

BEFORE THE KANSAS STATE BOARD OF NURSING

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

FILED #856
JAN 31 2013 pab

**IN THE MATTER OF
KIMBERLY ANN WHELAN
License No. 13-96590-101**

KSBN

Case No. 08-954-6

SUMMARY ORDER TO REVOKE

Now this 31st day of January, 2013, the above matter comes before the Kansas State Board of Nursing (Board) pursuant to authority granted to the Board by K.S.A. 65-1120. The Board hereby proposes to find facts and take disciplinary action against the registered nurse license of Kimberly Ann Whelan, (Licensee) by way of Summary Order as provided by K.S.A. 77-537.

FINDINGS OF FACT

1. (a) Licensee is licensed to practice nursing in the state of Kansas as a registered nurse through 10/31/2013. The Board has jurisdiction over the Licensee and the subject matter of this action.
- (b) Licensee's address of record is 1715 Kennedy Avenue, Parsons, Kansas 67357.
- (c) Licensee was referred to the Kansas Nurse Assistance Program (KNAP) and signed a contract with KNAP in November of 2008. Her case was closed unsuccessfully on June 20, 2011. Licensee was referred to KNAP because she admitted to the theft of drugs from her employer, Elmhaven East in Parsons, Kansas from May 2007 thru October of 2008. She admitted to meeting the pharmacy deliveries and taking drugs before the drugs were checked in. She did not follow appropriate policy and procedures. She diverted hydrocodone and Tylenol #3 on numerous occasions.
- (d) Licensee was placed on two years probation in a juvenile case in the District Court of Neosho County, Kansas, 95JV72 C. She was convicted of felony burglary. The crime has not been expunged.
- (e) On or about August 11, 2011, the Licensee erroneously documented her criminal history on her employment application submitted to Cherryvale Nursing and Rehabilitation Center in Cherryvale, Kansas. She denied being placed on probation for any crime.
- (f) Licensee failed to accurately document the reasons for her termination of employment at two prior positions at Elmhaven East and West in Parsons, Kansas and Prairie Mission in St. Paul, Kansas on subsequent employment applications.
- (g) Licensee was employed at Prairie Mission Retirement Village, in St. Paul, Kansas on or about July 22, 2011 and documented medications as given to patients but patients report not receiving medications. On or about July 28, 2011 while still employed at Prairie Mission, respondent fell asleep in the dining room while feeding a resident.

When a resident fell on the 28th of July, 2011 staff were unable to locate the Licensee to perform a full assessment of the resident. At report, later that same day, Licensee was observed to have slurred speech and was nodding off.

(h) Licensee while employed at Elmhaven West, in Parsons, Kansas on or about December 22, 2010 Licensee diverted a resident's Fentanyl patch for her personal use.

(i) Licensee failed to report her felony conviction for burglary on her October 31, 2011 nursing license renewal. Licensee reported it was a misdemeanor.

(j) Licensee has a history of diversion of drugs and it is dangerous to herself and others for her to continue to practice nursing with or without monitoring.

2. Pursuant to K.S.A. 65-1120(a), the Kansas State Board of Nursing may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization, if the applicant, licensee or holder of a certificate of qualification or authorization is found to have violated the Nurse Practice Act. The above fact findings establish evidence that the applicant violated the following provisions of the Nurse Practice Act:

(a) K.S.A. 65-1120(a)(2), to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust...

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

(c) K.S.A. 65-1120(a)(6), unprofessional conduct, by drug diversion K.A.R. 60-3-110(n);

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

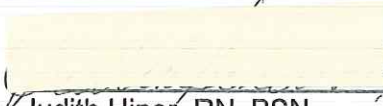
(e) K.S.A. 65-1120(a)(6), unprofessional conduct, by failing to complete the requirements of the impaired provider program of the board; K.A.R. 30-3-110 (s).

3. Licensee's conduct described herein violates the Kansas Nurse Practice Act.
4. K.S.A. 77-511(a)(2)(A) of the Kansas Administrative Procedure Act authorizes the use of summary proceedings by a state agency if the use of summary proceedings does not violate any provision of law, the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties, and the state agency believes in good faith, after investigation of the facts, that the allegations will be supported to the applicable standard of proof.
5. The role of the Kansas State Board of Nursing is to protect citizens of Kansas.

IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF NURSING THAT

- 1. Licensee's license is revoked.**
- 2. Licensee shall not practice nursing in the state of Kansas.**
- 3. Licensee shall pay \$70.00 costs of this action to the Board within thirty (30) days of the effective day of this Order.**

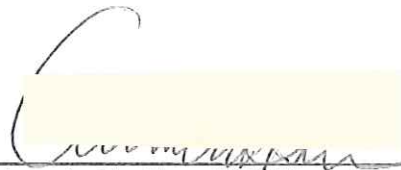
Pursuant to K.S.A. 77-537, this decision, which is called a Summary Order, is subject to your request for a hearing. If you desire a hearing, you must submit or direct a written request for hearing to: Kansas State Board of Nursing, Legal Division, 900 SW Jackson, Suite 1051, Topeka, Kansas 66612-1230, (785) 296-4325. THIS REQUEST MUST BE SUBMITTED WITHIN FIFTEEN (15) DAYS FROM THE DATE OF THIS ORDER. If a hearing is not requested in the time and manner stated, this Summary Order becomes effective as a final order, without further notice, upon the expiration of the time for requesting a hearing. If a hearing is requested, the prior issuance of a summary order shall not affect the burden of proof. Pursuant to K.S.A. 77-531, if the Summary Order is served by mail, three days are added to the time limits set out above.


Judith Hiner, RN, BSN
Investigative Committee, Chair
Kansas State Board of Nursing

CERTIFICATE OF SERVICE

I certify that on the 31st day of January 2013, the foregoing copy of the Summary Order to Revoke was served by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Kimberly Ann Whelan
1715 Kennedy Ave.
Parsons, Kansas 67357


Alma A. Heckler, #11555
Assistant Attorney General