

BEFORE THE KANSAS STATE BOARD OF NURSING

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

FILED

JUL 10 2014

IN THE MATTER OF

ROCHELLE A. FIESTER

License No. (Reinstatement) 13-84455-061

KSBN

Case No. 11-187-8

INITIAL AGREED ORDER

NOW ON THIS 10th day of July, 2014, the Kansas State Board of Nursing, represented by Assistant Attorney General, Alma A. Heckler, and the Respondent, Rochelle A. Fiester 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 filed for reinstatement of her registered nurse license on or about 12/10/2013. 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 101 N. Michigan St. Lot 11, Lawrence, Kansas 66044.
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. Respondent acknowledges that this agreement is an open record pursuant to the Kansas Open Records Act, K.S.A 45-215 et seq., and may be published or disseminated notwithstanding any state or federal law otherwise restricting public access to, or dissemination of, any personal or health care information, or any information or records of substance abuse evaluation and/or treatment contained herein.
5. 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.

6. 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.

7. (a) A petition was filed on March 7, 2014 to take disciplinary action against the Respondent's license and states the following:

(b) Respondent let her license lapse on 6/30/2011. Respondent filed for reinstatement on 12/10/2013. A background check revealed a misdemeanor conviction of driving on a suspended license and without seatbelts. All fines have been paid. Respondent failed to report the conviction to the Board.

(c) At time Respondent let her license lapse the investigation in KSBN Case No. 11-187-8 was pending. Respondent, while employed at Plaza West Regional Health Center, misplaced a resident's wedding rings. Respondent admitted to having possession of the rings but denied any misappropriation. The rings were not found.

Respondent admits to the facts as stated in the petition.

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 diverting drugs, supplies, or property of any patient or agency; K.A.R. 60-3-110(n);

Count 2: K.S.A. 65-1120(a)(6), unprofessional conduct, by failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient; K.A.R. 30-3-110(c);

Count 3: 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.

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 diverting drugs, supplies, or property of any patient or agency; K.A.R. 60-3-110(n);

Count 2: K.S.A. 65-1120(a)(6), unprofessional conduct, by failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient; K.A.R. 30-3-110(c);

Count 3: 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.

POLICY STATEMENT

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

DISPOSITION

13. By entering into this Initial Agreed Order (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.

14. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that this Initial Agreed Order 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 Initial Agreed Order remaining in effect until Respondent completes each of the conditions and requirements of this agreement.

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 suspended. The suspension will be stayed as long as the requirements and conditions of this agreement are met.

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 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.

17. 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 any paper license cards still in her possession to the Board with this Initial Agreed Order. Respondent shall receive a license which when verified by the public will show Suspended with a Stay to indicate that the license is suspended but such

suspension is stayed so long as she continues to meet the requirements of this Agreed Order.

The license will have limitations on the practice as stated below:

(b) The respondent will complete the following Continuing Nurse Education (CNE) within thirty (30) days of the effective date of this Agreement:

2 hours on the Kansas Nurse Practice Act (which may be accessed through the Via Christi web site at www.via-christi.org/cne or call 316-268-8551).

Respondent shall not use these hours to meet the CNE requirements of any renewal period.

(c) The Respondent shall only work in nursing positions where she is supervised by an RN at all times.

(d) The Respondent shall only work in nursing positions where she is supervised by an RN at all times.

(e) The respondent shall immediately inform all employers and prospective employers of this Initial Agreed Order.

(f) Respondent will Submit Reports from the respondent's employer 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:

If the Respondent is unemployed, prior to respondent securing employment that utilizes her nursing license, respondent is to mail to the Kansas State Board of Nursing a statement indicating that respondent has not yet secured employment which utilizes respondent's nursing license. This statement is due by the 10th day of each month beginning the next month after signing this Initial Agreed Order. (A statement from the respondent that she has not yet secured employment in nursing, is not a nursing performance report).

Once respondent is employed in a position that utilizes his or her nursing license, or if respondent is currently employed in a position that utilizes his or her nursing license, a nursing performance report is due by the 10th day of each of the following months; July 2013, October

2013, January 2014 and April 2014, or until respondent has caused the submission of four (4) separate nursing performance reports.

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

(1) The evaluation should be submitted by your supervisor on your employer's **facility letterhead stationary.**

(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) Supervisor evaluations.

(d) Overall appropriateness.

(e) Interactions with patients.

(f) Interactions with staff and administration.

(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 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.

19. Respondent acknowledges and agrees that Respondent is responsible for the costs related to satisfying the conditions and requirements of this Initial Agreed Order. Respondent further acknowledges and agrees that to provide the Board with false information regarding compliance with this Initial Agreed Order is a violation of this Initial Agreed Order.

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 Initial Agreed Order, 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 Initial Agreed Order 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 if any action based on failure to meet the conditions and requirements of this Initial Agreed Order is filed during the term of this Initial Agreed Order, or within 30 days after the expiration date, the conditions of this Initial Agreed Order shall continue in effect until the Board or a hearing/presiding officer designated pursuant to K.S.A. 77-514 and K.S.A. 77-526, rules on the action.

23. Respondent acknowledges and agrees that upon a first finding of Respondent not complying with any of the conditions or requirements of this Initial Agreed Order, the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, may be lifted for

a period of at least six months from the date of said finding or other disciplinary action may be taken consistent with K.S.A 65-1120(a). Respondent will not be allowed to practice nursing in the state of Kansas during the period of suspension. Respondent acknowledges and agrees that all conditions and requirements of this Initial Agreed Order to remain in effect during any period of suspension.

24. Respondent acknowledges and agrees that upon a second or subsequent finding of Respondent not complying with any of the conditions or requirements of this Initial Agreed Order the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, shall be lifted for at least a period of one year from the date of said finding or other disciplinary action may be taken consistent with K.S.A 65-1120(a). Respondent will not be allowed to practice nursing in the state of Kansas during the period of suspension. Respondent acknowledges and agrees that all conditions and requirements of this Initial Agreed Order remain in effect during the period of suspension.

25. Respondent acknowledges and agrees if the Stay of Suspension is lifted due to a finding of non-compliance with any of the conditions or requirements of this Initial Agreed 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 and has remained in compliance during the period of suspension, with all conditions and requirements of this Initial Agreed Order. Upon the Respondent providing said written verification the suspension will again be stayed.

26. 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.

27. 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.

28. After successful completion of all of the conditions and requirements of this Initial Agreed Order by the respondent, the Initial Agreed Order will be satisfied and the case will be inactivated.

29. By signing this Initial Agreed Order, Respondent acknowledges that Respondent has read and understands the entire document, and agrees to be bound by its terms. This Initial Agreed 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 Initial Agreed Order is the date shown on the certificate of service.

30. 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 INITIAL AGREED ORDER.

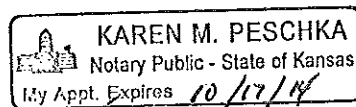
IT IS SO ORDERED.

Rochelle Fiester

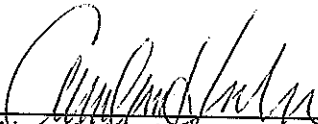
Rochelle Fiester
Respondent
101 N. Michigan St, Lot 11
Lawrence, Kansas 66044

Rochelle Fiester must sign before a Notary Public.

State of Kansas, County of Douglas.



Karen M. Peschka 7/10/2014


Alma A. Heckler, # 11555
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. 77-529, either party may request a review of this initial 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 initial 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 initial 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 10th day of July, 2014, I mailed a copy of this INITIAL AGREED ORDER to:

Rochelle Fiester
101 N. Michigan St, Lot 11
Lawrence, Kansas 66044


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