

BEFORE THE KANSAS STATE BOARD OF NURSING

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

**IN THE MATTER OF
BRIAN E. TRAST
License No. 13-84645-121**

FILED**APR 21 2010****KSBN****Case No. 06-396-0, 09-881-7****CONSENT AGREEMENT AND FINAL ORDER**

NOW ON THIS 19th day of April, 2010, the Kansas State Board of Nursing, represented by Assistant Attorney General, Brenda J. Clary, and the Respondent, Brian E. Trast, hereby stipulate to the following facts and agency action, 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, as a registered professional nurse (RN) and as a certified registered nurse anesthetist (CRNA) in Kansas through 31st day of December 2011.
2. Respondent's address of record is 7224 Cherokee Drive, Prairie Village, KS 66208.
3. Respondent is represented by Blake H. Reeves.
4. Respondent acknowledges his right pursuant to K.S.A. 77-523 to respond, present evidence and argument, conduct cross-examination of witnesses, and submit rebuttal evidence and hereby waives that right. Respondent further waives all possible substantive and procedural motions and defenses that could be raised during an administrative hearing process pursuant to the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*
5. Respondent acknowledges that, pursuant to K.S.A. 77-527, he would have the right to seek review of an initial order by filing a petition for review by the agency head, addressed to Mary Blubaugh, Executive Director, Kansas State Board of Nursing, within fifteen (15) days of the date an initial order is served. Respondent hereby waives review, and the parties agree to

the entry of a final order by a presiding officer designated pursuant to K.S.A. 77-514 and K.S.A. 77-526 to act on behalf of the Board.

6. Respondent acknowledges that, pursuant to the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*, he would have the right to seek judicial review of an adverse final agency action by filing a petition for review with the district court within 30 days after service of a final order and serving the petition on Mary Blubaugh, Executive Director, Kansas State Board of Nursing. Respondent hereby expressly waives judicial review.

7. Respondent acknowledges that, upon signature by the parties and the presiding officer, this agreement will be 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.

8. The parties agree that, after an investigation, the Board's investigative committee found reasonable grounds to believe that the respondent is subject to discipline pursuant to K.S.A. 65-1120, and referred this matter for further proceedings.

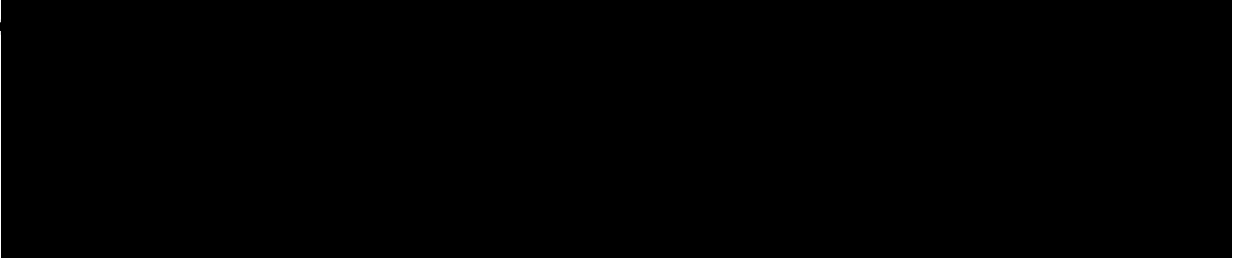
9. The parties agree that the Kansas State Board of Nursing has the authority under K.S.A. 74-1106 *et seq.* to examine, license and renew license for duly qualified applicants and may limit, deny, suspend or revoke a license or authorization to practice nursing, or may issue a public or private censure upon making any of the findings listed in K.S.A. 65-1120(a), or may levy administrative fines consistent with K.S.A. 74-1110.

10. A petition filed on the 5th day of January 2010 alleges the following:

- a) In August 2008, as a result of suspicions that Respondent had diverted drugs and worked while impaired, Respondent's employer required Respondent to seek assessment and monitoring by [REDACTED]

- b) [REDACTED] Respondent entered into a one-year monitoring agreement with [REDACTED] with an estimated completion date of August 25, 2009.
- c) Among other provisions, the agreement required the following:
[REDACTED]
Submit monthly random urine drug screens;
[REDACTED]
Inform all employers of participation in [REDACTED]
Disclose to all employers that he has a CRNA Access Key Policy Protocol and may not have access to mood-altering medications without supervision;
Inform his physicians of his participation in [REDACTED] and, if prescribed any mood altering medications, notify program staff and provide prescriptions and a letter from the physician regarding the prescription;
Comply with any recommendations made by [REDACTED] during the monitoring period; and
Failure to comply with the agreement would be reported to the Board.
- d) [REDACTED] deemed Respondent safe to practice while in compliance with that agreement.
- e) During September and November 2008, doctors working with Respondent expressed concerns about Respondent's red eyes, slurred speech, and apparent sleepiness.
- f) Respondent reported that he was having difficulty sleeping and was being treated for sleep apnea.
- g) According to [REDACTED], Respondent's drug screens had been negative.
- h) On or about June 1, 2009, the hospital pharmacist approached Respondent's employer with concerns regarding Respondent's Sufentanil usage.
- i) Among other concerns were total Sufentanil usage, the fact that Respondent checked out Sufentanil for anesthesiologists who did not use it, including a case for which he was specifically told not to use it and cases with which he was not involved, and seven 1-cc vials of Sufentanil that were unaccounted for.
- j) On or about June 16, 2009, Respondent's employer confronted Respondent, and Respondent admitted to drug diversion and usage.
- k) Respondent was terminated but told the employer would consider rehiring him if he was compliant with recommended treatment.
- l) [REDACTED]

m)



n) As a consequence of the June 10, 2009 relapse, [REDACTED] extended the program until June 10, 2012, and imposed a six-month key restriction beginning on the first day of employment.

o)



p) On October 2, 2009, Respondent entered into a new three-year agreement with [REDACTED]

11. Respondent stipulates to and waives hearing on the alleged facts.

12. The parties agree that the stipulated facts are sufficient to support the following findings:

a) K.S.A. 65-1120(a)(6), Respondent has engaged in unprofessional conduct, as defined by K.A.R. 60-3-110(n), diverting drugs.

b) K.S.A. 65-1120(a)(4), Respondent is unable to practice with skill and safety due to current abuse of drugs or alcohol.

c) K.S.A. 65-1120(a)(6), Respondent has engaged in unprofessional conduct, as defined by K.A.R. 60-3-110(s), by failing to complete the requirements of the impaired provider program of the board.

CONCLUSIONS OF LAW

13. 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, or may issue a public or private censure upon making any of the findings listed in K.S.A. 65-1120(a), or may levy administrative fines consistent with K.S.A. 74-1110.

14. The Board has jurisdiction of the respondent and the subject matter of this action.

15. Respondent has knowingly, intelligently, and voluntarily waived any and all rights to hearing on and review of the proposed agency action. 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.

16. The facts support the following grounds upon which the Board may take action against Respondent's license:

- a) K.S.A. 65-1120(a)(6), Respondent has engaged in unprofessional conduct, as defined by K.A.R. 60-3-110(n), diverting drugs;
- b) K.S.A. 65-1120(a)(4), Respondent is unable to practice with skill and safety due to current abuse of drugs or alcohol; and
- c) K.S.A. 65-1120(a)(6), Respondent has engaged in unprofessional conduct, by failing to complete the requirements of the impaired provider program of the board; K.A.R. 30-3-110(s).

POLICY STATEMENT

17. The role of the Kansas State Board of Nursing is to protect citizens of Kansas, and the proposed action furthers that policy.

DISPOSITION

18. 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.

19. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that **Respondent's authorization to practice as a certified registered nurse anesthetist and Respondent's license to practice nursing as a registered nurse are indefinitely suspended. The suspension of Respondent's RN license will be stayed** as long as the requirements and conditions of this agreement are met, and Respondent may practice as an RN under the limitations stated below.

20. 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 as a registered nurse 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 and modifications are made by agreed order or order of the presiding officer after hearing.

21. The Kansas State Board of Nursing will not take additional disciplinary action against Respondent's nursing license based on the facts stated above as long as respondent completes each of the following conditions and requirements:

- a) Respondent shall return his current license card(s) to the Board with this Consent Agreement. Respondent shall receive substitute license card(s) 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 continue to 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 shall have a narcotic key restriction on respondent's licenses for the first six (6) months after respondent secures employment that requires licensure as an CRNA or RN. The narcotic key restriction prohibits Respondent from passing of narcotics, wasting of narcotics, or having access to narcotics. The narcotic key restriction also prohibits Respondent from supervising nurses or others that have access to narcotics. After Respondent completes six (6) months of employment that requires a nursing license, without violating any terms of this agreement, Respondent may request that the narcotic key restriction be removed from Respondent's license. Respondent's request shall include written verification from Respondent's employer, to the Kansas State Board of Nursing, as to whether Respondent has been employed in a position that requires a nursing license; as to whether Respondent has held that position for at least six (6) months; as to whether Respondent has passed, wasted, had access to, or supervised others that had access to narcotics. With a showing that Respondent has complied with the narcotic key restriction term of this agreement and Respondent is compliant with all other terms of this agreement, the narcotic key restriction will be removed from Respondent's license.
 - 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 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 and shall report any misdemeanor or felony arrest, charge, or conviction to the Legal Division within fourteen (14) days. Traffic infractions need not be reported.
- 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.

22. 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.

23. 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.

24. 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 serving the Notice of Hearing upon the Respondent only will be proper service and it is the Respondent's responsibility to contact his or her attorney, if any, in reference to the action.

25. Respondent acknowledges and agrees that if any action based on failure to meet the conditions and requirements of this Consent Agreement is filed during the term of this Consent Agreement and Final Order, or within 30 days after the expiration date, the conditions of this Consent Agreement and Final 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.

26. Respondent acknowledges and agrees that upon a first finding that Respondent has failed to comply with any of 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. Respondent acknowledges and agrees that all conditions and requirements of this Consent Agreement remain in effect during the period of suspension.

27. Respondent acknowledges and agrees that upon a second or subsequent finding that Respondent has failed to comply with any of 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. Respondent acknowledges and agrees that all conditions and requirements of this Consent Agreement remain in effect during the period of suspension.

28. Respondent acknowledges and agrees that if the Stay of Suspension is lifted due to a finding of non-compliance with any of the conditions or requirements of 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 and has remained in compliance during the period of suspension, with all

conditions and requirements of this Consent Agreement. Upon the Respondent's providing said written verification the suspension will again be stayed.

29. 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.

30. This agreement is a disciplinary action 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.

31. 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.

32. 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.

33. 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 discipline cases. The parties having agreed, the order is a final order and effective on the date of filing.

IN WITNESS WHEREOF, the parties hereto execute this CONSENT AGREEMENT.

[Redacted]

Brian E. Trast
Respondent

Brian E. Trast must sign before a Notary Public.

State of Missouri
County of Jackson

This instrument was acknowledged and signed before me by Brian E. Trast on the 19 day of April 2010.

[Signature]
(Notary's signature)

My appointment expires 4-08-2014

[Redacted]

Blake H. Reeves, #19688
Polsinelli Shughart, P.C.
120 West 12th St.
Kansas City, MO 64105
Counsel for Respondent

[Redacted]

Brenda J. Clary, #18770
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612

PATRICIA L. ENLOW
Notary Public-Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires April 08, 2014
Commission # 10435860

IT IS SO ORDERED.

[Redacted]

Sandra L. Sharon, Presiding Officer

CERTIFICATE OF SERVICE

On the 26th day of April, 2010, I mailed a copy of this CONSENT AGREEMENT AND FINAL ORDER to:

Blake H. Reeves, Esq.
Polsinelli Shughart, P.C.
120 West 12th St.
Kansas City, MO 64105
Counsel for Respondent



Brenda J. Clary
Assistant Attorney General