

BEFORE THE KANSAS STATE BOARD OF NURSING
Landon State Office Building
900 SW Jackson, Suite 551-S
Topeka, Kansas 66612-1230
(785) 296-8401

IN THE MATTER OF
SUSAN PETERSON
LPN ENDORSEMENT APPLICANT
LICENSE NO. 13-060263-092

Case No. 97-0100-7

**MEMORANDUM DECISION
AND INITIAL ORDER**

NOW ON this 30th day of October, 1997, the above-captioned matter comes on decision upon the application of Respondent, Susan Peterson, for licensure as a licensed practical nurse and upon her appeal of the Summary Order of the Board dated September 4, 1997, denying said application.

Susan Peterson will be referred to herein as "Applicant" or "Respondent" and the Kansas State Board of Nursing will be referred to as the "Petitioner".

The Petitioner, Kansas State Board of Nursing, appears by and through its Disciplinary Counsel, Assistant Attorney General Mark S. Braun. The Respondent appears in person and by her attorney, Lisa Nathanson.

The matter was heard, pursuant to proper notice, on October 29, 1997.

The Board has proper jurisdiction of the parties and of the subject matter of the proceeding.

The record consists of the testimony presented at the hearing on October 29, 1997, and Petitioner's Exhibit 1, admitted without objection, which consists of a written argument by Respondent's counsel, a case report of James H. Mahr, Respondent's parole officer, a letter report dated October 6, 1997, of Karen L. Martin, M.A., Licensed Professional Counselor, and a letter from Amy Baldwin, dated September 30, 1997, directed to Respondent's counsel.

Upon considering the evidence, the statements and arguments of counsel, and being otherwise well and duly advised in the premises, the Hearing Officer finds and orders as follows:

1. Respondent filed her Application for Licensure as a Licensed Practical Nurse on or about March 27, 1997. In connection with said application, the Respondent answered question no. 12, "Have you ever been convicted of a misdemeanor or felony?" in the affirmative. Respondent attached to her application certain records of her criminal convictions.

2. The application was denied by a Summary Order of the Board dated September 4, 1997. The Respondent timely requested a hearing upon the Summary Order.

3. At the hearing, the Respondent took no issue with the factual findings of the Summary Order concerning the fact of her being convicted in three separate criminal cases for property crimes, two of which were felonies, and having served two periods of incarceration in the custody of the Secretary of Corrections. Accordingly, the Findings of Fact numbered 1, 2, 3, and 4, including the subparts thereof, are adopted and incorporated herein by reference.

4. The Respondent, further, takes no real issue with the Findings of Fact set forth in paragraphs 5 and 6 of the Summary Order but contends that as applied to her, the stark factual record of her criminal convictions and incarceration does not paint a true picture of her present character and morals.

5. The criteria of *Vakas v. Kansas Board of Healing Arts*, 248 Kan. 589, 808 P.2d 1355 (1991), is instructive and persuasive in evaluating whether the Respondent should be granted a license. Although the present case does not involve a reinstatement application, the Respondent's situation is such that the *Vakas* criteria should be considered. Those factors are: (1) the present moral fitness of the applicant; (2) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession; (3) the extent of applicant's rehabilitation; (4) the nature and seriousness of the original misconduct; (5) the conduct subsequent to discipline; (6) the time elapsed since the original discipline; (7) the applicant's character, maturity, and experience at the time of the original revocation; and (8) the applicant's present competence in medical nursing skills.

Again, although this does not involve a reinstatement application after a prior instance of professional discipline, the Applicant's conduct and misconduct prior to her nursing training and original application should be contrasted with her present moral fitness and the other factors espoused in *Vakas*.

6. The Applicant freely testified as to the facts surrounding her prior criminal convictions. One such conviction involved theft from an employer. She has served two periods of incarceration, the first from November of 1986 to May of 1988, and the second from July of 1990 to April of 1991. She has been on parole since her release in 1991.

7. Since her release, the Applicant has satisfactorily performed all of the terms and conditions of her parole with the sole exception of paying the restitution required by her parole. Applicant's counsel informs the Board that she will be released from parole notwithstanding that she has not paid the required restitution. Respondent testified that she was unable to pay the restitution in a timely fashion due to a series of severe family misfortunes and financial difficulties. Because of family health problems including a complicated pregnancy and injury to her husband, the family has been under a severe financial strain. Notwithstanding that, she has paid some amounts on the restitution and intends to pay the restitution as best she can.

Following her release from prison, the Applicant has attended and completed her nursing school and passed the State Boards. Currently she works in a position as a biller for a lawn and garden center and has responsibility for the handling of money. She has satisfactorily completed her counseling programs and has a positive recommendation from her parole officer to the Board. She has engaged in no criminal activity since 1990, the date of her last conviction. She has married and had two children. She has testified that if she were to be granted a license, she would not be adverse to conditions and monitoring on the part of the Board.

8. The purpose of the Kansas Nurse Practice Act, *K.S.A. 65-1113, et seq.* (KNPA) is to protect the public from licensees who might jeopardize the public safety or welfare. The only issues of relevance in this regard are the Applicant's three prior criminal convictions and her failure

to pay the restitution which has been ordered by the Court. Considering these issues in conjunction with the *Vakas* factors, the Hearing Officer finds that the present moral fitness of the Applicant appears to be satisfactory. This is attested by the positive recommendation of her parole officer and her conduct in the last seven years since the last criminal conviction. Further, she has demonstrated a proper consciousness of her prior wrongful conduct and the disrepute which such conduct would have brought to her profession should she have been a nurse at that time. The Applicant appears to have been conscientious in her rehabilitation programs. She has satisfactorily completed all of such rehabilitation programs except the payment of restitution. The nature and seriousness of her conduct might mitigate against granting a license as the Summary Order found. However, the time elapsed since such conduct and her exemplary conduct since the criminal convictions and incarceration serves to allay the fears created thereby. The Applicant appears to have grown in character and maturity since the time of her criminal activity and the testimony reveals there were mitigating circumstances in her life at that time. The Applicant's present competence in nursing skills is not an issue since she has recently passed the Boards.

9. In light of the foregoing findings, the Hearing Officer finds that *K.S.A. 65-1120(a)(2)* has been violated. That is the Applicant has been guilty of felonies and is not rehabilitated to a sufficient degree to warrant the public trust. She has not been rehabilitated sufficiently because of the failure to pay the restitution which was a part of her parole.

10. However, the Hearing Officer believes that the more appropriate disposition of the matter would be to grant her a license pursuant to her application and immediately suspend the same. The suspension of her license would be stayed upon the following conditions:

- a. That upon obtaining nursing employment, the Applicant's employer shall submit reports to the Board's Nurse Practice Specialist on a quarterly basis concerning her work performance and competence. Such reports shall be by a RN who is directly in charge of the supervision of the Applicant.

- b. That the Applicant remain compliant with the conditions of her parole so long as she is still on parole. That upon her being discharged from parole, she shall notify the Board's Nurse Practice Specialist of that fact. In the event that restitution still remains due and payable, the Applicant shall continue to make payments on such restitution as shall be deemed satisfactory by the Board's Nurse Practice Specialist.
- c. Applicant shall execute all necessary releases and authorizations necessary for the Board to obtain information from her employer and parole officer.
- d. Applicant shall, within 10 days of obtaining or changing nursing employment, notify the Board of the name and address of her employer and name of her most immediate supervisor.
- e. That the license card of the Respondent, when issued, shall bear a "S" on its alert code.
- f. That the length of the suspension shall be for the initial period of licensure.
- g. That the Applicant pay the costs of this proceeding in the amount \$35.00 within thirty days of the finalization of this Initial Order.

IT IS SO ORDERED.



TERRY E. BECK, Hearing Officer

Dated: 11-3-97