

BEFORE THE KANSAS STATE BOARD OF NURSING
900 S.W. Jackson, 551-S
Topeka, Kansas 66612-1256
(913) 296-4929

In the Matter)
))
 of) Case No. 91-380-8
))
JODY A. BERRY))
_____)

INITIAL ORDER

This matter comes on for hearing this 6th day of December, 1991, pursuant to an application for reinstatement for licensure, filed with the board on November 12, 1991, by the petitioner, Jody A. Berry.

Hearing panel members present as designated presiding officer are: Dean Zerr, R.N., board president and hearing panel chairperson; Barbara J. McClaskey, R.N., board member; and Elsie Flory, L.P.N., former board member and special appointee of the board. Also present is Theresa Marcel Nuckolls, Assistant Attorney General, as general counsel to the hearing panel. The petitioner appears personally, without legal counsel. The state appears by and through Carol R. Bonebrake, Assistant Attorney General, as disciplinary counsel to the board.

As a preliminary matter, hearing panel member Elsie Flory indicates to the parties that she is professionally

acquainted with and knows the petitioner's husband, Mr. Robert Berry, but states that she does not believe this acquaintanceship will in any way influence any decision on this matter by her. Neither party objects to Ms. Flory's presence on the hearing panel.

Notice of this hearing was provided to the parties on November 22, 1991, and the hearing panel approves service.

Petitioner Berry is sworn in and offers testimony to the hearing panel on her own behalf. Petitioner offers exhibits no. 1, 2, 3 and 4, which are admitted into evidence without objection from the state, and are therefore part of the record in this matter. At petitioner's request, Mr. Robert Eugene Berry (petitioner's husband) and Mr. Bill Miller are sworn in and offer testimony on petitioner's behalf.

Counsel for the state offers exhibits no. 1 and 2, which are admitted into evidence without objection from the petitioner, and are therefore part of the record in this matter. Counsel for the state questions the petitioner, and upon obtaining the leave of the hearing panel and consent by the petitioner, prepares a chalk board time line to diagram events pertinent to this matter. Upon the request of counsel for the state, Charlene Shible, investigator for the Kansas State Board of Nursing, is sworn in and offers testimony.

The evidentiary record is closed and the parties then offer closing arguments and remarks.

WHEREUPON due deliberation and by the unanimous vote of the hearing panel, the hearing panel does hereby make and enter the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The petitioner, Jody A. Berry, a/k/a Jody Gaffney, applied for the reinstatement as a registered professional nurse in the state of Kansas; such reinstatement application was filed with the Kansas State Board of Nursing on November 12, 1991.
2. The reinstatement application referenced in fact no. 1 contains a written statement by the petitioner that "I am a recovering addict and need to stay away from passing medications for now anyway."
3. Petitioner has twice previously had a license to practice as a registered nurse revoked by the Kansas State Board of Nursing; such revocations occurring in 1984 and 1988.
4. Petitioner admits to being an alcoholic and to being addicted to habit-forming drugs; petitioner states in sworn testimony that her drug of choice is Darvocet, however, petitioner states that she has never used "street drugs".

5. Petitioner was served a copy of the notice of this December 6, 1991 hearing by depositing a copy of the same in the United States mail, first class postage prepaid, the 22nd day of November, 1991.

6. Neither the petitioner nor counsel for the state object to the time or place of this hearing or to the hearing panel's composition or jurisdiction over this matter;

7. The petitioner in this matter has been convicted of a felony and misdemeanors connected with her obtaining or use of habit-forming drugs; such convictions occurring in 1982, 1983 and 1990.

8. Petitioner has received extensive counseling and therapy related to her addiction and personal problems.

9. Petitioner has participated in meeting of Narcotics Anonymous (NA) and Alcoholics Anonymous (AA), and regularly attends after-care group meetings of individuals having previously gone through the same treatment program as the petitioner.

10. Petitioner has never participated in the Kansas State Board of Nursing's peer assistance program, nor participated in any group specifically made up of persons in the nursing practice who have had addiction problems.

11. Petitioner's husband, Bob Berry, is a licensed practical nurse (LPN) in the state of Kansas and is a

recovering alcoholic. In sworn testimony, Mr. Berry states that he would not hesitate to contact the board if the petitioner relapses and begins to again use alcohol or drugs.

12. Petitioner states in sworn testimony that she suffers from post traumatic stress disorder (PTSD).

13. Petitioner states in sworn testimony that, except for a prescription medication taken upon doctors order in August of 1991 and except for the daily use of Prozac as prescribed by her physician, she has now been "clean" from habit-forming drugs for 13 months.

14. Petitioner requests that her scope of practice be limited to employment settings where she does not have access to drugs, and states that she would prefer a strictly administrative job.

CONCLUSIONS OF LAW

1. This hearing panel has jurisdiction over this matter and this hearing pursuant to K.S.A. 1990 Supp. 65-1120, K.S.A. 77-501 et seq., and K.A.R. 60-3-104.

2. K.S.A. 1990 Supp. 65-1120 permits the board to suspend or limit a license to practice as a registered nurse in the state of Kansas.

3. Petitioner has been found guilty of a felony, as evidenced by the record in this matter.

4. Petitioners has profered evidence of sufficient rehabilitation to warrant some degree of public trust.

5. Petitioner is habitually intemperate in the use of alcohol and addicted to the use of habit-forming drugs.

6. Petitioner's continuing attempts to recover must be balanced against the board's duty to protect the health, safety and welfare of the public.

7. Recovery efforts by the petitioner, and any living arrangement or condition that may impact upon the stress experienced by the petitioner, have an impact upon the petitioner's continued rehabilitation and the reasonableness of public trust.

WHEREUPON due deliberation and a motion made, seconded and unanimously passed, the hearing panel does hereby ORDER that the petitioner's application for reinstatement be GRANTED and that the petitioner be issued a license; this license is hereby ORDERED LIMITED to practices and employment that do not allow, require or in any way permit that she have any access to any prescription drugs; the limited license hereby granted is further ordered SUSPENDED for two years, and this suspension of the limited license is hereby order STAYED conditioned upon petitioner's complete and satisfactory compliance with the following requirements:

(1) Petitioner must enter and complete the peer assistance program administered by the Kansas State Nurses Association (KSNA);

(2) Petitioner must send or cause to be sent to the board quarterly reports from any and all of her employers; such reports shall be written and shall address petitioner's practice as a nurse;

(3) Petitioner shall attend an all-nurse support group meeting at least twice a month; unless such meetings do not occur that often, in which case, that fact shall be verified by and to the satisfaction of the board's nurse practice specialist;

(4) Petitioner shall promptly and in writing notify the board of any and all changes in the following:

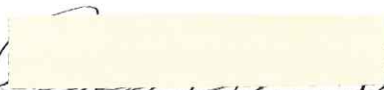
- (a) Her home address or phone number(s);
- (b) Her work addresses or phone numbers;
- (c) Her marital status; and
- (d) Her living arrangements;

(5) Petitioner shall, during the next continuing education (CE) period, obtain credits in and attend at least one class or course offered on nurses and addiction; and

(6) Petitioner shall, within 72 hours after receipt of the prescription, provide to the board's nurse practice specialist a

written copy of any and all prescriptions for drugs ordered for her by any and all health or mental care professionals.

This order GRANTING a license, LIMITING that license, SUSPENDING that limited license and STAYING the suspension of that limited license, subject to the herein contained conditions, is dated this 14th day of December, 1991.


For the Presiding Officer

Notice Regarding Relief From This Order

This is an Initial Order. The party against whom this initial order was issued may file a petition for review with the agency head within fifteen (15) days after service of this order. This petition for review must state its basis. Unless a later date is stated in an initial order, a stay is granted, or the order is reviewed, an initial order shall become a final order without further notice or proceedings thirty (30) days after the date of service, as indicated by the attached Certificate of Service.


CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing INITIAL ORDER as served by depositing a copy of the same in the United States mail, first class postage prepaid, this 19th day of December, 1991, to:

Jody A. Berry
2219 Brandywine
Topeka, Kansas 66614

and by hand-delivering a copy to:

Carol R. Bonebrake
Assistant Attorney General
Kansas Judicial Center, 2nd Floor
Topeka, Kansas 66612


Carol R. Bonebrake