

Alma Heckler

BEFORE THE KANSAS STATE BOARD OF NURSING

FILED

OCT 21 2013

KSBN

IN THE MATTER OF
DANNY SHANAHAN
License No. Applicant

Case No. 13-066-0

OAH No. 13BN0159

INITIAL ORDER

Now on this 14th day of August 2013, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing (Board/Petitioner). Sandra L. Sharon was duly appointed Presiding Officer pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing, appears by Assistant Attorney General Alma A. Heckler, Disciplinary Counsel for the Board. The Respondent, Danny Shanahan, appears in person.

The record in this matter was held open so an affidavit could be received from the Board's investigator, Betty Stewart, who was not able to testify at the hearing due to a family circumstance.

Findings of Fact

1. On January 5, 2013, the Board received an Endorsement Application from the respondent for license to practice nursing in the State of Kansas.
2. The respondent's original licensing state is Oklahoma.
3. On the Endorsement Application, at Question 13, where the respondent was asked "has **any** license, certification, or registration (nursing or other) ever been denied, revoked, suspended, limited or disciplinary action taken by a licensing authority of any state, agency of the U.S. government, territory of the U.S. or country?" The respondent marked "Yes" and indicated he had been disciplined by the Arkansas State Board of Nursing.
4. On or about July 8, 2010, the respondent entered into a Consent Agreement with the Arkansas State Board of Nursing. The Consent Agreement reflects that the respondent self-reported on May 5, 2012, that he telephoned an unauthorized prescription of hydrocodone for his own use on or about April 30, 2013.
5. Further, in 2008 the respondent was disciplined by the Arkansas State Board of Nursing for testing positive for marijuana and Darvocet. He was placed on probation for two years and completed the probation March 2010.
6. On March 26, 2013, the Oklahoma Board of Nursing entered into Stipulations, Settlement and Order with the respondent wherein the respondent agreed to submit to an

evaluation complying with the Oklahoma's Board's Evaluation Criteria and agreeing to submit to bodily fluid testing.

7. On May 7, 2013, the respondent's license was temporarily suspended in the State of Oklahoma for violation of the Stipulations, Settlement and Order of March 26, 2013. The respondent failed to comply with the Oklahoma Board's body fluid testing guidelines.
8. On August 1, 2013, the Oklahoma Board of Nursing lifted its Stay on the respondent's license to practice nursing in the State of Oklahoma and the requirement for the respondent to submit to drug screens.
9. On February 15, 2013, the Kansas State Board of Nursing referred the respondent to the Kansas Nurse Assistance Program (KNAP) for a chemical dependency evaluation. The result of the chemical dependency evaluation was that no treatment was recommended for the respondent, but he was assigned to an Extended Evaluation Program.
10. The respondent failed to return a signed agreement to KNAP regarding the Extended Evaluation Program.
11. It was the respondent's position that he did not return the Extended Evaluation Agreement to KNAP on the advice of Betty Stewart, Board Investigator, wherein Ms Stewart advised the appellant to hold off returning the Extended Evaluation Agreement to KNAP awaiting further direction from the Board.
12. Ms Stewart's affidavit indicates she referred Mr. Shanahan to KNAP as directed by the Board's investigative committee. While Ms Stewart had a conversation with the respondent on March 19, 2013, she contends she did not tell Mr. Shanahan that the Board's decision to refer him to KNAP had changed. Ms Stewart states, "I did not at any time tell Mr. Shanahan that he did not have to enroll in and complete any requirements of KNAP."
13. Because the respondent failed to return the Extended Evaluation Agreement to KNAP, his case was closed with KNAP April 5, 2013, and the Board petitioned to deny the respondent's endorsement application on April 29, 2013.

Applicable Law

1. It is a violation of the Kansas Nurse Practice Act to:
 - Have a license to practice nursing denied, revoked, limited, or suspended or to be publically or privately censured, by a license authority of another state...K.S.A. 65-1120(a)(8);
 - Fail to complete the requirements of the impaired provider program of the Board. K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(s).

- Unable to practice with skill and safety due to current abuse or drugs or alcohol.

Discussion

1. When the respondent was disciplined in the state of Arkansas, he violated K.S.A. 65-1120(a)(8).
2. When the respondent failed to participate in Extended Evaluation Program of the Board's impaired provider program, he violated K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(s).
3. Because the respondent failed to participate in the Board's impaired provider program, the Board cannot be sure he is able to practice nursing with skill and safety due to his abuse of drugs or alcohol. This is a violation of K.S.A. 65-1120(a)(4).

Conclusion

1. The Board has shown by a preponderance of the evidence that its petition to deny the respondent's reinstatement application to practice nursing in the State of Kansas be granted. The Board's petition is so granted.
2. Cost of this action shall be assessed against the respondent in the amount of \$70.00 pursuant to K.S.A. 65-1120(d).

Appeal Rights and Other Administrative Relief

Pursuant to K.S.A. 77-527, either party may request a review of this initial order by filing a petition for review with the Kansas State Board of Nursing. A petition for review must be filed within 15 days from the date this initial order was served. Failure to timely request a review by the Kansas State Board of Nursing may preclude further judicial review. The petition for review shall be mailed or personally delivered to: Mary Blubaugh, Executive Director, Board of Nursing, Landon State Office Building, 900 SW Jackson, Suite 1051, Topeka, KS 66612-1230.

Pursuant to K.S.A. 77-531, if the initial order is served by mail, three days are added to the time limits set out above.

Pursuant to K.S.A. 77-530, if a request for review is not made in the time and manner stated above, this initial order shall become effective as a final order 30 days after service.



Sandra L. Sharon
Administrative Law Judge/Presiding Officer
Office of Administrative Hearings
1020 S. Kansas Ave.
Topeka, KS 66612
Telephone: 785-296-2433

CERTIFICATE OF SERVICE

On Oct 18, 2013, I mailed this original document through State Building
Mail to:


Mary Blubaugh
Executive Administrator
Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612
Telephone: 785-296-4325

and a copy of this document through State Building Mail to:

Alma Heckler
Assistant Attorney General
Disciplinary Counsel for the Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612
Telephone: 785-296-4325

and a copy of this document through first class mail to:

Danny Shanahan
3 Winters Drive
Bella Vista, AR 72714



Staff Person
Office of Administrative Hearings