

BEFORE THE KANSAS STATE BOARD OF NURSING

FILED
MAR 03 2017
KSBN

IN THE MATTER OF
BRIANA LIV COOK
License No. 14-120989-061

Case No. 12-2177-7
OAH No. 17BN0009

INITIAL ORDER

Now on this 27th day of January 2017, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing (Board/Petitioner) pursuant to K.S.A. 77-536. Sandra L. Sharon was duly appointed Presiding Officer/Administrative Law Judge pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing (Board), appears by Assistant Attorney General Bryce Benedict, Disciplinary Counsel for the Board. The respondent, Briana Liv Cook, appears *pro se*.

Findings of Fact

1. On or about March 18, 2015, the respondent entered into a Diversion Agreement with the Board wherein she admitted to willful and repeated violations of the Kansas Nurse Practice Act. These violations include unprofessional conduct by: drug diversion, inaccurately recording or falsifying or altering documents, fraud or deceit in practicing nursing, and failing to furnish the Board with legally requested information.
2. As part of the Diversion Agreement, the respondent agreed to re-enter the Kansas Nurse Assistance Program (KNAP) and comply with KNAP's recommendations and requirements, including submitting to random drug screens.
3. By correspondence dated July 14, 2016, the respondent's participation in KNAP was terminated for three (3) instances of noncompliance with her agreement with KNAP. The instances of noncompliance include two (2) failures to provide a urine drug screen, and a relapse with a positive urine drug screen for alcohol.
4. As a result of the positive urine drug screen for alcohol, KNAP made a finding that the respondent was not safe to continue practicing nursing.

Applicable Law

1. Upon violation of the Kansas Nurse Practice Act, the Board has the authority to deny, revoke, limit, or suspend any license to practice nursing in the State of Kansas or any application for a license to practice nursing. K.S.A. 65-1120(a).
2. It is a violation of the Kansas Nurse Practice Act to be unable to practice nursing with skill and safety due to current abuse of drugs or alcohol. K.S.A. 65-1120(a)(4).

3. It is a violation of the Kansas Nurse Practice Act to willfully and repeatedly violate provisions of the Kansas Nurse Practice Act. K.S.A. 65-1120(a)(7).
4. It is a violation of the Kansas Nurse Practice Act to fail to complete the requirements of the impaired provider program of the Board. K.S.A. 65-1120(a)(7) and K.A.R. 60-3-110(s).

Discussion

1. In addition to the violations admitted to by the respondent in the Diversion Agreement she entered into with the Board, the respondent has committed additional violations of the Kansas Nurse Practice Act.
2. The respondent tested positive for alcohol and there was a finding by KNAP that it was unsafe for her to practice nursing. This is a violation of K.S.A. 65-1120(a)(4).
3. Because the respondent failed to complete the KNAP program, she has violated K.S.A. 65-1120(a)(7) and K.A.R.60-3-110(s).
4. Finally, the respondent has willfully and repeatedly violated the Kansas Nurse Practice Act, a violation of 65-1120(a)(7).

Conclusion

The petition of the Board to revoke the respondent's license to practice nursing in the State of Kansas is granted.

Cost of this action shall be assessed against the respondent in the amount of \$100.00 pursuant to K.S.A. 65-1120(d).

Appeal Rights and Other Administrative Relief

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 within 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, 900 SW Jackson, Suite 1051, 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 made in the time and manner stated above, this initial order shall become effective as a final order 30 days after service.

Sandra L. Sharon
Administrative Law Judge/Presiding Officer
Office of Administrative Hearings
1020 S. Kansas Ave.
Topeka, KS 66612
Telephone: 785-296-2433

CERTIFICATE OF SERVICE

On March 2, 2017, 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 has been served with each of the following persons by mail to:

Briana Liv Cook
284 North Pecan Street
Gardner, KS 66030

and that the foregoing has been served electronically via the OAH's e-filing system to:

Bryce Benedict
Assistant Attorney General
Disciplinary Counsel for the Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612
Telephone: 785-296-2512

Staff Person
Office of Administrative Hearings

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BEFORE THE KANSAS STATE BOARD OF NURSING

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

**IN THE MATTER OF
Briana Liv Cook**

**License No. 14-120989-061
Case No. 12-2177-7**

OAH no. 17BN0009

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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, Briana Cook, is licensed to practice nursing in Kansas. The Board has jurisdiction over the respondent and the subject matter of this action.
2. Respondent's address of record is 284 North Pecan Street, Gardner KS 66030.
3. 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

4. The facts below are common to all counts:
 - (a) The respondent entered into a Diversion Agreement with the Board on or about March 18, 2015.
 - (b) Among the requirements imposed upon the respondent by the Diversion Agreement was that the respondent enroll in and follow the recommendations of KNAP.
 - (c) The respondent is in violation of the Diversion Agreement in that she was terminated from the KNAP program for non-compliance.

(d) The Diversion Agreement provides that if the respondent violates the terms of the agreement that she would be entitled to a hearing as to whether she had complied with the agreement, but she could not contest the violations listed in the agreement.

VIOLATIONS

5. Respondent has violated the Kansas Nurse Practice Act, as provided by the terms of the Diversion Agreement as follows:

Count 1: K.S.A. 65-1120(a)(6), unprofessional conduct, by drug diversion K.A.R. 60-3-110(n)

Count 2: K.S.A. 65-1120(a)(6), unprofessional conduct, by inaccurately recording, falsifying or altering documents.

Count 3 K.S.A. 65 1120(a)(1) unprofessional conduct by fraud or deceit in practicing nursing.

Count 4 K.S.A. 65-1120(a)(7), willfully and repeatedly violation provisions of the Kansas Nurse Practice Act by failing to complete the requirements of impaired provider program KAR 60-3-110(s).

Count 5: K.S.A. 65-1120(a)(4) unable to practice with skill and safety due to current abuse of drugs or alcohol.

Count 6: K.S.A. 65-1120 (3) to be guilty of unprofessional conduct failing to furnish the board, its investigators, or its representative with any information legally requested by the board KAR 60-3-110 (t).

Furthermore, the acts of the respondent that followed the entry of the Diversion Agreement also establish additional violation of the Kansas Nurse Practice Act:

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: failing to complete the requirements of the impaired provider program of the Board.

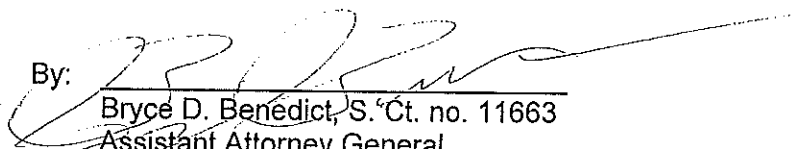
Count 8: K.S.A. 65-1120(a)(4), to be unable to practice with skill and safety due to current abuse of drugs or alcohol.

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, S.Ct. no. 11663
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612
785 296-4325
bryce.benedict@ksbn.state.ks.us

CERTIFICATE OF SERVICE

The undersigned certifies that he caused a copy of the above to be placed in the United States

Mail, postage prepaid, on the 12th day of August, 2016, addressed to:

Briana Cook
284 North Pecan Street
Gardner KS 66030

Megan Lewis
SIMPSON, LOGBACK, LYNCH
7400 W. 110th Suite 600
Overland Park KS 66210



Bryce D. Benedict