

IN THE MATTER OF  
RACHEL ANN BOLEN  
License No. 13-75516-072

Case No. 11-189-9  
OAH No. 13BN0129

### INITIAL ORDER

This matter comes on for hearing on July 25, 2013 and August 7, 2013 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, Rachel Ann Bolen, appears in person and through her attorney Danielle R. Sanger.

#### Findings of Fact

1. The respondent entered into a Statement of Understanding with the Kansas Nurse Assistance Program (KNAP) on January 7, 2011 for a term of three years. Within the Statement of Understanding, the respondent agreed to submit to random urine drug screens, not use any mood altering drugs, attend two twelve-step meetings per week, and attend monthly monitor meetings.
2. Prior to her agreement with the KNAP, the respondent entered into in-patient treatment at Valley Hope on November 23, 2010. She was discharged from Valley Hope on December 8, 2012.
3. In June and July 2011, the respondent failed attend two twelve-step meetings per week (8 per month). This was the respondent's first noncompliance with KNAP.
4. For the month of January 2012, regarding the respondent's documentation of her attendance at twelve-step meetings, the respondent testified she kept forgetting to take her attendance sheet with her to the meetings. As a result, she had no documentation of participation in twelve-step meetings for January 2012. To resolve her dilemma, the respondent simply used her twelve-step attendance sheet for November 2011 and crudely changed the dates of the meetings she supposedly attended.
5. The respondent testified she did not think this was a big deal because it was her understanding the KNAP program was all about the "paperwork". The respondent also testified the twelve-step attendance sheet she submitted January 2012 was correct.
6. When the respondent was confronted about the false documentation she was given until February 6, 2012 to submit an accurate twelve-step attendance sheet for January 2012. KNAP sent a letter to the respondent on February 2, 2012, notifying her fraudulent act was her second noncompliance with KNAP.

7. On February 6, 2012, the respondent faxed a second twelve-step attendance sheet for January 2012 to KNAP. The respondent asserts everything is the same as the sheet she originally submitted. However, this is not correct. For example, the original sheet indicates the respondent attended a twelve-step meeting called Women's on January 29, 2012 and the leader's signature was Jana. However, on the second sheet the respondent submitted, she indicates she attended Women's on January 30, 2012 and Carol was the signature leader. Further, of the twelve meetings the respondent asserted she attended, the leader's signature on the second attendance sheet differed from the first attendance sheet for ten of the twelve meetings.
8. The respondent's refusal to understand that her actions were seriously fraudulent and at the least dishonest, and the cavalier attitude the respondent demonstrated in this matter reflects poor judgment and a failure to understand the severity her actions caused.
9. Finally, on September 12, 2012, the respondent failed to check-in with KNAP to see if she was selected for a random urine drug screen. Not only did the respondent fail to check-in on that date, she was selected to test and failed to do so.
10. On September 13, 2012, KNAP sent the respondent a closure notice due to noncompliance with KNAP.
11. The respondent attempts to show the Board she is serious about her sobriety by voluntarily submitting herself to drug testing. Tests were taken on June 4, 2013 and June 10, 2013 and were negative for all tested items.

#### Applicable Law

1. The Kansas State Board of Nursing has the authority to examine, license, renew licenses limit, suspend or revoke a license to practice nursing in the State of Kansas for proper legal cause. K.S.A. 74-1106.
2. Grounds for discipline, revocation, limitation or suspension are outlined at K.S.A. 65-1120.
3. It is a violation of the Kansas Nurse Practice Act to commit unprofessional conduct by inaccurately recording, falsifying, or altering any record of a patient or agency or of the Board. K.S.A. 65-1120(a)(6) and K.A.R. 30-3-110(d).
4. It is a violation of the Kansas Nurse Practice Act to commit unprofessional conduct by failing to complete the requirement of the impaired provider program. K.S.A. 65-1120(a)(6) and K.A.R. 30-3-110(s).
5. It is a violation of the Kansas Nurse Practice Act to be unable to practice nursing with skill and safety due to current abuse of drugs or alcohol. K.S.A. 65-1120(a)(4).

### Discussion

1. The respondent's KNAP case was closed September 13, 2012. She remains unmonitored by the Board's impaired provider program. In an attempt to show she was sober, the respondent submitted to voluntary urinary drug screens. However, these tests were taken in June 2013. During the span from September 2012 to June 2013, the respondent went unmonitored, and the Board cannot be assured she remained abstinent during this time. Alcohol abuse was the reason the respondent was in contract with KNAP. Without participation in KNAP, there is no way the Board can be assured the respondent is free from current alcohol abuse. This is a violation of the Kansas Nurse Practice Act at K.S.A. 65-1120(a)(4).
2. The respondent seemed to have a blatant disregard for her need to comply with the structure provided by KNAP. Her cavalier approach to submitting falsified documents to the Board reflects a failure to understand the importance of her compliance, and the purpose for her participation in the program. Participating in KNAP is not just about the paperwork. It is about demonstrating to the Board her ability to comply with the Kansas Nurse Practice Act and to demonstrate skills necessary for this compliance. When the respondent submitted grossly falsified documents to KNAP, she submitted altered and records to the Board. This is a violation of the Kansas Nurse Practice Act at K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(d).
3. Further, the respondent's actions are a violation of the Kansas Nurse Practice Act by failing to complete the requirements of the impaired provider program of the Board. This is a violation of the Kansas Nurse Practice Act at K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(s).

### Conclusion

1. The Board has shown the respondent clearly and willingly violated the Kansas Nurse Practice Act. The Board's Petition to Revoke the respondent's license to practice nursing in the State of Kansas is 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.



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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 Sept. 5, 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:

Rachel Ann Bolen  
710 W. Mosier  
Council Grove, KS 668946

Danielle Sanger  
Sanger Law Office  
5040 Bob Billings Parkway, Suite C-1  
Lawrence, KS 66049

  
\_\_\_\_\_  
Staff Person  
Office of Administrative Hearings



1020 S. Kansas Avenue  
Topeka, KS 66612

Phone: (785) 296-2433  
Fax: (785) 296-4848

Robert M. Tomlinson, Director

Sam Brownback, Governor

July 29, 2013

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IN THE MATTER OF  
RACHEL ANN BOLEN  
License No.: 13-75516-072  
Case No.: 11-189-9  
OAH No.: 13BN0129

KSBN

Danielle Sanger  
Sanger Law Office  
5040 Bob Billings Parkway, C-1  
Lawrence, KS 66049

Alma A. Heckler  
Assistant Attorney General  
Kansas State Board of Nursing  
900 SW Jackson, LSOB Ste. 1051  
Topeka, KS 66612

Dear Ms Sanger and Ms Heckler:

This correspondence is to confirm that the hearing in the above-captioned matter will reconvene on **August 7, 2013 at 9:00 a.m.** at the Office of Administrative Hearings, **1020 S Kansas Avenue, Topeka, Kansas.**

Sincerely,

Sandra L. Sharon  
Administrative Law Judge/Presiding Officer  
Office of Administrative Hearings

SLS:

cc: Rachel Ann Bolen, 710 W Moiser, Council Grove. Kansas.

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KSBN

KANSAS STATE BOARD OF NURSING

Landon State Office Building  
900 SW Jackson, Suite 1051  
Topeka, Kansas 66612-1230

IN THE MATTER OF )  
 )  
Rachael Ann Bolen )  
License No. 13-75516-072 )

Case No. 11-189-9  
OAH No. 13BN0129

ORDER

On November 3, 2016, the above-referenced matter comes for consideration of the Petition for Review filed by Rachael Ann Bolen by and through her attorney, Danielle R. Sanger of Sanger Law Office. Pursuant to K.S.A. 2016 Supp. 77-527(a)(2), the Kansas State Board of Nursing (Board) has delegated to Carol Bragdon, a member of the Board, its authority to make a determination on a Petition for Review of an Initial Order and to issue an order accordingly.

After considering the agency file and the briefs of the parties, the Board makes the following findings of fact, conclusions of law, and order.

Findings of Fact

1. On January 25, 2013, the Board's litigation counsel filed a petition on behalf of the Board with the Office of Administrative Hearings alleging that Bolen had violated the Kansas Nurse Practice Act, K.S.A. 65-1113 *et seq.* Specially, it alleged that Bolen:

(a) committed unprofessional conduct by inaccurately recording, falsifying, or altering any record of a patient or agency or of the Board as set forth in K.S.A. 2013 Supp. 65-1120(a)(6) and K.A.R. 60-3-110(d);

(b) committed unprofessional conduct by failing to complete the requirements of the impaired provider program of the Board as set forth in K.S.A. 2013 Supp. 65-1120 and K.A.R. 60-3-110(s); and

(c) was unable to practice nursing with the skill and safety due to current abuse of drugs or alcohol as set forth in K.S.A. 2013 Supp. 65-1120(a)(a4).

The petition requested that Bolen's license to practice nursing in Kansas be revoked.

2. On July 25, 2013, and August 7, 2013, the Presiding Officer of the Officer of Administrative Hearings conducted a hearing on the Board's petition. The Presiding Officer heard the evidence outlined below.

3. In 1996, the Board issued a license to Rachael Ann Bolen (Bolen) to practice as a registered nurse (RN) in Kansas. In 1997, Bolen began working at the Morris County Hospital (Hospital) as a staff nurse. The Hospital later employed Bolen as a clinical nurse manager. Her responsibilities included supervising and scheduling nursing staff, ensuring that patient care was properly completed, and assisting nurses on the floor as needed.

4. Prior to November 22, 2010, the Hospital did not have any concerns with Bolen being impaired while practicing as a nurse. On that date, however, Bolen was on duty at the Hospital when the chief nursing officer noticed that Bolen had slurred speech, appeared to be drowsy, and was not able to complete a task.

5. The chief nursing officer had Bolen complete a drug screen test at noon, retrieved Bolen's keys to the drug room, and sent Bolen home until the drug screen results were completed. It was clear to the chief nursing officer that Bolen was working as a nurse while impaired.

6. On November 23, 2010, Bolen entered into in-patient treatment at Valley Hope. Bolen sought treatment because of pressure from her spouse and family to do so. She reported to Valley Hope that she "was drinking too much" and would binge drink approximately three times per month for the past year. Bolen told Valley Hope that she drank eight beers and three double shots of vodka the previous day, but denied using any other substance. Bolen's clinical profile stated she may have rigid thinking and tend to intellectualize when confronted with a problem. Bolen was discharged from Valley Hope on December 8, 2010, with a diagnosis of alcohol dependence. The discharge summary stated that Bolen's prognosis was guarded due to a strong streak of self-will, geographical isolation, and marriage issues. Her continuing care plan recommended participation in twelve-step meetings.

7. Bolen's November 2010 drug test was positive for the prescription medication Benzodiazepine, which is Oxazepam. Bolen told the chief nursing officer that her physician had prescribed the medication for her. When the chief nursing officer requested confirmation of the prescription, Bolen never complied. Benzodiazepine is prescribed to help control the withdrawal symptoms from alcohol dependency.

8. On January 7, 2011, Bolen entered into a 3-year contract with the impaired provider program approved by the Board, the Kansas Nurse Assistance Program (KNAP). According to Bolen, she entered into the KNAP for her own protection. As a nurse manager, Bolen had made decisions that had upset some people. She believed being monitored would help if someone would attempt to get her



into trouble or accuse her of being under the influence. After signing the KNAP contract, Bolen returned to work at the Hospital in January 2011.

9. In her contract with the KNAP, Bolen agreed to submit quarterly reports from employers, take random urine drug screens, not use any mood altering drugs, attend two twelve-step meetings per week, submit to random drug screens, attend monthly monitoring meetings, cooperate fully with the KNAP requirements, and not to work in home health, nursing agency, hospice, or as a traveling nurse for the first year. Bolen was responsible for ensuring that her employer submitted the quarterly reports. The KNAP also required Bolen to submit a monthly attendance sheet that was dated and signed or initialed by another person at the twelve-step meeting she attended. The KNAP required the attendance sheet to be sent to the KNAP by the first of each month for the previous month. The participant's attendance was based upon the meetings listed on the attendance sheet when the KNAP received it.

10. The KNAP differentiates between noncompliance with and a violation of the contract. Noncompliance with the contract includes failing to complete a drug screen, attend twelve-step meetings, attend monthly monitoring meetings, provide employer reports, or follow treatment recommendations. A violation of the contract includes a relapse or not following the narcotic key restriction. The consequence of a violation is that the participant is removed from the workforce and required to have a re-evaluation to determine whether treatment is required and whether the person is safe to return to work as a nurse. The program restarts for three years from the date of relapse as if the person had not been in the program previously.

11. After receiving information that Bolen worked at the Hospital while impaired, the Board opened an investigation case and assigned it to investigator Karen Peschka (Peschka). After confirming the information and Bolen's contract with the KNAP, the Board advised Bolen to remain compliant with the terms of her KNAP contract.

12. Bolen submitted attendance sheets for June 2011 indicating she attended six of the eight required twelve-step meetings and for July 2011 indicating she attended 7 of the eight required twelve-step meetings. On August 11, 2011, Regina Walters, the KNAP's program manager, sent a letter to Bolen advising her that her failure to attend the required meetings was her first noncompliance with the terms of her KNAP contract and that the attendance sheet must be received at the KNAP office by the first of each month. The KNAP letter also told Bolen that her employer had not submitted any quarterly reports for her, which was also a noncompliance with her KNAP contract. The KNAP counted these matters as one instance of noncompliance. The KNAP sent a copy of the letter to Peschka.

13. Beginning in August 2011, the KNAP began to receive quarterly reports from Bolen's employers. When Peschka talked to Bolen about her attendance sheets, Bolen stated there was a mix-up on submitting the attendance sheets. On August 30, 2011, Peschka talked with a KNAP employee about the attendance sheets. The KNAP

employee told Peschka the KNAP had changed the dates the attendance sheets were due. The KNAP employee also said Bolen had attended eleven meetings in July 2011, eight meetings in August 2011, and Bolen was in compliance as of August 30, 2011. Another KNAP document summarizing the twelve-step meetings that Bolen had attended while participating in the KNAP showed she attended six meetings for June 2011 and eleven meetings for July 2011.

14. On February 1, 2012, Bolen submitted an altered attendance sheet to the KNAP for January 2012. Bolen took the attendance sheet that she submitted for November 2011 and whited out the dates. She then added the dates to show meetings that she had allegedly attended in January 2012. Bolen said she forgot to take the attendance sheet with her to the twelve-step meetings in January 2012. Bolen also stated she actually attended the twelve meetings listed on the attendance sheet but forgot to get signatures at eight of the meetings, so she had "holes" in her attendance sheet. However, Bolen did not provide the attendance sheet that had the "holes" at the hearing. Bolen did not believe the altered document would be an issue because she had heard that the KNAP was "all about the paperwork." Bolen claimed she talked with each person whose signature was on the attendance sheet and they approved her changing the dates. Bolen said she never tried to hide the fact that she altered the November 2011 attendance sheet for her January 2012 attendance sheet and she did not intend to deceive the KNAP by doing so.

15. On February 2, 2012, Regena Walters sent a notice to Bolen that stated:

I spoke to you today in reference to the 12-step sheet you sent to the KNAP office. This is a copy [of] your November sheets with date changes, which is a fraudulent act. This is your second notification of non-compliance. Both have been in relation to your 12-steps which causes great concern about your recovery. We discussed this in which you went through a number of excuses. You stated to me you are going to a meeting Saturday and will try to back track the meetings you had attended for January and will fax them to this office by Monday, February 6, 2012. This will cause your 12-step submission to be late for this month which will go into the KSBN report as non-compliant. This letter covers the non-compliance notification.

A copy of this letter was sent to Peschka.

16. On February 6, 2012, Bolen faxed to the KNAP a second twelve-step attendance sheet for January 2012. The KNAP entered the following note concerning this submission: "[Bolen] tried to submit previous 12-step sheet with changed dates, which has not been accepted. Resubmitted, per [John Childers] will accept but watch future." Bolen claimed this second attendance sheet was the same as the attendance sheet she had previously submitted for January 2012. Bolen's claim, however, is not correct.

17. The first attendance sheet showed Bolen attended a twelve-step meeting called "Women's" on January 29, 2012, and Jana signed as the leader. The second attendance sheet did not show that Bolen attended a meeting on January 29, 2012, but showed she attended a "Women's" twelve-step meeting on January 30, 2012, and Carol signed as the leader. Additionally, the leader's signature for ten of the twelve meetings that Bolen claimed to have attended in January 2012 were different on the two attendance sheets.

18. On February 7, 2012, Peschka notified Bolen the Board had received information that she may have violated the Kansas Nurse Practice Act. The allegation was that on or about February 1, 2012, Bolen submitted an attendance sheet for the twelve-step meetings that was falsified.

19. From January 26, 2011, to August 14, 2012, Bolen completed 24 urine drug screen tests. Eight of those tests had a creatinine level that was less than the required level for a valid test; this indicates a diluted urine specimen. A low creatinine level can be caused by excessive fluid intake prior to a sample collection or the sample being diluted post-collection. The KNAP sent Bolen three letters advising her to limit her fluid intake two hours before providing a specimen and the next three tests must have an acceptable creatinine level. Generally, this problem is resolved once a participant is notified of it. Neither Bolen nor her physician contacted the KNAP regarding any medical reason that may have caused the low creatinine level.

20. In May 2012, the Chief Nursing Officer at the Hospital became concerned about Bolen's job performance – failing to report a change in a patient's condition and failing to have an RN in attendance on a nursing floor. When those concerns were raised, Bolen resigned. Another employee understood Bolen had been forced to resign. However, Bolen contended that she resigned because she had a completely different style of management than her supervisor.

21. In June 2012, Bolen began working at the Newman Hospital as the hospice coordinator and then in the emergency room.

22. On September 12, 2012, Bolen was randomly selected to take a urine drug screen test. However, Bolen failed to check in on that date to see if she had been selected for a random urine drug screen, which resulted in her failure to take the random drug screen test as required by the KNAP contract. Bolen assumed that her failure to check in for the drug screen test was due to the turmoil in the emergency room at the Newman Hospital where she worked.

23. On September 13, 2012, the KNAP sent a notice to Bolen that she failed to provide a urine drug screen on the date randomly selected and that, without random drug screens, the KNAP could not monitor her abstinence from alcohol and drugs or determine whether she was safe to practice nursing. The KNAP told Bolen her failure to take the randomly selected drug screen was her third and final notice of noncompliance

and the KNAP had closed her case due to her noncompliance with the conditions in her KNAP contract. The KNAP also notified the Board's office of Bolen's noncompliance.

24. On September 14, 2012, Bolen sent an e-mail to the KNAP's program manager stating that when she attempted to check in for the drug screen, she learned she failed to check in earlier that week. Bolen explained, "I have no idea why that happened. I am trying to get use to a new routine but I usually always remember to check in and if I don't remember doing it then I usually panic in the afternoon and check to see if I did." The program manager advised Bolen her case had been closed and the Board had to refer her to the KNAP before she could re-enter the program. In a later e-mail, Bolen asked, "What if I can print off proof that I checked in that day?" The program manager advised Bolen that if she had checked in for the drug screen test, documentation would exist and she would have known to take the test but did not do so – which was the non-compliance issue.

25. When the Board received notice of Bolen's noncompliance with her KNAP contract, Peschka reopened her case.

26. In September 2012, the Newman Hospital placed Bolen on a 30-day suspension to resolve the noncompliance issue. When she was not able to do so, Bolen's employment with the hospital ended.

27. In December 2012, Peschka informed the Board concerning the results of her investigation. Based upon that information, the Board changed the status of the case from investigation to prosecution and referred the matter to its litigation counsel with the recommendation that Bolen be offered a diversion agreement requiring her to enter the KNAP under a new contract.

28. After filing the petition requesting revocation of Bolen's nursing license on January 25, 2013, the Board's litigation counsel sent to Bolen an offer of a consent agreement.

29. On February 15, 2013, Bolen's then counsel contacted the Board's litigation counsel about changing certain provisions, specifically the ability to work as a traveling nurse or in a nursing agency. On February 19, 2013, Bolen signed an employment contract with True Staff, which is located in Ohio, and began working as a traveling nurse. ~~Bolen did not have a supervisor at True Staff, was assigned to a large hospital where she worked in a float pool, and had a charge nurse who oversaw the nurses.~~ On March 5, 2013, Bolen's then counsel provided a copy of Bolen's employment contract to the Board's litigation counsel and asked that the provision prohibiting Bolen from working as a traveling nurse be deleted.

30. Bolen's work as a traveling nurse raised several issues. Primarily, as a traveling nurse, there was no consistent supervision, which is needed to recognize possible signs of impairment or problems that a nurse may be experiencing. Consistent supervision at all times requires on-site supervision by the same person. Working in a

float pool at a hospital meant that a nurse could work anywhere within the hospital and have different supervisors. Other concerns are the difficulty in being able to attend twelve-step meetings and complete a urine drug test, as well as experiencing a loss of support from family and friends by being on the road. The lack of supervision also applied to Bolen being employed as a home health nurse or a hospice nurse. In these types of employment, the Board would not be able to monitor Bolen's safety to practice nursing. When the Board was told of Bolen's employment as a traveling nurse, it withdrew its recommendation for a diversion agreement.

31. On the advice of counsel, Bolen scheduled voluntary drug and alcohol screening tests. On June 4, 2013, Bolen submitted samples of her hair and nails for testing of drugs. The results were negative. On June 10, 2013, Bolen voluntarily submitted samples of her hair for testing of alcohol. The results were negative. Regina Walters testified the KNAP would not accept these tests and results because the testing company was not authorized by the KNAP, the tests were not requested by the KNAP, and the tests were planned rather than random.

32. Dr. Lora Siegle worked with Bolen for about 14 years when she was a nurse at the Morris County Hospital. Dr. Siegle described Bolen as an excellent nurse who has empathy for her patients and good nursing care, especially during a crisis. She stated that Bolen began a new job at the hospital when there was great turmoil and her father was dying of cancer. These problems caused Bolen "some personal problems for which she sought treatment, and as her friend physician, [she was] glad to say the treatment was successful." Dr. Siegle supported Bolen "in trying to put this episode in her life behind her." However, Dr. Siegle admitted that she did not know Bolen had taken a drug test that was positive for benzodiazepine the day before she entered treatment, and she was unaware of the diagnosis given by Valley Hope when Bolen was discharged. Bolen never asked Dr. Siegle to advise the KNAP of any medication she had prescribed for Bolen.

33. Becky Evans had known Bolen since her birth; she observed Bolen as nurse when her family and friends were patients at the Morris County Hospital. She also described Bolen's practice of nursing in a positive manner.

34. Kimberly Ann Kniebel worked as a nurse at the Morris County Hospital during Bolen's employment there. She frequently worked with Bolen and opined that Bolen "was a very good nurse, reliable." When she returned to work in January 2011, Bolen told Kniebel she had treatment at Valley Hope and had enrolled with the KNAP. Since then, Kniebel did not have concerns about Bolen abusing drugs or alcohol.

35. Dana Reddick was a school nurse who also worked part-time at the Morris County Hospital with Bolen for about 14 years. She believed Bolen was a very capable and dependable nurse, before and after treatment. Reddick also knew Bolen personally and saw her socially on a regular basis. She did not believe Bolen was abusing alcohol or drugs. However, Reddick was not aware that Bolen tested positive for drugs prior to

seeking treatment or the diagnosis and prognosis given by Valley Hope when Bolen was discharged.

36. Terryanna Albright was also employed as a nurse by the Morris County Hospital. She described Bolen as an excellent nurse. However, she had concerns about Bolen in November of 2010 and on two instances after her return from treatment when she noticed Bolen had difficulty keeping her eyes open. When she inquired, Bolen told her that she was having problems sleeping. Albright accepted the answer because Bolen's father had passed away in March 2011, she had not seen Bolen take any medication, and she had not smelled any alcohol. Albright was not aware that Bolen tested positive for drugs prior to seeking treatment or the diagnosis and prognosis given by Valley Hope when Bolen was discharged.

37. Lori Sue Underwood is a nurse who also worked with Bolen at the Morris County Hospital. She described Bolen as "an awesome nurse" who was always available when needed. After Bolen returned from treatment, Underwood was not concerned that Bolen was impaired by drugs or alcohol. Bolen told her she was enrolled in KNAP. However, Underwood was not aware that Bolen tested positive for drugs prior to seeking treatment or the diagnosis and prognosis given by Valley Hope when Bolen was discharged.

38. C.O. was the chairperson of the twelve-step group Bolen attended. C.O. stated that Bolen joined the group in 2011 and had been an active participant, attending at least twice weekly and assisting at meetings. She had not seen Bolen exhibiting any signs or symptoms of impairment. The chairperson acknowledged that Bolen did not have the signatures on the attendance sheet for the January 2012 meetings, Bolen wrote the January dates over the November dates, and Bolen submitted the altered attendance sheet to the KNAP. However, C.O. did not believe Bolen "'falsified' this sheet because Bolen was, in fact, present at every meeting that was indicated by the dates on the January 2012 12-step attendance sheet."

39. R.B. was Bolen's twelve-step sponsor. She met Bolen when she joined the twelve-step group and became Bolen's sponsor in the summer of 2012. She had been a drug and alcohol counselor for 25 years. R.B. had not seen any signs or symptoms indicating Bolen had abused drugs or alcohol during the time that she knew Bolen, and she believed Bolen was committed to maintaining her sobriety.

40. Fifteen individuals, including C.O, signed a statement dated June 7, 2013, that Bolen was an active and involved member in their twelve-step program. She regularly attended their meetings for more than two years and assisted with the meetings.

41. Bolen claimed the last time that she drank alcohol was on November 22, 2010. Bolen denied attempting to intentionally dilute the urine drug samples. She had to drive from Council Grove to Manhattan, which is 80 miles round trip, to attend the twelve-step meetings. Bolen claimed she attended more twelve-step meetings than

were recorded on the attendance sheets. Bolen stated Elyse, an employee with the KNAP, advised her to submit the attendance sheets at the monthly monitoring meeting, which was on the last Monday of each month; this method of submitting the attendance sheet ended when Elyse left the KNAP in July or August of 2011.

42. Based upon the evidence presented at the hearing, the Presiding Officer concluded that Bolen violated the Kansas Nurse Practice Act as alleged in the petition and granted the Board's request for revocation of Bolen's nursing license.

43. On September 20, 2013, Bolen filed a timely Petition for Review of the Initial Order with the Board. On October 10, 2013, the Board denied Bolen's Petition for Review.

44. On October 25, 2013, Bolen filed a Petition for Reconsideration and a Petition for Grant of Stay. On November 19, 2013, Bolen filed a Request for a Default Order Granting her Petition for Reconsideration.

45. On December 19, 2013, the Board denied Bolen's Petition for Reconsideration, Petition for Stay of Effectiveness, and Request for a Default Order.

46. On January 14, 2014, Bolen filed a Petition for Judicial Review with the Shawnee County District Court.

47. On June 27, 2014, the district court issued a Memorandum Decision and Order. It found, *inter alia*, that the Board should have granted Bolen's Petition for Review of the Initial Order and allowed the parties submit briefs on whether the Initial Order's conclusion that Bolen violated the provisions in the Kansas Nurse Practice Act were supported by substantial evidence. The district court remanded the case to the Board for further proceedings.

48. On July 25, 2014, Bolen filed a Notice of Appeal of the district court's order.

49. On October 2, 2014, the Court of Appeals issued an order dismissing Bolen's appeal as premature.

50. On March 30, 2016, the Board filed an order granting review and scheduling the filing of briefs by the parties; Bolen's brief was due on May 10, 2016, and the Board's brief was due on June 21, 2016. The parties' brief was to address the following issues:

(a) Whether the Presiding Officer's conclusion that Bolen committed unprofessional conduct by inaccurately recording, falsifying, or altering any record of a patient, agency, or the Board was supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole.

(b) Whether the Presiding Officer's conclusion that committed unprofessional conduct by failing to complete the requirements of the Board's impaired provider program was supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole.

(c) Whether the Presiding Officer's conclusion that Bolen was unable to practice with skill and safety due to current abuse of drugs or alcohol was supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole.

(d) Whether the Presiding Officer's decision to revoke Bolen's nursing license was otherwise unreasonable, arbitrary, or capricious.

51. On April 18, 2016, Bolen filed a Motion to Dismiss for Failure to Prosecute and a Memorandum supporting her motion. She claimed the Board failed to diligently comply with the district court's remand order when it had held nine open meetings between October 2014 and March 2016.

52. On April 29, 2016, an Amended Order granting review was filed directing the Board's litigation counsel to address Bolen's Motion to Dismiss in the Board's brief. On May 4, 2016, Bolen filed a motion seeking a continuance to file her brief.

53. On May 10, 2016, Bolen filed her brief in support of her Petition for Review of the Initial Order.

54. On June 20, 2016, the Board's litigation counsel filed a response brief.

#### Conclusions of Law

55. Proceedings to revoke, limit, or suspend a nursing license are conducted pursuant to the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501 *et seq.* K.S.A. 2016 Supp. 65-1120(b). Under the KAPA, the provision governing review of an initial order states:

Subject to K.S.A. 77-621, and amendments thereto, in reviewing an initial order, the agency head or designee shall exercise all the decision-making power that the agency head or designee would have had to render a final order had the agency head or designee presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the agency head or designee upon notice to all parties. In reviewing findings of fact in initial orders by presiding officers, the agency head shall give due regard to the presiding officer's opportunity to observe the witnesses and to determine the credibility of witnesses. The agency head shall consider the agency record or such portions of it as have been designated by the parties. K.S.A. 2016 Supp. 77-527(d).



56. K.S.A. 77-621 is a part of the Kansas Judicial Review Act (KJRA). Thus, our review is limited in the same manner as a court. K.S.A. 2016 Supp. 77-621(c)(7) states, in pertinent part, that relief can be granted upon a decision that "the agency action is based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole." The phrase "in light of the record as a whole" means:

[T]he adequacy of the evidence in the record before the court to support a particular finding of fact shall be judged in light of all the relevant evidence in the record cited by any party that detracts from such finding as well as all of the relevant evidence in the record, compiled pursuant to K.S.A. 77-620, and amendments thereto, cited by any party that supports such finding, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witness and the agency's explanation of why the relevant evidence in the record supports its material findings of fact. In reviewing the evidence in light of the record as a whole, the court shall not reweigh the evidence or engage in de novo review. K.S.A. 2016 Supp. 77-621(d).

57. Additionally, K.S.A. 2016 Supp. 77-621(c)(8) provides that relief can be granted if the Presiding Officer's decision is "otherwise unreasonable, arbitrary or capricious.

*Is the Presiding Officer's conclusion that Bolen committed unprofessional conduct by inaccurately recording, falsifying, or altering any record of a patient or agency or of the Board supported by substantial evidence in the record as a whole?*

58. K.S.A. 2016 Supp. 65-1120(a)(6) authorizes the Board to revoke, limit, or suspend any nursing license if it finds that the licensee committed unprofessional conduct as defined in a regulation adopted by the Board. The definition of unprofessional conduct includes inaccurately recording, falsifying, or altering any record of a patient, agency, or the Board. K.A.R. 60-3-110(d).

59. Bolen argues that substantial evidence in the record as a whole does not support the Presiding Officer's conclusion that she inaccurately recorded, falsified, or altered a record of the Board by altering the November 2011 attendance sheet, adding new dates to the altered attendance sheet, and submitting it to the KNAP as the January 2012 attendance sheet. Bolen relies upon her testimony that she never tried to hide the fact that she altered the November 2011 attendance sheet and she did not intend to deceive the KNAP by doing so. Bolen points out that the other members of her twelve-step group advised her to alter an attendance sheet in this manner and did not believe Bolen's action was fraudulent. Bolen also relies upon the KNAP allowing her to resubmit a new attendance sheet for January 2012.

60. Although the KNAP's letter dated February 2, 2012, and the twelve-step group refer to a fraudulent act, the Kansas Nurse Practice Act does not require a fraudulent act. Rather, K.A.R. 60-3-110(d) prohibits three types of acts: inaccurately recording any record of the Board, falsifying any record of the Board, or altering any record of the Board. Unlike fraud, none of these acts require concealment or intent to deceive. Thus, Bolen's claim that she never concealed her alteration or had intent to deceive is immaterial to determine whether she violated K.A.R. 60-3-110(d).

61. Likewise, Bolen's claim that the members of her twelve-step group told her she could change the dates on the October 2011 attendance sheet is immaterial. Because they were not a party to the KNAP agreement, the members of her twelve-step group lacked any authority to permit such an act. Bolen testified she had forgotten to get signatures at the meetings she attended in January 2012. Thus, Bolen clearly understood that the attendance sheet was to be completed contemporaneous with her attendance at each twelve-step meeting. The defense of "they told me to" is not recognized by statute or case law.

62. It is undisputed Bolen altered the twelve-step attendance sheet that she submitted for October 2011 by whiting out the dates and writing in dates for January 2012 and then submitting the altered document as her twelve-step attendance sheet for January 2012. Her explanations for her conduct do not change this fact.

63. Bolen has admitted to fabricating an attendance sheet for January 2012 and sending it to the KNAP. Her conduct can be given many names, such as altering a record or falsifying a record. Both constitute unprofessional conduct which is statutorily punishable by revocation of the offending nurse's license.

64. The fact that the KNAP allowed Bolen to submit a January 2012 attendance sheet on February 6, 2012, is irrelevant in determining whether she altered or falsified the attendance sheet that was originally submitted. As the KNAP explained in its letter dated February 2, 2012, if Bolen submitted the attendance sheet for January 2012 after February 1, it would be a late submission and considered as noncompliant. In other words, both attendance sheets constituted two acts of noncompliance -- the altered attendance sheet was considered as one act of noncompliance and the late attendance sheet was considered as another act of noncompliance. No explanation was given as to why the KNAP later forgave the tardy submission of the second attendance sheet. The record does not show that the KNAP or the Board ever forgave the submission of the altered attendance sheet.

65. Bolen contends the revocation her nursing license is not warranted when considering all of the mitigating factors. However, she does not indicate what those mitigating factors are. Because she does not discuss the mitigating factors, it is assumed she is relying upon the same evidence that she claimed did not support a finding that she committed unprofessional conduct.

66 Bolen gave excuses for submitting the altered attendance sheet and did not believe her submission of the altered attendance sheet was serious because the KNAP was "all about the paperwork." She also failed to take responsibility for her action by claiming she received permission from the members of her twelve-step group to alter the attendance sheet. The requirements of the KNAP contract are aimed toward maintaining sobriety and a participant's compliance with the KNAP contract requirements demonstrates to the Board that a participant is committed to sobriety. By contrast, failure to comply with the KNAP contract raises concerns that the participant may be abusing alcohol or drugs and placing the public's safety at risk. Bolen refuses to acknowledge that her bad judgment and cavalier attitude has led her to committing a dishonest act and serious violation of the Kansas Nurse Practice Act.

67. Based upon the above findings of fact and conclusions of law, the Board determines that substantial evidence in the record as a whole supports the Presiding Officer's conclusion that Bolen committed unprofessional conduct by inaccurately recording, falsifying, or altering any record of the Board. The Board further determines that the record as a whole also supports the Presiding Officer's decision to revoke Bolen's nursing license as a result of this act of unprofessional conduct.

*Is the Presiding Officer's conclusion that Bolen committed unprofessional conduct by failing to complete the requirements of the KNAP supported by substantial evidence in the record as a whole?*

68. K.S.A. 2016 Supp. 65-1120(a)(6) authorizes the Board to revoke, limit, or suspend any nursing license if it finds that the licensee has committed unprofessional conduct as defined in a regulation adopted by the Board. The definition of unprofessional conduct includes failing to complete the requirements of the impaired provider program of the Board. K.A.R. 60-3-110(s).

69. The KNAP gave Bolen three notices of noncompliance with her KNAP contract. The first notice advised she did not attend the required number of meetings for June and July 2011 and did not submit the required quarterly reports from her employer. Rather than relying upon the attendance sheets that she submitted to the KNAP, Bolen relies on the document summarizing the number of meetings that she attended while participating in the KNAP. That document indicated Bolen had attended the required number of meetings for July 2011. She also relies on the conversation that Peschka had with a KNAP employee stating Bolen attended eleven meetings for July 2011, eight meetings in August 2011, and was in compliance as of August 30, 2011. Lastly, Bolen points out that members of her twelve-step group said she regularly attended the meetings.

70. Bolen's reliance on the statements by the members of her twelve-step group is misplaced. Bolen agreed under the contract with the KNAP to submit monthly attendance sheets showing that she attended two twelve-step meetings per week. The noncompliance issue is with the number of meetings Bolen recorded on the attendance sheets and not with the numbers on a KNAP document that summarized her attendance

sheets or general statements by the members of her twelve-step group about how many meetings they believed she attended.

71. As the Board points out in its brief, Bolen blamed an employee at the KNAP for her failure to submit attendance sheets showing the required attendance at the meetings for the months of June and July 2011. According to Bolen, the KNAP changed the manner and time in which the attendance sheets were submitted, unbeknownst to her.

72. Even if Bolen did later submit proof to the KNAP that she attended the required meetings for the month of July 2011, the KNAP documents and the KNAP employee did not indicate that Bolen had attended the required meetings for the month of June 2011 or that her employers timely submitted quarterly reports for the months of January through July 2011. The KNAP's employee's statement to Peschka that Bolen was in compliance as of August 30, 2011, is vague and does not necessarily mean all issues in the first notice were resolved. Rather, this statement can be interpreted to mean because Bolen had submitted attendance sheets showing that she attended the required number of meetings for August 2011, there were no *new* compliance issues. As such, Bolen had not resolved all of the compliance issues listed in the KNAP's first notice to her. Thus, Bolen failed to complete the KNAP requirements by submitting an attendance sheet showing she attended the required meetings for the month of June 2011 and having her employer submit quarterly reports prior to August 2011.

73. The second notice of noncompliance involved the altered attendance sheet that Bolen submitted for the month of January 2012. Bolen relies upon the same evidence as discussed in the prior issue. The discussion in paragraphs numbered 61 through 66 regarding those facts are hereby incorporated by reference. Thus, it is undisputed that Bolen submitted to the KNAP an altered attendance sheet for the month of January 2012.

74. The KNAP's third notice of noncompliance concerned Bolen failing to call to see if she had been randomly selected for a drug screen test, which she had, and failing to take that test in September 2012. Bolen's response is that she assumes she got busy at work and forgot, but she failed to provide documentation showing she worked that day. Even if she had submitted such proof, this excuse does not negate the fact she was responsible for complying with the requirements in the KNAP contract. Thus, it is undisputed that Bolen failed to comply with the requirements of the KNAP contract by calling to report and taking the random drug screen test.

75. K.A.R. 60-3-110(s) does not require multiple instances of noncompliance. Nevertheless, the totality of the evidence shows Bolen had a minimum of four: she failed to attend the required twelve-step meetings for the month of June 2011, failed to submit the required employer quarterly reports prior to August 2011, submitted an inaccurate or altered attendance sheet of her twelve-step meetings for the month of January 2012, and failed to report for a random drug testing and to submit to a random drug screen test in September 2012.

76. After considering the above findings of fact and conclusions of law, the Board determines that substantial evidence in the record as a whole supports the Presiding Officer's conclusion that Bolen committed unprofessional conduct by failing to comply with the requirements of the KNAP contract. The Board further determines that the record as a whole also supports the Presiding Officer's decision to revoke Bolen's nursing license as a result of this unprofessional conduct.

*Is the Presiding Officer's conclusion that Bolen was unable to practice nursing with the skill and safety due to current abuse of drugs or alcohol supported by substantial evidence in the record as a whole?*

77. K.S.A. 2016 Supp. 65-1120(a)(4) authorizes the Board to revoke, limit, or suspend any nursing license if it finds that the licensee was unable to practice nursing with the skill and safety due to current abuse of drugs or alcohol.

78. Bolen contends the Presiding Officer's conclusion that she was unable to practice nursing with skill and safety due to current abuse of drugs or alcohol was not supported by the record as a whole. Again, she relies upon the statements of her colleagues, friends, and the members of her support group indicating Bolen regularly attended twelve-step meetings and was committed to her sobriety and they did not believe she was abusing alcohol or drugs. Bolen also points to the negative alcohol and drug results of her voluntary tests in June 2013. However, there was no evidence how the tests were collected or their reliability, and the tests were not random.

79. None of the individuals upon whom Bolen relies indicated that they saw Bolen on a daily basis, which is important because Bolen told Valley Hope that she was a binge drinker, drinking in excess approximately three times per month. This could make it more difficult to detect than if she drank daily or several times per week. Her binge drinking pattern also shows the need for Bolen to have consistent supervision by her employer.

80. Bolen contends that she has not consumed any alcohol or drugs since she was admitted to Valley Hope. Considering that she altered and falsified an attendance sheet to avoid being found in noncompliance with the KNAP contract, her credibility regarding her abstinence is lacking.

81. Bolen also ignores the other evidence in the record supporting the Presiding Officer's conclusion that she was unable to practice nursing with skill and safety due to current abuse of drugs or alcohol.

- (a) Bolen failed to attend the required twelve-step meetings for the month of June 2011;
- (b) Bolen failed to submit employer quarterly reports prior to August 2011;
- (c) Bolen submitted an inaccurate or falsified attendance sheet for the month of January 2012;

- (d) Bolen failed to check in for random drug testing and to submit to a random drug screen test in September 2012;
- (e) Bolen provided eight urine drug screens from January 26, 2011, to August 14, 2012, that had a low creatinine level indicating a diluted urine specimen and had no medical explanation for the low creatinine level; and
- (f) the Hospital became concerned in May 2012 about Bolen's job performance –failing to report a change in a patient's condition and failing to have an RN in attendance on a nursing floor.

82. After considering the above findings of fact and conclusions of law, the Board determines that substantial evidence in the record as a whole supports the Presiding Officer's conclusion that Bolen was unable to practice nursing with skill and safety due to current abuse of drugs or alcohol. The Board further determines that the record as a whole also supports the Presiding Officer's decision to revoke Bolen's nursing license as a result of her being unable to practice nursing with skill and safety due to current abuse of drugs or alcohol.

*Was the Presiding Officer's decision to revoke Bolen's nursing license otherwise unreasonable, arbitrary or capricious?*

83. The Kansas Supreme Court has explained the standard of unreasonable, arbitrary, or capricious as follows:

An action is unreasonable when it is taken without regard to the benefit or harm to all interested parties or is without foundation in fact, and that an action is arbitrary and capricious if it is unreasonable or lacks any factual basis. Essentially, the test under K.S.A. 77-621(c)(8) determines the reasonableness of the agency's exercise of discretion in reaching its decision based upon the agency's factual findings and the applicable law. Useful factors that may be considered include whether: (1) the agency relied on factors that the legislature had not intended it to consider; (2) the agency entirely failed to consider an important aspect of the problem; (3) the agency's explanation of its action runs counter to the evidence before it; and (4) whether the agency's explanation is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Wheatland Elec. Co-op., Inc. v. Polansky*, 46 Kan. App. 2d 746, 757 (2011). (Internal citations omitted.)

84. Regarding the Presiding Officer's conclusion that she violated K.S.A. 2016 Supp. 65-1120(a)(4), Bolen claims this conclusion is unreasonable because it is without foundation in fact and points to evidence supporting a different conclusion. Regarding the Presiding Officer's conclusion that she violated K.S.A. 2016 Supp. 65-1120(a)(6) and K.A.R. 60-3-110(d), Bolen contends the decision was unreasonable because it is without foundation in fact and points to evidence she presented. Regarding the Presiding Officer's conclusion that she violated KSA 2016 Supp. 65-1120(a)(6) and

K.A.R. 60-3-110(s), Bolen argues this conclusion was unreasonable because it is without foundation in fact and relies upon the evidence she presented.

85. The evidence relied upon by Bolen was discussed in the above issues. Bolen does not raise any other factors to support her claim that the Presiding Officer's conclusions are unreasonable. Her arguments fail as the analysis in the above issues challenging the factual basis for each violation makes clear that the record, when considered as a whole, supports each finding of a violation and that each violation was sufficient to revoke Bolen's nursing license.

86. After considering the above findings of fact and conclusions of law, the Board determines the Presiding Officer's conclusions that Bolen violated K.S.A. 2016 Supp. 65-1120(a)(4) by being unable to practice nursing with the skill and safety due to current abuse of drugs or alcohol, Bolen violated K.S.A. 2016 Supp. 65-1120(a)(6) and K.A.R. 60-3-110(d) by inaccurately recording, falsifying, or altering any record of the Board, and Bolen violated K.S.A. 2016 Supp. 65-1120(a) and K.A.R. 60-3-110(s) by failing to complete the requirements of the KNAP was not unreasonable, arbitrary, or capricious.

*Should Bolen's Motion to Dismiss be granted?*

87. Bolen filed a motion to dismiss this proceeding for lack of prosecution between the dates of October 2, 2014, and March 30, 2016.

88. On October 2, 2014, the Court of Appeals issued an order dismissing Bolen's appeal on other issues in the district court's remand order. On March 30, 2016, the Board filed an order scheduling the filing of briefs by the parties. On April 18, 2016, Bolen filed a Motion to Dismiss for Failure to Prosecute. On April 29, 2016, the Board issued an Amended Order directing the Board's litigation counsel to address Bolen's Motion to Dismiss in its brief. On May 4, 2016, or six days prior to the date her brief was due, Bolen filed for a continuance. However, before an order was issued on her motion, Bolen filed her brief when due. The Board subsequently timely filed its brief.

89. In support of her motion to dismiss, Bolen argues that the Board conducted several meetings between October 2, 2014, and March 30, 2016, and that at those meetings, the Board failed to take action on her Petition for Review of the Initial Order as required by the district court's remand order. Bolen did not supplement the record to support these facts or to show those meetings were held under the Kansas Administrative Proceedings Act (KAPA), K.S.A. 77-501 *et seq.* rather than under the Kansas Open Meetings Law (KOMA), K.S.A. 75-4317 *et seq.* This distinction is important. The KOMA applies to meetings to conduct the regular business of the Board; the KORA applies to proceedings to conduct an administrative action involving a nursing license. Thus, any of the Board's open meetings are irrelevant to this issue.

90. Next, in the Memorandum filed with her motion, Bolen relied upon the following KAPA statute: "The *presiding officer*, at appropriate stages of the

proceedings, shall give all parties full opportunity to file pleadings, objections and motions, including, but not limited to motions to dismiss and motions for summary judgment." K.S.A. 2016 Supp. 77-519(a). (Emphasis added.)

91. Under the KAPA, a "presiding officer" means "the agency head, one or more members of the agency head or a presiding officer assigned by the office of administrative hearings." K.S.A. 2016 Supp. 77-514(a). Under the KAPA, the agency head may review an initial order upon petition by a party. K.S.A. 2016 Supp. 77-527(a). Pursuant to K.S.A. 77-527(a)(2), the Board has delegated to board member Carol Bragdon its authority as agency head for making determinations regarding a petition for review.

92. Here, the presiding officer was assigned by the Office of Administrative Hearings; the assigned presiding officer conducted the pre-hearing proceedings and evidentiary hearing and issued an initial order. By its own language, K.S.A. 2016 Supp. 77-519(a) applies to proceedings conducted by the presiding officer. By contrast, the review of the Initial Order is conducted by the agency head. Thus, K.S.A. 2016 Supp. 77-519(a) is not applicable at this stage of the proceeding before the agency head.

93. Additionally, the Board had the duty to prosecute while the case was pending before the Office of Administrative Hearings. After an evidentiary hearing, the Presiding Officer at the Office of Administrative Hearings issued an Initial Order finding Bolen had violated the Kansas Nurse Practice Act and revoking her license. Bolen filed a Petition for Review of the Initial Order trying to change that Initial Order. Her Petition for Review is akin to an appeal because no additional evidence is presented to the agency head. See K.S.A. 2016 Supp. 77-527(d) (the agency head reviews the agency record or portions of it as designated by the parties). While the review is pending before the agency head, Bolen has the burden to prove the invalidity of the Initial Order. See K.S.A. 2016 Supp. 77-527(d) and K.S.A. 2016 Supp. 77-621(1). As such, Bolen has a duty to prosecute her Petition for Review.

94. The duty to prosecute Bolen's Petition for Review should not be placed solely on the Board as Bolen claims. Rather, any duty by the Board to prosecute her Petition for Review as alleged by Bolen must be shared with Bolen. On October 30, 2016, the Board filed an Order scheduling the filing of briefs. Prior to that date, Bolen never filed a motion requesting the scheduling for briefs on her Petition or any other similar pleading or correspondence between October 2, 2014, and March 30, 2016. Thus, Bolen's argument in support of her motion to dismiss for failure to prosecute her Petition for Review fails.

95. Based upon the above findings and conclusions, the Board determines that Bolen's motion to dismiss for lack of prosecution should be denied.

Order



Based upon the above findings and analysis, the Board concludes that Bolen has failed to show that substantial evidence did not support the Presiding Officer's determination that Bolen violated the Kansas Nurse Practice Act when she: (1) committed unprofessional conduct by inaccurately recording, falsifying, or altering any record of a patient, agency, or the Board; (2) committed unprofessional conduct by failing to complete the requirements of the Board's impaired provider program—KNAP, and (3) was unable to practice nursing with the skill and safety due to current abuse of drugs or alcohol. The Board also concludes that Bolen's nursing license should be revoked due to these violations whether considered separately or collectively. Thus, the Initial Order is hereby affirmed and Bolen's Petition for Review of the Initial Order is denied. The Board further concludes that Bolen's motion to dismiss the case for failure to prosecute should be denied for the reasons stated above.

IT IS SO ORDERED.

*Carol Bragdon*

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Carol Bragdon, Board Member  
As directed by and on behalf of the  
Kansas State Board of Nursing

### NOTICE OF ADMINISTRATIVE RELIEF

The above Order denying Bolen's Petition for Review of the Initial Order and Motion to Dismiss is a Final Order. Pursuant to K.S.A. 77-529, a party may file with the Board a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. The agency designee who may receive service of a petition for reconsideration on behalf of the Board is Mary Blubaugh, Executive Director, Kansas State Board of Nursing, Landon State Office Building, 900 S.W. Jackson, Ste. #1051, Topeka, Kansas 66612-1230

### NOTICE OF JUDICIAL RELIEF

Pursuant to K.S.A. 77-613, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The agency designee who may receive service of a petition for judicial review on behalf of the Board is Mary Blubaugh, Executive Director, Kansas State Board of Nursing, Landon State Office Building, 900 S.W. Jackson, Ste. #1051, Topeka, Kansas 66612-1230.

### CERTIFICATE OF SERVICE

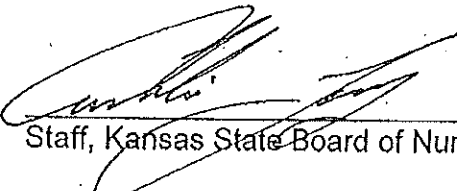
I hereby certify that on November 4<sup>TH</sup>, 2016, copies of the above Order and Notices were deposited with the United States Postal Service, postage pre-paid, and addressed to:

Danielle R. Sanger  
Sanger Law office  
5040 Bob Billings Parkway, Suite C-1  
Lawrence, KS 66049

Rachael Ann Bolen  
710 W. Mosier  
Council Grove, KS 66846

and hand delivered to:

Bryce Benedict  
Assistant Attorney General  
Disciplinary Counsel for the  
Kansas State Board of Nursing  
900 SW Jackson, Suite 1051  
Topeka, KS 66612

  
Staff, Kansas State Board of Nursing