

BEFORE THE KANSAS STATE BOARD OF NURSING

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

**IN THE MATTER OF
GAIL LANITA PHELPS**

License No. 14-86752-062

Case No. 14-642-0, 14-1723-1, and 14-1961-1

16BNO002

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INITIAL AGREED ORDER

NOW ON THIS 16th day of June, 2016, the Kansas State Board of Nursing, represented by Assistant Attorney General, Bryce D. Benedict, and the Respondent, Gail Lanita Phelps, by and through her counsel, Tracie England, hereby enter into this agreement and proffer evidence and the hearing officer adopts those recommendations and makes the following findings of fact and orders:

FINDINGS OF FACT

1. Respondent, Gail Lanita Phelps, is licensed to practice nursing in Kansas. The Board has jurisdiction over the Respondent and the subject matter of the action.
2. Respondent's address of record is RR #3, Box 80, Hooker, OK 73945
3. The respondent stipulates to the following facts:
 - (a) The respondent on her 2014 online license renewal denied that her license had ever had disciplinary action taken against it.
 - (b) The Oklahoma Board of Nursing revoked respondent's license in 1998.
 - (c) The respondent when submitting her 2014 online license renewal represented she had completed 30 hours of CNE.
 - (d) At the time of her 2014 license renewal the respondent only had only completed 9 hours of CNE.
 - (e) In 2014, while the respondent was employed at Bob Wilson Memorial Grant County Hospital, Ulysses, Kansas, she violated patient confidentiality.

CONCLUSIONS OF LAW

4. 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.
5. 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.
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)(1), to be guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing.
 - Count 2: K.S.A. 65-1120(a)(7), to have willfully or repeatedly violated the provisions of the Kansas nurse practice act or any rules and regulations adopted pursuant to that act, specifically K.S.A. 65-1117(a) and K.A.R. 60-9-106, in failing to obtain the necessary CNE hours for license renewal.
 - Count 3: 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: violating the confidentiality of information or knowledge concerning any 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. 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.

11. 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 the terms and conditions of this agreement.

12. 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 pay fine in the amount of \$250.00 upon entering this agreement.

(b) Respondent will obtain within one-hundred twenty (120) days, and provide documentation to the Legal Department, Kansas State Board of Nursing, completion of 21 hours of CNE to meet the 30 CNE requirement.

(c) In addition to the above CNE requirement, respondent will obtain within one-hundred twenty (120) days, and provide documentation to the Legal Department, Kansas State Board of Nursing, completion of (1) the two hour *The Nurse Practice Act*:

An Overview for Nurses home study CNE available online through the Via Christi Regional Medical Center at:

<https://www.viachristi.org/health-professionals/nursingallied-health/cne-wichita>,

AND (2) and at least three hours CNE in EACH of the categories of Professional Practice, Ethics, Handling Abusive Patients, Confidentiality/HIPPA, AND Legal Issues. It is the responsibility of the Licensee to ensure that hours required to be taken within a specified topic or topics qualify as meeting the definition of that topic. If the assigned topic is not clearly stated in the title of the course, you must review the course objections. The course objectives must clearly state the topic was discussed at length within the course. If there is a question whether any CNE qualifies the Licensee should contact the Board of Nursing.

(d) Any CNE required to be completed to satisfy this agreement WILL NOT apply to the 30 CNE hours required for the next registration period.

(e) Respondent shall send a money order for \$100.00 to the Board upon entering into the agreement to pay the cost of the action.

(f) The respondent shall immediately inform all medical or health related employers and prospective employers of the Initial Agreed Order and not work in agency or unsupervised positions.

(g) Respondent is responsible to arrange for his or her employer to submit quarterly performance 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: 10th day of each of the months of January, April, July, and October, to begin with the first such month that occurs after the effective date of this agreement, and continuing until four (4) separate quarterly reports have been received.

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:
 - (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.

If the Respondent is unemployed, or employed in a position that does not utilize his or 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.

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

(i) 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.

(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.

13. 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.

14. 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.

15. 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 attorney, if any, in reference to the action.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

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

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.

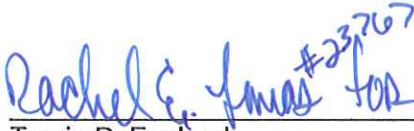
IN WITNESS WHEREOF, the parties hereto execute the INITIAL AGREED ORDER.


IT IS SO ORDERED.

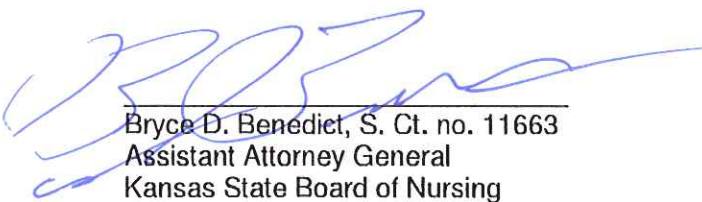


Sandra Sharon
Administrative Law Judge

APPROVED BY:


Tracie R. England
HITE FANNING & HONEYMAN L.L.P.
100 N. Broadway, Suite 950
Wichita, Kansas 67202


Gail Lanita Phelps
Respondent
RR #3 Box 80
Hooker, OK 73945


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

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.

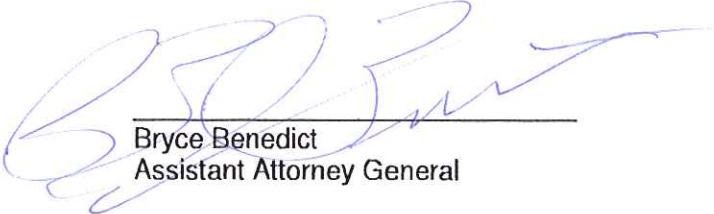
Pursuant to K.S.A. 77-531, if the final order is served by mail, three days are added to the time limits set out above.

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 17th day of June, 2016, I mailed a copy of the INITIAL AGREED ORDER to:

Tracie R. England
HITE FANNING & HONEYMAN L.L.P.
100 N. Broadway, Suite 950
Wichita, Kansas 67202



Bryce Benedict
Assistant Attorney General