

BEFORE THE KANSAS STATE BOARD OF NURSING

FILED

DEC 04 2013

IN THE MATTER OF
SUSAN CLARE LEBEDA
License No. 14-60252-032

Case No. 11-889-4
OAH No. 13BN0155

KSBN

INITIAL ORDER

Now on this 7th day of November 2013, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing (Board/Petitioner). Sandra L. Sharon was duly appointed Presiding Officer pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing, appears by Assistant Attorney General Michael R. Fitzgibbons, Disciplinary Counsel for the Board. The Respondent, Susan Clare Lebeda, appears in person.

Findings of Fact

1. On or about May 11, 2011, while at a training seminar for the Sumner County Hospital, the respondent was described as showing erratic, aggressive, confrontational, and unprofessional behavior.
2. On or about May 24, 2011, the respondent failed to timely appear for her shift at the Sumner County Hospital. The respondent called into the hospital approximately forty minutes after her scheduled starting time, and reported she overslept because she had taken the prescription drug phenegren to sleep. During the conversation, the respondent appeared confused and her speech was slurred.
3. The respondent arrived at work and at approximately 6:00 p.m. was observed with erratic behavior and slurred speech. She admitted to taking alcohol and prescription drugs prior to reporting to work. A blood alcohol test was given and the reports were positive. The respondent had a blood alcohol level of .30 percent.
4. Following this incident, the respondent entered inpatient rehabilitation at Valley Hope.
5. On June 2, 2011, the respondent was terminated from her employment with the Sumner County Hospital.
6. The respondent asserts she self-referred to the Kansas Nurse Assistance Program (KNAP). However, the respondent was also referred to KNAP by her former employer, Sumner County Hospital.
7. By letter dated June 30, 2011, from KNAP, the respondent was offered an Agreement of Understanding to enter into its recovery program.

8. The respondent did not follow through with the KNAP program and her case was closed August 4, 2011.
9. By letter dated June 18, 2012, the Board referred the respondent to the KNAP program.
10. On January 1, 2013, the respondent reported to work and appeared impaired and smelled of alcohol. She admitted to her employer she had alcohol December 31, 2011. The respondent refused a urine drug screen (UDS) as requested by her employer.
11. The respondent's relapse on alcohol was reported to KNAP. She was advised to cease working as a nurse until she could be re-evaluated and a safe to practice statement received by KNAP.
12. Included in the respondent's agreement with KNAP was random urinary drug testing. The respondent was to call in daily to see if she was selected to test, and if selected, she was to provide a urine sample that day.
13. On January 3, 2013, the respondent failed to check-in to see if she was selected for a UDS. The respondent was selected for a UDS and failed to test.
14. On January 4, 2013, the respondent failed to check-in. However, she was not selected to test.
15. On January 7, 2013, the respondent failed to check-in to see if she was selected for a UDS. The respondent was selected for a UDS and failed to test.
16. On January 8, 2013, the respondent failed to check-in to see if she was selected for a UDS. The respondent was selected for a UDS and failed to test.
17. The respondent's case with KNAP was closed as unsuccessful on January 9, 2013.
18. On April 9, 2013, the Board filed a Petition to Revoke the respondent's license to practice nursing in the State of Kansas.

Applicable Law

1. 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).
2. It is a violation of the Kansas Nurse Practice Act to willfully and repeatedly violate provisions of the Kansas Nurse Practice Act by failing to complete the requirements of the impaired program of the Board. K.S.A. 65-1120(a)(7) and K.A.R. 60-3-110(s).

Discussion

1. On or about May 24, 2011, the respondent was unable to practice nursing with skill and safety due to current use of drugs or alcohol. This is a violation of K.S.A. 65-1120(a)(4).
2. Further, on or about January 1, 2013, the respondent was unable to practice nursing with skill and safety due to suspected use of drugs or alcohol. The respondent refused to take a urinary drug screen to verify her safety to practice nursing.
3. The respondent failed to meet her contractual obligations with KNAP, the Board's impaired provider program, and her case was closed with KNAP twice. The first closure was on or about August 4, 2011. The second closure was on or about January 9, 2013.

Conclusion

1. The Board has shown by a preponderance of the evidence that the respondent has violated the Kansas Nurse Practice Act. The Board's petition to revoke the respondent's license to practice nursing in the State of Kansas is granted.
2. Cost of this action shall be assessed against the respondent in the amount of \$70.00 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 E. 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 Dec 2, 2013, I mailed this original document through State Building
Mail to:

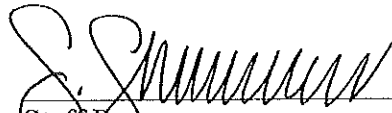
Mary Blubaugh
Executive Administrator
Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612
Telephone: 785-296-4325

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

Michael R. Fitzgibbons
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:

Susan Clare Lebeda
618 North Webb
Caldwell, KS 67022



Staff Person
Office of Administrative Hearings