

FILED

OCT 8 2009

KSBN

BEFORE THE KANSAS STATE BOARD OF NURSING

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

IN THE MATTER OF

SHAWN A. GARBIN

License No. 13-083823-091

Case No. 08-145-7

OAH No. 08BN0141 KSBN

CONSENT AGREEMENT TO SURRENDER AND REVOKE LICENSE AND FINAL ORDER

NOW ON THIS 7th day of October, 2009, the Kansas State Board of Nursing, represented by Assistant Attorney General, Mark A. Knight, and the Respondent, Shawn A. Garbin, represented by Marilyn B. Keller, 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. Respondent is licensed to practice nursing in Kansas through 9/30/2009. 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 14484 West 139th, Olathe, KS 66062.
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 that a petition be filed to take disciplinary action against the Respondent's license.

5. Following a petition being filed by the Board, a hearing would also be held at a later date at which time the Board would have to prove that Respondent violated K.S.A. 65-1120(a).

6. 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 agreement will conclude Board action pending at this time against Respondent's license.

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

8. Without admitting to the allegations provided in Paragraphs 9(a) through (k), inclusive, Respondent admits that such allegations, if presented to the Board at a hearing, would provide the Board with sufficient evidence to find that Respondent committed the acts described in Paragraphs 9(a) through (k), inclusive. Upon the Board finding that Respondent committed the acts described in Paragraph 9(a) through (k), inclusive, and provided herein, Respondent admits that the Board would have sufficient authority to take the disciplinary actions agreed to in this Consent Agreement. Respondent believes that his best interests will be served by not proceeding to hearing and by agreeing to the terms of this Consent Agreement.

9. (a) On or about December of 2007, Respondent was employed as a nurse at Shawnee Mission Medical Center (SMMC), Merriam, Kansas.

(b) On or about 12/19/2007, CH arrived at the SMMC emergency room for treatment. CH was assigned to a room and was contacted in the room by Respondent. Respondent was on duty at the time.

(c) CH reported she was alone in the room with Respondent. CH reported Respondent sat in front of her and took her hands in his hands. CH reported that Respondent begin referring to her as "baby" and "honey" in a "flirtatious" manner as he spoke to her. CH

advised that she began "flirting" back with Respondent as she thought Respondent was just being friendly.

(d) CH advised Respondent placed her hand on Respondent's stomach then moved her hand to his genitals. CH reported she removed her hand and called Respondent a "pervert." CH advised Respondent again took hold of her hands and told CH he would have to come back later to undress CH for the doctor. CH advised Respondent said to her, "let me start now" then unfastened CH's belt, unbuttoned CH's jeans, and unzipped CH jeans.

(e) CH reported Respondent attempted to uncover one of her breasts. CH advised she told Respondent "No" and asked him if he needed to get back to work. CH reported Respondent left the room for a short period of time then returned. CH reported she told Respondent she had to use the restroom. CH said Respondent told her to provide a urine sample in case one was needed. CH advised she left the room to go to the restroom.

(f) CH stated when she returned from the restroom she laid down. CH advised Respondent returned to the room and again undid her jeans then left. CH reported a physician entered the room and examined her. CH advised following the exam and after the physician left the room, Respondent returned to the room. CH stated Respondent questioned why she was already dressed as he was going to dress her.

(g) CH reported Respondent asked her for her telephone number. CH advised Respondent told her he could get the telephone number from her chart. CH stated at that point she provided her telephone number to Respondent. CH advised Respondent hugged her and kissed her on her mouth. CH reported she was putting on her coat when Respondent grabbed her breast. CH advised she told Respondent she had to leave. CH advised she left the SMMC. CH stated she returned to SMMC at a later time to report the incident.

(h) On or about 1/3/2008, Respondent was interviewed by Det. Bisel of the Merriam, Kansas Police Department. Respondent initially denied any inappropriate behavior toward CH. Respondent then reported CH grabbed his "crotch". Respondent advised CH grabbed his

crotch while the two of them kissed. Respondent reported he touched CH's breast while they kissed. Respondent advised further that CH had also put her hand on his abdomen and began rubbing. Respondent said he then placed his hand on CH's hand to show acceptance. Respondent advised CH then moved her hand to his crotch. Respondent stated his hand followed CH's hand as it moved to his crotch. Respondent advised that the interaction between CH and himself was consensual. Respondent reported he did not know CH before the incident on 12/19/2007.

(i) On or about 12/20/2007, AZ arrived at the SMMC emergency room for treatment. AZ was intoxicated when she arrived at SMMC. AZ was assigned to a room and was contacted in the room by Respondent. Respondent was on duty at the time. AZ reported that initially her mother was at SMMC with her. AZ stated at the suggestion of Respondent, AZ's mother left SMMC to retrieve clothing for AZ.

(j) AZ advised after her mother left Respondent began flirting with her and telling her she was pretty. AZ reported Respondent began touching her breasts and sat her down on a bench. AZ advised Respondent exposed his penis and said to her "this is what I like, suck it." AZ stated Respondent placed his penis in her mouth. AZ stated Respondent was holding her face with his hands while he was thrusting his penis against the back of her throat. AZ reported Respondent ejaculated on her and then grabbed a paper towel. AZ advised that later after she was sober she thought about what had occurred and decided to report the incident.

(k) On or about 1/3/2008, Respondent was interviewed by Det. Bisel. Respondent advised AZ was intoxicated. Respondent said AZ became flirtatious with him and stated she wanted him to "fuck her." Respondent reported AZ offered more than once to perform oral sex on Respondent. Respondent stated he started to leave the room but AZ grabbed him and began undoing the ties on his pants. Respondent advised he pulled his penis out and AZ performed oral sex on him.

(l) On or about 5/20/2008, a Petition for Emergency Proceedings was filed in the above captioned matter, on behalf of the Board, requesting suspension of Respondent's license to practice nursing in Kansas based on the above outlined facts.

(m) On or about 5/28/2008, a hearing was held on the Petition for Emergency Proceedings.

(n) On or about 5/30/2008, an Emergency Order was issued suspending Respondent's license to practice nursing in Kansas.

(o) On or about 6/30/2008, a Petition was filed in the above captioned matter, on behalf of the Board, requesting revocation of Respondent's license to practice nursing in the state of Kansas. A prehearing conference was scheduled for 7/29/2008. Subsequent to the filing of the Petition on 6/30/2008 and prior to the 7/29/2008 prehearing conference, Respondent was charged criminally in the District Court of Johnson County, Kansas, case number 08CR1753, with charges stemming from incidents alleged in the Board Petition.

(p) On or about 7/28/2008, Respondent requested and Petitioner did not oppose the proceedings in the above captioned matter being stayed pending a final resolution of the Johnson County, Kansas criminal case.

(q) On or about 7/28/2008, an Emergency Order Nunc Pro Tunc, was issued which corrected the effective date of the 5/30/2008 Emergency Order.

(r) On or about 1/30/2009, Respondent was convicted of Aggravated Sexual Battery, a felony, in the District Court of Johnson County, Kansas, case number 08CR1753.

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(a) is established.

11. As indicated in Paragraph 9, Respondent stipulates that the allegations provided in Paragraph 9(a) through 9 (k) provide sufficient basis to subject his nursing license to disciplinary action by the Board for the following violations of the Kansas Nurse Practice Act:

(a) 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.

(b) K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(f), commission of any act of sexual abuse, sexual misconduct, or sexual exploitation related to the Respondent's practice.

(c) K.S.A. 65-1120(a)(2), to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense without establishing sufficient rehabilitation to warrant the public trust.

POLICY STATEMENT

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

DISPOSITION

13. Based upon this agreement, the parties agree that Respondent is surrendering Respondent's license to practice nursing in the state of Kansas.

14. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that Respondent's license to practice nursing in Kansas is immediately Revoked.

15. Based upon this agreement, the parties agree that Respondent shall not apply to become a nurse, be licensed as a nurse, or practice nursing in the state of Kansas for a period of ten (10) years from the effective date of the Consent Agreement to Surrender and Revoke.

16. If after the ten (10) year period of time, Respondent does seek reinstatement of Respondent's license, Respondent has waived the right to a hearing on the facts in this matter. However to receive a reinstatement of Respondent's license the Respondent will have the

opportunity at that time to prove that Respondent has completed a Board approved Kansas Nursing Refresher Course subsequent to the ten (10) year period of time, and to present for consideration information regarding the factors listed in *Vakas v. Kansas State Board of Healing Arts*.

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

18. The Board will report this surrender and revocation to data banks, other entities, and in its newsletter. This is a disciplinary action on Respondent'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.

19. 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.

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

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

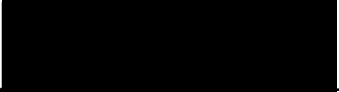
IT IS SO ORDERED.

Shawn A. Garbin
Respondent
14484 West 139th
Olathe, KS 66062

Shawn A. Garbin must sign before a Notary Public.



*Signed before me Terri Harley
September 29, 2009.*


Marilyn B. Keller
Counsel for Respondent
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Mark A. Knight, #12183
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 9th day of October, 2009, I mailed a copy of this CONSENT AGREEMENT TO SURRENDER AND REVOKE LICENSE AND FINAL ORDER to:

Shawn A. Garbin
14484 West 139th
Olathe, KS 66062

Marilyn B. Keller
Counsel for Respondent
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Mark A. Knight, #12183
Assistant Attorney General