

BEFORE THE KANSAS STATE BOARD OF NURSING

Landon State Office Building, 900 S.W. Jackson #1051
Topeka, Kansas 66612-1230

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FILED

AUG 30 2010

KSBN

**IN THE MATTER OF
JOHNNY A. BARKER**

License No. 13-065437-092

ARNP License No. 53-044900-092

FILED - OAH

Case No. 09-1078-5

OAH No. 10BN0080

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CONSENT AGREEMENT AND FINAL ORDER

NOW ON THIS 30th day of August, 2010, the Kansas State Board of Nursing, represented by Assistant Attorney General, Alma A. Heckler, and the Respondent, Johnny A. Barker, by and through counsel H. Douglas Pfalzgraf, hereby enter into this agreement and proffer evidence and the hearing officer adopts those recommendations and makes the following findings of fact and orders:

AGREED FINDINGS OF FACT

1. Respondent is licensed to practice nursing in Kansas through 9/30/2010. The Kansas State Board of Nursing (KSBN) has jurisdiction over the Respondent and the subject matter of this action.
2. Respondent's address of record is #5 Cattail Cove Circle, Anthony, KS 67003.
3. The Respondent understands that pursuant to K.S.A. 77-515, respondent may be represented at respondent's expense by, an attorney during these proceedings. Respondent acknowledges that this agreement will be an open record pursuant to the Kansas Open Records Act, K.S.A 45-215 et seq., and may be published or disseminated notwithstanding any state or federal law otherwise restricting public access to, or dissemination of, any personal or health care information, or any information or records of substance abuse evaluation and/or treatment contained herein.

4. 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 this matter for further proceedings.

5. 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.

6. A petition was filed 2/8/2005 to take disciplinary action against the licensee's license. In the Board's case number 93-280-4, alleging drug diversion and a positive drug test, Respondent's license was suspended for two years with the suspension stayed on conditions including participation in the [REDACTED]

7. In the Board's case numbers 00-064-4, 00-345-4, and 00-374-4, Respondent entered into an informal disciplinary agreement but failed to complete the terms of the agreement. Effective February 4, 2004, he entered into a Consent Agreement that suspended his license with a stay on conditions, including successful completion of [REDACTED]. Respondent completed the requirements of the Consent Agreement in January 2006, and the case was inactivated.

8. By letter dated May 29, 2009, GraceMed made a conditional offer of employment to Respondent.

8. On June 24, 2009, Respondent submitted a sample for a pre-employment urine drug screen (UDS). That sample tested positive for amphetamines and cannabinoid. Respondent provided a prescription for Vyvanse, an amphetamine, and admitted that he had smoked marijuana in May.

9. GraceMed offered employment as an ARNP on the conditions that Respondent submit to random drug testing and give consent to communication between GraceMed and [REDACTED]. Respondent agreed.

10. On or about June 29, 2009, Respondent completed a Standardized Credentialing Application.

11. The Standardized Credentialing Application is submitted to insurance and health benefit providers by health care providers.

12. Section X, question number 6 of the Standardized Credentialing Application asks, "Has your authority to practice in any state been suspended, revoked, voluntarily or involuntarily surrendered, been subject to a consent order or stipulation, not renewed, denied renewal, or has probation ever been revoked?" Respondent marked "N" for "no."

13. The above incidents are violations of the nurse practice act. The Respondent agrees that the board is prepared to prove that respondent has violated: Count I: K.S.A. 65-1120(a)(4), to be unable to practice with skill and safety due to current abuse of drugs or alcohol.

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

Count II: K.S.A. 65-1120(a)(1), to be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing.

Count III: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(d),

14. 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 this agreement instead of proceeding to such a hearing.

CONCLUSIONS OF LAW

15. 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.

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

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

Count II: K.S.A. 65-1120(a)(1), to be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing.

Count III: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(d),

POLICY STATEMENT

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

DISPOSITION

18. 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 and K.S.A. 77-501 et seq. and to judicial review.

19. Upon the parties entering into this Consent Agreement and with the respondent having met all statutory requirements for reinstatement of respondent's Kansas Nursing license, the respondent's application for reinstatement of respondent's Kansas Nursing license will be granted.

20. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that this Consent Agreement will continue through any renewal periods of respondent's nursing license until respondent completes each of the conditions and requirements of this agreement. Further, the parties agree that in the event of a lapse of Respondent's nursing license, reinstatement of Respondent's nursing license shall be contingent upon this Consent Agreement and Final Order remaining in effect until Respondent completes each of the conditions and requirements of this agreement.

21. 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. The suspension will be stayed as long as the requirements and conditions of this agreement are met.

22. 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 limited. The limitations placed on the license and described below will remain in place until the requirements and conditions of this agreement are met or until the requirements and conditions of this agreement call for the modification of the limitations.

23. The Kansas State Board of Nursing 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 shall return his or her current license card to the Board with this Consent Agreement. Respondent shall receive a license which shall be issued with an "S" placed in the status code portion of the license to indicate that the license is suspended with a Stay. The license will have an "L" indicating the limitations on the practice.

(b) Respondent will participate in and complete the reasonable recommendations and requirements of the [REDACTED]; sign releases of information necessary for [REDACTED] to evaluate and monitor respondent and for [REDACTED] to report information to the board. Respondent will be deemed to have completed the [REDACTED] when [REDACTED] issues written notification that respondent has completed the program. Respondent must enroll in the [REDACTED] program within thirty (30) days of entering this agreement. Noncompliance with [REDACTED] is a violation of this agreement.

(c) Respondent must submit to random drug screens as determined or selected by the Board or by [REDACTED]. The costs of the drug screens will be paid by the respondent. Respondent agrees that a Positive Drug Screen is a violation of this agreement.

(d) Respondent shall have a narcotic key restriction on respondent's license for the first six (6) months after respondent secures employment that requires a nursing license. The narcotic key restriction prohibits the respondent from passing of narcotics, wasting of narcotics or having access to narcotics. The narcotic key restriction also prohibits the respondent from supervising nurses or others that have access to narcotics. After respondent completes six (6) months of employment that requires a nursing license, without violating any terms of this agreement, respondent may request that the narcotic key restriction be removed from respondent's license. Respondent's request shall include written verification from respondent's employer, to the Kansas State Board of Nursing, as to whether the respondent has been employed in a position that requires a nursing license; as to whether the respondent has held that position for at least six (6) months; as to whether the respondent has passed, wasted, had access to, or supervised others that had access to narcotics. With a showing that the narcotic key restriction term of this agreement has been met by the respondent, and the respondent is compliant with all other terms of this agreement, the narcotic key restriction will be removed from respondent's license.

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

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

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

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

(i) Respondent shall not violate the laws of the United States, of State, or of any political subdivision of any State during the term of this agreement. Traffic infractions shall not be considered violations of the law.

(j) The respondent will complete two (2) hours of Continuing Nurses Education (CNE) on the topic of "The Kansas Nurse Practice Act." Respondent is to submit the original certificates for proof of the completion of the hours within 30 days of this agreement. Respondent may not use these hours to meet the CNE requirements of any renewal period.

(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.

24. Respondent acknowledges and agrees that Respondent is responsible for the costs related to satisfying the conditions and requirements of this Consent Agreement. Respondent further acknowledges and agrees that to provide the Board with false information regarding compliance with this Consent Agreement is a violation of this Consent Agreement.

25. 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 this Consent Agreement, but Respondent could not contest the violations listed in this agreement.

26. All parties understand that if an action based on failure to meet the conditions and requirements of this 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 his or her attorney, if any, in reference to the action.

27. Respondent acknowledges and agrees that if any action based on failure to meet the conditions and requirements of this Consent Agreement is filed during the term of this Consent Agreement and Final Order, or within 30 days after the expiration date, the conditions of this Consent Agreement and Final 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.

28. Respondent acknowledges and agrees that upon a first finding of Respondent not complying with any of the conditions or requirements of this Consent Agreement, the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, shall be lifted for a period of six months from the date of said finding. Respondent will not be allowed to practice nursing in the state of Kansas during the period of suspension. Respondent acknowledges and agrees that all conditions and requirements of this Consent Agreement remain in effect during the period of suspension.

29. Respondent acknowledges and agrees that upon a second or subsequent finding of Respondent not complying with any of the conditions or requirements of this Consent Agreement the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, shall be lifted for a period of one year from the date of said finding. Respondent will not be allowed to practice nursing in the state of Kansas during the period of suspension. Respondent acknowledges and agrees that all conditions and requirements of this Consent Agreement remain in effect during the period of suspension.

30. Respondent acknowledges and agrees that upon the Stay of Suspension being lifted due to a finding of non-compliance with any of the conditions or requirements of this Consent Agreement, the Suspension will not again be Stayed until the Respondent has, following the prescribed time period of suspension, provided written verification to the Board that Respondent is in compliance and has remained in compliance during the period of suspension, with all

conditions and requirements of this Consent Agreement. Upon the Respondent providing said written verification the suspension will again be stayed.

31. The Board will inactivate this case file once respondent satisfies this agreement. This 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 this agreement is entered into.

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

33. After successful completion of all of the conditions and requirements of this Consent Agreement by the respondent, the Consent Agreement will be satisfied and the case will be inactivated.


34. By signing this Consent Agreement and Final Order, Respondent acknowledges that Respondent has read and understands the entire document, and agrees to be bound by its terms. This Consent Agreement and Final 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 this Consent Agreement and Final Order is the date shown on the certificate of service.

35. 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 this CONSENT AGREEMENT AND FINAL ORDER.

IT IS SO ORDERED.

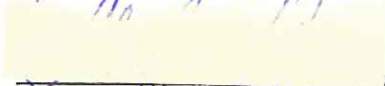
Johnny A. Barker must sign before a Notary Public.




Johnny A. Barker
Respondent
#5 Cattail Cove Circle
Anthony, KS 67003



H. Douglas Pfalzgraf, # 12018
Pfalzgraf Law Offices
522 North Washington
P.O. Box 668
Wellington, Kansas 67152-0668
Counsel for Respondent



Alma A. Heckler, #11555
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612




Sandra L. Sharon, Presiding Officer

CERTIFICATE OF SERVICE

On the 30th day of August, 2010, I mailed a copy of this CONSENT AGREEMENT AND FINAL ORDER to:

Johnny A. Barker
#5 Cattail Cove Circle
Anthony, KS 67003

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