

-5E/ 2799, 116A

**FILED**

**BEFORE THE KANSAS STATE BOARD OF NURSING** FEB 13 2008

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

**KSBN**

**IN THE MATTER OF  
MARILENA D. PEREZ  
License No. New LPN Applicant**

**Case No. 07-867-1**

FILED - DRP

14 FEB '08 4:48:58

**CONSENT AGREEMENT AND FINAL ORDER**

NOW ON this 15<sup>th</sup> day of February, 2008, the Kansas State Board of Nursing (hereinafter "the Board"), represented by Assistant Attorney General, Alma A. Heckler, and Marilena D. Perez (hereinafter "Respondent"), represented by her attorney, Mark E. McFarland of Wallace, Saunders, Austin, Brown & Enochs, Chtd., hereby enter into this Consent Agreement and Final Order (hereinafter also may be referred to as "this agreement") and proffer evidence and make recommendations, and the hearing officer accepts such proffered evidence and adopts the parties' recommendations and makes the following findings of fact and orders:

**AGREED FINDINGS OF FACT**

1. Respondent is an applicant to practice nursing in the state of Kansas and Respondent's completed application was received by the Board on October 24, 2007. The Board has jurisdiction over Respondent and the subject matter of this action.
2. Respondent's address of record is 2607 Chainey #2, Garden City, Kansas 67846.
3. 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. After an investigation, the Board's investigative committee found reasonable grounds to believe that Respondent may have violated the Kansas Nurse Practice Act, K.S.A. 65-1120, and referred this matter for further proceedings.

5. The Board 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.

6. On July 29, 2004, a five (5) count felony indictment was filed against Respondent in the United States District Court for the District of Maryland, Case No. 04-CR-00359-AMD. On May 13, 2005, Respondent entered into a plea agreement whereby she agreed to enter a "Guilty" plea to one (1) felony count and the U.S. Attorney agreed to dismiss the remaining charges. On November 16, 2007, Respondent's plea agreement was accepted; Respondent entered a plea of "Guilty" to one (1) felony count; and Respondent was convicted, ordered to pay restitution in the amount of \$12,500.00 and placed on supervised probation for a period of two (2) years.

7. Being found "guilty" of a felony is a violation of the Kansas Nurse Practice Act. Respondent agrees that the Board is prepared to prove that Respondent has violated K.S.A. 65-1120(a)(2) by having been found guilty of a felony.

8. 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**

9. The Board 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.

10. Respondent has violated the Kansas Nurse Practice Act by having been found guilty of a felony in violation of K.S.A. 65-1120(a)(2).

### **POLICY STATEMENT**

11. The role of the Board is to protect citizens of the state of Kansas.

### **DISPOSITION**

12. By entering into this Consent Agreement and Final Order, Respondent and the Board stipulate and agree to 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.

13. Upon the parties entering into this Consent Agreement and Final Order, Respondent and the Board stipulate and agree that the Board shall grant Respondent's application for an initial license subject to the following:

(a) Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, Respondent and the Board stipulate and agree that this agreement will continue through any renewal periods of Respondent's nursing license until Respondent completes all of the conditions and requirements of this agreement. Further, Respondent and the Board stipulate and agree that in the event of a lapse of Respondent's nursing license during the duration of this agreement, reinstatement of Respondent's nursing license shall be contingent upon this Consent Agreement and Final Order continuing in effect until Respondent completes each of the conditions and requirements of this agreement.

(b) Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, Respondent and the Board stipulate and agree that simultaneously with the Board's granting Respondent's application for an initial license to practice nursing in the state of Kansas as set forth in this Section 13, and consistent with the terms and conditions of this agreement, Respondent's license to practice nursing in the state of Kansas is immediately suspended until the Respondent completes her probation in Case No. 04-CR-00359-AMD and all of the conditions and requirements of this agreement. However, Respondent and the Board further stipulate and agree that simultaneously with the Board's suspension of Respondent's license to practice nursing in the state of Kansas as set forth in this Section 13(b) and consistent with the terms and conditions of this agreement, the suspension of Respondent's license to practice nursing in the state of Kansas is immediately stayed, and the Board shall issue and Respondent shall receive a license card which shall be issued with an "S" placed in the status code portion of the license card to indicate that the license is "Suspended with a Stay". Provided Respondent continues to meet all the conditions of her probation in Case No. 04-CR-00359-AMD as determined by the United States District Court having jurisdiction over that subject matter, and all of the conditions and requirements of this agreement, the stay of the suspension of Respondent's license to practice nursing in the state of Kansas shall continue and remain in effect, and Respondent shall be eligible to be employed in a position that utilizes her nursing license subject only to the limitations on her license as set forth below in Section 13(c). The Board stipulates and agrees that it will not institute, cause to be instituted, suggest the institution of, or otherwise assist in any way, other than required by law or authorized by Section 17 of this agreement, in any action to terminate, lift, or modify in any way the stay provided for

in this Section 13(b) of the Board's suspension as long as Respondent continues to meet all the conditions of her probation in Case No. 04-CR-00359-AMD as determined by the United States District Court having jurisdiction over that subject matter, and the conditions and requirements of this agreement.

(c) Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties stipulate and agree that simultaneously with the stay of the suspension of Respondent's license to practice nursing in the state of Kansas, Respondent's license to practice nursing in the state of Kansas is immediately limited and subject to the following limitations:

(i) Respondent shall not be eligible to be employed in a position utilizing her nursing license for any nursing home, long-term care facility, home health service, or with any mental patient in any setting; and,

(ii) Respondent, while working in a position utilizing her nursing license, shall be supervised at all times by a registered nurse (RN) on site.

The Board shall issue and Respondent shall receive license card which shall be issued an "L" in the status code portion of the license card to indicate that the license is "Limited". The Board stipulates and agrees that it will not institute, cause to be instituted, suggest the institution of, or otherwise assist in any way, other than required by law or authorized by Section 17 of this agreement, in any action to modify in any way the limitations provided for in this Section 13(c) as long as Respondent continues to meet all the conditions of her probation in Case No. 04-CR-00359-AMD as determined by the United States District Court having jurisdiction over that subject matter, and the conditions and requirements of this agreement.

14. The Board stipulates and agrees that it shall not take additional disciplinary action against Respondent's nursing license for the violation stated above as long as Respondent completes each of the following conditions and requirements:

(a) Respondent shall immediately inform all employers and prospective employers of this Consent Agreement and the Final Order and her criminal conviction as required by the conditions of probation outlined in Item B contained in the Standard Conditions of Supervision of the sentencing journal entry in Case No. 04-CR-00359-AMD;

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

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

(d) Respondent shall not violate the laws of the United States, the State of Kansas, or any political subdivision of any State during the duration of this agreement. Traffic infractions shall not be considered a violation of the laws;

(e) Respondent shall submit Reports from Respondent's employer 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: Prior to Respondent securing employment that utilizes her nursing license, Respondent is to mail to the Board 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 consent agreement. Once Respondent is employed in a position that utilizes her nursing license, a nursing performance report is due by the

10th day of every third month 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:

- (i) Incorporation of information on facility letterhead stationary is preferred;
- (ii) Letter format is acceptable, with the date of the report identified;
- (iii) Evaluator's name, telephone number, address, license number and nursing credentials;
- (iv) Respondent's name, address, telephone number, license number; and,
- (v) 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; and,
  - F. Interactions with staff and administration.

(f) Respondent agrees to notify the Board's Legal Division of any changes in her address and/or telephone number, as well as, any employment terminations or employment changes or additions. All such notifications shall be made in writing within fourteen (14) days of such a change.

15. Respondent acknowledges and agrees that Respondent is responsible for the costs related to satisfying the conditions and requirements of this agreement. Respondent further acknowledges and agrees it is a violation of this agreement to provide the Board with false information regarding compliance with this agreement.

16. If Respondent does not meet the conditions and requirements set forth in Section 14, then the Board may request additional sanctions against Respondent's license or application for a license. Respondent shall be sent notice of such action and shall be entitled to an evidentiary hearing to determine whether Respondent has complied with the conditions and requirements set forth in Section 17, but Respondent acknowledges and agrees that she shall not contest the violation identified herein and resulting in this agreement.

17. All parties understand that if an action based on Respondent's alleged failure to meet the conditions and requirements of this agreement is filed, K.S.A. 77-531 requires the Notice of Hearing to be served upon Respondent and Respondent's attorney of record, if any. Respondent and the Board stipulate and agree that only serving the Notice of Hearing upon Respondent will be proper service and it is the Respondent's responsibility to contact her attorney, if one continues to be employed at that time or any other attorney hired by Respondent to represent her before the KSBN in reference to the action.

18. Respondent and the Board acknowledge, stipulate and agree that after an evidentiary hearing, if it is determined that Respondent has failed to comply with any of the



conditions or requirements of this Consent Agreement and Final Order, then the stay of the suspension of Respondent's license to practice nursing in the state of Kansas shall be lifted and will remain so for six (6) months from the date of said finding. Respondent will not be allowed to practice nursing in the state of Kansas during the period of time the stay is lifted and Respondent's license to practice nursing in the state of Kansas is suspended.

19. Respondent and the Board acknowledge, stipulate, and agree that after an evidentiary hearing, if it is determined that Respondent has failed for a second or subsequent time to comply with the conditions or requirements of this agreement, then the stay of the suspension of Respondent's license to practice nursing in the state of Kansas shall be lifted for a period of one (1) year from the date of said finding. Respondent will not be allowed to practice nursing in the state of Kansas during the period of time the stay is lifted and Respondent's license to practice nursing in the state of Kansas is suspended.

20. Respondent acknowledges and agrees that upon the stay of the Board's suspension of her license to practice nursing in the state of Kansas being lifted due to a finding of non-compliance with this agreement, the Board will not issue an order staying the Board's suspension of Respondent's license to practice nursing in the state of Kansas until Respondent has, following the prescribed time period of suspension, provided written verification to the Board that Respondent is in compliance with all conditions and requirements of this agreement. Upon Respondent providing said written verification the Board shall immediately issue an order staying the Board's order suspending Respondent's license to practice nursing in the state of Kansas.

21. At such time that Respondent provides the Board with documentation showing that she has successfully completed her probation in Case No. 04-CR-00359-AMD, the Board shall terminate this disciplinary case and any and all discipline against Respondent set forth herein, and issue an order finding that Respondent has successfully

satisfied the conditions and requirements of this Consent Agreement and Final Order. This agreement does not prohibit the Board from taking disciplinary action against Respondent's license for any violations of the Kansas Nurse Practice Act committed by Respondent after the date of this agreement.

22. 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 and is a public record.

23. By signing this Consent Agreement and Final Order, Respondent acknowledges that Respondent has read and understands the entire document, and agrees to be bound by its terms. This Consent Agreement and Final Order constitutes the entire agreement between the parties and may not be modified except in writing and approved by all parties.

24. 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 CONSENT AGREEMENT AND FINAL ORDER.

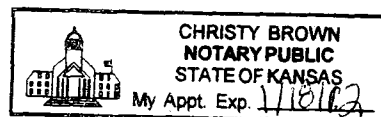
**IT IS SO ORDERED.**

\_\_\_\_\_  
Marilena D. Perez  
2607 Chainey #2  
Garden City, Kansas 67846

\_\_\_\_\_  
Sandra L. Sharon, Presiding Officer

Notary  
Public

Christy Brown



APPROVED BY:

WALLACE, SAUNDERS, AUSTIN,  
BROWN & ENOCHS, CHTD.

---

Mark E. McFarland #14138  
10111 W. 87<sup>th</sup> Street  
P.O. Box 12290  
Overland Park, Kansas 66282  
(913) 888-1000 – Telephone  
(913) 888-1065 – Facsimile  
[mmcfarland@wsabe.com](mailto:mmcfarland@wsabe.com)

Counsel for Respondent

---

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

CERTIFICATE OF SERVICE

On the 15<sup>th</sup> day of February, 2008, I mailed a copy of this CONSENT AGREEMENT AND FINAL ORDER to:

Marilena D. Perez  
2607 Chainey #2  
Garden City, Kansas 67846

Mark E. McFarland  
Wallace, Saunders, Austin, Brown & Enochs, Chtd.  
10111 W. 87<sup>th</sup> Street  
P.O. Box 12290  
Overland Park, Kansas 66282

Counsel for Respondent



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