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KSBN

KANSAS STATE BOARD OF NURSING

Landon State Office Building
900 SW Jackson, Suite 1051
Topeka, Kansas 66612-1230

IN THE MATTER OF)
)
Pamela Ann Kriel)
License No. 13-65478-02)

Case No. 14-223-0

ORDER

On April 15, 2016, the above-referenced matter comes for consideration on the Petition for Reconsideration filed by Pamela Ann Kriel, pro se. Pursuant to K.S.A. 2015 Supp. 77-527(a)(2)(B), the Kansas State Board of Nursing (Board) has delegated to Board member Carol Bragdon its authority as agency head to make a determination on whether to grant or deny a Petition for Reconsideration and to issue an order accordingly.

After considering the agency record, the Board denies the matter based upon the findings and conclusions set forth below.

Findings of Fact

1. On March 24 2016, the Board denied a Petition for Review of an Initial Order filed by Pamela Ann Kriel (Respondent). That Order is incorporated herein by reference.

2. On April 11, 2016, the Board received from Respondent a document that claimed the Order denying her Petition for Review was erroneous. Specifically, Respondent stated, "The errors are enumerated in my letter of February 15, 2016, [and] incorporated here by reference."

3. Respondent's letter dated February 15, 2016, was addressed to the Board and the Presiding Officer at the Office of Administrative Hearings. Respondent was served with the Proposed Default Order on March 2, 2016, and she filed her Petition for Review of the Default Order with the Board on March 10, 2016. Respondent's Petition for Review did not reference her letter dated February 15, 2016. Thus, the errors alleged in her letter dated February 15 2016, were not a basis for denying her Petition for Review of the Initial Order.

Conclusions of Law

4. Respondent does not identify her recent letter as a petition for reconsideration. Nevertheless, the Board determines that it is because she is seeking, in essence, relief from the Order denying her Petition for Review of an Initial Order. See *State v. Kelly*, 291 Kan. 563, 565 (2010) (Pleadings filed by pro se litigants are liberally construed to give effect to the pleading's content; a pro se litigant's failure to cite the correct statutory grounds for his or her claim is immaterial).


5. A petition for reconsideration must state "the specific grounds upon which relief is requested." K.S.A. 77-529(a)(1). Respondent, however, does not challenge the Board's findings and conclusions that her Petition for Review of the Initial Order failed to state a factual or legal basis for relief. Rather, Respondent's Petition for Reconsideration attempts to provide the grounds for relief that was missing in her Petition for Review.

6. A motion to alter or amend a judgment, which are also referred to as a motion to reconsider, may be denied where the party could have, with reasonable diligence, presented the argument prior to the judgment. *Wenrich v. Employers Mut. Ins. Co.*, 35 Kan. App. 2d 582, 590 (2006). The Board concludes that Respondent's Petition for Reconsideration should be denied because she could have presented the grounds for relief made in her letter dated February 15, 2016, in her Petition for Review filed on March 10, 2016, but she failed to do so.

Order

Therefore, based upon the above the findings and conclusions, the Board determines that Respondent's Petition for Reconsideration should be denied.

IT IS SO ORDERED.



Carol Bragdon, Board Member
On behalf of the
Kansas State Board of Nursing

NOTICE OF JUDICIAL RELIEF

Pursuant to K.S.A. 77-613, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The designee who may receive service of a petition for reconsideration or a petition for judicial review on behalf of the Board is:

Mary Blubaugh,
Executive Director
Kansas State Board of Nursing
Landon State Office Building
900 S.W. Jackson, Ste. #1051
Topeka, Kansas 66612-1230.

CERTIFICATE OF SERVICE

This is to certify that on this 18th day of April 2016, copies of the above Order and Notice were deposited in the United States mail, first-class postage prepaid, and addressed to:

Pamela Ann Kriel
P. O. Box 592
Wellston, OK 74881

and hand delivered to:

Bryce Benedict
Assistant Attorney General
Disciplinary Counsel for the
Kansas State Board of Nursing
900 SW Jackson, Ste. 1051
Topeka, KS 66612-1365



Staff, Kansas State Board of Nursing

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KANSAS STATE BOARD OF NURSING
Landon State Office Building
900 SW Jackson, Suite 1051
Topeka, Kansas 66612-1230

IN THE MATTER OF)
)
Pamela Ann Kriel)
License No. 13-65478-022)

Case No. 14-223-0

**ORDER
DENYING REVIEW**

On March 23, 2015, the above-referenced matter comes for consideration of the Petition for Review filed by Pamela Ann Kriel (Respondent), pro se. Pursuant to K.S.A. 2015 Supp. 77-527(a)(2), the Kansas State Board of Nursing (Board) has delegated to Carol Bragdon, a member of the Board, its authority to determine whether to grant or deny a Petition for Review of an Initial Order and to issue an order accordingly.

After considering the agency record, the Board denies the Petition for Review based upon the following facts and conclusions of law.

Procedural History and Findings of Fact

1. On May 18, 2015, the Board's discipline counsel filed a Petition requesting the revocation of Respondent's nursing license Respondent based upon allegations that she violated several provisions of the Kansas Nurse Practice Act (KNPA).
2. On May 20, 2015 the Presiding Officer at the Office of Administrative Hearings (OAH) scheduled a pre-hearing conference in this matter for August 25, 2015. Respondent filed a written request for a continuance of the pre-hearing conference on August 18, 2015. On August 20, 2015, the Board's discipline counsel filed a Response to Respondent's Motion for Continuance opposing the request for a continuance.
3. On September 1, 2015, the Presiding Officer served Respondent with a Proposed Default Order to Revoke License based upon Respondent's failure to attend the August 25, 2015, pre-hearing conference. On September 9, 2015, Respondent filed a Rebuttal of Proposed Default Order to Revoke License, in which she asserted, among other things, that "Respondent made [a request for a continuance] by certified mail, received by the Presiding Officer on August 17, 2015. Respondent's request was never answered nor even acknowledged."
4. On September 14, 2015, the Presiding Officer served Respondent with an Amended Notice of Pre-Hearing Conference, which set the conference for February 23, 2016, at 9:00 a.m. in Room 560 in the Landon State Office Building, 900 S.W. Jackson, in Topeka, Kansas. The Amended Notice of Pre-Hearing Conference states in relevant part:

The Proposed Default Order to Revoke License dated the 1st day of September 2015 is set aside. . . .

If you fail to attend or participate in a conference, hearing, or other stage of an adjudicative proceeding, you may be held in default and a proposed default order may be issued granting petitioner's request. **If you need to request a continuance, you must do so in writing and prior to the hearing date.**

You may file a letter or pleading with the Board at the address listed in the caption above. (Emphasis in original)

5. On February 22, 2016, the Board received a letter from Respondent, addressed to the Presiding Officer and to the Board. In her letter, Respondent argued that the legal basis for the Board's Petition was invalid. The letter also made the following requests concerning this case:

In order to correct the Board's errors, it is necessary for you to:

1. Immediately terminate and vacate your frivolous and malicious action against me in the frivolous Case,
 2. Close, seal, and permanently delete the "folder" you have created concerning this frivolous Case,
 3. Cancel the "hearing" scheduled for February 23, 2016,
 4. Restore to me my Nursing License in good standing, and
 5. Expunge all reference to this frivolous Case and completely restore my good name and reputation regarding my Nursing career. [*sic*]
6. Respondent did not appear at the February 23, 2016, pre-hearing conference.
 7. On March 2, 2016, the Presiding Officer served Respondent with a Notice of Proposed Default Order and Proposed Default Order. That Order is hereby incorporated by reference.
 8. On March 10, 2016, Respondent timely petitioned for review of the Proposed Default Order. Respondent's petition states in its entirety:

Ladies and Gentlemen:

In accordance with the referenced letter's "Appeal Rights and Other Administrative Relief" paragraph, and pursuant to K.S.A. 77-527, I request review of the initial order with this petition for review, said review to be conducted in a re-hearing by telephone.

Conclusions of Law

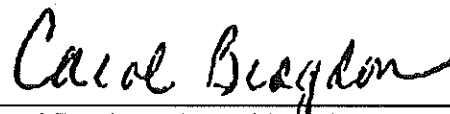
9. K.S.A. 2015 Supp. 77-527(c) requires a petition for review to state a basis for relief.

10. Whether to grant a petition for review is discretionary with the Board. K.S.A. 2015 Supp. 77-527(a).
11. The issue before the Board is whether to grant review of the Proposed Default Order and the Presiding Officer's determination that Respondent is in default for failing to attend the February 23, 2016, pre-hearing conference. This decision is based upon the requirements of K.S.A. 2015 Supp. 77-527.
12. In her petition for review, Respondent does not allege a legal or factual error by the Presiding Officer in the Proposed Default Order, or any other basis for relief. The Board therefore finds no reason to grant review. The Board notes that Respondent's February 22, 2016, letter was filed before the Proposed Default Order was issued, and therefore cannot be considered part of her petition for review.

Based upon the above factual findings and conclusions of law, the Board concludes it should not exercise review because Respondent has not stated a basis exists to grant relief from the Proposed Default Order.

WHEREFORE, it is the decision and order of the Board that Respondent's petition for review in the above-referenced case be denied and that the Proposed Default Order be affirmed.

IT IS SO ORDERED.



Carol Bradgon, Board Member
As directed by and on behalf of the
Kansas State Board of Nursing

NOTICE OF ADMINISTRATIVE RELIEF

The above Order denying review of the Proposed Default Order is a final order. Pursuant to K.S.A. 77-529, a party may file with the Board a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

Pursuant to K.S.A. 77-530, a party may file, if applicable, a petition for stay of effectiveness of the order prior to the expiration of the time in which to file a petition for judicial review. The filing of a petition for a stay of effectiveness is not a prerequisite for seeking judicial review.

NOTICE OF JUDICIAL RELIEF

If a petition for reconsideration is not filed pursuant to K.S.A. 77-613, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The designee who may receive service of a petition for reconsideration or a petition for judicial review on behalf of the Board is: Mary Blubaugh, Executive Director, Kansas State Board of Nursing, Landon State Office Building, 900 S.W. Jackson, Ste. #1051, Topeka, Kansas 66612-1230.


CERTIFICATE OF SERVICE

This is to certify that on this 24th day of March 2016, copies of the above Order, Notice of Administrative Relief, and Notice of Judicial Relief were deposited in the United States mail, first-class postage prepaid, and addressed to:

Pamela Ann Kriel
P.O. Box 592
Wellston, OK 74881

and hand delivered to:

Bryce D. Benedict
Disciplinary Counsel for the
Kansas State Board of Nursing
900 SW Jackson, Suite 1051
Topeka, KS 66612



Staff
Kansas State Board of Nursing

15BNO171

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
Pamela Ann Kriel

License No. 13-65478-022
Case No. 14-223-0

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NOTICE OF PROPOSED DEFAULT ORDER
AND
PROPOSED DEFAULT ORDER

This matter comes on for consideration by the presiding Administrative Law Judge (ALJ) to enter a Proposed Default Order against respondent, Pamela Ann Kriel.

Wherefore, the presiding ALJ finds as follows:

1. The respondent is licensed to practice nursing in Kansas.
2. The Petitioner, the Kansas State Board of Nursing Board (Board), has jurisdiction over the respondent and the subject matter of this action.
3. On or about May 18, 2015, a Petition was filed by the Board seeking revocation of the respondent's nursing license. It was sent to respondent at his or her's last known address and was not returned as undeliverable.
4. On 9-4-2015, a Notice of Prehearing Conference was sent to the respondent. The conference was scheduled for 2-23-2016 at 9:00 a.m.. The notice was not returned as undeliverable.
5. On 2-23-2016, a prehearing conference was convened. The Board appeared by disciplinary counsel, Bryce Benedict. The respondent did not appear in person or by phone.

6. Pursuant to Kansas Statutes Annotated (K.S.A.) 77-520(a), “[i]f a party fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties written notice of a proposed default order.”
7. The respondent is in default pursuant to K.S.A. 77-520.
8. This Proposed Default Order shall become effective and deemed an initial order, seven days after service or ten days after mailing of this order unless the respondent files a written motion stating why the Proposed Default Order should be vacated and the order is then vacated. A motion to vacate shall be mailed or personally delivered to: Kansas State Board of Nursing, Legal Division, Landon State Office Building, 900 SW Jackson, Ste. 1051, Topeka KS 66612-1230, with a copy to be mailed or personally delivered to: Sandra Sharon, Administrative Law Judge, Office of Administrative Hearings, 1020 S. Kansas Ave., Topeka, KS 66612-1327.
9. If this Proposed Default Order becomes effective, the allegations contained in the Petition will be deemed uncontroverted and the Petition will be granted and incorporated into this order as if fully set forth herein. The respondent’s license to practice nursing will be revoked. The respondent will immediately forward his or her original Kansas nursing license to the Board.

10. In addition, costs of the action in the amount of \$100.00 will be assessed to the respondent to be paid to the Board by cashier's check or money order within 30 days of the effective date of this order.

The presiding ALJ, being well and duly advised in the premises, now enters this Proposed Default Order against the respondent. It shall take effect as specified in the above findings.

Disciplinary counsel shall mail a copy of this Notice of Proposed Default Order and Proposed Default Order to the respondent at his or her last known address of record.

IT IS SO ORDERED.



Sandra Sharon
Administrative Law Judge
Office of Administrative Hearings
1020 S. Kansas Ave.
Topeka, KS 66612-1327

Appeal Rights and Other Administrative Relief

Pursuant to K.S.A. 77-520, if the proposed default order becomes effective, it is deemed an initial order, as set forth above. Pursuant to K.S.A. 77-527, either party may request review of the initial order by filing a petition for review with the Kansas State Board of Nursing within 15 days from date the order is deemed an initial order. Failure to timely request review may preclude further judicial review. Petitions for review shall be mailed or personally delivered to: Kansas State Board of Nursing, Legal Division, Landon State Office Building, 900 SW Jackson, Ste. 1051, Topeka, KS 66612-1230.

If neither party requests review, the initial order becomes a final order and is binding on the 30th day following its mailing.

A party may seek judicial review of a final order by filing a petition for judicial review pursuant to K.S.A. 77-601, et seq. Reconsideration of a final order is not a prerequisite to judicial review. A copy of any petition for judicial review shall be served on Mary Blubaugh, Executive Administrator, Kansas State Board of Nursing, 900 SW Jackson, Suite 1051, Topeka, KS 66612-1230.

CERTIFICATE OF SERVICE

On March 2, 2016, I mailed this original document through State Building Mail to:


Mary Blubaugh
Executive Administrator
Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612
Telephone: 785-296-4325

and a copy of this document through State Building Mail to:

Bryce D. Benedict
Assistant Attorney General
Disciplinary Counsel for the Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612
Telephone: 785-296-4325

And a copy of this document through first class mail to:

Pamela Ann Kriel
P.O. Box 592
Wellston, OK 74881



Staff Person
Office of Administrative Hearings

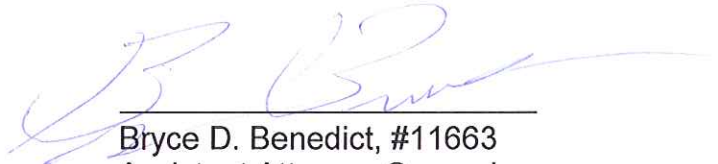
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 10th day of February, 2016, a true and correct copy of the foregoing Entry of Appearance was placed in the United States mail Postage paid and addressed to:

Pamela A. Kriel
P.O. Box 592
Wellston, OK 74881

And by interoffice mail to:

Sandra L. Sharon
Administrative Law Judge
Office of Administrative Hearings
1020 S. Kansas Ave.
Topeka, KS 66612



Bryce D. Benedict, #11663
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson, Suite 1051
Topeka, KS 66612
Phone: 785-296-4325
Fax: 785-296-3929
Bryce.benedict@ksbn.state.ks.us

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

IN THE MATTER OF PAMELA ANN KRIEL

License No 13-65478-022

Case No. 14-223-0

15B No 171
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PROPOSED DEFAULT ORDER TO REVOKE LICENSE

NOW ON THIS 28th day of August, 2015, petitioner, the Kansas State Board of Nursing, appears by disciplinary counsel, Michael R. Fitzgibbons, Assistant Attorney General, for a Hearing on the Petition. Respondent does not appear.

Wherefore, the Presiding Officer finds as follows:

1. Respondent is licensed to practice nursing in Kansas. The Kansas State Board of Nursing has jurisdiction over the Respondent and the subject matter of this action.
2. Respondent was sent a copy of the petition and notice of this hearing to respondent's last known address and service is proper. Respondent does not appear.
3. Petitioner moves for issuance of a proposed default order revoking respondent's license. The petitioner's request is granted by default pursuant to K.S.A. 77-520.
4. The petition is hereby granted and incorporated into this order as if set forth herein. Respondent violated the Nurse Practice Act as alleged in the petition.
5. Per Petitioner's request, Respondent's license to practice nursing in the State of Kansas is revoked.
6. Costs of the action of \$100 are assessed to respondent to be paid to the board by cash or money order within 30 days of the effective date of this order.
7. This Proposed Default Order shall become effective seven days after service or ten days after mailing of this order unless the Respondent files a written motion with the Board stating why the Proposed Default Order should be vacated and the order is then vacated.

8. If this Proposed Default Order becomes effective, the Respondent's request for administrative hearing is dismissed pursuant to K.S.A. 77-520(d).
9. Disciplinary counsel shall mail a copy of this proposed default order to respondent's last known address.

IT IS SO ORDERED.



Sandra Sharon, Presiding Officer
Office of Administrative Hearings
1020 S Kansas Ave.
Topeka, KS 66612-1327

NOTICE

Pursuant to K.S.A. 77-527, either party may request a review of this order by filing a petition for review with the Kansas State Board of Nursing. The petition for review shall state its basis. A petition for review must be filed within 7 days from the date this order becomes effective. Failure to timely request a review by the Kansas State Board of Nursing may preclude further judicial review. The petition for review shall be mailed or personally delivered to: State Board of Nursing - Legal Division, Landon State Office Building, 900 SW Jackson, Ste 1051, Topeka, KS 66612-1230.

Pursuant to K.S.A. 77-530, if neither party requests a review by the Kansas State Board of Nursing, then this initial order becomes final and binding on both parties on the 30th day following its service.

Pursuant to K.S.A. 77-531, if the initial order is served by mail, three days are added to the time limits set out above.



Michael R. Fitzgibbons, #12287
Disciplinary Counsel
Kansas State Board of Nursing
900 S.W. Jackson, Suite #1051
Topeka, KS 66612-1230
785-296-4325

CERTIFICATE OF SERVICE

I certify that on the 18th day of September, 2015, the foregoing copy of the PROPOSED DEFAULT ORDER REVOKING LICENSE was served by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Pamela Ann Kriel
P.O. Box 592
Wellston, OK 74881



Michael R. Fitzgibbons

BEFORE THE KANSAS STATE BOARD OF NURSING

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

FILED

MAY 18 2015

KSBN

IN THE MATTER OF PAMELA ANN KRIEL

License No 13-65478-022

Case No. 14-223-0

PETITION

COMES NOW the petitioner, the Kansas State Board of Nursing, by and through Assistant Attorney General assigned to the Board, Michael R. Fitzgibbons, and for its cause of action states that:

1. Respondent, Pamela Ann Kriel, is licensed to practice nursing in Kansas through February 2016. The Board has jurisdiction over the respondent and the subject matter of this action.
2. Respondent's address of record is P.o. Box 592 Wellston, OK 74881.
3. 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.
4. 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(a) is established.

FACTS COMMON TO ALL COUNTS

5. The facts below are common to all counts:
 - (a) It is alleged that licensee failed to report a Felony conviction to KSBN within 30 days of conviction.

(b) This licensee pled guilty to a Felony for False Claims dated the 14th day of January, 2013.

(c) Licensee was offered to complete some re education on the 19th of June, 2014.

(d) On the 29th of June 2014, licensee agreed to complete the requested CNE.

(e) Licensee has failed to complete the CNE requested by the Board.

(f) Licensee was offered a second chance to complete the requested CNE and sent a letter dated the 8th of October, 2014 and there was no response.

VIOLATIONS

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

Count 1: K.S.A. 65 1120(a)(1) unprofessional conduct by fraud or deceit in practicing nursing.

Count 2: K.S.A. 65-1120(a)(6), unprofessional conduct, by inaccurately recording, falsifying or altering documents.

Count 3: K.S.A. 65-1120 (3) to be guilty of unprofessional conduct as defined as defined by rules and regulations of the board by KAR 60-3-110 (t) failing to furnish the board, its investigators, or its representative with any information legally requested by the board.

WHEREFORE, petitioner requests a finding that the respondent has violated the Nurse Practice Act, that respondent's license to practice nursing in Kansas be revoked, and that costs of this action be assessed to the respondent in the amount of \$100.00.

Respectfully submitted,

Derek Schmidt
Kansas Attorney General

By:


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