

13BNG116  
6/10

**BEFORE THE KANSAS STATE BOARD OF NURSING**

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

FILED

**IN THE MATTER OF  
RICHARD H. SWAN  
License No. 13-66480-101**

JUN 30 2014

FILED BY

KSBN

24 JUN '14 PM 1:55

**Case No. 12-2137-7**

**INITIAL AGREED ORDER**

NOW ON THIS 24<sup>th</sup> day of June, 2014, the Kansas State Board of Nursing, represented by Assistant Attorney General, Alma A. Heckler, and the Respondent, Richard H. Swan, by and through his counsel, Carol Ruth Bonebrake, 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 10/31/2015. 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 4336 Mission Rd. Apt. #1, Kansas City, Kansas 66103.
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.
4. Respondent acknowledges that this agreement is 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.

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 this 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) Respondent entered into a stipulated agreement to reinstate his license to practice nursing, a Consent Agreement and Final Order in Board Case No. 05-968-0, on or about April 19, 2010 and admitted to the following facts and violations of the Kansas Nurse Practice Act:

“Applicant acknowledges that at the time his license lapsed, he was, or recently had been unable to practice with skill and safety due to current abuse of drugs or alcohol.

Applicant acknowledges that at the time his license lapsed, he was subject to a contractual agreement with the Kansas Nurse Assistance Program (KNAP), the impaired provider program of the Board, and was not compliant with the agreement.

The parties agree that Applicant signed a new three-year contract with KNAP on or about March 18, 2010.

Applicant further acknowledges that the Board could present evidence to prove those facts if this matter were to proceed to hearing.”

(b) Respondent admitted to the following violations:

Count 1: 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 2: K.S.A. 65-1120(a)(6), unprofessional conduct, as defined by K.A.R. 60-3-110(s), failing to complete the requirements of the impaired provider program of the board.

(c) Respondent agreed to successfully complete the requirements of the Kansas Nurse Assistance Program (KNAP). The successful completion of KNAP is a requirement of the April 19, 2010 Consent Agreement and Final Order.

(d) On or about September 14, 2012 the Board received a letter from KNAP. The letter stated that the Respondent's KNAP case had been closed due to non-compliance. Respondent failed to check in or complete a drug test on September 13, 2012. KNAP records show that the Respondent also failed to check in on 9/12/2012, 9/6/2012 and 9/4/2012.

(e) Respondent's KNAP case was reopened by KNAP in October 2012 after KNAP discovered the Respondent was still under treatment for health conditions and in the hospital.

(f) Respondent failed to check in with Affinity for testing on 11/29/2012 and missed a check in and test on 12/17/2012. Respondent's KNAP case was closed on 12/18/2012. Respondent owed a balance of \$1085.00 to KNAP when his case closed.

(g) Respondent admits to the facts as stated in the petition.

### **VIOLATIONS**

8. 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 1: 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 2: K.S.A. 65-1120(a)(6), unprofessional conduct, by failing to complete the requirements of the impaired provider program of the board; K.A.R. 30-3-110 (s);

Count 3: K.S.A. 65-1120(a)(6), unprofessional conduct, by failing to comply with any disciplinary order of the board; K.A.R. 30-3-110 (r).

9. 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

10. 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.

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

Count 1: 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 2: K.S.A. 65-1120(a)(6), unprofessional conduct, by failing to complete the requirements of the impaired provider program of the board; K.A.R. 30-3-110 (s);

Count 3: K.S.A. 65-1120(a)(6), unprofessional conduct, by failing to comply with any disciplinary order of the board; K.A.R. 30-3-110 (r).

### POLICY STATEMENT

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

### DISPOSITION

13. By entering into this Initial Agreed Order (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.

14. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that this Initial Agreed Order 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 Initial Agreed Order remaining in effect until Respondent completes each of the conditions and requirements of this agreement.

15. 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.

16. 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.

17. 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 any paper license cards still in his possession to the Board with this Initial Agreed Order. Respondent shall receive a license which when verified by the public will show Suspended with a Stay to indicate that the license is suspended but such suspension is stayed so long as he continues to meet the requirements of this Agreed Order. The license will have limitations on the practice as stated below:

(b) Respondent shall 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 in the KNAP program within thirty (30) days of entering this agreement.** The Board is notified by KNAP when the respondent has enrolled in their program. **Noncompliance with KNAP is a violation of this agreement. Failure to enroll in KNAP within 30 days of the date of mailing of this agreement will be a violation of this**

**Agreement and respondent will surrender his license to the Board.** The surrender will count as a revocation of his license. This is the respondent's last opportunity to enroll in and complete KNAP. **If the respondent's KNAP case is closed for any reason, other than successful completion of his KNAP contract, he will immediately surrender his license to the Board.** The surrender of his license to the Board will count as a revocation.

(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 have a narcotic key restriction on respondent's license for the first nine (9) 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 nine (9) 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 nine (9) 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 Initial Agreed Order.

(f) The respondent shall immediately inform all employers and prospective employers of this Initial Agreed Order.

(g) The respondent shall only work in nursing positions where he is supervised by an RN at all times.

(h) Respondent shall not work as a director of nursing or in a charge or supervising position while these restrictions on his license continue.

(i) Respondent shall not seek or accept employment with a nursing registry, a temporary nursing service or agency, a nursing home, a home health care service or agency, or as a private duty nurse without prior written consent of the Board for the term of this Agreement.

(j) 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:

If the Respondent is unemployed, prior to respondent securing employment that utilizes his nursing license, respondent is to mail to the Kansas State Board of Nursing a statement indicating that respondent has not yet secured employment which utilizes respondent's nursing license. This statement is due by the 10th day of each month beginning the next month after signing this Initial Agreed Order. (A statement from the respondent that she has not yet secured employment in nursing, is not a nursing performance report).

Once respondent is employed in a position that utilizes his nursing license, or if respondent is currently employed in a position that utilizes his nursing license, a nursing performance report is due by the 10th day of each of the following months; July 2014, October 2014, January 2015, April 2015, July 2015, October 2015, January 2016 and April 2016 or until respondent has caused the submission of eight (8) separate nursing performance reports.

The report shall be prepared and signed by respondent's immediate supervisor or by an R.N. who evaluates respondent's performance on a regular basis and be based on the following guidelines:

(1) The evaluation should be submitted by your supervisor on your employer's **facility letterhead stationary.**

(2) Letter format is acceptable, with the date of the report identified.

(3) Evaluator's name, telephone number, address, license number and nursing credentials.

(4) Respondent's name, address, telephone number, license number.

(5) A short explanation of the respondent's work performance in the following areas:

(a) Standards met regarding facility policies and procedures.

(b) Compliance with the Kansas Nurse Practice Act.

(c) Supervisor evaluations.

(d) Overall appropriateness.

(e) Interactions with patients.

(f) Interactions with staff and administration.

(k) Respondent shall send a money order for \$70.00 to the Board upon entering into this agreement to pay the cost of this action.

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

(m) 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.

(n) 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.

19. Respondent acknowledges and agrees that respondent is responsible for the costs related to satisfying the conditions and requirements of this Initial Agreed Order. Respondent



further acknowledges and agrees that to provide the Board with false information regarding compliance with this Initial Agreed Order is a violation of this Initial Agreed Order.

20. 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 Initial Agreed Order, but respondent could not contest the violations listed in this agreement.

21. All parties understand that if an action based on failure to meet the conditions and requirements of this Initial Agreed Order 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.

22. Respondent acknowledges and agrees that if his KNAP case is closed unsuccessfully for any reason, he will immediately surrender his license and such surrender will be considered a revocation and will be reported to the nursing national databases.

25. 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.

26. 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.

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

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

30. 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 INITIAL AGREED ORDER.

IT IS SO ORDERED.

*Richard H Swan*

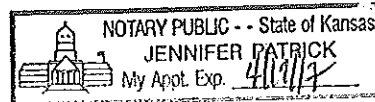
Richard H. Swan  
Respondent  
4336 Mission Rd. Apr.#1  
Kansas City, Kansas 66103

Richard H. Swan must sign before a Notary Public.

State of Kansas, County of Wyandotte.

*Carol Ruth Bonebrake*

Carol Ruth Bonebrake, #12672  
Counsel for Respondent  
Holbrook & Osborne  
107 SW 6<sup>th</sup> Avenue, Suite 210  
Topeka, Kansas 66603



*Alma A. Heckler*

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

*Sandra Sharon*

Sandra Sharon, Presiding Officer

Pursuant to K.S.A. 77-529, either party may request a review of this initial 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 this initial 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 initial 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, this initial order shall become effective as a final order 30 days after service.

CERTIFICATE OF SERVICE

On the 24<sup>th</sup> day of June, 2014, I mailed a copy of this INITIAL AGREED ORDER to:

Richard H. Swan  
4336 Mission Rd. Apr.#1  
Kansas City, Kansas 66103

Carol Ruth Bonebrake  
Holbrook & Osborne  
107 SW 6<sup>th</sup> Avenue, Suite 210  
Topeka, Kansas 66603



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