08BN0070 SLS

## BEFORE THE KANSAS STATE BOARD OF NURSING

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

FILED AUG 1 3 2010 KSBN

IN THE MATTER OF MARY B. FUQUA License No. 13-066768-092

Case No. 06-728-7, 06-882-7

FILED - OAH 16 AUG'10 AM9:48

### ORDER TO STAY SUSPENSION

Now on this \_\_\_\_\_ day of August, 2010, the petitioner, the Board, through counsel Alma

A. Heckler, moves to Stay the suspension of Respondent's license to practice nursing in the state of Kansas. Respondent's license to practice nursing was suspended following a finding that Respondent failed to meet conditions and requirements of the April 25, 2008 Consent Agreement and Final Order entered in the above captioned case. Petitioner has received documentation showing that the Respondent has complied with the conditions and requirements of the Consent Agreement and Final Order which would impose a Stay of the Suspension.

The Presiding Officer orders that the Suspension of Respondent's license to practice nursing in the state of Kansas is Stayed.

The Presiding Officer orders that all conditions and requirements of the Consent

Agreement and Final Order entered in the above captioned matter and dated April 25, 2008,

remain in effect.

IT IS SO ORDERED.

Sandra L. Sharon, Presiding Officer

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

# **NOTICE OF RIGHT TO APPEAL**

The procedures available and time limitations for seeking review or other relief as follows: Any party, within fifteen (15) days after service of this notice, may file a petition for review with the agency head, send your request to: Mary Blubaugh, Executive Director, Board of Nursing, Landon State Office Bldg., Suite 1051, 900 SW. Jackson, Topeka, KS 66612-1230.

The petition for review shall state its basis, pursuant to K.S.A. 77-527.

OLIVINIO OLIVIO	
On the, day of	
Mary B. Fuqua 2806 N 109 <sup>th</sup> Terrace Kansas City, KS 66109	
	lma A. Heckler

CERTIFICATE OF SERVICE

08810070

FILED - OAH 13 FEB '09 AM9:47

BEFORE THE KANSAS STATE BOARD OF NURSING

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

IN THE MATTER OF MARY B. FUQUA License No. 13-066768-092 FILED FEB 1 2 2009 KSBN

Case No. 06-728-7, 06-882-7

# AGREED ORDER TO LIFT STAY OF SUSPENSION AND SUSPEND LICENSE FOR SIX MONTHS

This Agreed Order is entered into on this 13th day of 14th day of 15th day of

- 1. Respondent is licensed to practice nursing in Kansas through 9/30/2010. The Kansas State Board of Nursing (Board) has jurisdiction over the Respondent and the subject matter of this action.
- 2. Respondent's address of record is 2806 N 109 Terrace, Kansas City, KS 66109.
- 3. 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.
- 4. Respondent has the right to these hearings and the right to seek review of the findings from the hearings 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 knowingly and voluntarily entering into this agreement instead of proceeding to these hearings. This agreed order will conclude Board action pending at this time against Respondent's license.

- 5. Respondent understands that pursuant to K.S.A. 77-515, Respondent may be represented at Respondent's expense by, an attorney during these proceedings.
- 6. (a) A petition was filed November 4, 2009 to take disciplinary action against the Respondent's license.
- (b) Respondent entered a Consent Agreement and Final Order on or about April 25, 2008 with the Kansas State Board of Nursing to resolve case numbers 06-728-7 and 06-882-7. The Consent Agreement and Final Order remains in effect until such time as the Respondent completes all conditions and requirements of the Consent Agreement and Final Order. In the Consent Agreement and Final Order the respondent stipulated to the diversion of Fentanyl and that she had diluted Lortab elixir in 06-882-7. Respondent had a positive screen for alcohol in 06-728-7.
- (c) The April 25, 2008 Consent Agreement and Final Order provide upon a first finding of non compliance with the conditions or requirements of the Consent Agreement and Final Order, 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.
- (d) The April 25, 2008 Consent Agreement and Final Order provides upon the Stay of Suspension being lifted due to a finding of non-compliance with the Consent Agreement and Final Order, 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 with all conditions and requirements of this Consent Agreement and Final Order. Upon the Respondent providing said written verification the suspension will again be stayed.
- (e) Conditions of the April 25, 2008 Consent Agreement and Final Order include a condition that the Respondent participate in and complete the recommendations and requirements of the

a positive urine drug screen for opiates on or about October 8, 2008. The Kansas Board of Nursing opened a new investigation (08-898-7) after receiving a report of diversion of drugs by the respondent from Providence Medical Center, Kansas City, Kansas. The respondent's key restriction was lifted in August, 2008 and she went to work at Providence on 8/25/2008. The Omnicell report indicated the Respondent used the override mechanism 63 times to remove Fentanyl between the dates of 9/2/08 to 10/8/08. On 10/8/2008 the respondent was searched by the facility security staff, with her permission, and 3 vials of Fentanyl Citrate 5 ml. (empty) and 5 Fentanyl Citrate 2ml. (empty) and 1 tourniquet with butterfly attached were found on her person. Respondent admitted in writing, to taking the medication and injecting it into her. The respondent has now demonstrated a history and pattern of abuse and diversion of Fentanyl and is not safe to practice.

## **VIOLATIONS**

- 7. Respondent has violated the Kansas Nurse Practice Act as follows:
- Count 1: 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 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)(4) to be unable to practice with skill and safety due to current abuse of drugs or alcohol.
- Count 4: K.S.A. 65-1120(a)(3), Professional Incompetency by K.S.A. 65-1120(e)(3), a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing.
- Count 5: K.S.A. 65–1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(n), diverting drugs, supplies, or property of any patient or agency.

- 8. Based upon this agreed order, the parties agree that Respondent agrees to the suspension of her license to practice nursing in the state of Kansas for a period of six months, to begin on the date this agreed order is filed with the Office of Hearings and Appeals.
- 9. The parties agree that Respondent's license to practice nursing in Kansas is immediately suspended as of the date of the filing of this order. Respondent shall not practice nursing in the state of Kansas until the six month period of suspension is complete and until she demonstrates her compliance with the terms of the Consent Agreement and that she is safe to practice.
- 10. Upon signing this agreed order and returning it to the Board, Respondent shall return Respondent's license card with the agreed order.
- 11. By their signatures, the parties hereby acknowledge this agreed order.
- 12. Disciplinary counsel shall mail a copy of this Agreed Order to Lift the Stay of Suspension and Suspend to respondent's address.

IT IS SO ORDERED.

Sandra L. Sharon, Presiding Officer

Mary B. Mqua
Respondent
2806 N 109 Terrace
Kansas City, KS 66109

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

## **CERTIFICATE OF SERVICE**

On the Chiday of Children , 2009, I mailed a copy of this AGREED ORDER TO LIFT STAY OF SUSPENSION AND SUSPEND LICENSE FOR SIX MONTHS to:

Mary B. Fuqua 2806 N 109 Terrace Kansas City, KS 66109

> Alma A. Heckler, #11555 Assistant Attorney General

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## BEFORE THE KANSAS STATE BOARD OF NURSING

Landon State Office Building, 900 S.W. Jackson #1051 Topeka, Kansas 66612-1230 APR 2 8 2008

IN THE MATTER OF MARY B. FUQUA License No. 13-066768-092

Case No. 06-728-7, 06-882-7

## CONSENT AGREEMENT AND FINAL ORDER

## AGREED FINDINGS OF FACT

- 1. Respondent is licensed to practice nursing in Kansas through 9/30/2008. 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 2806 N. 109 Terrace, Kansas City, KS 66109.
- 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. 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) In Investigative Case 06-728-7 the respondent was referred to the by her employer, Kansas University Medical Center (KU Med) after

it was noted respondent had several instances of wasted drugs that were not witnessed, removed medications from Pyxis not ordered for patients and removed more drugs out of Pyxis than any other nurse by four deviations above the norm. The respondent did admit she took some of the drugs home from KU Med and used for the two weeks prior to 2/1/2005. The respondent signed a Statement of Agreement with on February 25, 2005. Respondent relapsed on 8/10/06 and 10/27/06 and her term in was extended to 10/27/2009.

- Nursing Services and was assigned to Weight Loss Healthcare Centers of America in Overland Park, Kansas on or about the evening shift of 9/20/07. During the shift the respondent opened four (4) ampules of Fentanyl and a single dose of Lortab appeared to have been tampered with. The facility sent the respondent to do a UDS and she reported it was negative. When the results were verified, the provider indicated the respondent had refused to do the UDS. The respondent admitted to opening the Fentanyl but stated it was by mistake. She claims to have made the mistake twice and opened two vials each time. She further stated she had diluted the Lortab elixir for a patient but he did not take it. A significant quanity of Fentanyl was wasted the evening the respondent worked. Further investigation at the facility showed that the Fentanyl vials opened by the respondent had been tampered with and did not contain Fentanyl. The Lortab elixir also showed evidence of tampering and was present at only 50% in the syringe.
  - (c) The respondent is currently in and is compliant.
  - (d) A petition was filed in this matter on December 5, 2007.

### **FACTS**

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

by her employer, Kansas University Medical Center (KU Med) after it was noted respondent had several instances of wasted drugs that were not witnessed, removed medications from Pyxis not ordered for patients and removed more drugs out of Pyxis than any other nurse by four deviations above the norm. The respondent did admit she took some of the drugs home from KU Med and used for the two weeks prior to 2/1/2005. The respondent signed a Statement of Agreement with on February 25, 2005. Respondent relapsed on 8/10/06 and 10/27/06 and her term in was extended to 10/27/2009.

- Nursing Services and was assigned to Weight Loss Healthcare Centers of America in Overland Park, Kansas on or about the evening shift of 9/20/07. During the shift the respondent opened four (4) ampules of Fentanyl and a single dose of Lortab appeared to have been tampered with. The facility sent the respondent to do a UDS and she reported it was negative. When the results were verified, the provider indicated the respondent had refused to do the UDS. The respondent admitted to opening the Fentanyl but stated it was by mistake. She claims to have made the mistake twice and opened two vials each time. She further stated she had diluted the Lortab elixir for a patient but he did not take it. A significant quanity of Fentanyl was wasted the evening the respondent worked. Further investigation at the facility showed that the Fentanyl vials opened by the respondent had been tampered with and did not contain Fentanyl. The Lortab elixir also showed evidence of tampering and was present at only 50% in the syringe.
- (c) The respondent is currently in A petition was filed in this matter on 12/5/2007.

#### **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)(6), unprofessional conduct, by drug diversion K.A.R. 60-3-110(n):

Count 2: 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 3: K.S.A. 65 – 1120(a)(6), unprofessional conduct by inaccurately recording, falsifying, or altering any record of a patient or agency or of the board; K.A.R. 60-3-110(d).

Count 4: 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)

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)(6), unprofessional conduct, by drug diversion K.A.R. 60-3-110(n);

Count 2: 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 3: K.S.A. 65 - 1120(a)(6), unprofessional conduct by inaccurately recording, falsifying, or altering any record of a patient or agency or of the board; K.A.R. 60-3-110(d).

Count 4: 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)

#### POLICY STATEMENT

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

#### DISPOSITION

- 13. 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 seg. and to judicial review.
- 14. 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 renewal of respondent's Kansas Nursing license will be granted.
- 15. 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.
- 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 suspended. The suspension will be stayed as long as the requirements and conditions of this agreement are met.
- 17. 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.

- 18. 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 card which shall be issued with an "S" placed in the status code portion of the license card to indicate that the license is suspended with a Stay.
- (b) Respondent will participate in and complete the reasonable recommendations and requirements of the sign releases of information necessary for to evaluate and monitor respondent and for to report information to the board. Respondent will be deemed to have completed the program when issues written notification that respondent has completed the program. Any noncompliance with is a violation of this agreement.
- (c) Respondent must submit to random drug screens as determined or selected by the Board or by 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 immediately notify the Legal Division of any use of alcohol, if prohibited by KNAP, or controlled substances, or any violation of this Consent Agreement and Final Order.
- (e) The respondent shall immediately inform all employers and prospective employers of this Consent Agreement and the Final Order.
- (f) Respondent shall send a money order for \$70 to the Board upon entering into this agreement to pay the cost of this action.

- (g) Respondent shall not violate the Kansas Nurse Practice Act during the duration of this agreement.
- (h) 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.
- (i) The respondent shall work only in positions with supervision and must notify the Board of Nursing if she accepts employment at any facility other than her current employment in a Dialysis unit or facility.
- 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: This statement is due by the 10th day of each month beginning the next month after signing this consent agreement. As nursing performance report is due by the 10th day of every third Month until Licensee has caused the submission of six (6) separate nursing performance reports. The report shall be prepared and signed by Licensee's immediate supervisor or by an R.N. who evaluates Licensee's performance on a regular basis and be based on the following guidelines:
  - (1) Incorporation of information on facility letterhead stationary is preferred.
  - (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) Licensee's name, address, telephone number, license number.
  - (5) A short explanation of the Licensee'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 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.
  - (I) Respondent shall also supply four (4) quarterly reports from her counselor/therapist and/or psychologist or psychiatrist beginning one month after she signs this agreement or on about approximately May 15, 2008. Such reports shall indicate the number of visits with the professionals, the purpose of such contacts and an assessment of respondent's current prognosis. These reports should be sent to the same address the employee evaluations are set to and as listed in paragraph as listed in paragraph j above.
- 19. Respondent acknowleges 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.
- 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 Consent Agreement, 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 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.

- 22. Respondent acknowledges and agrees that upon a first finding of Respondent not complying with 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.
- 23. Respondent acknowledges and agrees that upon a second or subsequent finding of Respondent not complying with 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.
- 24. Respondent acknowledges and agrees that upon the Stay of Suspension being lifted due to a finding of non-compliance with 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 with all conditions and requirements of this Consent Agreement. Upon the Respondent providing said written verification the suspension will again be stayed.
- 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 and is a public record.

- 27. 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.
- 28. 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.
- 29. 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.

Mary B. Fuglia
Respondent
2806 N 109 Terrace
Kansas City, KS 66109

Mary B. Fuqua must sign before a Notary Public.

State of Kansas, County of \_\_\_\_\_\_ ss. SUBSCRIBED AND SWORN TO before, me by Mary B. Fuqua

Affany M. Gumau My Commission Expires Notary P

HOTARY PUBLIC -- State of Ransas TIFFANY M, BURNAU Hy Appt. Exp. 10/29/3009 Notary Public Seal) 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  $_{2}$  day of \_

, 2008, I mailed a copy of this CONSENT

AGREEMENT AND FINAL ORDER to:

Mary B. Fuqua 2806 N 109 Terrace Kansas City, KS 66109

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