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14 MAY '12 AM 10:00

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

IN THE MATTER OF
JOYCE M. WHITEMAN
License No. 13-45562-091

FILED
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MAY 14 2012
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Case No. 09-765-4

KSBN

AMENDED FINAL ORDER
AND CONSENT AGREEMENT

NOW ON THIS 14th day of May, 2012, the Kansas State Board of Nursing, represented by Assistant Attorney General, Alma A. Heckler, and the Respondent, Joyce M. Whiteman, 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 09/30/2013. 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 327 S. Main, Newton KS 67114-4818.
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 07/27/2009, the Board received information regarding Respondent, alleging that Respondent [REDACTED]

7. On or about 8/24/2010, Respondent's KNAP case was closed due to non-compliance with the program.

8. On or about 11/17/2010, Respondent was convicted of possession of methamphetamine, a felony, severity level 4, in case # 10CR247 in Harvey County Kansas. On or about 1/28/2011, Respondent was sentenced to 18 months of probation.

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. 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;

b. 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(s), failing to complete the requirements of the impaired provider program of the board.

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 Judicial Review Act. 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 applicants 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. 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;
- b. 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(s), failing to complete the requirements of the impaired provider program of the board.

POLICY STATEMENT

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

DISPOSITION

14. By entering into this Amended 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 this Amended Final Order and Consent Agreement 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 Amended Final Order and Consent Agreement remaining in effect until Respondent completes each of the conditions and requirements of this agreement.

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 suspended and suspension is stayed and is immediately limited.

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's license is immediately suspended but such suspension is now stayed and shall be stayed so long as the Respondent remains in compliance with the Amended Final Order and Consent Agreement and if the Respondent violates any of the terms and conditions of this agreement such violations will be addressed as outlined in paragraphs 18-24 of this agreement.
- b. Respondent shall fully comply with all of the conditions and requirements of her probation in case # 10CR247 in Harvey County, including but not limited to urine drug screens, counseling sessions, and monthly check-ins with her probation officer.
 - i. Respondent shall cause the submission of quarterly reports indicating the status of her compliance/non-compliance with her probation in case # 10CR247. These reports are due by the 10th day of every third month, beginning the next month after signing this Amended Final Order and Consent Agreement and ending upon the completion of her probation. Once the Respondent has completed her probation, she will submit proof of completion, a certified copy of her release from probation to the Legal division within ten business days of completion of probation.
 - ii. Noncompliance with probation in case # 10CR247 is a violation of this Agreement.
- c. Respondent shall participate in and complete the reasonable recommendations and requirements of the Kansas Nurses Assistance

Program (KNAP). Respondent shall sign releases of information necessary for KNAP to evaluate and monitor Respondent and for KNAP to report information to the Board, Attorney General's office, and Office of Administrative Hearings. 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 the date of this Amended Final Order and Consent Agreement. Noncompliance with KNAP is a violation of this Agreement.

- d. Respondent shall submit to random drug screens as determined or selected by the Board, by KNAP, or by Respondent's probation officer. 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.
- e. Respondent shall have a narcotic key restriction on Respondent's license for the first six (6) months after Respondent secures employment that requires a nursing license. The narcotic key restriction prohibits the Respondent from passing of narcotics, wasting of narcotics or having access to narcotics. The narcotic key restriction also prohibits the Respondent from supervising nurses or others that have access to narcotics.
 - i. After Respondent completes six (6) months of employment that requires a nursing license, without violating any terms of this agreement, Respondent may request that the narcotic key restriction be removed from Respondent's license. Respondent's request shall include written verification from Respondent's employer, to the Kansas State Board of Nursing, as to whether the Respondent has been employed in a position that requires a nursing

license, as to whether the Respondent has held that position for at least six (6) months, as to whether the Respondent has passed, wasted, had access to, or supervised others that had access to narcotics. With a showing that the narcotic key restriction term of this agreement has been met by the Respondent, and the Respondent is compliant with all other terms of this agreement, the narcotic key restriction will be removed from Respondent's license.

- f. Respondent shall immediately notify the Legal Division of any use of alcohol, if prohibited by KNAP, or controlled substances, or any violation of this Amended Final Order and Consent Agreement.
- g. 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 Amended 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 Amended 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 statement by the evaluator that Respondent is compliant with the narcotic key restriction.
 6. 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.

- h. Respondent has already sent a money order for \$70 to the Board upon entering into this agreement to pay the cost of this action.
 - i. Respondent shall not violate the Kansas Nurse Practice Act during the duration of this agreement.
 - j. 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.
 - k. 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.
 - i. All such notifications shall be made in writing within fourteen (14) days of such a change.
 - l. 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 Amended Final Order and Consent Agreement is a violation of this Amended Final Order and Consent Agreement.
18. 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 Amended Final Order and Consent Agreement, but Respondent could not contest the violations listed in this agreement.
19. 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.

20. Respondent acknowledges and agrees that if any notice based on failure to meet the conditions and requirements of this Amended Final Order and Consent Agreement is filed during the term of this Amended Final Order and Consent Agreement, or within 30 days after the expiration date, the conditions of this Amended Final Order and Consent Agreement shall continue in effect until the Board takes final action in the proceeding.
21. Respondent acknowledges and agrees that upon a first finding of Respondent not complying with any of the conditions or requirements of this Amended 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 six months from the date of said finding. 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 Amended Final Order and Consent Agreement remain in effect during the period of suspension.
22. Respondent acknowledges and agrees that upon a second or subsequent finding of Respondent not complying with any of the conditions or requirements of this Amended 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. 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 Amended Final Order and Consent Agreement remain in effect during the period of suspension.
23. 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 Amended 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 Amended Final Order and Consent Agreement. Upon the Respondent providing said written verification, the suspension will again be stayed.

24. 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.
25. 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.
26. After successful completion of all of the conditions and requirements of this Amended Final Order and Consent Agreement by the Respondent, the Amended Final Order and Consent Agreement and the original Final Order and Consent Agreement will be satisfied and the case will be inactivated.
27. By signing this Amended 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 Amended 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 Amended Final Order and Consent Agreement is the date shown on the certificate of service.
28. 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 AMENDED FINAL ORDER AND CONSENT AGREEMENT.

IT IS SO ORDERED

[Redacted signature area]

Joyce Whiteman
Respondent
327 S. Main
Newton KS 67114-4818

[Redacted signature area]

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



Joyce Whiteman must sign in front of a notary public.

Joyce Whiteman signed this before me on 5/8/12 IN HARVEY COUNTY, KANSAS

[Redacted signature area]

[Redacted signature area]

Sandra Sharon, Presiding Officer

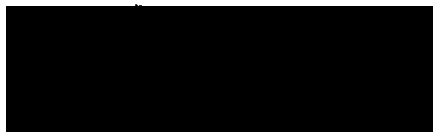
Pursuant to K.S.A. 77-527, either party may request a review of this final order by filing a petition for reconsideration with the Kansas State Board of Nursing. A petition for reconsideration must be filed within 15 days from the date this final order was served. Failure to timely request a reconsideration 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 14th day of May, 2012, the foregoing copy of the AMENDED FINAL ORDER AND CONSENT AGREEMENT was deposited in the United States Mail, first-class postage prepaid, addressed to the following:

Joyce Whiteman
327 S. Main
Newton KS 67114-4818



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