

Betty Wright

BEFORE THE KANSAS STATE BOARD OF NURSING

Filed

JUL 28 2005

Board of Nursing

IN THE MATTER OF
Judith Berry
License No. 13-064258-121

Case No. 03-753-7
OAH No. 05BN0003

INITIAL ORDER

Now on this 27th day of July, 2005, the above captioned matter comes on for hearing before the Office of Administrative Hearings. The petitioner, the Kansas State Board of Nursing, appears by disciplinary counsel, Betty Wright. The respondent, Judith Berry, appears in person.

FINDINGS OF FACT

1. The respondent is licensed to practice nursing as a Registered Nurse through December 31, 2005.
2. The respondent's address is 1237 W. Poplar, Olathe, Kansas 66061.
3. Notice of this proceeding was sent June 29, 2005, service is proper.
4. The respondent signed a Consent Agreement to Suspend License with a Stay effective January 6, 2005. The respondent agreed that any positive drug screen would be a violation of the agreement. On January 13, 2005 the Kansas Nurse Assistance Program (KNAP) program received a positive UDS for alcohol and notified the Kansas Board of Nursing on January 26, 2005. Continued nursing practice of the respondent posed an immediate danger to the public health, safety, or welfare. The respondent's USD alcohol level was 2,200 ngs.
5. The respondent was not compliant with KNAP and the consent agreement by relapsing to alcohol. The license stay was lifted when the respondent was ordered to cease practice by KNAP on January 26, 2005 and the stay was re-instituted on March 2, 2005.
6. The appellant had a second relapse on March 31, 2005. With a low level UDS at 260 ngs. At that time a letter was sent to the appellant advising her that due to the low level positive screen could be due to consumption of an over the counter medication. However, the respondent was informed that another relapse with a low level positive UDS for alcohol over 250 ngs would be considered a relapse. The appellant told KNAP that she had taken the cold medication Benadryl. However, at hearing the respondent admitted this was a lie.

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7. On June 20, 2005 the respondent had another low level USD positive for alcohol of 290 ngs. As the respondent had been previously informed, this was considered a relapse under her consent agreement with the board. At this time, the respondent's therapist could not assert that she was safe to practice nursing.
8. The respondent has terminated her involvement with KNAP.
9. The respondent's therapist cannot assert she is safe to practice nursing. The respondent denies alcohol use on the March 31, 2005 USD and the June 20, 2005 USD. However, the respondent admits to alcohol use in June 2005.

CONCLUSIONS OF LAW

1. The respondent is noncompliant with KNAP and with the Consent Agreement by relapsing to alcohol.
2. The respondent has violated the Nurse Practice Act.
3. Respondent has violated:
 - (a) K.S.A. 65-1120 (a)(6); unprofessional conduct, defined by administrative regulation K.A.R. 60-3-110(R); failing to comply with any disciplinary order of the board.
 - (b) K.S.A. 65-1120(a)(6), unprofessional conduct as defined by K.A.R. 60-3-110(s) as failing to complete the requirements of the impaired provider program of the board.
4. The petitioners request to lift the stay and revoke the respondent's license is hereby granted. The petitioner's license to practice nursing is hereby revoked.

Appeal Rights and Other Administrative Relief

The procedures available and time limitations for seeking review or other relief as follows: Any party, within fifteen (15) days after service of this notice, may file a petition for review with the agency head, send you request to:

Mary Blubaugh, Executive Director, Board of Nursing
Landon State Office Building
Suite 1051, 900 SW Jackson
Topeka, KS 66612-1230

The petition for review shall state its basis, pursuant to K.S.A. 77-527.

OFFICE OF ADMINISTRATIVE HEARINGS



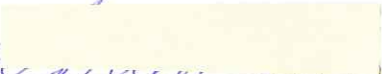
Sandra L. Sharon
Presiding Officer
Office of Administrative Hearings

CERTIFICATE OF SERVICE

On July 27, 2005, I mailed a copy of this document to:

Judith Berry
1237 W. Poplar St.
Olathe, KS 66061

Betty Wright
Assistant Attorney General
Disciplinary Counsel for the Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612




Staff Person
Office of Administrative Hearings