

BEFORE THE KANSAS STATE BOARD OF NURSING

Landon State Office Building, 900 S.W. Jackson # 551-S
Topeka, Kansas 66612-1230

Filed

SEP 10 2002
Board of Nursing

IN THE MATTER OF
JO JEAN PATTERSON
LICENSE NO. 13-061442-091

CASE NO. 97-0328-5

CONSENT AGREEMENT AND FINAL ORDER

COMES NOW the petitioner, the Board of Nursing, by and through disciplinary counsel for the board, Alma A. Heckler, and for its cause of action states that:

NATURE OF THE CASE

1. Respondent's address of record is 5730 SE Boulevard, Derby, Kansas 67037.
2. In 2000, respondent's license was suspended indefinitely after a finding that respondent had violated K.S.A. 65-1120(a)(4), she is unable to practice with skill and safety due to current abuse of drugs and alcohol. Respondent's license had been stayed in October, 1998 and she was ordered to enroll in the Kansas Nurses Assistance Program and comply with all the recommendations and requirements of the program. Respondent was also to submit to an evaluation for addictive behavior and the evaluator was to have access to all records of her drug use, medical condition and employment. Respondent had previously completed an evaluation in 1997, but the evaluator did not have access to the documents mentioned above. Respondent failed to follow through with the conditions of the Initial Order of October 1998, and her license was suspended indefinitely.
3. Respondent filed a reinstatement application on or around February 12, 2002.
4. As a basis for this agreement and its enforcement, it shall be considered that respondent violated the Nurse Practice Act as follows:

STIPULATION OF FACTS AND AGREEMENT

In lieu of proceeding to a full administrative hearing, the parties agree to enter into and be bound by the following admissions and stipulations, and this agreement:

- (a) The respondent was discharged from her employment during her probationary period. Respondent's performance at that time demonstrated very little basic nursing knowledge and unprofessional behavior e.g.: respondent allowed unlicensed individuals described as her "friends" to be at work with her and to assist her in the performance of her duties; after ten (10) days of orientation on patients with ventilators and IV's respondent showed no retention of the knowledge. Each time respondent was required to care for a patient with IV medication, she required reorientation of the necessary skills. Respondent was not functioning at the level of competency expected. Respondent became very angry and defensive when the Kansas Nurse Assistance Program (K.N.A.P.) was mentioned to her.
 - (b) Subsequent to her termination, the Board discovered that from December 23, 1993 through September 1997 respondent had obtained a total of 264 prescriptions from twelve(12) different physicians which were filled at six (6) different pharmacies.
 - (c) The respondent was told by one of her physicians that she was addicted to Butalbital, described in the Physician's Deck Reference as a habit forming barbiturate which may impair mental and/or physical abilities.
 - (d) Respondent worked under the influence of drugs or alcohol.
5. These allegations were previously found to be true after a Hearing on October 14, 1998. The Board filed a petition to determine if respondent's license should be reinstated on February 19, 2002.
6. Respondent is aware that she has certain rights in this matter which may include the right to a formal hearing; the right to see and hear evidence against her and to cross-examine witnesses against her; the right to present witnesses and evidence on her behalf; and the right to seek reconsideration, review or appeal of the findings from the hearing in this

matter. Respondent knowingly and intelligently waives, or gives up, her rights and enters into this Consent Agreement to resolve this matter instead of proceeding to Hearing.

7. 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(b) and K.S.A.77-501 *et seq.* and to judicial review.

8. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that the respondent shall immediately provide the Board with a new renewal application and furnish evidence of completion of the mandatory continuing education required for license renewal and pay the appropriate fee. Provided that the respondent otherwise qualifies for licensing her renewal application shall be granted. However, the license will be issued, but respondent will not be allowed to practice until the Kansas Nurses Assistance Program (KNAP) determines she is able to practice. When KNAP determines that the respondent is able to practice, KNAP will immediately inform the Kansas Board of Nursing (KBON). KNAP will provide the board with a list of any limitations to practice to be placed on respondent's license, that KNAP determines to be appropriate. The respondent's license will allow respondent to participate in KNAP under the following conditions:

(a) Within fourteen (14) days of signing this Consent Agreement, respondent must enroll in the Kansas Nurses Assistance Program (KNAP), and comply with and remain compliant with all the recommendations and requirements of the program. It is the respondent's obligation to meet all the requirements of the program. Respondent must follow and successfully complete any treatment or counseling recommended. In the event respondent does not qualify for participation in KNAP, respondent shall immediately enroll in such other peer assistance program designated by the Board, and respondent must follow and successfully complete any treatment or counseling recommended.

(b) 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. The

drug screens must be random and meet all criteria established by the Board. The drug screens will be at least quarterly and may be more frequent as determined by KNAP or the Board. The Board may select and approve the collector. The results of any drug screen specifically requested by the Board will be sent directly to the Board. A positive drug screen shall be deemed a violation of this agreement. Using products containing poppy seeds, hemp, alcohol, or other substances which can cause false positives shall not constitute an acceptable reason for having a false drug screen. A urine specimen which is improperly given or with a creatinine of less than 20mg/dl, or which otherwise indicates that the specimen is diluted shall be deemed to be a positive drug screen. Any drug screen sample which tests positive may be re-tested by respondent pursuant to the following procedure. Respondent must exercise her option to have her specimen retested within 72 hours of notification to her of the positive test result. Notification to respondent will be deemed to have been made when she is orally notified of the test result. Furthermore, in the event that both the original and any subsequent tests are positive, respondent shall have the right to request a hearing. The issues at such a hearing shall be limited to whether the specimen tested was that of respondent and if appropriate testing procedures were followed, and the burden of proof will be on the respondent.

(c) Respondent must abstain from the use of all controlled substances except as prescribed for her for legitimate reasons by a licensed medical provider from whom she seeks medical attention. Respondent shall inform all providers who authorize prescriptions for narcotics, psychotropic medicines, or other mood altering drugs, or other pain relief for her of this Consent Agreement and the Final Order. Respondent shall submit written reports to the Board within ten (10) days of each prescription. The written reports shall identify the medication prescribed, the reason for the prescription, the dosage, the date of prescription, and the number of refills authorized. Respondent agrees that if she accepts a prescription for narcotics, psychotropic medicines, or other mood altering drugs, that the

Board may impose additional requirements or terms. Provided, however, respondent may challenge the need for additional terms and conditions.

(d) When respondent is approved for practice by K.N.A.P., she shall immediately inform her employers, prospective employers, and the director of any nursing education program, involving any clinical component, in which she enrolls or teaches, of this Consent Agreement and the Final Order. Within fourteen (14) days of this Consent Agreement and the Final Order, and with in fourteen (14) day of any change of employment respondent shall cause her employer to notify the Board in writing of the employer's receipt of copies of this Consent Agreement and the Final Order. Respondent shall also cause her employer(s) to provide quarterly reports for the period of her license. The reports shall be prepared by respondent's immediate supervisor or by an R.N. who evaluates her performance on a regular basis. Such reports shall include information regarding attendance, performance and documentation. Respondent's employer may submit copies of employee evaluations conducted during a quarter in lieu of a report for that quarter for one (1) year. These reports or evaluations shall be sent by the employer or person conducting the evaluation to the attention of the Board's Practice Specialist, Kansas State Board of Nursing, Landon State Office Building, 900 S.W. Jackson, Suite 551-S, Topeka, Kansas 66612-1230.

(e) Respondent shall comply with all laws and regulations governing the practice of nursing. Respondent shall also comply with all laws and regulations of the United States of America and its States. Minor traffic violations will not automatically be deemed a violation of this Consent Agreement and Final Order. Depending on the circumstances, repeated minor traffic violations could, however, be evidence of a pattern and practice which may demonstrate a manifest incapacity to practice nursing. Traffic offenses involving drugs or alcohol are not minor traffic offenses and will be deemed to be a violation of this Consent Agreement and Final Order.

(f) Respondent agrees to sign any release(s) necessary so that all reports, tests, or evaluations may be forwarded to the Kansas State Board of Nursing to the attention of the Board's Practice Specialist. In addition, upon request the respondent will provide the Board with any release necessary to confirm that respondent remains alcohol and drug free. The revocation of any release will be a breach of this Consent Agreement. Said records shall not be kept as public records.

(g) When the respondent has been approved to practice by KNAP, she agrees to notify the Board's Practice Specialist of the name of her employer and immediate supervisor within fourteen (14) days from the date she accepts employment and within fourteen (14) days of any change of employment or change in immediate supervisor for a period of one (1) year.

(h) Respondent agrees to notify the Board's Practice Specialist of any changes in her name, address and phone number as well as all employment terminations or employer changes or additions. All notifications of a change in employment shall be made within fourteen (14) days of such a change for a period of one (1) year.

(i) Respondent shall immediately notify the Board of any use of alcohol, if prohibited, or controlled substances, or any violation of this Consent Agreement and Final Order.

(j) Respondent shall receive a license card which shall be issued with an "L" placed in the status code portion of the license card to indicate that action has been taken against her license.

(k) Respondent shall not, under any circumstances, misrepresent her licensure status. Respondent shall not work as a director of nursing or in a charge or supervising position while restrictions on her license continue.

(l) When respondent has been approved to practice by KNAP, she shall not handle or administer any controlled substances, nor shall she be involved with retrieval of, or assist in the retrieval, of such substances from the pharmacy, nor shall she participate, directly, indirectly, or as a witness, in the destruction or wasting of such substances. Respondent

shall not carry keys for, or have access to, storage areas where controlled substances are stored or kept. Respondent will not write out or call in any prescriptions for narcotics, psychotropic medications or mood altering drugs for herself, her family members, or anyone else who is not a patient of her employer. In the event respondent or any member of her family has a legitimate prescription for which refills have been authorized, this provision does not prohibit respondent from calling a pharmacy with a request to have the authorized refill processed. Provided, however, violations of these provisions necessitated by a true medical emergency, shall be dealt with on a case by case basis, and the respondent will have the burden of establishing that a true medical emergency situation existed.

(m) When respondent has been approved to practice by KNAP she shall not seek or accept employment with a nursing registry, a temporary nursing service or agency, a home health care service or agency, or as a private duty nurse without prior written consent of the Board.

9. Respondent admits that any use by her of controlled substances, except as specifically allowed herein, will not only be a violation of this Consent Agreement, but also independent grounds for additional discipline pursuant to K.S.A.65-1120, and may, at the sole discretion of the Board, constitute conclusive and irrefutable proof that she should not be licensed to practice nursing, and will justify immediate action to revoke or suspend her license to practice nursing. Respondent agrees that within 48 hours of any request, she will surrender her license to the Board if the Board, after any investigation, determines that she has violated the terms and conditions of this Consent Agreement and Final Order. Respondent further agrees that, if she fails to surrender her license to the Board within 48 hours of a request as provided above, the Board will be authorized and justified in taking action pursuant to K.S.A. 77-501, including emergency action against her pursuant to K.S.A. 77-536. Furthermore, in the event the Board should move for an order revoking

respondent's license, the only issue will be whether respondent has strictly complied with every term and condition herein.

10. Respondent understands that any unsatisfactory reports from the Kansas Nurse Assistance Program, or the peer assistance program designated by the Board,(defined as reports of non-compliance with the requirements of the program) from her supervisor, or any reports of a reportable incident under Risk Management Law, or a violation of the Kansas Nurse Practice Act, or failure to comply with any of the conditions of this Consent Agreement and Final Order may, at the sole discretion of the Board, constitute a breach of this agreement and the Final Order, and may result in further proceedings against respondent under the Kansas Administrative Procedures Act.
11. Respondent further understands that each and every condition outlined in this Consent Agreement is mandatory and if she fails to meet any one of the conditions the Board will proceed to cause a petition or other proceedings to be filed in this matter and that a full adjudicative proceeding will follow. Respondent further understands that as a result she may be denied, suspended, limited, or revoked pursuant to K.S.A.65-1120 or K.S.A. 74-1110.
12. It is understood that the Consent Agreement is subject to the approval of the Board. Should the Board, or its designee, modify or change this Consent Agreement in any manner unsatisfactory to either party, or disapprove it, either party may withdraw its consent and this document, and all agreements herein shall be void, and the matter will proceed to hearing. However, once approved, all stipulations, agreements and admissions made herein are binding upon the respondent in the event it is necessary to hold any further hearing in these or any other proceedings.
13. The parties understand and acknowledge that this is a disciplinary action and will be reported to the National Council of State Boards of Nursing data bank, and that pursuant to K.S.A.45-215 *et seq.*, the signed original of this Consent Agreement and Final Order shall remain in the custody of the Board as Public Records.

14. In deciding to enter into this Consent Agreement the respondent relied upon her own knowledge and judgment and did not rely on any statement, representation or promise from the Board or anyone acting on its behalf. Respondent further acknowledges that she entered into this Consent Agreement and consented to the entry of the Final Order freely, knowingly, and voluntarily, and without any coercion, pressure, or duress from the Board or anyone on its behalf.
15. This Consent Agreement will be subject to and governed by the State of Kansas.
16. Respondent acknowledges and agrees that neither this Consent Agreement or the Final Order are intended to be , nor will they operate as, a waiver or estoppel of the Board's right to take action against respondent for any act or omission not specifically made a part of this agreement, and that nothing in this Consent Agreement and Final Order shall be construed to deny the Board jurisdiction to investigate and prosecute other alleged violations of the Nurse Practice Act regardless of when they occur(ed) or when called to the attention of the Board. Respondent acknowledges that each and every term and condition imposed herein is mandatory and that she is required to comply with each and every one. An express or implied waiver of one or more conditions shall not operate as a waiver of any other, nor constitute an estoppel or bar to the enforcement of any other term or condition of this Consent Agreement.
17. Respondent acknowledges and understands that she will be responsible for payment of any costs associated with compliance with this Consent Agreement, and that it is her responsibility to insure that all reports required to be submitted to the Board, including those of her employer or other third party, are submitted in a timely manner.
18. Respondent will pay costs in the sum of \$70.00. Said payment shall be made to the Board in cash, check, or money order.
19. Respondent acknowledges and agrees that nothing contained in this Consent Agreement and Final Order will grant her any right to an automatic license renewal or a license without restrictions.

20. By signing this Consent Agreement, respondent acknowledges that she has read and understands the entire document, and agrees to be bound by its terms. This Consent Agreement constitutes the entire agreement of the parties and may not be modified except in writing and approved by all parties.

IN WITNESS WHEREOF, the parties hereto execute this Consent Agreement and request for a Final Order.

Terry Beck

Terry Beck
Hearing Officer

Jo Jean Patterson

Jo Jean Patterson
Respondent

STATE OF KANSAS

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COUNTY OF Shawnee

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Subscribed and sworn to before me, this 10th day of September, 2002.

Charlene K. Roby



Signature of Notary Public

Approved by: *Sterling S. Waggener*

Sterling S. Waggener, Attorney for Respondent

DATE 9/10/02

Alma A. Heckler

Alma A. Heckler #11555, Assistant Attorney General