

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

IN THE MATTER OF:)
)
) **CASE NO. 95-0324-0**
CAROLE JEAN MAHAFFEY)
RN APPLICANT)

INITIAL ORDER

Now on this 12th Day of March, 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, Carole Jean Mahaffey, appears in person 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 states she is aware of this right, but she is waiving that right and wishes to proceed without counsel.

The Hearing Officer notes for the record that the Petition and Notice of Hearing were served on the Respondent February 28, 1996, by placing same in the United States Mail to her at 9816 Willow Avenue, Apt. 1B, Kansas City, Mo. 64134. Upon inquiry, Respondent states she received the Petition and Notice of Hearing.

The Hearing Officer inquires of the Respondent if she has had the opportunity to review the Petition. Respondent states that she has had the opportunity. The Hearing Officer states that this matter comes on for hearing on the Respondent's application for licensure, and the allegation in the Petition that disciplinary action had been taken against the Respondent's license to practice as a nurse in Kentucky, by the Kentucky Board of Nursing.

The Hearing Officer informs the Respondent that Kansas law provides that action taken in one state is also grounds for disciplinary action in Kansas, either based upon the application, or after having been licensed. The Hearing Officer informs the Respondent: that she has the opportunity to admit or deny the allegations in the Petition; that if such allegations are admitted, the Hearing Officer will have to make a finding that the Kansas act has been violated by virtue of the action in Kentucky, and then take action the Hearing Officer deems appropriate under the statute; and that if she denies the allegations, the matter will proceed to hearing on the allegations in the Petition. The Hearing Officer inquires of the Respondent if she understands the above information. The Respondent states that she understands this information.

The Hearing Officer inquires whether the Respondent admits or denies the allegations, that disciplinary action was taken against her license in Kentucky. Respondent states that she admits that such action was taken against her license in Kentucky.

The Petitioner's counsel offers Petitioner's Exhibit No. 1, which is a packet of materials containing: (A) a certified copy of the verification of licensure and discipline from the Kentucky Board of Nursing and the verification form (Section II of the Kansas RN

Endorsement Application), which the applicant sent to the Kentucky Board for verification of licensure, and the Kentucky Board sent directly to the Kansas Board; and (B) a certified copy of the "Findings of Fact, Conclusions of Law, and Order" finding that the Respondent violated the Kentucky licensure act by practicing nursing without a license because she failed to renew her license. Her new application to Kentucky was granted, but she was ordered to pay a civil penalty of three-hundred-seventy-five (\$375.00) dollars, and assessed half the stenographic record costs as a hearing fee. Petitioner's Exhibit No. 2 is a packet of materials containing: (A) telefax transmittal record from the Kentucky Board of Nursing to Mr. Harry Holloway, Kansas Board Nursing, faxing a copy of an Order in the Franklin County (Kentucky) Circuit Court issuing a temporary injunction against the Kentucky Board of Nursing; (B), a letter from the Respondent to the Kentucky Board of Nursing in which the Respondent paid the civil penalty and her half of the stenographic costs; (C) a copy of the same order identified in Exhibit No. 1(B) above; and (D) a copy of a handwritten document which purports to be a waiver of time in her Kentucky Board of Nursing case. Petitioner's exhibits are admitted without objection.

Petitioner states his position that the Respondent be granted a license to practice in the State of Kansas, but that she be publicly censured and ordered to pay the costs of this proceeding.

The parties agree that there has been great confusion in this matter, because of the difficulty in obtaining records from the Kentucky circuit courts, and the fire-loss of her previous attorney's records.

Respondent states that she was not aware of any action against her Kentucky license until the Kansas Board of Nursing contacted her about its investigation. She states that she was aware that the Kentucky Board intended to discipline her, but she thought that the Kentucky circuit court case was settled so that no action was to be taken, nor was it to be a part of her record. Respondent points out that this case is eight years old, and that she has not had the problem in any of the other several states in which she holds licenses. Respondent states that she is now very aware.

Respondent offers Respondent's Exhibit No. 1, a telefax transmittal page from her attorney in her Kentucky administrative and circuit court cases, with an affidavit from her attorney; Respondent's Exhibit No. 2 is an August 14, 1995 memo to file regarding a telephone conversation regarding the Kentucky case; Respondent's Exhibit No. 3 is an agreed order of dismissal of the Kentucky Circuit Court case; and Respondent's Exhibit No. 4 is a copy of the Order granting this Respondent a temporary injunction in the Kentucky Circuit Court case, as previously identified in Petitioner's Exhibit No. 2(A) above. Respondent's Exhibits Nos. 1-4 are admitted without objection.

The Hearing Officer states that the order of the Kentucky Board of Nursing, which remained in effect upon the dismissal of the Franklin County Circuit Court case, found that the Respondent had practiced as a nurse in Kentucky for some period of time due to some inadvertence. For that Kentucky violation, the Respondent was disciplined by being ordered to pay the civil penalty and other costs.

The Hearing Officer states he is prepared to rule. Based upon the statements of the parties and the evidence presented, the Hearing Officer makes the following Findings Of Fact, Conclusions of Law, and issues this Order.

FINDINGS OF FACT

1. Respondent submitted a Registered Nurse Endorsement Application seeking license to practice as a registered professional nurse in the State of Kansas.

2. The Notice of Hearing and Petition in this matter were sent to the Respondent at her last address known to the Board by first class mail on February 28, 1996.

3. Respondent was informed of her rights to an attorney and a hearing in this matter, and knowingly waived that right and chose to appear on her own behalf.

4. Respondent stipulated or admitted that disciplinary action had been taken against her license to practice as a RN by the Kentucky Board of Nursing for practicing nursing without a license in that state by not filing her renewal application and continuing to practice. That discipline was a civil penalty and costs.

5. Respondent paid the penalty and costs. Respondent has practiced nursing in the State of Kentucky and other states without any further disciplinary action.

6. The Kentucky discipline occurred in 1989 for conduct in 1988.

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 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 against the Respondent's license to practice nursing in the state of Kansas, 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.

3. 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.

4. Notice of these proceedings and service of the notices in these proceedings were done in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq., and are therefore proper.

5. Based on Petitioner's exhibits, the Respondent's exhibits, and the Respondent's statements, Respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., specifically that the Kentucky Board of Nursing took disciplinary action her license to practice nursing in the State of Kentucky. Such action constitutes a violation of the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., specifically K.S.A. 65-1120(a)(8).

6. Respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., as alleged in the Petition, as an extremely technical violation of the Kansas Act.

7. The Respondent knowingly and understandingly waived her rights to an attorney and a hearing in this matter.

8. The Respondent has been informed of her rights to appeal this matter pursuant to statute. Respondent knowingly waives her right to appeal.

ORDER

Based on the above findings of fact and conclusions of law, the Hearing Officer determines that he must take some action, regardless of how long ago the Kentucky action was taken. **IT IS THEREFORE ORDERED** pursuant to the disciplinary remedies available under K.S.A. 65-1120(a), Respondent's application to practice as registered professional nurse (R.N.) in the State of Kansas is hereby granted. Respondent is privately censured.

Costs in this matter are waived.


The Hearing Officer informs the Respondent of that she has time in which to appeal this order if she does not agree with the decision, and that she cannot obtain a license until that time period passes. However, she is also informed that she may waive that right and get a license effective immediately. The Respondent waives her right to appeal, stating that she is not interested in an appeal.

IT IS SO ORDERED.



Terry E. Beck
Hearing Officer

Prepared and Submitted by:



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Assistant Attorney General
Disciplinary Counsel
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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.

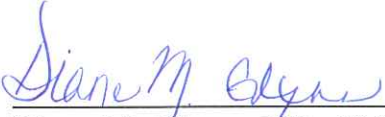
CERTIFICATE OF SERVICE

This is to certify that on the 29th day of May, 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:

Carole Jean Mahaffey
11903 Lone Jack - Lee's Summit Road
Lee's Summit, Mo. 64086

and by hand delivery to:

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



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