

BEFORE THE KANSAS STATE BOARD OF NURSING
Landon State Office Building, 900 S.W. Jackson #1051
Topeka, Kansas 66612-1230

FILED
MAY 23 2011

IN THE MATTER OF
MELISSA D. BOYLE
License No.

KSBN

Case No. 10-1063-4

CONSENT AGREEMENT AND FINAL ORDER

NOW ON THIS 19 day of May, 2011, the Kansas State Board of Nursing, represented by Assistant Attorney General, Alma A. Heckler, and the Respondent, Melissa D. Boyle, by and through her counsel, Anthony M. Singer, hereby enter into this agreement and proffer evidence and the hearing officer adopts those recommendations and makes the following findings of fact and orders:

AGREED FINDINGS OF FACT

1. Respondent is licensed to practice nursing in Kansas through October 31, 2011. The Kansas State Board of Nursing (KSBN) has jurisdiction over the Respondent and the subject matter of this action.
2. Respondent's address of record is P. O. Box 13 350 2nd Street, Agra, KS 67621.
3. The Respondent understands that pursuant to K.S.A. 77-515, respondent may be represented at respondent's expense by, an attorney during these proceedings. Respondent acknowledges that this agreement will be an open record pursuant to the Kansas Open Records Act, K.S.A 45-215 et seq., and may be published or disseminated notwithstanding any state or federal law otherwise restricting public access to, or dissemination of, any personal or health care information, or any information or records of substance abuse evaluation and/or treatment contained herein.
4. After an investigation, the Board's investigative committee found reasonable grounds to believe that the respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1120, and referred this matter for further proceedings.

5. 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.

6. (a) A petition was filed on 2/25/2011 to take disciplinary action against the licensee's license and alleged the following:

(b) While employed at Phillips County Retirement Center in Phillipsburg, Kansas, respondent engaged in inappropriate treatment of residents.

7. The above incidents are violations of the nurse practice act. The Respondent agrees that the board is prepared to prove that respondent has violated:

Count 1: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(e)(3), physical abuse, which shall be defined as any act or failure to act performed intentionally or carelessly that causes or is likely to cause harm to a patient by any threat, menacing conduct, or other nontherapeutic or inappropriate action that results in or might reasonably be expected to result in a patient's unnecessary fear or emotional or mental distress.

Count 2: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(c), failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient.

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 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.

10. Respondent has violated the Kansas Nurse Practice Act as follows:

Count 1: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(e)(3), physical abuse, which shall be defined as any act or failure to act performed intentionally or carelessly that causes or is likely to cause harm to a patient by any threat, menacing conduct, or other nontherapeutic or inappropriate action that results in or might reasonably be expected to result in a patient's unnecessary fear or emotional or mental distress.

Count 2: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(c), failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient.

POLICY STATEMENT

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

DISPOSITION

12. By entering into this Consent Agreement and consenting to the entry of the Final 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.

13. Upon the parties entering into this Consent Agreement and with the respondent having met all statutory requirements for reinstatement of respondent's Kansas Nursing license, the respondent's application for reinstatement of respondent's Kansas Nursing license will be granted.

14. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that this Consent Agreement will continue through any renewal periods of respondent's nursing license until respondent completes each of the conditions and requirements of this 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 this Consent Agreement and Final Order remaining in effect until Respondent completes each of the conditions and requirements of this agreement.

15. Based upon this 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 is immediately suspended. The suspension will be stayed as long as the requirements and conditions of this agreement are met.

16. Based upon this 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 is immediately limited. The limitations placed on the license and described below will remain in place until the requirements and conditions of this agreement are met or until the requirements and conditions of this agreement call for the modification of the limitations.

17. 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 shall receive a license which shall reflect the stay of suspension and the limitations on the practice set out below.

(b) Respondent will Submit Reports from the 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 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 beginning the next month after signing this consent agreement.

Once respondent is employed in a position that utilizes her nursing license, or if respondent is currently employed in a position that utilizes his or 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:

- (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.

(c) Complete 4-6 hours of Continuing Nurse Education (CNE) on Caring for Patients with Dementia and Alzheimers, 4 to 6 hours on Documentation, 4-6 hours on Abuse of Patients and 4-6 hours on Reporting Abuse. Ms. Boyle must submit original certificates of completion to

the Board as proof of completion of this nursing education by July 15, 2011. Respondent agrees that none of the listed CNE will count toward any license renewal.

(d) Respondent shall not seek or accept employment with a home health care service or agency, as a private duty nurse or in a nursing home without prior written consent of the Board for the duration of this Consent Agreement.

(e) Respondent shall work only under the supervision of an RN.

(f) The respondent shall immediately inform all employers and prospective employers of this Consent Agreement and the Final Order.

(g) Respondent shall send a money order for \$70 to the Board upon entering into this agreement to pay the cost of this action.

(h) Respondent shall not violate the Kansas Nurse Practice Act during the duration of this 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 this agreement. Traffic infractions shall not be considered violations of the law.

(j) 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.

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

19. 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 this Consent Agreement, but Respondent could not contest the violations listed in this agreement.

20. All parties understand that if an action based on failure to meet the conditions and requirements of this Consent Agreement 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 his or her attorney, if any, in reference to the action.

21. Respondent acknowledges and agrees that if any action based on failure to meet the conditions and requirements of this Consent Agreement is filed during the term of this Consent Agreement and Final Order, or within 30 days after the expiration date, the conditions of this Consent Agreement and Final 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.

22. Respondent acknowledges and agrees that upon a first finding of Respondent not complying with any of the conditions or requirements of this Consent Agreement, the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, shall be lifted for a period of six months 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 this Consent Agreement remain in effect during the period of suspension.

23. Respondent acknowledges and agrees that upon a second or subsequent finding of Respondent not complying with any of the conditions or requirements of this Consent Agreement the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, shall be lifted for a period of one year 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 this Consent Agreement remain in effect during the period of suspension.

24. Respondent acknowledges and agrees that upon the Stay of Suspension being lifted due to a finding of non-compliance with any of the conditions or requirements of this Consent Agreement, the Suspension will not again 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 this Consent Agreement. Upon the Respondent providing said written verification the suspension will again be stayed.

25. The Board will inactivate this case file once respondent satisfies this agreement. This 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 this agreement is entered into.

26. 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. This Agreement is a public record and will be reported to national disciplinary data banks.

27. After successful completion of all of the conditions and requirements of this Consent Agreement by the respondent, the Consent Agreement will be satisfied and the case will be inactivated.

28. 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 constitute the entire agreement of the parties and may not be modified except in writing and approved by all parties. The effective date of this Consent Agreement and Final Order is the date shown on the certificate of service.

29. 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.

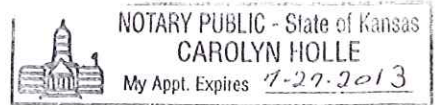
IT IS SO ORDERED.

[Redacted]

Melissa D. Boyle must sign before a Notary Public.

Melissa D. Boyle
Respondent
P. O. Box 13 350 2nd Street
Agra, KS 67621

Carolyn Holle
Notary Public
5-19-2011



[Redacted]

Anthony M. Singer, #18771
Woodard, Hernandez, Roth & Day, L.L.C.
245 Waco, Suite 260
Wichita, Kansas 67202
Counsel for Respondent

[Redacted]

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

[Redacted]

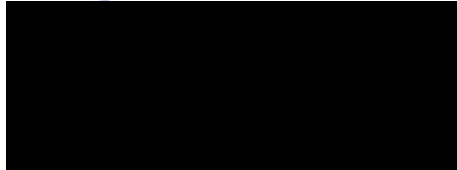
Sandra L. Sharon, Presiding Officer

CERTIFICATE OF SERVICE

On the 25th day of May, 2011, I mailed a copy of this CONSENT AGREEMENT AND FINAL ORDER to:

Melissa D. Boyle
P. O. Box 13 350 2nd Street
Agra, KS 67621

Anthony M. Singer
Woodard, Hernandez, Roth & Day, L.L.C.
245 Waco, Suite 260
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