

**BEFORE THE KANSAS STATE BOARD OF NURSING**

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

FILED

APR 18 2016

KSBN

**IN THE MATTER OF  
MELANIE D. ANDREW**

OAH no. 15-BN0074

License No. 14-123415-092

Case Nos. 14-271-7 and 15-483-7

INITIAL AGREED ORDER

NOW ON THIS 13<sup>th</sup> day of April, 2016, the Kansas State Board of Nursing, represented by Assistant Attorney General, Bryce D. Benedict, and the Respondent, Melanie Andrew, hereby enter into this agreement and proffer evidence and the hearing officer adopts those recommendations and makes the following findings of fact and orders:

1. Respondent, Melanie D. Andrew, is licensed to practice nursing in Kansas. The Board has jurisdiction over the Licensee and the subject matter of the action.
2. Respondent's address of record is 11424 W. 104<sup>th</sup> Street, Overland Park, Kansas 66214.
3. After an investigation, the Kansas State Board of Nursing investigative committee found reasonable grounds to believe that the respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1120, and referred the matter for further proceedings.

FINDINGS OF FACT

4. The facts below are common to all counts:

(a) Respondent was employed at Menorah Medical Center in 2013 and 2014. On 2/5/2014 and 2/6/2014 she administered narcotics four (4) times for two (2) patients without a physicians order. Respondent is an RN and does not have prescriptive authority. She admitted she "prescribed" the medications but claimed 3 out of the 4 times she did talk to the physicians about the orders. The physicians deny that she spoke to or consulted with them.

- (b) Respondent also falsified the documentation of the drug administration. Respondent falsely reported she received verbal orders from physicians. Respondent wrote the orders on separate order sheets and did not place the order sheets she falsified in or on the charts. Respondent used the name of another nurse not on duty at the time on the false documentation to hide respondent's intentional acts.
- (d) While employed at the KU Hospital in 2015 the respondent stole prescription pads and forged prescriptions by which she obtained oxycodone for her personal use.

#### CONCLUSIONS OF LAW

5. The above incidents are violations of the nurse practice act. The Respondent agrees that the board is prepared to prove that respondent has violated the act and stipulates to the allegations alleged in the Petition.
6. 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.
7. 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 K.A.R. 60-3-110(a) performing acts beyond the authorized scope of the level of nursing for which the individual is licensed.
- Count 2: K.S.A. 65-1120(a)(6) to be guilty of unprofessional conduct as defined by K.A.R. 60-3-110(d) inaccurately recording, falsifying, or altering any record of a patient or agency or of the board.

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

#### POLICY STATEMENT

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

#### DISPOSITION

9. By entering into the Initial Agreed Order and consenting to the entry of the Initial 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.

10. Respondent has the right to a hearing with evidence and witnesses and to seek review of the findings from that hearing in accordance with the Kansas Administrative Procedure Act and the Act for Judicial Review and Civil Enforcement of agency actions. Respondent is waiving those rights and voluntarily entering into the agreement instead of proceeding to such a hearing.

11. Based upon the agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that the Initial Agreed Order will continue through any renewal periods of respondent's nursing license until respondent completes each of the conditions and requirements of the 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 the Initial Agreed Order remaining in effect until Respondent completes each of the conditions and requirements of the agreement.

12. Based upon the 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 will be suspended for six (6) months and this suspension will be stayed providing she is in compliance with KNAP and with the terms and conditions of this agreement.

13. 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 will maintain compliance with the Kansas Nurses Assistance Program (KNAP) and follow the the recommendations and requirements. There must be a determination of licensee's safety to practice nursing. Respondent shall sign releases of information necessary for KNAP to evaluate for substance abuse and to monitor Respondent and for KNAP to report information to the Board, Attorney General's office, and Office of Administrative Hearings.

(b) Respondent must submit to random drug screens as determined or selected 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 the agreement.

(c) The respondent shall immediately inform all medical or health related employers and prospective employers of the Initial Agreed Order.

Licensee shall not practice unsupervised or for an agency. 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.

(d) Respondent will have her employer submit quarterly reports 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, or employed in a position that does not utilize 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.

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, or until four (4) separate nursing performance reports have been received, to begin the next such month following the effective date of this agreement.

**The report shall be prepared and signed by respondent's immediate supervisor** who evaluates respondent's performance on a regular basis and be based on 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:
  - (i) Standards met regarding facility policies and procedures.
  - (ii) Compliance with the Kansas Nurse Practice Act.
  - (iii) Supervisor evaluations.
  - (iv) Overall appropriateness.
  - (v) Interactions with patients.
  - (vi) Interactions with staff and administration.
- (e) Respondent shall send a money order for \$100.00 to the Board upon entering into the agreement to pay the costs of the actions.
- (f) Respondent shall not violate the Kansas Nurse Practice Act during the duration of the agreement.
- (g) Respondent shall not violate the laws of the United States, of State, or of any political subdivision of any State during the term of the agreement. Traffic infractions shall not be considered violations of the law.

(h) The respondent will complete two (2) hours of Continuing Nurses Education (CNE) on the topic of "Kansas Nurse Practices Act" at:

<https://www.viachristi.org/health-professionals/nursingallied-health/cne-wichita>, AND respondent will complete 3-6 hours of CNE on the topic of Documentation, 3-6 hours on CNE on the topic of Scope of Practice and 3-6 hours of CNE on the topic of Professional Accountability.

Respondent is to submit the original certificates for proof of the completion of the hours within 180 days of the agreement to the Legal Division, Kansas State Board of Nursing.

Respondent may not use these hours to meet the CNE requirements of any renewal period.

(i) 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.

14. Respondent acknowledges and agrees that Respondent is responsible for the costs related to satisfying the conditions and requirements of the Initial Agreed Order. Respondent further acknowledges and agrees that to provide the Board with false information regarding compliance with the Initial Agreed Order is a violation of the Initial Agreed Order.

15. 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 the Initial Agreed Order, but Respondent could not contest the violations listed in the agreement.

16. All parties understand that if an action based on failure to meet the conditions and requirements of the 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 her or her attorney, if any, in reference to the action.

17. Respondent acknowledges and agrees that if any action based on failure to meet the conditions and requirements of the Initial Agreed Order is filed during the term of the Initial Agreed Order, or within 30 days after the expiration date, the conditions of the 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.

18. Respondent acknowledges and agrees that upon a finding of Respondent not complying with any of the conditions or requirements of the Initial Agreed Order the stay on the Suspension of Respondent's license to practice nursing in the State of Kansas will be removed 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 the Initial Agreed Order remain in effect during the period of suspension.

19. Respondent acknowledges and agrees that the suspension will be extended due to a finding of non-compliance with any of the conditions or requirements of the Initial Agreed Order, the suspension will not 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 the Initial Agreed Order. Upon the Respondent providing said written verification the suspension will be stayed.

20. The Board will inactivate the case file once respondent satisfies the agreement. The 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 the agreement is entered into.


21. The agreement is a discipline and must be reported on any future renewal or reinstatement applications. The agreement is a contract entered into by the parties to resolve an investigative case. The original of the agreement shall be placed in the Agency Record. The Agreement is a public record and will be reported to national disciplinary data banks.

22. By signing the Initial Agreed Order, Respondent acknowledges that Respondent has read and understands the entire document, and agrees to be bound by its terms. The 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 the Initial Agreed Order is the date shown on the certificate of service.

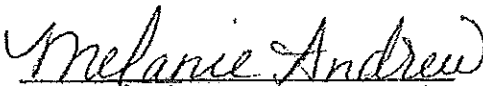
23. The hearing/presiding officer whose signature appears below has been designated pursuant to K.S.A. 77-514 and K.S.A. 77-526 to act on behalf of the Board/agency head and to hear discipline cases on behalf of the Board/agency head and to render either initial orders or final orders, if by agreement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

Disciplinary Counsel shall serve a copy of this Order on respondent counsel.

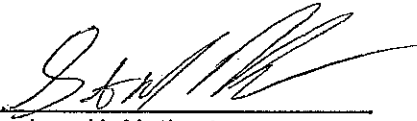
**IT IS SO ORDERED.**

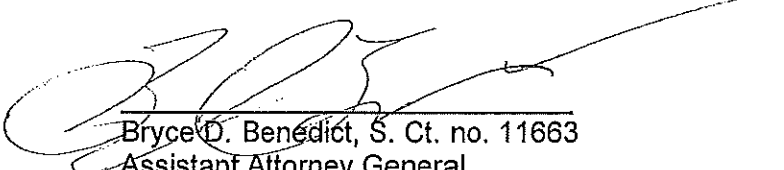
  
\_\_\_\_\_  
Sandra Sharon  
Administrative Law Judge

APPROVED BY:

  
\_\_\_\_\_  
Respondent  
Melanie D. Andrew  
11424 W. 104<sup>th</sup> Street  
Overland Park, Kansas 66214



  
Stephen H. Netherton  
HITE FANNING & HONEYMAN  
100 N. Broadway Suite 950  
Wichita, Kansas 67202-2209  
Attorney for Respondent

  
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

NOTICE

Pursuant to K.S.A. 77-527, either party may request a review of the final order by filing a petition for reconsideration with the Kansas State Board of Nursing. A petition for reconsideration must be filed with 15 days from the date the final order was served. Failure to timely request a reconsideration by the Kansas State Board of Nursing may preclude further judicial review. The petition for reconsideration 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 final 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 reconsideration is not requested in the time and manner stated above, the initial order shall become effective as a final order 30 days after service.

CERTIFICATE OF SERVICE

On the 18<sup>th</sup> day of April, 2016, I mailed a copy of the INITIAL AGREED ORDER to:

Stephen H. Netherton  
HITE FANNING & HONEYMAN  
100 N. Broadway Suite 950  
Wichita, Kansas 67202-2209

  
Bryce D. Benedict  
Assistant Attorney General

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

**FILED**

**IN THE MATTER OF  
MELANIE D. ANDREW  
License No. 14-123415-092**

**JAN 21 2016**

**KSBN**

**Case No. 14-271-7 AND 15-483-7**

**AMENDED PETITION**

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

1. Respondent, Melanie D. Andrew, is licensed to practice nursing in Kansas through 9/30/2016. The Board has jurisdiction over the respondent and the subject matter of this action.
2. Respondent's address of record is 11424 W. 104<sup>th</sup> Street, Overland Park, Kansas 66214.
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, 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.

**FACTS COMMON TO ALL COUNTS**

5. The facts below are common to all counts:
  - (a) Respondent was employed at Menorah Medical Center in 2013 and 2014. Respondent was disciplined by Menorah because on 2/5/2014 and 2/6/2014 she administered narcotics four (4) times for two(2) patients without a physicians order.

(b) Respondent is an RN and does not have prescriptive authority. Only physicians may prescribe narcotics and controlled substances. She admitted she "prescribed" the medications but claimed 3 out of the 4 times she did talk to the physicians about the orders. The physicians deny that she spoke to or consulted with them.

(c) Respondent also falsified the documentation of the drug administration. Respondent falsely reported she received verbal orders from physicians. Respondent wrote the orders on separate order sheets and did not place the order sheets she falsified in or on the charts. Respondent did not want the false documents to become part of the patients' permanent records. Respondent used the name of another nurse not on duty at the time on the false documentation to hide respondent's intentional acts.

(d) In Case No. 13-671-0 the respondent was allowed to endorse into Kansas after a Driving Under the Influence (DUI) diversion and a DUI conviction in 2005. The DUIs both occurred in Kansas. Respondent reported "no" to the question on the Kansas Nursing Endorsement application in 2013 "has any license, certification or registration (nursing or other) ever been denied, revoked, or suspended ... . Licensee was not disciplined.

(e) According to another report, while employed at University of Kansas Hospital, it is alleged that licensee stole prescription pads, wrote prescriptions forging physician's name and filling them at local pharmacies.

(f) Licensee admitted to stealing the prescription pads.

(g) As part of investigation, the clinic physician logged into K-TRACS and discovered that licensee had filled prescriptions on March 12<sup>th</sup>, 2015 for Oxycodone HCl 30 mg tablets totaling 180 pills for a 30 day supply.

(h) Upon completion of the investigation, the licensee was terminated from employment with the University of Kansas Hospital on the 23<sup>rd</sup> day of March, 2015.

## VIOLATIONS

6. 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 K.A.R. 60-3-110(a) performing acts beyond the authorized scope of the level of nursing for which the individual is licensed;

Count 2: K.S.A. 65-1120(a)(6) to be guilty of unprofessional conduct as defined by K.A.R. 60-3-110(d) inaccurately recording, falsifying, or altering any record of a patient or agency or of the board;

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

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

Count 5: K.S.A. 65-1120(a)(6), unprofessional conduct, exploitation, which shall be defined as misappropriating a patient's property or taking unfair advantage of a patient's physical or financial resources for the licensee's or another individual's personal or financial advantage by use of undue influence, coercion, harassment, duress, deception, false pretense or false representation; KAR 60-3-110 (o).

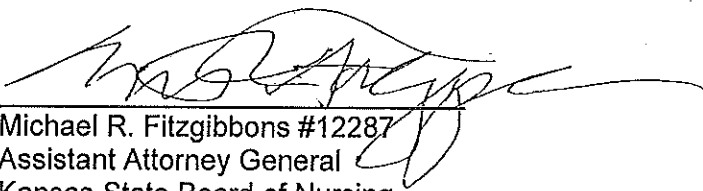
Count 6: K.S.A. 65-1120(a)(6), unprofessional conduct, by diverting drugs, supplies, or property of any patient or agency K.A.R. 60-3-110(n);

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 in the at least the amount of \$70.00.

Respectfully submitted,

Derek Schmidt  
Kansas Attorney General

By:

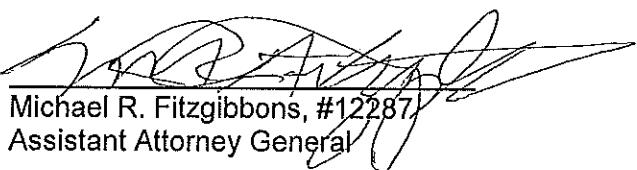
  
Michael R. Fitzgibbons #12287  
Assistant Attorney General  
Kansas State Board of Nursing  
Landon State Office Building  
900 SW Jackson #1051  
Topeka, KS 66612

CERTIFICATE OF SERVICE

On the 21st day of January, 2016, I mailed a copy of the AMENDED PETITION:

Stephen H. Netherton  
HITE FANNING & HONEYMAN  
100 N. Broadway Suite 950  
Wichita, Kansas 67202-2209

Melanie D. Andrew  
11424 W. 104<sup>th</sup> Street  
Overland Park, Kansas 66214

  
Michael R. Fitzgibbons, #12287  
Assistant Attorney General