

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

In the Matter )

of )

MATTHEW ASHER )  
\_\_\_\_\_ )

Case No. 89-212-8

Case No. 297

INITIAL ORDER

This matter comes on for hearing before the presiding officer of the Kansas State Board of Nursing on August 24, 1990. Board members sitting as presiding officer are Dean Zerr, R.N.; Mary Dunbar, L.M.H.T.; Jacquelyn Philip; and Helen R. Rice, R.N., Chairperson. Mark W. Stafford, Assistant Attorney General, is present as general counsel. Carol R. Bonebrake, Assistant Attorney General, appears as disciplinary counsel. Respondent appears in person and through his attorney, Cathleen M. Reeder, attorney at law.

Disciplinary counsel moves to consolidate this case with case number 297. Respondent does not object to consolidation. Therefore, case no. 89-212-8 and case no. 297 are hereby consolidated.

Respondent states that he does not contest the allegations or facts set forth in the petition, and waives the right to a

disciplinary hearing. Additionally, respondent offers to voluntarily surrender his license to practice nursing.

Respondent's waiver of a full disciplinary hearing is accepted.

Respondent states that he waives his right to rehearing before and appeal to the entire board, so that this order is effective on the date rendered, which is August 24, 1990.

Based upon evidence received in the emergency proceeding held on July 20, 1990, the evidence presented on this date, and the respondent's statements, the board makes the following findings of fact and conclusions of law.

#### Findings of Fact

1. The findings of fact stated in the emergency order and journal entry in this case dated July 20, 1990 are incorporated by reference and become the findings of fact for this order.

#### Conclusions of Law

1. The board is authorized to revoke, limit or suspend a license to practice as a registered professional nurse when the licensee is found to be habitually intemperate in the use of alcohol or addicted to the use of habit-forming drugs.

2. The board may revoke, limit or suspend a nursing license if the licensee is found to have repeatedly or willfully violated the nurse practice act.

3. By his addiction to habit-forming drugs, respondent is in violation of the nurse practice act.

4. By his continued unauthorized use of narcotics, respondent is in violation of the nurse practice act.

IT IS THEREFORE ORDERED THAT respondent's license to practice nursing in the state of Kansas is hereby revoked.

Entered this 31<sup>st</sup> day of August, 1990.

Helen R. Rice, R.N. *HR*  
Chairperson, Presiding Officer

CERTIFICATE OF SERVICE


This is to certify that a copy of the foregoing INITIAL ORDER was served by depositing same in the United States Mail, first class postage prepaid, this 31<sup>st</sup> day of August, 1990, to:

Matthew Asher  
2946 SW Wayne  
Topeka, Kansas 66611

Cathleen M. Reeder  
222 W. 7th Street  
P.O. Box 797  
Topeka, Kansas 66601

and by hand-delivering a copy to:

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

 *mn*  
\_\_\_\_\_  
Helen R. Rice, R.N.  
Chairperson, Presiding Officer

AUG 10 1990 -2224

Carol R. Bonebrake, #12672  
Assistant Attorney General  
Kansas Judicial Center, 2d Floor  
Topeka, KS 66612-1597  
913/296-2215  
ASHER/MC

BEFORE THE BOARD OF NURSING  
OF THE STATE OF KANSAS

IN THE MATTER )  
OF ) Case No. 297  
MATTHEW ASHER )  
\_\_\_\_\_ )

IN THE MATTER )  
OF ) Case No. 89-212  
MATTHEW ASHER )  
\_\_\_\_\_ )

MOTION TO CONSOLIDATE CASES

COMES NOW the petitioner and moves the Board for an order to consolidate Case No. 297 originally filed on June 6, 1989 and heard on June 14, 1989 and Case No. 89-212 which was filed on July 5, 1990 and remains pending. In support of this motion, petitioner states the following:

1. That Case No. 297 was filed on June 6, 1989 and heard by the Board on June 14, 1989. An Initial Order was entered on the 27th day of June 1989 and became final thirty (30) days after service as no party filed a petition for review and no other action was taken. On July 20, 1990, the Board entered an Emergency Order and Journal

Entry suspending respondent's license. A hearing is scheduled on this matter on August 24, 1990.

2. Case No. 89-212 is a new case which was filed on July 5, 1990, as petitioner believes that respondent has committed subsequent and continued violations of the Nurse Practice Act. This action remains pending and will be heard on August 24, 1990.

3. That both cases involve common facts.

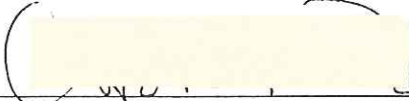
4. That in the interest of judicial and administrative economy, these cases should be heard at the same time and will not result in unfair prejudice or burden to the respondent.

5. That counsel for petitioner has consulted with counsel for respondent, and she has no objection to this motion.

WHEREFORE, petitioner prays for an order of the Board consolidating these actions for hearing on August 24, 1990.

Respectfully submitted,

ROBERT T. STEPHAN  
Attorney General


 *Carol R. Bonebrake*  
\_\_\_\_\_  
Carol R. Bonebrake, #12672  
Assistant Attorney General  
Kansas Judicial Center, 2d Floor  
Topeka, Kansas 66612  
913/296-2215  
Attorneys for Petitioner

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing  
MOTION TO CONSOLIDATE CASES was served by depositing same  
in the United States Mail, first class postage prepaid, the  
10<sup>th</sup> day of August, 1990, to:

Matthew Asher  
2946 S.W. Wayne, #23  
Topeka, Kansas 66611

Cathleen Reeder  
115 E. 7th Street  
P. O. Box 797  
Topeka, Kansas 66601

  
Carol R. Bonebrake *ake*

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

In the Matter )  
 )  
 of ) Case No. 297  
 ) Case No. 89-212-8  
 Matthew Asher )  
 )  
 \_\_\_\_\_ )

EMERGENCY ORDER AND JOURNAL ENTRY

This matter comes on for hearing on July 20, 1990 before the designated hearing panel sitting as Presiding Officer for the Board. Members present are Dean Zerr, R.N.; Jacquelyn Philip; Helen Rice, R.N.; Elsie Flory, L.P.N.; and Doris Underwood, R.N., Chairperson. Mark W. Stafford, Assistant Attorney General, is present as General Counsel. Carol R. Bonebrake, Assistant Attorney General, appears as Disciplinary Counsel. Respondent is not present in person or through counsel.

By and through his attorney, Cathleen M. Reeder, Respondent makes written motion for a continuance. The motion is first considered as it related to case number 89-212-8 which is a new case. After recessing and then later returning to this matter, the motion is considered as it relates to case no. 297.

The continuance is granted for case number 89-212-8. As is more specifically stated below, the matter is converted to an emergency adjudicative hearing as authorized by K.S.A. 77-536,



and Respondent's license is suspended pending final resolution of case number 297.

In accordance with the emergency procedure, case number 297 is set for a formal adjudicative hearing August 24, 1990 at 8:00 A.M. Additionally, case number 89-212-8 is continued to the same date and time. The hearing will commence in the Robinson Courtroom, Washburn University School of Law, 17th and MacVicar, Topeka, Kansas.

After considering the evidence before it as pertaining solely to case number 297, the board enters the following findings of fact and conclusions of law:

#### Findings of Fact

1. Respondent is a Registered Professional Nurse in the State of Kansas.
2. The Board previously entered into an agreement with Respondent whereby his license to practice nursing was suspended for 18 months. However, all but 14 days of the suspension was stayed with certain conditions.
3. The agreement was accepted by the Board as indicated in an initial order of June 27, 1989.
4. Respondent also entered into an agreement with the Kansas State Nurses' Association peer assistance program (KSNA).

5. Respondent agreed with KSNA that he would not use any alcohol or controlled substances.

6. On April 1, 1990, Respondent entered the emergency room at Susan B. Allen Memorial Hospital, El Dorado, Kansas as a patient, complaining of flank pain, and requested Demerol, which was administered at approximately 5:10 P.M.

7. The emergency room report indicates that the urine sample suspiciously appeared to have had blood added to it.

8. The patient requested additional Demerol at approximately 7:05 P.M.

9. There is no evidence that Respondent informed the emergency room personnel that he was either addicted to habit-forming drugs or that he was under an agreement with KSNA which precluded his use of the Demerol.

10. Respondent did not report his treatment with narcotics at the hospital to KSNA.

11. By his continued use of Demerol, Respondent shows an unwillingness or inability to avoid using habit-forming drugs.

12. Respondent's continued practice of nursing allows access to dangerous and habit-forming drugs intended for legitimate patient use.

13. Respondent's continued use of habit forming drugs affects his safe and competent practice of nursing.

14. Respondent's continued practice of nursing poses an immediate threat to the public health, safety and welfare.

15. State's Exhibit No. 2 lacks persuasiveness and does not serve as the basis for this order.

Conclusions of Law

1. The purpose of the Kansas nurse practice act is to protect the public health, safety and welfare.


2. If the Board finds that there is an immediate threat to the public health, safety and welfare, it may take measures as are necessary to alleviate the threat, giving notice to the extent as is reasonable under the circumstances.

3. It is a violation of the nurse practice act to be habitually intemperate in the use of alcohol or habit-forming drugs.

IT IS THEREFORE ORDERED that the license of Matthew Asher is suspended on the basis of the threat to the public health, safety and welfare, such suspension to be in place until case number 297 is resolved.

Entered this 20th day of July, 1990.

This order serves as notice of the hearing scheduled for August 24, as stated above.

 *RM*  
\_\_\_\_\_  
Doris Underwood, R.N.  
Chairperson, Presiding Officer

Notice Regarding Relief From This Order

This order is effective when entered. The party against whom this emergency order was issued may seek relief within (30) days after the order was rendered by filing a petition for review in the district court of proper venue pursuant to the Kansas act for judicial review and enforcement of agency actions, K.S.A. 77-601 et seq.

The attached certificate of service shall constitute notice for purposes of obtaining review.

CERTIFICATE OF SERVICE

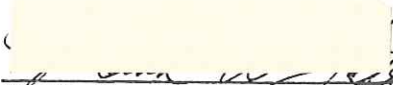
I certify that on the 30<sup>th</sup> day of July, 1990, a copy of the foregoing Emergency Order and Journal Entry was served by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Matthew Asher  
2946 S.W. Wayne  
Topeka, Kansas 66611

Cathleen M. Reeder  
222 W. 7th Street, P.O. Box 797  
Topeka, Kansas 66601

and a copy was hand-delivered to:

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

  
\_\_\_\_\_  
Mark W. Stafford,  
Assistant Attorney General, for  
Doris Underwood, R.N.  
Chairperson, Presiding Officer