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**BEFORE THE KANSAS STATE BOARD OF NURSING**

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

FILED

DEC 30 2014

**IN THE MATTER OF  
JOHNNY A. BARKER  
License No. 13-065437-092  
ARNP License No. 53-044900-092**

KSBN

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Case No. 09-1078-5  
OAH No. 10BN0080

**AGREED FINAL ORDER**

NOW ON THIS 24<sup>th</sup> day of December, 2014, 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 9/30/2016. 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. Respondent entered into a Consent Agreement and Final Order with the Board in 2010. That agreement remained active and respondent failed to complete the terms of the agreement. Respondent has previously stipulated to the following facts in a Consent Agreement with the Board in 2010:

A petition was filed 2/8/2005 to take disciplinary action against the licensee's license. In the Board's case no. 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 Kansas Nurse Assistance Program (KNAP).

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 KNAP. Respondent completed the requirements of the Consent Agreement in January 2006, and the case was inactivated.

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

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.

GraceMed offered employment as an ARNP on the conditions that Respondent submit to random drug testing and give consent to communication between GraceMed and his therapist. Respondent agreed.

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

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

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."

7. The above incidents were found to be violations of the nurse practice act and the respondent stipulated to the following violations in the 2010 Consent Agreement and Final Order:

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), inaccurately recording, falsifying, or altering any record of a patient or agency or of the board.

8. Respondent's license was suspended for six months because his KNAP case was closed on January 21, 2011 due to his failure to enter into an agreement with KNAP. He agreed to successfully complete KNAP in the 2010 Consent Agreement. After the suspension was over, he was allowed to re-enroll in KNAP.

9. Respondent's KNAP case has been closed again due to his failure to remain compliant with KNAP. His KNAP case was closed a second time in February of 2014. Respondent is not currently enrolled in KNAP.

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 this 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 established.

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

Count I: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(r) failing to comply with any disciplinary order of the board;

Count II: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(s) failing to complete the requirements of the impaired provider program of the board;

#### **POLICY STATEMENT**

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

#### **DISPOSITION**

14. By entering into this Agreed Order 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.

15. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that this Agreed Order takes the place of the 2010 Consent Agreement and Final Order. The terms of this Agreed and Final Order shall 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 Agreed Order remaining in effect until respondent completes each of the conditions and requirements of this agreement. Failure to complete this agreement and KNAP will cause the respondent to either immediately surrender his nursing licenses to the board and/or for the board to immediately file to revoke his license. The surrender, whether voluntary by the respondent or based on an administrative action filed by the board, will count as a revocation for reporting purposes.

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 will be allowed by the Board to enroll in KNAP one last time and to 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. Respondent must enroll again in the KNAP

program within thirty (30) days of entering this agreement. Noncompliance with KNAP is a violation of this agreement.

(c) 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 is a violation of this agreement.

(d) Respondent shall once again have a narcotic key restriction on respondent's license for the first six (6) months after respondent secures employment that requires any kind of 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 KNAP, or controlled substances, or any violation of this Agreed and Final Order.

(f) The respondent shall immediately inform all employers and prospective employers of this Agreed and 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) 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 agreement is a violation of this agreement.

25. If respondent does not meet these conditions and requirements and does not successfully complete KNAP, the respondent agrees to immediately surrender his licenses to the Board and such surrender will count as a revocation of his licenses and shall be reportable to the national databases. This is the respondent's third and final opportunity to successfully complete KNAP. Respondent's failure to complete KNAP successfully shall cause the agency to immediately file an action to revoke the respondent's license if he fails to surrender the license to the board as he has agreed.

26. All parties understand that if an action based on failure to meet the conditions and requirements of this 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 agreement is filed during the term of this Agreed and Final

Order, or within 30 days after the expiration date, the conditions of this Agreed 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.

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 Agreed Order by the respondent, the agreement will be satisfied and the case will be inactivated.

34. By signing this Agreed and Final Order, Respondent acknowledges that Respondent has read and understands the entire document, and agrees to be bound by its terms. This Agreed 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 Agreed 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 AGREED AND FINAL ORDER.

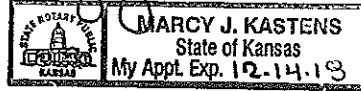
**IT IS SO ORDERED.**



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

Johnny A. Barker must sign before a Notary Public.

Marcy J. Kastens, Notary Public



H. Douglas Pfalzgraf  
H. Douglas Pfalzgraf, #12018  
Pfalzgraf Law Offices  
522 North Washington  
P.O. Box 668  
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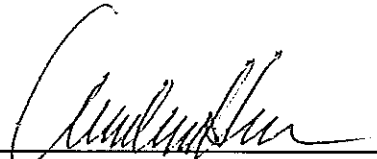
Sandra L. Sharon  
Sandra L. Sharon, Presiding Officer

CERTIFICATE OF SERVICE

On the 30<sup>th</sup> day of December, 2014, I mailed a copy of this AGREED AND FINAL ORDER to:

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

H. Douglas Pfalzgraf,  
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