

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

FILED
JAN 31 2017
KSBN

IN THE MATTER OF MARY BROTHERTON

License No. 13-67459-071 / Reinstatement Application
Case No. 13-1088-7 and 13-1096-7

EFFECTIVE AS A
FINAL ORDER
DATE: February 20, 2017

SUMMARY ORDER

Now on this 31st day of January, 2017, this matter comes before the Kansas State Board of Nursing (Board) pursuant to authority granted to the Board by K.S.A. 65-1106 and K.S.A. 65-1120, to find facts and take disciplinary action against the Applicant, Mary Brothert, by way of Summary Order pursuant to K.S.A. 77-537. Upon review, the following findings of fact, conclusions of law and order are made for and on behalf of the Board:

FINDING OF FACTS

1. Applicant's address of record is P.O. Box 503, Bonner Springs KS 66012.
2. Applicant submitted an application to be reinstated as an RN in Kansas on March 25, 2016.
3. Applicant did not renew her initial Kansas nursing license in 2013 and Applicant's license lapsed on July 31, 2013.
4. Applicant was employed as a nurse at Overland Park Regional Medical Center (OPRMC) from on or about January 23, 2012 through on or about April 29, 2013.
5. On or about April 27, 2013 through April 28, 2013, Applicant was working as the charge nurse during the night shift at OPRMC.
6. Applicant took Toradol from PYXIS and asked a co-worker to inject her with the Toradol. Co-worker refused to inject Applicant.
7. Applicant did not have a prescription for Toradol.

8. Applicant admitted that she took medication from PYXIS under patient name, then hit cancel to avoid the medication showing as withdrawn.
9. The PYXIS records showed Applicant removed a Lidocaine patch for patient L.B. and then cancelled the transaction at approximately 0057 on April 28, 2013.
10. The PYXIS records showed Applicant removed Toradol 30mg/ml for patient C.M. at approximately 2033 on April 27, 2013 and then cancelled the transaction at approximately 0104 on April 28, 2013
11. Applicant was terminated by OPRMC on or about April 29, 2013 for diverting drugs from their facility.
12. The facility had specific policies in effect for medication administration, documentation, and theft.
13. On reinstatement application when asked to list employment as a nurse over the last 5 years, Applicant wrote that she was employed by OPRMC from January 20, 2013 through May 17, 2014 and documented her reason for leaving as "personal medical."
14. Applicant's personal file at OPRMC documents that she was employed from January 23, 2012 through April 29, 2013 and that her employment for terminated.
15. On or about May 9, 2013, Applicant submitted to a pre-employment UDS for employment at Golden Living Center in Edwardsville, KS.
16. The UDS was positive for Codeine.
17. Applicant did not have a prescription for Codeine.
18. The Board referred Applicant to the Kansas Nurses Assistance Program (KNAP) on or about April 6, 2016 for a drug and alcohol evaluation to determine if she was safety to practice.
19. Applicant refused to submit to an evaluation through KNAP.
20. KNAP closed her case with them for refusal on or about April 25, 2016.

APPLICABLE LAW

21. The Kansas State Board of Nursing has the authority under K.S.A. 74-1106(c)(4) and K.S.A. 65-1120(a) to examine, license, renew or reinstate licenses and may limit, deny, suspend or revoke a license or authorization to practice nursing, and may issue a public or private censure and levy administrative fines consistent with K.S.A. 74-1110.

22. The Kansas State Board of Nursing may deny a license as a registered nurse if the applicant is deficient in qualification, or in the quality of education, or if there are disqualifying factors under K.S.A. 65-1120 and amendments thereto. K.S.A. 65-1115 (a) & (b) & (c)(1).

23. The Board may deny any license or authorization to practice if applicant has willfully or repeatedly violated the provisions of the nurse practice act. K.S.A. 65-1115.

DISQUALIFYING FACTORS

24. K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(c) to be guilty of unprofessional conduct by failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient.

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

26. K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(n) to be guilty of unprofessional conduct by diverting drugs, supplies, or property of any patient or agency

27. K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(s) to be guilty of unprofessional conduct by failing to submit to a mental or physical examination or an alcohol or drug screen, or any combination of these, when so ordered by the board pursuant to K.S.A. 65-4924 and amendments thereto.

28. 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.

CONCLUSIONS OF LAW

29. The Board has jurisdiction over the Applicant and the subject matter of this action, and such proceeding is held in the public interest.

30. The Board adopts the above facts and finds that Applicant violated the nurse practice act and has the disqualifying facts as stated in paragraphs 24 through 28 above.

31. Applicant has numerous disqualifying factors under K.S.A. 65-1120 and therefore Applicant has not met the requirements for approval of her license.

32. Applicant willfully violated of the Kansas Nurse Practice act.

33. Based on the facts and circumstances set forth, the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of the law and the protection of the public interest does not require the Board give notice and opportunity to participate to persons other than Applicant.

34. The presiding officer whose signature appears below has been designated by the Board pursuant to K.S.A. 77-514 to act on behalf of the Board to act as a hearing officer and to execute orders, including summary orders.

IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF NURSING THAT:

1. Applicant's reinstatement application is denied.
2. Applicant shall not practice nursing in the state of Kansas.



Judith Hiner, RN, BSN
Investigative Committee, Chair
Kansas State Board of Nursing

NOTICE OF RIGHTS

Pursuant to K.S.A. 77-537, this Summary Order shall become effective as a Final Order, without further notice, if no hearing is requested within fifteen (15) days of service. If you desire a hearing, you must submit or direct a written request for hearing to: Kansas State Board of Nursing, Legal Division, 900 SW Jackson, Suite 1051, Topeka, Kansas 66612-1230, (785) 296-4325. THIS REQUEST MUST BE SUBMITTED WITHIN FIFTEEN (15) DAYS FROM THE DATE OF THIS ORDER. Pursuant to K.S.A. 77-531, if the Summary Order is served by mail, three days are added to the time limits set out above.

CERTIFICATE OF SERVICE

I certify that on the 31ST day of January, 2017, the foregoing copy of the Summary Order was severed by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Mary Brotherton
P.O. Box 503
Bonner Springs KS 66012



Aushlin Lowry
Senior Administrative Assistant
Kansas State Board of Nursing

NOTICE

PLEASE TAKE NOTICE that this is a Final Order. A party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court as authorized by K.S.A. 77-601, *et seq.* A petition must be filed within 30 days following service of the Final Order. A copy of any petition for judicial review must be served upon Mary Blubaugh, Executive Administrator, Kansas State Board of Nursing, 900 SW Jackson, Suite 1051, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I certify that on the 22nd day of February, 2017, the foregoing copy of the Summary Order, now a Final Order was served by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Mary Brotherton
P.O. Box 503
Bonner Springs KS 66012



Michelle David # 26982
Special Assistant Attorney General