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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
MICHELE A. MOORE
License No. 14-71606-122**

FILED #1245
JUN 03 2013 PLS

KSBN

Case No. Case No. 10-1008-7, 08-1083-7

**INITIAL AGREED ORDER SUPERSEDING JANUARY 13, 2011 CONSENT AGREEMENT
AND FINAL ORDER**

NOW ON THIS 30th day of May, 2013, the Kansas State Board of Nursing, represented by Assistant Attorney General, Alma A. Heckler, and the Respondent, Michele A. Moore, by and through her counsel, Steven R. Smith of Gates, Shields and Ferguson, P.A., hereby enter into this agreement and proffer evidence and the presiding officer adopts those recommendations amendments and makes the following findings of fact and orders:

AGREED FINDINGS OF FACT

1. Respondent is licensed to practice nursing in Kansas through 12/31/2014. 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 10244 West 80th Street, Apt. 205, Overland Park, Kansas 66204.
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. 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.

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 entered into a Consent Agreement and Final Order on 3/14/2007 in order to resolve a discipline case, Case No. 06-057-7.

8. In a prior 3/14/2007 Consent Agreement, Respondent agreed to complete all the conditions and requirements and most specifically, the following:

- a. Respondent shall receive a license suspended with a stay and with limitations on her practice.
- b. Respondent agreed to participate in and complete the reasonable recommendations and requirements of the Kansas Nurses Assistance Program (KNAP). Any noncompliance with KNAP was a violation of the Agreement.
- c. Respondent agreed to submit to random drug screens as determined or selected by the Board or by KNAP.
- d. Respondent agreed not to seek or accept employment with a nursing registry, a temporary nursing service or agency, a home health care service or agency, or as a private duty nurse during the term of this agreement.
- e. Respondent agreed not to practice without direct supervision during the term of this agreement.

9. On or about 11/25/2008, the Board received information regarding Respondent, alleging that on or about 11/17/2008, Respondent refused a urine drug screen while employed at KVC

Behavior Healthcare, Kansas City Kansas through the staffing agency, Metropolitan Nursing, Overland Park Kansas. Metropolitan Nursing, Overland Park Kansas, is a staffing agency which provides health care professionals for short and long-term staffing needs.

10. On or about 12/08/2008, the Board opened a new investigation, Case No. 08-1083-7, on Respondent to investigate the above-referenced information.

11. On or about 1/1/2009, Respondent's RN license lapsed.

12. On or about 7/6/2009, Respondent contacted the Board and stated that she had 3.5 fingers amputated and was scheduled to have ½ finger amputated on 7/17/2009. Respondent also stated that the amputations were due to being restrained while she was in the hospital for pneumonia. Respondent stated she was unsure whether she was going to try to reinstate her license because of the amputations.

13. On or about 8/9/2010, Respondent submitted a reinstatement application to the Board.

14. In a letter dated 8/27/2010, Respondent was informed that her reinstatement application, including the physical injury to her left hand, was reviewed by the Investigative Committee chairperson on 8/18/2010, and the decision of the chairperson was for Respondent to be evaluated by a physician to determine her ability to practice nursing safely.

15. On or about 9/3/2010, Respondent had an independent medical evaluation completed by Lynn A. Curtis, MD, Topeka Kansas.

16. On or about 9/16/2010, the Board received a report from Lynn A. Curtis, MD, regarding Respondent, which stated Respondent cannot write with clarity (unless through the use of amanuensis), cannot draw a syringe, cannot start an IV, cannot use sterile gloves, cannot set up sterile fluids, and cannot participate in a code.

17. The independent medical evaluation report also stated that it appeared that:

Respondent had all of the functional credentials with a restriction of 0-25 pounds for lifting, pushing, pulling, and carrying to perform as a Nurse Educator;
Respondent would have difficulty with emergencies and direct patient care, and

would not be able to perform these tasks as a Resource Person; Respondent would be qualified as a Surgical Services Educator with a restriction of 0-25 pounds for lifting, pushing, pulling, and carrying; Respondent would not be qualified as a Staff RN due to the requirement of direct patient care.

18. Respondent entered a second Final Order and Consent Agreement on January 13, 2011 in Case No. 08-1083-7 and 10-1008-7. This Initial Agreed Order supersedes the January 13, 2011 consent Agreement and Final Order.

VIOLATIONS

19. The above incidents are violations of the nurse practice act. The Respondent agrees that the board is prepared to prove that respondent has violated:

- a. Count 1: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(r), failing to comply with any disciplinary order of the board;
- b. Count 2: K.S.A. 65-1120(a)(3), professional incompetency by K.S.A. 65-1120(e)(3), a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing and K.S.A. 65-4924, reports relating to impaired providers; procedures.

20. 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 this agreement instead of proceeding to such a hearing.

CONCLUSIONS OF LAW

21. 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.

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

- a. Count 1: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(r), failing to comply with any disciplinary order of the board;
- b. Count 2: K.S.A. 65-1120(a)(3), professional incompetency by K.S.A. 65-1120(e)(3), a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing and K.S.A. 65-4924, reports relating to impaired providers; procedures.

POLICY STATEMENT

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

DISPOSITION

24. By entering into this Initial Agreed Order (Agreement) superseding the January 13, 2011 Consent Agreement and Final Order 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.

25. 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.

26. 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. The suspension will be stayed as long as the requirements and conditions of this agreement are met.

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 limited. The limitations placed on the license and described below will remain in place until the requirements and conditions of this agreement are met or until the requirements and conditions of this agreement call for the modification of the limitations.

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 is currently licensed and when her license is verified by the public, it will show Suspended with a Stay to indicate that the license is suspended but such suspension is stayed so long as she continues to meet the requirements of this Agreed Order. The license will have limitations on the practice as stated below:

(b) Respondent shall immediately inform all employers and prospective employers of this Initial Agreed Order.

(c) Respondent shall not seek or accept employment where she is responsible for direct patient Care. Respondent shall have no contact with patients, to include clinical supervision of students who provide patient care.

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

(e) Respondent shall not seek or accept employment with a nursing registry, a temporary nursing service or agency, a nursing home, 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.

(f) Respondent has reported that she intends to seek employment as a nurse consultant, reviewing medical records. Her employment as a nurse consultant is consistent with

her practice limitations as outlined in this Agreement and her disability limitations as reported in the evaluation completed by Dr. Curtis. The Board has agreed to modify the reporting and quarterly reporting requirements of this disciplinary agreement but only if she practices nursing as a nurse consultant. Therefore, the Board makes the following modifications so long as she continues to practice as a nurse consultant:

- (1) Respondent shall report her employment to the Board within ten business days.
- (2) Respondent will submit an annual letter on her employer's letterhead and from her employer on the anniversary of her employment, verifying her continued employment as a nurse consultant 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**. As long as she works as a nurse consultant, the quarterly reporting requirement as outlined in paragraph 28(g) is waived.
- (3) If Respondent leaves her employment as a nurse consultant, she must notify the Board within ten business days regarding the reasons for her termination, voluntary or otherwise.

(g) Otherwise, if the Respondent seeks to practice in a position which requires any kind of patient contact, she must be re-evaluated and approved to practice without limitations on her ability to provide direct patient care, by a board approved/certified physician specializing in rehabilitation/occupational assessments. The physician must complete a report and the Respondent is responsible for releasing a copy of the report to the legal division of the Kansas Board of Nursing. If the Respondent is evaluated as able to practice in positions that provide direct patient care, without limitations, the reporting requirement shall be as follows:

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 the 10th day of each of the following months; July, October, January

or April, or 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 or by an R.N. who evaluates respondent's performance on a regular basis and be based on the following guidelines:

(1) The evaluation should be submitted by your supervisor on your employer's **facility letterhead stationary.**

(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.

(h) While 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).

(i) Respondent shall send a money order for \$70.00 to the Board upon entering into this agreement to pay the cost of this action.

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

(k) 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.

(l) The respondent will complete the following Continuing Nurse Education (CNE) within ninety days of the effective date of this Agreement:

2 hours on the Kansas Nurse Practice Act (which may be accessed through the Via Christi web site at www.via-christi.org/cne or call 316-268-7872).

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

(m) 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.

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 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 could 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 a first finding of Respondent not complying with any of the conditions or requirements of this Initial Agreed Order, the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, shall be lifted for a period of six months 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 this Initial Agreed Order to remain in effect during the period of suspension.

34. Respondent acknowledges and agrees that upon a second or subsequent finding of Respondent not complying with any of the conditions or requirements of this Initial Agreed Order the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, shall be lifted for a period of one year 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 this Initial Agreed Order remain in effect during the period of suspension.

35. 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.

36. 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.

37. 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.

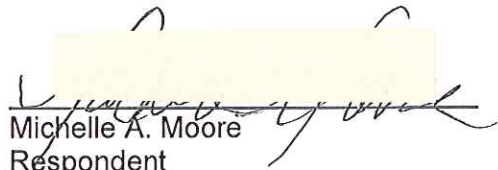
38. After successful completion of all of the conditions and requirements of this Initial Agreed Order by the respondent, the Initial Agreed Order will be satisfied and the case will be inactivated.

39. 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.

40. 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.


IT IS SO ORDERED.



Michelle A. Moore
Respondent
10244 W. 80th St., Apt. 206
Overland Park, Kansas 66204

Michelle A. Moore must sign before a Notary Public.




Steven R. Smith, #09690
Counsel for Respondent
10990 Quivera, Suite 200
Overland Park, Kansas 66210-1284


Alma A. Heckler, # 11555
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612


Sandra Sharon, Presiding Officer

Pursuant to K.S.A. 77-529, either party may request a review of this initial 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 this initial 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 initial order is served by mail, three days are added to the time limits set out above.

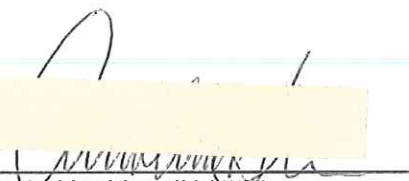
Pursuant to K.S.A. 77-530, if a request for reconsideration is not requested in the time and manner stated above, this initial order shall become effective as a final order 30 days after service.

CERTIFICATE OF SERVICE

On the 3rd day of June, 2013, I mailed a copy of this INITIAL AGREED ORDER to:

Michelle A. Moore
10244 W. 80th St., Apt. 206
Overland Park, Kansas 66204

Steven R. Smith
Gates, Shields & Ferguson, P.A.
10990 Quivera, Suite 200
Overland Park, Kansas 66210-1284


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