

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

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IN THE MATTER OF KIMBERLY ELLEN QUALHEIM

License No. 13-65429-072

Case No 10-1061-5

INITIAL AGREED ORDER

NOW ON THE 17 day of February, 2014, THE ABOVE MATTER COMES BEFORE THE Kansas State Board of Nursing (Board) pursuant to authority granted to the Board by K.S.A. 65-1120. The Board hereby proposed to find facts and take disciplinary action against the Licensee by way of Summary Order as provided by K.S.A. 77-537.

FINDINGS OF FACT

1. Respondent, Kimberly Ellen Qualheim, is licensed to practice nursing in Kansas. The Board has jurisdiction over the Licensee and the subject matter of the action.
2. Applicant's address of record is 434 Emery Mulvane, Kansas 67110.
3. The case was submitted to the Investigative Committee on the 16th day of September, 2013.
4. Review of the investigation and other information gathered by the Board revealed the following information upon which the action is based.
5. After an investigation, the Board's investigative committee found reasonable grounds to believe that the respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1120, and referred the matter for further proceedings.
6. The Kansas State Board of Nursing has the authority under K.S.A. 74-1106 et seq. to examine, license and renew license for duly qualified applicants and may limit, deny, suspend or revoke 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.

7. (a) A Petition was filed October 8th, 2013 to take disciplinary action against the licensee's license.

(b) This matter is set for Prehearing on the 19th of November, 2013.

FACTS COMMON TO ALL COUNTS

8 The facts below are common to all counts:

- a. According to the report, it is alleged that while licensee was employed by Progressive Home Health & Hospice, Wichita, Kansas, licensee went to the facility while under the influence of alcohol.
- b. Licensee was arrested and charged with driving under the influence.
- c. This incident occurred on or about the 10th day of July, 2010.
- d. Licensee entered KNAP on the 17th day of November 2010.
- e. A chemical dependency evaluation was completed that rendered a diagnosis of alcohol and sedative dependency.
- f. While in KNAP, licensee missed calling in for UDS on the 23th day of June, 2011.
- g. Licensee called in for UDS, was chosen and failed to have UDS done on the 23th day of February 2012.
- h. Licensee was given verbal warning from KNAP for failing to attend the required two 12 step meetings/wk.
- i. Licensee failed to attend monthly monitoring meeting in April, 2013 and her KNAP case was closed as unsuccessful.

VIOLATIONS

9. Respondent has violated the Kansas Nurse Practice Act as follows:

Count 1 K.S.A. 65-1120(a)(7), willfully and repeatedly violation provisions of the Kansas Nurse Practice Act by failing to complete the requirements of impaired provider program

KAR 60-3-110(s).

Count 2: K.S.A. 65-1120(a)(4) unable to practice with skill and safety due to current abuse of drugs or alcohol.

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 Act for Judicial Review and Civil Enforcement of agency actions. Respondent is waiving those rights and voluntarily entering into the 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 license for duly qualified applicants and may limit, deny, suspend or revoke 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

POLICY STATEMENT

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

DISPOSITION

13. By entering into the Initial Agreed Order and consenting to the entry of the Initial 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.

14. Based upon the agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, 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 for a period of one (1) year from the date of this agreement of which the suspension will be stayed provided that licensee complies with the terms of this Consent Agreement.

15. The Kansas State Board of Nursing will grant the applicant's request relief from the suspension and 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 will participate in and complete the reasonable recommendations and requirements of the Kansas Nurses Assistance Program (KNAP); sign releases of information necessary for KNAP to evaluate and monitor respondent and for KNAP to report information to the board. Respondent will be deemed to have completed the KNAP program when KNAP issues written notification that respondent has completed the program.

Noncompliance with KNAP is a violation of this agreement.

(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. Respondent agrees that a Positive Drug Screen, for a drug she does not have a valid prescription for, is a violation of this agreement.

(c) Respondent shall immediately notify the Legal Division of any use of alcohol, if prohibited by KNAP, or controlled substances, or any violation of this Final Order and Consent Agreement.

(d) The respondent shall immediately inform all employers and prospective employers of this Final Order and Consent Agreement.

(e) If Respondent is employed in the nursing profession, Respondent will 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: First report will be due on March 10th, 2014 and the 10th of every third month until four (4) reports have been submitted. These reports are performance reports while in a position that requires a nursing license

(f) Respondent will have limitations on her license

(g) Respondent will not practice in the following: unsupervised, agency, teach and/or home health care nursing positions.

(h) Respondent shall send a money order for \$70 to the Board upon entering into the agreement to pay the cost of the action.

(i) Respondent shall not violate the Kansas Nurse Practice Act during the duration of the agreement.

(j) Respondent shall not violate the laws of the United States, of State, or of any political subdivision of any State during the term of the 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. All such notifications shall be made in writing within fourteen (14) days of such a change.

16. Respondent acknowledges and agrees that Respondent is responsible for the costs related to satisfying the conditions and requirements of the Initial Agreed Order. Respondent further acknowledges and agrees that to provide the Board with false information regarding compliance with the Initial Agreed Order is a violation of the Initial Agreed Order.

17. 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 the Final Order and Consent Agreement, but Respondent could not contest the violations listed in the agreement.

18. All parties understand that if an action based on failure to meet the conditions and requirements of the 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. All parties agree that only serving the Notice of Hearing upon the Respondent will be

proper service and it is the Respondent's responsibility to contact her or her attorney, if any, in reference to the action.

19. Respondent acknowledges and agrees that if any action based on failure to meet the conditions and requirements of the Initial Agreed Order is filed during the term of the Initial Agreed Order, or within 30 days after the expiration date, the conditions of the Initial Agreed Order shall continue in effect until the Board or a hearing/presiding officer designated pursuant to K.S.A. 77-514 and K.S.A. 77-526, rules on the action.

20. The Board will inactivate the case file once respondent satisfies the agreement. The 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 the agreement is entered into.

21. The agreement is a discipline and must be reported on any future renewal or reinstatement applications. The agreement is a contract entered into by the parties to resolve an investigative case. The original of the agreement shall be placed in the Agency Record. The Agreement is a public record and will be reported to national disciplinary data banks.

22. After successful completion of all of the conditions and requirements of the Initial Agreed Order by the respondent, the Initial Agreed Order will be satisfied and the case will be inactivated.

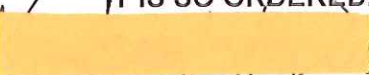
23. By signing the Initial Agreed Order, Respondent acknowledges that Respondent has read and understands the entire document, and agrees to be bound by its terms. The Initial Agreed Order constitute the entire agreement of the parties and may not be modified except in writing and approved by all parties. The effective date of the Initial Agreed Order is the date shown on the certificate of service.

24. 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.

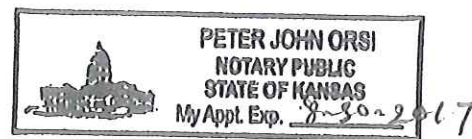
IN WITNESS WHEREOF, the parties hereto execute the INITIAL AGREED ORDER.

IT IS SO ORDERED.


Respondent
Kimberly Ellen Qualheim
434 Emery
Mulvane, Kansas 67110

2/10/14 must sign before a Notary Public.


Madden & Orsi
Attn: Peter John Orsi II
R.H. Garvey Building
Suite 1000
300 W. Douglas
Wichita, Kansas 67202




Michael R. Fitzgibbons #12287
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612


Sandra Sharon, Presiding Officer

Pursuant to K.S.A. 77-527, either party may request a review of the final order by filing a petition for reconsideration with the Kansas State Board of Nursing. A petition for reconsideration must be filed with 15 days from the date the 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.

Pursuant to K.S.A. 77-530, if a request for reconsideration is not requested in the time and manner stated above, the initial order shall become effective as a final order 30 days after service.


CERTIFICATE OF SERVICE

On the 20th day of February, 2014, I mailed a copy of the INITIAL AGREED ORDER:

Kimberly Ellen Qualheim
434 Emery
Mulvane, Kansas 67110

Madden & Orsi

Attn: Peter John Orsi II
R.H. Garvey Building
Suite 1000
300 W. Douglas
Wichita, Kansas 67202


Michael R. Fitzgibbons, #12287
Assistant Attorney General