondent providing said written verification, the suspension will again be stayed.

23. 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.
24. 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.
25. After successful completion of all of the conditions and requirements of this Final Order and Consent Agreement by the respondent, the Final Order and Consent Agreement will be satisfied and the case will be inactivated.
26. 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.
27. 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.

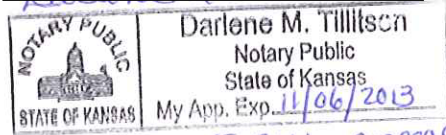
IT IS SO ORDERED

[Redacted]

Linda Phelps must sign before a Notary Public.

Linda Phelps
Respondent
PO Box 192
Ransom KS 67572

[Redacted]



on 7-5-2011 appeared Linda June Phelps.

[Redacted]

Danielle R. Sanger, #24587
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612

[Redacted]

Sandra Sharon, Presiding Officer

Pursuant to K.S.A. 77-527, either party may request a review of this final order by filing a petition for reconsideration with the Kansas State Board of Nursing. A petition for reconsideration must be filed within 15 days from the date this final 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 final order is served by mail, three days are added to the time limits set out above.

CERTIFICATE OF SERVICE

I certify that on the 8th day of July, 2011, the foregoing copy of the FINAL ORDER AND CONSENT AGREEMENT was depositing in the United States Mail, first-class postage prepaid, addressed to the following:

Linda Phelps
PO Box 192
Ransom KS 67572



Danielle R. Sanger, #24587
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612