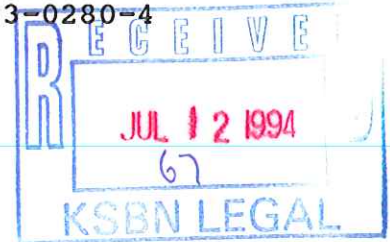


BEFORE THE KANSAS STATE BOARD OF NURSING
LONDON STATE OFFICE BUILDING
900 S.W. JACKSON RM 551-S
TOPEKA, KANSAS 66612-1230

IN THE MATTER OF:)
)
JOHNNY BARKER)
LICENSE NO. 13-065437-092)

CASE NO. 93-0280-4



CONSENT AGREEMENT AND FINAL ORDER

COMES NOW the Petitioner, the Kansas State Board of Nursing, hereinafter referred to as the "Board", by and through Assistant Attorney General Mark S. Braun, and the Respondent, Johnny Barker, and respectfully request the Board, or its designee, to approve this Consent Agreement and Final Order as the resolution in this case. By entering into this Consent Agreement and Final Order, both parties waive their right to a full administrative hearing pursuant to K.S.A. 65-1120(b) and K.S.A. 77-523. This Consent Agreement and Final Order affects the Respondent's license to practice as a registered professional nurse (R.N.) in Kansas.

AGREEMENT

It is the intent and purpose of this Consent Agreement and Final Order to provide for settlement of all issues currently before the Board without the necessity of a formal hearing. Respondent knowingly and intelligently waives his right to a hearing on the issues currently before the Board relating to a license. The parties agree as follows:

1. Both parties to this Agreement acknowledge that the Board received a complaint and conducted an investigation as to whether Respondent violated the Kansas Nurse Practice Act. Based on that

investigation, there are reasonable grounds to believe Respondent violated the Act.

2. Respondent acknowledges and understands that: he has the right to seek legal representation in this matter; that he has the right to a full and fair hearing on the allegations made by the Petitioner. At such hearing, the Petitioner would be required to present witnesses and evidence in support of the allegations; he has the opportunity to cross-examine Petitioner's witnesses; he has the opportunity to present witnesses and evidence on his behalf; the matter would be decided on the evidence presented and a decision would include findings of fact and conclusions of law; the right to seek reconsideration of any adverse order issued by the Board and the right to seek judicial review of any adverse Board order or decision. Respondent understands that by entering into this Consent Agreement and Final Order, he is waiving all of the above-mentioned rights.

3. In lieu of proceeding to a full hearing, Respondent stipulates to Paragraph 5 of the Petition. Respondent understands that by stipulating to that paragraph, he is admitting to a violation of the Kansas Nurse Practice Act.

4. Pursuant to the disciplinary remedies available in K.S.A. 65-1120, Respondent's license to practice as a registered professional nurse (R.N.) will be suspended for a period of two (2) years from the date the Consent Agreement and Final Order is approved by the Board, or its designee. Said suspension shall be stayed as long as the Respondent meets the following conditions:

A. For the first year of this Agreement and Order, Respondent shall not carry keys or have access to any medication storage areas. If, in the judgement of the administrator of the impaired licensee program the Respondent's employer and the Board's Practice Specialist, Respondent's situation warrants, Respondent may carry keys and have access to storage areas as directed by the program administrator or Practice Specialist. Prior written approval must be submitted before Respondent may have access to medication storage areas.

B. Respondent shall undergo an evaluation to determine whether or not outpatient treatment or counseling is necessary. If the evaluation states no treatment is necessary, then no treatment shall be required. If the evaluation states he is in need of treatment, Respondent shall participate in the Kansas Nurse Assistance Program (KNAP). Respondent shall contact Professional Advisory Services, 6605 Martway, Suite 100, Mission, Kansas 66202, (913) 236-7575, within fourteen (14) days of the Board or designee's approval of this Consent Agreement and Final Order.

C. Respondent shall notify the Board's Practice Specialist in writing within ten (10) days of any changes in residence, home telephone number, employment, or other work situations.

D. The Board's Practice Specialist shall receive quarterly reports about Respondent's work from his closest supervising agent. The reports shall include information about Respondent's attendance, quality of work performance and patient

care. The reports shall be submitted on or before the 20th day of October, January, April, and July. The first report shall be due October 20, 1994 and continue through July 20, 1996.

E. Respondent's current license expires September 30, 1994. The re-issuance of his license shall be contingent upon this Agreement and Order remaining in effect until the two year period as previously identified.

5. By signing this Consent Agreement and Final Order, Respondent acknowledges he has read the entire document and agrees to be bound by this document.

6. Should the Board, or its designee, modify or change the Consent Agreement and Final Order in any manner unsatisfactory to either party, either party may withdraw its consent and the matter will proceed to hearing. Further, if the Consent Agreement and Final Order, as signed by the parties, is not acceptable to the Board, or its designee, neither party shall be bound to any representations made in this agreement.

7. Respondent acknowledges that he has received the factual information relating to the counts stated in the Petition. Respondent further acknowledge that he has reviewed the Petition filed in this case. The parties to this Agreement and Order further agree that if any changes are made as stated in Paragraph 6 of this Agreement, Respondent shall receive notice of a hearing and will be provided sufficient time to prepare for the hearing.

FINDINGS OF FACT

1. Respondent is licensed to practice as a registered

professional nurse (R.N.) in the State of Kansas, having been issued license number 13-065437-092, with an expiration date of September 30, 1994.

2. The Board received information and conducted an investigation into alleged violations of the Kansas Nurse Practice Act by the Respondent.

3. The Board found there were reasonable grounds to believe Respondent violated the Kansas Nurse Practice Act.

4. During the Spring of 1993, Respondent while employed as an R.N. at the Harper County Hospital diverted drugs of patients or agency. Said conduct constituted unprofessional conduct in violation of K.S.A. 65-1120(a)(6), as defined by K.A.R. 60-3-110(a)(9).

5. Respondent stipulates and admits to Paragraph 5 as stated in the Petition.

6. In lieu of proceeding to a full administrative hearing, the parties have agreed to enter into and be bound by this Consent Agreement and Final Order.

7. The Parties understand and acknowledge that, pursuant to K.S.A. 45-215 et seq., the signed original of the Consent Agreement and Final Order shall remain in the custody of the Board as a public record.

CONCLUSIONS OF LAW

1. The Kansas State Board of Nursing has jurisdiction over the Respondent and the subject matter pursuant to K.S.A. 65-1120.

2. Respondent is not represented by counsel. Respondent is

aware of his rights under the United States and Kansas Constitutions, the Kansas Nurse Practice Act and the Kansas Administrative Procedures Act. Based on the knowledge of his Respondent has knowingly, intelligently, and voluntarily waived his rights and entered into this Consent Agreement and Final Order. In lieu of proceeding to a full administrative hearing, Respondent waives his rights to: an adjudicative administrative hearing in which the evidence and witnesses would be presented; cross-examination of those witnesses against him; the opportunity to present witnesses and evidence on his behalf; a decision by the Board or its designee based on the evidence; findings of facts and conclusions of law; the right to seek reconsideration by the Board of any adverse decision and the right to seek judicial review by a district court of any adverse decision by the Board.

3. Respondent has stipulated and admitted to Paragraph 5 contained in the Petition. Based on that stipulation, Respondent has violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq.

4. Respondent is guilty of unprofessional conduct in that during the Spring of 1993, he diverted drugs of patients or agency in violation of K.S.A. 1120(a)(6), as defined by K.A.R. 60-3-110(a)(9).

5. The Petitioner and Respondent have entered into this Consent Agreement and Final Order which, when signed by both parties and the Board or its designee, will be binding on the parties and the Board.

6. Respondent and counsel have reviewed the Petition and waive formal notice of the filing of the Petition with the understanding that the Petition and Consent Agreement and Final Order will be filed with the Board simultaneously.

FINAL ORDER

WHEREFORE, based on the foregoing Agreement, Findings of Fact and Conclusions of Law, IT IS THEREFORE ORDERED that the following action will be taken against the Respondent's license to practice as a registered professional nurse (R.N.) in the State of Kansas:

Pursuant to the disciplinary remedies available in K.S.A. 65-1120, Respondent's license to practice as a registered professional nurse (R.N.) will be suspended for a period of two (2) years from the date this Consent Agreement and Final Order is approved by the Board or its designee. Said suspension shall be stayed upon proof Respondent has successfully completed an ^{out}patient substance abuse treatment program, and Respondent meets the following conditions:

A. For the first year of this Agreement and Order, Respondent shall not carry keys or have access to any medication storage areas. If, in the judgement of the administrator of the impaired licensee program, the Respondent's employer and the Board's Practice Specialist, Respondent's situation warrants, Respondent may carry keys and have access to storage areas as directed by the program administrator or practice specialist. Prior written approval must be submitted before Respondent may administer medication or have access to medication storage areas.


B. Respondent shall undergo an evaluation to determine whether or not outpatient treatment or counselling is necessary. If the evaluation states no treatment is necessary, then no treatment shall be required. If the evaluation states treatment is necessary, then Respondent shall participate in the Kansas Nurse Assistance Program (KNAP). Respondent shall contact Professional Advisory Services, 6605 Martway, Suite 100, Mission, Kansas 66202, (913) 236-7575, within fourteen (14) days of the Board or designee's approval of this Consent Agreement and Final Order.

C. Respondent shall notify the Board's practice specialist in writing within ten (10) days of any changes in residence, home telephone number, employment, or other work situations.

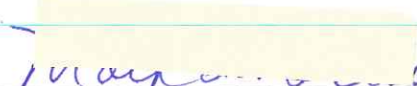
D. The Board's Practice Specialist shall receive quarterly reports about Respondent's work from closest supervising agent. The reports shall include information about Respondent's attendance, quality of work performance and patient care. The reports shall be submitted on or before the 20th day of October, January, April, and July. The first report shall be due October 20, 1994 and continue through July 20, 1996.

E. Respondent's current license expires September 30, 1994. The re-issuance of his license upon a timely application for renewal shall be contingent upon this Agreement and Order remaining in effect until the two (2) year period as previously identified.

IN WITNESS WHEREOF, the parties hereunto execute this Consent Agreement and Final Order:


Johnny Barker
Respondent

7/6/94
DATE


MARK S. BRAUN
Assistant Attorney General
Board Disciplinary Counsel


8/22/94 FAX copy signed
DATE by me 7/06/94

WHEREFORE, the provisions stated above are hereby adopted and made the Final Order of the Kansas State Board of Nursing.

IT IS SO ORDERED.

Dated this 25th day of August, 1994

*faxed copy signed
by APR on July 7, 1994*


Board Representative or
Board Designee


CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing CONSENT AGREEMENT AND FINAL ORDER was served by depositing same in the United States Mail, first class postage prepaid, this 30th day of August, 1994 to:

Johnny Barker
315 N Main, Box 34
Attica, Kansas 67009-0034

and by hand delivering a copy to

Mark S. Braun, Disciplinary Counsel
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson, Suite 551-S
Topeka, Kansas 66612-1230



Diane M. Glynn, J.D., R.N.
Practice Specialist