

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

FILED  
MAY 26 2016  
KSBN

IN THE MATTER OF  
Gay L. Cummins

OAH Case No. 16BN0086

License No. 13-87045-082  
Case No. 14-1490-4 & 15-1025-4

**NOTICE OF PROPOSED DEFAULT ORDER**  
**AND**  
**PROPOSED DEFAULT ORDER**

This matter comes on for consideration by the presiding Administrative Law Judge (ALJ) to enter a Proposed Default Order against the respondent, Gay L. Cummins.

Wherefore, the presiding ALJ finds as follows:

1. The respondent is licensed to practice nursing in Kansas through August 31, 2016.
2. The petitioner, the Kansas State Board of Nursing Board (Board), has jurisdiction over the respondent and the subject matter of this action.
3. On November 25, 2015, a Petition was filed by the Board seeking revocation of the respondent's nursing license. It was sent to her at her last known address and was not returned as undeliverable.
4. A prehearing conference was scheduled on January 29, 2016. The respondent did not appear. A proposed default order was issued to which the respondent filed a response.

5. The prehearing conference was rescheduled for March 30, 2016. During the prehearing conference, deadlines were established and the matter was sent for hearing on May 23, 2016 at 9:30 a.m.
6. The Prehearing Order was issued memorializing the deadlines and hearing setting.
7. The respondent failed to comply with any of the prehearing deadlines.
8. On Friday, May 20, 2016, at approximately 11:44 a.m., the respondent faxed in a request for continuance of the hearing in which she mentioned another matter set later in week. She also stated that her attorney, who she intended to have represent her in this matter, “hasn’t enough time to prepare.”
9. No attorney has entered his or her appearance to represent the respondent in this matter, other than the one who was initially involved but who withdrew on December 30, 2015.
10. The Board filed its opposition to the request for continuance.
11. The parties were contacted Friday afternoon and advised that the hearing would proceed as scheduled.
12. On Monday, May 23, 2016, the respondent sent an email at 3:01 a.m. stating that she “cannot afford to come to Topeka to contest my [her] license being revoked.” She also stated that she “choose to surrender my [her] nursing license at this time.” She stated that she would mail her license to the Office of Administrative Hearings.

13. The hearing was not canceled but rather was convened on May 23, 2016, at 9:30 a.m.
14. The Board appeared by disciplinary counsel, Bryce D. Benedict. The respondent did not appear.
15. Pursuant to Kansas Statutes Annotated (K.S.A.) 77-520(a), “[i]f a party fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties written notice of a proposed default order.”
16. The respondent is in default pursuant to K.S.A. 77-520.
17. This Proposed Default Order shall become effective and deemed an initial order, seven days after service or ten days after mailing of this order unless the respondent files a written motion stating why the Proposed Default Order should be vacated and the order is then vacated. A motion to vacate shall be mailed or personally delivered to: Kansas State Board of Nursing, Legal Division, Landon State Office Building, 900 SW Jackson, Ste. 1051, Topeka KS 66612-1230, with a copy to be mailed or personally delivered to: Michele Tunnell, Administrative Law Judge, Office of Administrative Hearings, 1020 S. Kansas Ave., Topeka, KS 66612-1327.
18. If this Proposed Default Order becomes effective, the allegations contained in the Petition will be deemed uncontroverted and the Petition will be granted and incorporated into this order as if fully set forth herein. The

respondent's license to practice nursing will be revoked. The respondent will immediately forward her original Kansas nursing license to the Board.

19. In addition, costs of the action in the amount of \$100.00 will be assessed to the respondent to be paid to the Board by cashier's check or money order within 30 days of the effective date of this order.

The presiding ALJ, being well and duly advised in the premises, now enters this Proposed Default Order against the respondent. It shall take effect as specified in the above findings.

**IT IS SO ORDERED.**

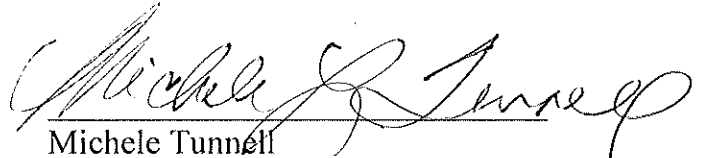
**Appeal Rights and Other Administrative Relief**

Pursuant to K.S.A. 77-520, if the proposed default order becomes effective, it is deemed an initial order, as set forth above. Pursuant to K.S.A. 77-527, either party may request review of the initial order by filing a petition for review with the Kansas State Board of Nursing within 15 days from date the order is deemed an initial order. Failure to timely request review may preclude further judicial review. Petitions for review shall be mailed or personally delivered to: Kansas State Board of Nursing, Legal Division, Landon State Office Building, 900 SW Jackson, Ste. 1051, Topeka, KS 66612-1230.

If neither party requests review, the initial order becomes a final order and is binding on the 30th day following its mailing.

A party may seek judicial review of a final order by filing a petition for judicial review pursuant to K.S.A. 77-601, *et seq.* Reconsideration of a final order is not a prerequisite to judicial review. A copy of any petition for judicial review shall be served

on Mary Blubaugh, Executive Administrator, Kansas State Board of Nursing, 900 SW  
Jackson, Suite 1051, Topeka, KS 66612-1230.

A handwritten signature in cursive script, reading "Michele R. Tunnell". The signature is written in black ink and is positioned above a horizontal line.

Michele Tunnell  
Administrative Law Judge  
Office of Administrative Hearings  
1020 S. Kansas Ave.  
Topeka, KS 66612-1327

CERTIFICATE OF SERVICE

On May 25, 2016, I mailed this original document through State Building Mail to:

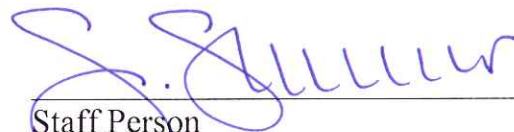
Mary Blubaugh  
Executive Administrator  
Kansas State Board of Nursing  
900 SW Jackson, LSOB, Ste. 1051  
Topeka, KS 66612  
Telephone: 785-296-4325

and a copy of this document through State Building Mail to:

Bryce D. Benedict  
Assistant Attorney General  
Disciplinary Counsel for the Kansas State Board of Nursing  
900 SW Jackson, LSOB, Ste. 1051  
Topeka, KS 66612  
Telephone: 785-296-4325

and a copy of this document through first class mail to:

Gay L. Cummins  
P.O. Box 109  
Iuka, KS 67066



Staff Person  
Office of Administrative Hearings

**BEFORE THE KANSAS STATE BOARD OF NURSING**

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

**FILED**

**NOV 25 2015**

**KSBN**

**IN THE MATTER OF  
Gay L. Cummins**

**License No. 13-87045-082  
Case Nos. 14-1490-4 & 15-1025-4**

**PETITION**

COMES NOW the petitioner, the Kansas State Board of Nursing, by and through Assistant Attorney General assigned to the Board, Bryce D. Benedict, and for its cause of action states that:

1. Respondent, Gay L. Cummins, is licensed to practice nursing in Kansas through August 31, 2016. The Board has jurisdiction over the respondent and the subject matter of this action.
2. Respondent's address of record is PO Box 109, luka KS 67066.
3. 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 et seq., and referred this matter for further proceedings.
4. 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.

**STATEMENT OF FACTS**

5. (a) In Kansas State Board of Nursing case no. 04-585-4 the Licensee diverted drugs. She wrote to the KSBN investigator regarding this malfeasance at the Hutchinson Hospital, "For approximately 5 months I did divert narcotics. I started out using the wastes and eventually began taking drugs that the patient did not need. I deny ever depriving my patients of meds they needed for their pain management. I diverted the following drugs to the best of my memory: Demerol, Morphine, Ativan, Fentanyl [sic]. These were all used IM and IV."

(b) Case no. 04-585-4 was resolved by allowing the Licensee to enroll in the KNAP program; this program was completed in April 2011.

(c) On May 10, 2015 the Licensee was admitted to the Pratt Regional Medical Center. On examination it was discovered the Licensee had a Fentanyl patch applied to her back. The Licensee had not been prescribed Fentanyl.

(e) The Licensee admitted the Fentanyl patch came from one of the residents of Cummins County Care, a business owned and operated by the Licensee.

(f) A drug screen at the Pratt Regional Medical Center was positive for benzodiazepines, opiates and oxycodone.

(g) The Licensee and Cummins Country Care were then investigated by KDADS.

(h) During the KDADS investigation the Licensee admitted taking two Fentanyl patches and some Haldol from one resident, and four to six doses of Norco from another resident.

(i) The KDADS investigation revealed that although Fentanyl was prescribed for one resident (identified as resident #2) and documentation showed that Fentanyl was frequently signed out for this resident during the period of April 11, 2015 through April 30, 2015, there was no documentation it was dispensed to resident #2.

(j) The KDADS investigation revealed that for another resident, identified as #3, there was a prescription for Norco to be dispensed two times a day as needed, but from May 1, 2015 to May 31, 2015 there was no documentation any had been administered to the resident.

(k) The KDADS investigation revealed that Cummins Country Care had no system for documentation of medicines it received at the facility, or for the disposal of medications.

(l) The KDADS investigation revealed that Cummins Country Care was grossly lacking in accountability for narcotics that were to be on hand: for resident #1 four doses of Tramadol were missing; for resident #2 fifty-three doses of Norco were missing; for resident #4 eighty-six doses of Percocet and eighty-six doses of Ativan were missing; for resident #7 twenty-three doses of Xanax and forty-two doses of Percocet were missing.

(m) The KDADS investigation revealed the Licensee failed to conduct a functional capacity screen on two of the seven residents of Cummins Country Home.

(n) The KDADS investigation revealed the Licensee failed to properly staff the Cummins Country Home, and on at least on one occasion there was no nurse on duty and the facility was delegated to the charge of a CMA, and on another occasion resident #3 fell on May 12, 2015 but there was no nurse available to respond.

(o) Following the KDADS investigation the Licensee admitted to the Kansas State Board of Nursing, "I was caught diverting drugs."

(p) The Licensee has not entered any drug treatment program.

### VIOLATIONS

6. The above fact findings establish evidence that the Licensee violated the following provisions of the Kansas Nurse Practice Act:



Count 1: 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.

Count 3: K.S.A. 65-1120(a)(3), to have committed an act of professional incompetency.

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

Count 5: K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110, to be guilty of unprofessional conduct as defined by rules and regulations of the board; to wit: diverting drugs, supplies, or property of any patient or agency.

Count 6: K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110, to be guilty of unprofessional conduct as defined by rules and regulations of the board; to wit: failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient.

Count 7: K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110, to be guilty of unprofessional conduct as defined by rules and regulations of the board; to wit: inaccurately recording, falsifying, or altering any record of a patient or agency or of the board.

Count 8: K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110, to be guilty of unprofessional conduct as defined by rules and regulations of the board; to wit: physical abuse, which is defined as any act or failure to act performed intentionally or carelessly that causes or is likely to cause harm to a patient. This term includes failure or omission to provide any goods or services that are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm.

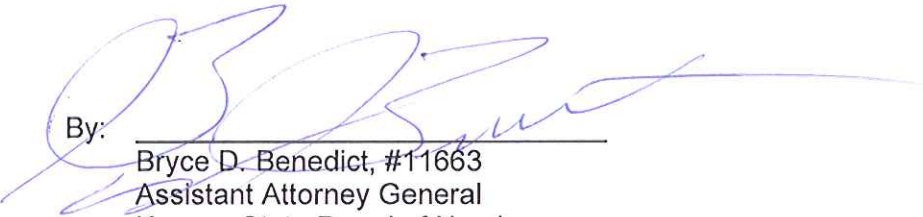
Count 9: K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110, to be guilty of unprofessional conduct as defined by rules and regulations of the board; to wit: delegating any activity that requires the unique skill and substantial specialized knowledge derived from the biological, physical, and behavioral sciences and judgment of the nurse to an unlicensed individual in violation of the Kansas Nurse Practice Act or to the detriment of patient safety.

Count 10: K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110, to be guilty of unprofessional conduct as defined by rules and regulations of the board; to wit: assigning the practice of nursing to a licensed individual in violation of the Kansas nurse practice act or to the detriment of patient safety.

WHEREFORE, petitioner requests a finding that the respondent has violated the Nurse Practice Act, that respondent's license to practice nursing in Kansas be revoked, and that costs of this action be assessed to the respondent.

Respectfully submitted,

Derek Schmidt  
Kansas Attorney General



By: \_\_\_\_\_

Bryce D. Benedict, #11663  
Assistant Attorney General  
Kansas State Board of Nursing  
Landon State Office Building  
900 SW Jackson #1051  
Topeka, KS 66612