

BEFORE THE KANSAS STATE BOARD OF NURSING
LONDON STATE OFFICE BUILDING
900 S.W. JACKSON, ROOM 551-S
TOPEKA, KANSAS 66612-1230
913/296-8401

IN THE MATTER OF:)

)
) Case No: 96-0003-0
)

JANET JACKSON)
R.N. ENDORSEMENT APPLICANT)

NUNC PRO TUNC INITIAL ORDER

Now on this 21st day of August, 1996, the above-captioned matter comes on for Hearing before Terry E. Beck, the Board's designated Hearing Officer, on the Petition filed with the Board. The Petitioner appears by and through Assistant Attorney General Mark S. Braun, Disciplinary Counsel for the Board. The Respondent, Janet Jackson, appears in person and without counsel.

The Hearing Officer advises the Respondent that she has the right to be represented by an attorney in these proceedings, if she chooses to obtain one. Respondent acknowledges this right, but wishes to proceed without counsel. Respondent states that she has consulted an attorney, but due to the attorney's circumstances, and the Respondent's financial circumstances, Respondent is waiving her right to counsel.

The Hearing Officer notes for the record that this matter is

on for hearing upon the request of the Respondent for a hearing to appeal the summary denial of her application for licensure. The Hearing Office notes that the record, at this time, contains the Summary Order issued in this matter, the Respondent's application for licensure and the Notice of Hearing in this matter.

The Hearing Officer inquires whether the Respondent received the Notice of Hearing in this matter. Respondent states she received the notice. The Hearing Officer further inquires whether the Respondent has any objection with the notice or the jurisdiction of the Board or Hearing Officer to hear this matter. Respondent states no objections. The Hearing Officer inquires whether the parties are ready to proceed. The parties state they are ready.

The Matter proceeds to hearing, whereupon the Respondent presents her case requesting that her application for licensure in Kansas be granted. Respondent is placed under oath by the Hearing Officer for the statements she will make on her own behalf. Respondent reviews her circumstances of diverting demerol from her employing hospital in Nevada, leading to the voluntary surrender of her license to practice nursing in that state. Respondent further informs the Hearing Officer about the treatment and follow-up after care she underwent in Nevada, as well as the continued aftercare once she moved to Kansas. In support of her position, Respondent offers her Exhibits Numbers 1-6. Respondent's Exhibit No. 1 is an undated letter, by fax, to To Whom It May Concern from Alice Conroy, R.N.; Petitioner's Exhibit No. 2 is an August 15, 1996

letter to To Whom It May Concern, from Harry Brown, Ph.D., Clinical Psychologist; Petitioner's Exhibit No. 3 is an August 13, 1996 letter to To Whom It May Concern, from Karen S. Donnahie, RN, CEN; Petitioner's Exhibit No. 4 is a copy of an undated handwritten letter to To Whom It May Concern from Diane Redlinger; Petitioner's Exhibit No. 5 is an August 12, 1996 letter from Joyce E. McNally; and Respondent's Exhibit No. 6 is a copy of an August 15, 1996 letter from Kristin Piper, RN, Program Manager, Kansas Nurse Assistance Program to Mark Braun, Petitioner's counsel.

The Petitioner's counsel objects to the admission of the exhibits because those parties providing the information contained in those exhibits are not present for cross-examination. The objection is noted, but the exhibits are admitted with the understanding that the Hearing Officer will determine what weight to give the exhibits. exhibits. The Respondent reviews the materials provided and concludes her case.

The Petitioner's counsel cross-examines the Respondent.

The Petitioner states his opposition to the granting of licensure to the Respondent. In support of his position, Petitioner offers exhibits. Petitioner's Exhibit No. 1 is a March 13, 1996 letter from the Respondent to Diane Glynn, KSBN Practice Specialist; Petitioner's Exhibit No. 2 is a certified copy of the Respondent's Voluntary Surrender Of License/Certificate In Lieu of Other Disciplinary Action; Petitioner's Exhibit No. 3 is the Respondent's Application for licensure; Petitioner's Exhibit No. 4 is a copy of her Nevada license which expired February 28, 1995.

Petitioner calls Diane Glynn, Board Practice Specialist. The Petitioner concludes requesting that the Respondent's application be denied.

The Hearing Officer gives each side the opportunity for a closing statement. Both parties make a closing statement.

Findings of Fact

1. On or about March 25, 1996 Respondent submitted an application for licensure to practice as a nurse in the State of Kansas.

2. That application was reviewed at a May 13, 1996 Board Investigative Committee meeting and denied by a Summary Order, which is a part of this record, issued May 20, 1996.

3. Respondent timely submitted a request for a hearing of the Summary Order denying her application for licensure.

4. The Notice of Proceedings in this matter were sent to the Respondent at her last address known to the Board by first class mail on June 13, 1996.

5. Respondent has been advised of her right to counsel and voluntarily waived that right.

6. On the Application (Petitioner's Exhibit No. 3), Respondent does not answer questions 11 and 12 inquiring about pending disciplinary action in another state and whether her license has ever been disciplined. Instead, Respondent circled those question numbers and provided a letter of explanation (Petitioner's Exhibit No. 1).

7. Respondent appears confused in her letter (Petitioner's Exhibit No. 1) and her testimony here today as to whether the voluntary surrender of her license constituted disciplinary action.

8. On or about March 27, 1996, the Respondent voluntarily surrendered her license to practice nursing in the State of Nevada. Copies are already a part of the record, as well as an exhibit in this case.

9. The Nevada State Board of Nursing took disciplinary action against the Respondent's license to practice nursing in that State.. In addition to the Petitioner's Exhibit No. 2 (the Voluntary Surrender, which states it is in lieu of **other** disciplinary action, the April 5, 1996 letter to Ms. Jean Boline, of the Kansas Board, and the accompanying Findings of Fact, Conclusions of Law and Order, clearly indicate that the voluntary surrender was considered by the Nevada Board to be disciplinary action.

10. Respondent has violated the Kansas Nurse Practice Act, for which disciplinary action may be taken by the Board, or its designated hearing officer against the license or licensee.

11. Respondent admitted in the voluntary surrender that, as of February 6, 1996 she was habitually intemperate and/or addicted to controlled substances. Respondent provided information to the Kansas State Board of Nursing, through the Kansas Nurse Assistance Program and herself, that she is a drug addict and as of May, 1996, was only in the beginning stages of recovery.

12. Respondent also admits to diverting controlled substances

for personal use on or about October 25, 1995, while licensed and practicing as a nurse in the State of Nevada.

13. Respondent admits to being an addict who has been through treatment and who is currently in recovery.

14. Based upon all the exhibits and the Respondent's testimony, Respondent does not appear to be unable to practice with safety and skill due to current abuse of alcohol or drugs.

15. There has been much more evidence submitted regarding the Respondent's treatment and recovery program. Since the issuance of the denial letter, Respondent has maintained her recovery program for an additional three months and appears to be very sincere and active in her recovery.

16. The purpose of the Nurse Practice Act is protection of the public.

17. The Petitioner's concerns of relapse and the length of recovery in this case are noted. Relapse is always a possibility.

18. The Board in the past has allowed continued licensure of nurses with substance and chemical abuse problems, so long as the overriding purpose of the Act is met - the protection of the public.

19. It would not be adverse to the public interest or protection to issue the Respondent a license as long as certain conditions are met.

20. The Hearing Officer makes it clear that at the time the Investigative Committee made its decision, it made an appropriate decision. This decision is based upon expanded information either

not available or not provided to the committee.

CONCLUSIONS OF LAW

1. The Board and this Hearing Officer have jurisdiction to hear this matter pursuant to the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., and the Kansas Administrative Procedures Act, K.S.A. 77- 501 et seq. Respondent stipulates to such jurisdiction.

2. The Respondent has been advised of her right to counsel and has knowingly and voluntarily waived that right.

3. The Respondent has been properly served with the Notice of Hearing in this matter pursuant to the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq.

4. The Board, and by designation the Hearing Officer, have the authority, after a finding of a violation of the Nurse Practice Act, to impose any of the disciplinary sanctions identified in K.S.A. 65-1120 and K.S.A. 74-1110 against the Respondent or the Respondent's license to practice nursing in the State of Kansas.

5. K.S.A. 65-1120(b) requires these proceedings of the Board to be conducted pursuant to the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq.

6. The purpose of the Kansas Nurse Practice Act, is the protection of the public.

7. Licensure is a privilege and not a right.

8. The Respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1120(a)(8), in that her license to practice nursing in the State of Nevada faced disciplinary action. Respondent surrendered her license to practice nursing in Nevada in lieu of

further disciplinary action.

9. The Respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1120(a)(6), unprofessional conduct as defined by K.A.R. 60-3-110(i), diverting drugs from her employing hospital in Nevada.

ORDER

The Hearing Officer notes that the issue is to determine whether to grant the Respondent's application for licensure is consistent with the purpose of the Act.

Based on the above findings of fact and conclusions of law and the evidence and testimony presented in this case, IT IS THEREFORE ORDERED that the Respondent's license shall be granted under certain specific conditions and limitations. IT IS FURTHER ORDERED, pursuant to the disciplinary remedies available under K.S.A. 65-1120(a) that:

Respondent's license to practice as a registered professional nurse, (R.N.), is hereby **suspended** for the period of licensure. February 28, 1998. The **suspension is stayed**, allowing the Respondent to practice under the following conditions and limitations:

1. Respondent is to maintain her recovery program;
2. Respondent is to enroll and successfully participate in the Kansas Nurse Assistance Program. Respondent is to contact Ms. Etta Williams of that program at (13) 236-7575, or 6005 Martway, Suite 100, Mission, Kansas 66202;
3. Respondent is to undergo any necessary evaluation or treatment which is recommended by KNAP;

4. Respondent shall sign any appropriate releases allowing the representatives of the Board to obtain any and all information related to the Respondent's participation in KNAP, treatment or recovery;

5. Upon being employed as a nurse, Respondent is to inform her employer and nursing supervisor of this agreement. Respondent shall provide, in writing, the name, address, and telephone number, of the employer; and the name of the R.N. who will be Respondent's closest R.N. nursing supervisor, (who shall be familiar with the Respondent's day-to-day activity and nursing practice), to the Board's Practice Specialist within ten (10) days of accepting employment;

6. Respondent's employer(s), through her closest R.N. nursing supervisor familiar with the Respondent's day-to-day nursing practice, shall provide quarterly employer reports to the Board's Practice Specialist. Said reports shall provide information about the Respondent's nursing practice and care. Said reports shall be due on the 20th day of each quarter in the months of January, April, July, and October. Upon accepting employment, the quarterly reports shall be due on the first quarter closest to the months scheduled above. The reports shall be required for the duration of the stayed suspension.

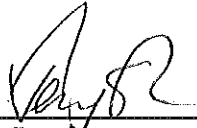
7. Respondent is to notify the Board's Practice specialist in writing of any and all nursing employment, any and all changes of employment, and any change of home address, within ten (10) days of the change(s).

8. Respondent is required to self-report any relapse.

9. Respondent's license, when issued, shall be limited in that she is not to have any access to scheduled drugs, medication storage areas, or the keys to medication storage areas, (rooms, carts, cabinets, etc.).


10. Respondent shall provide the Board's representatives any and all authorizations requested by the Board related to Respondent's employment, medical treatment, substance abuse treatment, or any other requested releases for information.

IT IS SO ORDERED.



Terry E. Beck
Hearing Officer

Prepared and Submitted by:



Mark S. Braun
Disciplinary Counsel
900 S.W. Jackson Rm 551-S
Topeka, Kansas 66612-1230

NOTICE REGARDING RELIEF FROM THIS ORDER
STATEMENT OF APPEAL RIGHTS

This is an Initial Order. The parties to whom this Initial Order is issued may file a petition for review with the Agency Head within fifteen (15) days after service of this order. The petition for review must state the specific grounds upon which relief is requested. Unless a later date is stated within the Initial Order, a stay is granted, or the order is reviewed, an Initial Order shall become a final order without further notice or proceedings thirty (30) days after the date of service as indicated by the attached certificate of service.


CERTIFICATE OF SERVICE

This is to certify that on the 10th day of October, 1996, I deposited a true and correct copy of the Initial Order in the United States Mail, first class mail, postage prepaid to the following:

Janet Jackson
5106 Garner La.
Merriam, Kansas 66203

and by hand delivery to:

Mark S. Braun
Assistant Attorney General
Kansas State Board of Nursing
900 S.W. Jackson Rm 551-S
Topeka, Kansas 66612-1230



Diane M. Glynn, J.D., R.N.
Practice Specialist