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**BEFORE THE KANSAS STATE BOARD OF NURSING**

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

KSBN

FILED OAH

**IN THE MATTER OF BRENDA L. PRELL**

License No. 13-91262-041

Case No. 13-91262-041 OAH No. 16BN0103

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**INITIAL AGREED ORDER**

NOW ON THIS 17<sup>th</sup> day of November, 2016, the Kansas State Board of Nursing, represented by Special Assistant Attorney General, Michelle David, and the Respondent, Brenda Prell, hereby enter into this agreement and proffer evidence and the presiding officer adopts those recommendations and makes the following findings and orders:

1. Respondent is licensed to practice nursing in Kansas. 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 207 S. Hollenberg Avenue, Hanover, KS 66945.
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. 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.

**AGREED FINDINGS OF FACT**

6. Respondent entered an Initial Agreed Order on May 21, 2013.

7. Pursuant to the Order, Respondent re-entered the Kansas Nurses Assistant Program (KNAP) for monitoring.
8. On January 28, 2014, KNAP received a letter from Respondent's supervisor at Linn Community Nursing Home stating that Respondent had been terminated on July 10, 2013 for failing to follow proper procedures and not following the employee improvement plan given to Respondent on June 6, 2013.
9. On January 8, 2015, Respondent tested positive for alcohol.
10. Respondent later admitted that she had a relapse in January, which was why the test was positive for alcohol.
11. The January 8, 2015 relapse was Respondent's forth relapse since initially entering KNAP on November 21, 2011.
12. Respondent was re-evaluated for substance abuse on February 2, 2015. Respondent had a MAST score of 15. Scores above 5 suggest problem alcohol use. Respondent's DAST score was 16. Scores between 16-20 suggest severe level problem. Respondent's SASSI score was 1/9.
13. Based on Respondent's relapse the KNAP board decided to restart Respondent's program with a new completion date of January 8, 2018.
14. On February 2, 2015, Respondent signed a new three year contract with KNAP.
15. On June 8, 2015, Respondent was sent a letter from KNAP informing her she was in non-compliance for not submitting her May 2015 12-step meeting attendance sheets. This was Respondent's first non-compliance.
16. On August 3, 2015, Respondent was sent a letter from KNAP informing her she was in non-compliance for testing positive for Amphetamines on July 31, 2015 and Respondent had not submitted an updated prescription for the medication. This was Respondent's second non-compliance.

17. On October 6, 2015, Respondent was sent a letter from KNAP notifying her that her UDS collected on October 1, 2015 had an abnormal creatinine level and that she would be required to have a physical by a nephrologists or endocrinologist. The letter directed that Respondent needed to schedule an appointment and needed to provide the date and the time of the appointment to KNAP by October 14, 2015.

18. On October 22, 2015, Respondent was sent a letter from KNAP stating she was in non-compliance because she did not notify KNAP of her appointment time. This was Respondent's third non-compliance.

19. Pursuant to the conditions of the KNAP contract, Respondent's KNAP file was closed for three non-compliances.

20. This was Respondent's second closure with KNAP.

21. Respondent admits that the non-compliance with KNAP is a violation her Initial Agreed Order issued on May 21, 2013.

#### **CONCLUSIONS OF LAW**

22. After an investigation, the Board's investigative committee found reasonable grounds to believe that Respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1120, and referred this matter for further proceedings.

23. 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.

24. Respondent has violated the Kansas Nurse Practice Act as follows:

Count 1: K.S.A. 65-1120(a)(6) to be guilty of unprofessional conduct as defined by rules and regulations of the board, defined as failing to complete the requirements of the impaired provider program of the board, K.A.R.60-3-110(t);

Count 2: 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 3: K.S.A. 65-1120(a)(6) to be guilty of unprofessional conduct as defined by rules and regulations of the board, defined as failing to comply with any disciplinary order of the board, K.A.R.60-3-110(r).

### **POLICY STATEMENT**

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

### **DISPOSITION**

26. 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.

27. 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 for atleast 90 days. After 90 days the suspension will be stayed, so long as Respondent re-enrolls in the three (3) year monitoring program with the Kansas Nurses Assistance Program. The stayed suspension will lifted once the terms in section 28 are completed.

28. 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 participate in and successfully complete the three year monitoring program with of the KNAP. **At the end of Respondent's 90 day suspension,**

**Respondent must contact the KSBN to be re-referred to KNAP. Once Respondent has enrolled in KNAP the suspension will be stayed.** Enrollment in KNAP includes signing a contract with KNAP and entering the Affinity Program (drug and alcohol monitoring).

Respondent agrees to 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 successfully completed the program. The Board is notified by KNAP when the respondent has enrolled in their program. Closure of Respondent's KNAP file is a violation of this agreement.

(b) Respondent must submit to random 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/Alcohol Screen is a violation of this agreement.**

(c) Respondent shall immediately notify the Legal Division of any use of alcohol, if prohibited by KNAP, or controlled substances, or any violation of this Initial Agreed Order.

(d) The respondent shall immediately inform all employers and prospective employers of this Initial Agreed Order and her enrollment in KNAP.

(e) The Respondent shall only work in nursing positions where she is supervised by an RN at all times. **Licensee shall not practice unsupervised. An RN must be supervised by an RN. "Supervised practice" requires that a supervisor must be on site with the physical ability to spot check the licensee's work.**

(f) Respondent shall, therefore, not work as a director of nursing or in a charge or supervising position while these restrictions on her license continue.

(g) Respondent shall not seek or accept employment with a home health care service or agency, or as a private duty nurse without prior written consent of the Board for the term of this Agreement.

(h) Respondent will submit nursing performance reports from 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; January, April, July and October 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,** who evaluates respondent's performance on a regular basis and be prepared with the following guidelines:

- (1) Incorporation of information on **facility letterhead stationary** is preferred.
- (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.

(k) Respondent shall send a money order for \$100.00 to the Board upon entering into this agreement to pay the cost of this action.

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

(m) 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.

(n) Respondent agrees to and must 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.

29. 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.

30. If Respondent does not meet these conditions and requirements, the Kansas State Board of Nursing will lift the stay on the suspension and 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 can not contest the violations listed in this agreement.

31. 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.

32. 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.

33. Respondent acknowledges and agrees that upon the Stay of Suspension being 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.

34. 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.

35. 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.

36. 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.



37. 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.

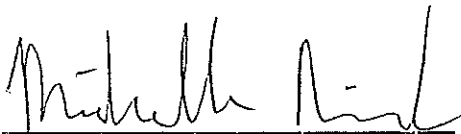
38. The hearing/presiding officer whose signature appears below has been designated pursuant to K.S.A. 77-514 and K.S.A. 77-526 to act on behalf of the Board/agency head and to hear discipline cases on behalf of the Board/agency head and to render either initial orders or final orders, if by agreement of both parties, in those discipline cases.

IN WITNESS WHEREOF, the parties hereto execute this INITIAL AGREED ORDER.

APPROVED BY:



Brenda L. Prell  
Respondent  
207 S. Hollenberg Avenue  
Hanover, KS 66945



Michelle David  
Special Assistant Attorney General  
Kansas State Board of Nursing  
Landon State Office Building  
900 SW Jackson #1051  
Topeka, KS 66612

IT IS SO ORDERED.



Michele L. Tunnell  
Administrative Law Judge  
Office of Administrative Hearings

### NOTICE

Pursuant to K.S.A. 77-527, either party may request a review of this initial order by filing a petition for review with the Kansas State Board of Nursing. A petition for review must be filed with 15 days from the date this initial order was served. Failure to timely request a review by the Kansas State Board of Nursing may preclude further judicial review. The petition for review 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.

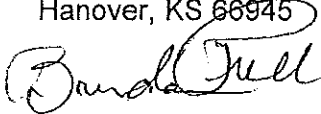
Pursuant to K.S.A. 77-530, if a request for review is not requested in the time and manner stated above, this initial order shall become effective as a final order 30 days after service.

### CERTIFICATE OF SERVICE

On the 18<sup>th</sup> day of November, 2016, I mailed a copy of this executed

INITIAL AGREED ORDER to:

Brenda L. Prell  
207 S. Hollenberg Avenue  
Hanover, KS 66945

  
Legal Staff  
Kansas State Board of Nursing