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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 BRIAN D. SCHMIDT

License No. 13-74453-112

Case No. 13-090-7

INITIAL AGREED ORDER TO SURRENDER AND REVOKE LICENSE

NOW ON THIS 26th day of February, 2014, the Kansas State Board of Nursing, represented by Assistant Attorney General, Michael R. Fitzgibbons, and the Licensee, Brian D. Schmidt, 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

The hearing officer makes the following findings of fact based on the evidence presented and statements of the parties.

1. Licensee is licensed to practice nursing in Kansas through November, 2014. The Kansas State Board of Nursing (KSBN) has jurisdiction over the licensee and the subject matter of this action.
2. Licensee's address of record is 37 N. 80th Place, Kansas City, Kansas 66111.
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 is established.
4. The Board has requested a petition be filed to take disciplinary action against the licensee's license.

5. The petition was filed by the Board on the 15th day of November, 2013, a hearing would also be held at a later date at which time the Board would have to prove that licensee violated K.S.A. 65-1120(a).

6. Licensee 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. Licensee is waiving those rights and knowingly and voluntarily entering into this agreement instead of proceeding to these hearings. This agreement will conclude Board action pending at this time against licensee's license.

7. Licensee understands that pursuant to K.S.A. 77-515, licensee may be represented at licensee's expense by, an attorney during these proceedings.

8. (a) A petition was filed to take disciplinary action against the licensee's license as authorized by the Board.

- a. (b) On or about 11th day of November, 2012, Respondent was employed as a nurse at Trinity Nursing Rehab Center, Merriam, Johnson County, Kansas.
- b. On or about 11th day of November, 2012, TG was a patient under the care of Respondent at this medical facility. Respondent was on duty at the time.
- c. TG reported she was alone in the room with Respondent, although subsequent investigation revealed that another patient who is deaf was asleep in the same room.
- d. TG reported Respondent had come into her room in the early morning hours of the 11th day of November, 2012 to give her a sleeping pill.
- e. TG reported that Respondent came back and started to rub her shoulders and then touch her breasts.
- f. TG and Respondent engaged in sexual contact that culminated in Respondent ejaculating. TG claimed that the sexual contact was non-consensual.

- g. On or about 12th day of November, 2012, Respondent was interviewed by the Administrator and Respondent said that he could not answer on advice of his attorney.
- h. On the 13th day of November, 2012, on advice of his attorney, Respondent resigned from his position.
- i. Respondent was charged with one count of Aggravated Sexual Battery, a Severity Level 5, Person Felony on 15th day of January, 2013 in the Johnson County Kansas Case No. 13CR00099.
- j. A Petition for Emergency Proceedings was filed on the 19th day of July, 2013 to suspend Respondent's license pending the final outcome of the criminal case.
- k. An Emergency Order was entered suspending Respondent's license on the 6th day of August, 2013
- l. This Respondent pled no contest to Sexual Battery, a class A person misdemeanor, and he was sentenced to six months as an underlying sentence on the 25th day of October, 2013.
- m. Respondent was granted a suspended sentence and required to Register as a Sex Offender.
- (n) Licensee wishes to surrender his license.

CONCLUSIONS OF LAW

9. 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.

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

Count 1 Pursuant to KAR 60-3-110 (f) Unprofessional conduct i.e. "commission of any act of sexual abuse, sexual misconduct or sexual exploitation related to the licensees' practice is shown in the allegations contained in the criminal complaint.

Count 2 K.S.A. 65-1120(a)(6) to be guilty of unprofessional conduct as defined by the rules and regulations.

POLICY STATEMENT

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

DISPOSITION

12. Based upon this agreement and final order, the parties agree that Licensee is surrendering licensee's license to practice nursing in the state of Kansas.

13. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that Licensee's license to practice nursing in Kansas is immediately revoked. Licensee shall not practice nursing in the state of Kansas.

14. Upon signing this agreement and returning it to the Board, licensee shall return licensee's license card with the agreement.

15. The Board will report this surrender and revocation to data banks, other entities, and in its newsletter. This is a disciplinary action on licensee's license. The original of this document shall be kept in the Board's agency file. This Agreement is a public record and will be reported to national disciplinary data banks. The effective date of this Consent Agreement to Surrender and Revoke is the date shown on the certificate of service.

16. If licensee does seek reinstatement of licensee's license, the agreed facts and listed violations are admitted, licensee has waived the right to a hearing on the facts in this matter, however to receive a reinstatement of licensee's license the licensee will have the opportunity at that time to prove licensee's fitness to practice nursing in Kansas.

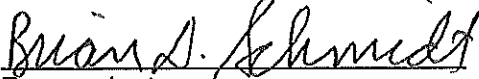
17. The hearing/presiding officer whose signature appears below has been designated pursuant to K.S.A. 77-514 and K.S.A. 77-526 to act on behalf of the Board/agency head and to

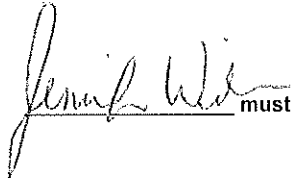
hear discipline cases on behalf of the Board/agency head and to render either initial orders or final orders, if by agreement of both parties, in those discipline cases.

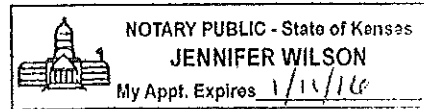
18. By their signatures, the parties hereby acknowledge this agreement.

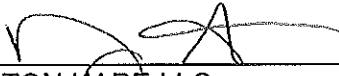
IN WITNESS WHEREOF, the parties hereto execute this FINAL ORDER AND CONSENT AGREEMENT TO SURRENDER AND REVOKE LICENSE .

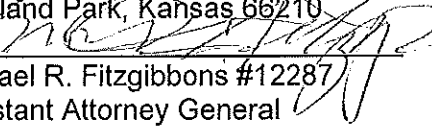
IT IS SO ORDERED.



Respondent
Brian D. Schmidt
37 N. 80th Place
Kansas City, Kansas 66111

 must sign before a Notary Public.




NORTON HARE LLC
Attn: Phil Stein #22073
9 Corporate Woods
9200 Indian Creek Parkway, Suite 450
Overland Park, Kansas 66210


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


Sandra Sharon, Presiding Officer

Pursuant to K.S.A. 77-527, either party may request a review of this final 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 final 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 final order is served by mail, three days are added to the time limits set out above.

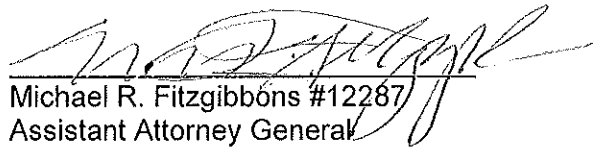
Pursuant to K.S.A. 77-530, if a request for reconsideration is not requested in the time and manner stated above, this initial order shall become effective as a final order 30 days after service.

CERTIFICATE OF SERVICE

On the 15th day of April, 2014 I mailed a copy of this FINAL ORDER AND CONSENT AGREEMENT TO SURRENDER AND REVOKE LICENSE to:

Brian D. Schmidt
37 N. 80th Place
Kansas City, Kansas 66111

NORTON HARE LLC
Attn: Phil Stein
9 Corporate Woods
9200 Indian Creek Parkway, Suite 450
Overland Park, Kansas 66210


Michael R. Fitzgibbons #12287
Assistant Attorney General