

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

FILED
JUN 16 2009
KSBN

IN THE MATTER OF
ABBY L. HESS
License No. 13-084262-082

Case No. 08-480-7, 07-673-8

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CONSENT AGREEMENT AND FINAL ORDER

NOW ON THIS 18th day of June, 2009, the Kansas State Board of Nursing, represented by Assistant Attorney General, Mark A. Knight, and the Respondent, Abby L. Hess, represented by Carol R. 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 8/31/2010. 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 16580 W 155th PL, Olathe, KS 66062.
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) On or about 7/1/2007, Respondent entered the Emergency Room of Stormont Vail Hospital, Topeka, Kansas, with her grandfather. Respondent was not employed at Stormont Vail at the time but had previously been employed there as a nurse. While at Stormont Vail on 7/1/2007, Respondent removed oxycodone tablets from the omnicell medication dispenser. Respondent did this without authority and for her personal use. Oxycodone is a prescription only narcotic medication.

(b) Respondent was employed at Shawnee Mission Medical Center (SMMC), Shawnee Mission, Kansas, between September of 2007 and October of 2007 as a nurse. During October of 2007, SMMC staff noted discrepancies in Respondent's charting of medications administered to patients and the time the medications were removed from the pyxis system. The medications involved in the discrepancies were prescription only narcotics which included: acetaminophen-codeine; oxycodone; acetaminophen-hydrocodone; acetaminophen-propoxyphene. On or about 10/18/2007, as a result to the above medication discrepancies, Respondent's employment with SMMC was terminated.

(c) On or about 10/18/2007, Respondent entered the Kansas Nurses Assistance Program (KNAP) which is the impaired provider program of the Board.

(d) On or about 11/7/2008, Respondent was contacted by KSBN Investigator, Betty Stewart. Respondent advised that during the time she was employed at SMMC, she diverted hydrocodone from SMMC for her own use.

(e) Respondent is studying in preparation to obtain a CRNA license.

7. The above incidents are violations of the nurse practice act. The Respondent agrees that the board is prepared to prove that respondent has violated: 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; K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(d), inaccurately recording, falsifying, or altering any record of a patient or agency or of the board; 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.

8. 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

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 is established.

10. 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(n), diverting drugs, supplies, or property of any patient or agency.

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

Count 3: 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.

POLICY STATEMENT

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

DISPOSITION

12. 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 seq. and to judicial review.

13. 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.

14. 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.

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 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.

16. 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. The card will have an "L" indicating the limitations on the practice.

(b) Respondent will 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. Noncompliance with KNAP is a violation of this agreement.

(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 will continue to comply with the KNAP CRNA ACCESS POLICY for one year from the effective date of this Agreement. Additionally, Respondent will Submit Reports regarding the KNAP CRNA ACCESS POLICY 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:

A report is due by the 10th day of every month for one year, beginning the month after this Agreement is executed by the Board.

The report shall be prepared on facility letterhead and signed by Respondent's designated fellow health professional, as the term is used in the KNAP CRNA ACCESS POLICY. The designee shall include the following on each report:

- (1) The date of the report identified.
- (2) Designee's name, telephone number, address, license number and nursing credentials.
- (3) Respondent's name, address, telephone number, license number.

- (4) The date and name of the facility of each surgery case for which the Respondent delivered anesthesia medications.
- (5) Certification by the designee that the Respondent delivered all waste and empty syringes back to the original pick-up point (i.e. pharmacy).
- (6) Certification by the designee that what was administered to the patient and what remains and after each case equals the total amount of all anesthesia medications that were delivered to the CRNA prior to each surgery case.

(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 Consent Agreement and Final Order.

(f) The respondent shall immediately inform all attended clinical programs, employers and prospective employers of this Consent Agreement and the Final Order.

(g) Respondent shall send a money order for \$70 to the Board upon entering into this agreement to pay the cost of this action.

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

(i) 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.

(j) Respondent shall not practice or participate in clinical settings without onsite supervision by a qualified nurse or instructor, for a period of one year. The parties agree that this provision prohibits the Respondent from practicing nursing or participating in clinical settings unless the supervising nurse or instructor is present within the same facility as

the Respondent and the supervising nurse or instructor is available for periodic inspection of Respondent's tasks.

(k) Respondent will Submit Reports from the Respondent's clinical setting 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:

A report is due by the 10th day of every Month until Respondent has completed clinicals.

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

- (1) Incorporation of information on facility letterhead.
- (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) Instructor evaluations.
 - (d) Overall appropriateness.
 - (e) Interactions with patients.
 - (f) Interactions with staff and administration.

(l) 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.

17. Respondent acknowledges 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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. The effective date of this Consent Agreement and Final Order is the date shown on the certificate of service.

27. 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.

[Redacted]
Abby L. Hess
Respondent
16580 W 155th PL
Olathe, KS 66062

Abby L. Hess must sign before a Notary Public.

Kansas Johnson

ELYSE SANTOMECH
Notary Public - State
My Appt. Expires 11/1/09

[Redacted]
Carol R. Bonebrake
Carol R. Bonebrake, #12672
Counsel for Respondent
107 SW 6th St., Suite 210
Topeka, KS 66603

[Redacted]
Mark A. Knight, #12183
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612

[Redacted]
Sandra L. Sharon, Presiding Officer

CERTIFICATE OF SERVICE

On the 3 day of June, 2009, I mailed a copy of this CONSENT
AGREEMENT AND FINAL ORDER to:

Abby L. Hess
16580 W 155th PL
Olathe, KS 66062

Carol R. Bonebrake, #12672
Counsel for Respondent
107 SW 6th St., Suite 210
Topeka, KS 66603

*On June 19, 2009, I mailed
a copy of this document to
the listed persons.*

[Redacted]
Mark A. Knight, #12183
Assistant Attorney General
Kansas State Board of Nursing