

BEFORE THE KANSAS STATE BOARD OF NURSING

FILED

FEB 16 2007

KSBN

IN THE MATTER OF
LINDA D. DAVIS
License No. 23-005128-072

Case No. 78-051-9
OAH No. 07BN0009

INITIAL ORDER

NOW on this 25th day of January 2007, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing (KSNB), Sandra L. Sharon, duly appointed as Presiding Officer pursuant to K.S.A. 75-514. The Petitioner, the Kansas State Board of Nursing, appears by disciplinary counsel, Mark Knight, Assistant Attorney General. The Respondent appears through her attorney, Jim Lawing.

Findings of Fact

1. The Petitioner and Respondent stipulate to facts as presented in Petition paragraph 5 as follows:
 - a. On March 22, 1971, Linda D. Davis, aka Linda D. Frost, was licensed to practice nursing in the state of Kansas as a licensed practical nurse.
 - b. On November 17, 1972, the respondent was convicted of Murder in the First Degree pursuant to K.S.A. 21-3401, in Sedgwick County, Kansas District Court case number CR8421.
 - c. Prior to July of 1997 K.S.A. 65-1120(a)(2) read as follows:

"to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense, if the board determines, after investigation, that such person has not been sufficiently rehabilitated to warrant public trust."
 - d. On March 7, 1979, a hearing was held before the KSBN in case number 78-051-9. An Order was entered by KSBN in this case. The order stated that respondent had not violated K.S.A. 1978 Supp. 65-1120(a)(2) because she had been sufficiently rehabilitated to warrant public trust.
 - e. In July of 1997 K.S.A. 65-1120(a)(2) was amended to read as follows:

"to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant public trust, except that notwithstanding K.S.A. 74-120 no license, certificate of qualification or authorization to

practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto."

2. The respondent allowed her license to practice nursing as a licensed practical nurse to lapse on or about July 31, 2004.
3. On March 17, 2006, the respondent filed an application for reinstatement her license to practice nursing as a licensed practical nurse with the Kansas State Board of Nursing.
4. The Respondent was licensed to practice nursing as a Licensed Practical Nurse prior to the statutory change of July 1997. Her license had previously renewed and would have renewed again but for the Respondent allowing her license to lapse.

Conclusions of Law

1. K.S.A. 65-1120(a)(2) provides as follows:
 - (a) *Grounds for disciplinary actions.* The board may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization, if the applicant, licensee or holder of a certificate of qualification or authorization is found after hearing:
 - (2) to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120 no license, certificate of qualification or authorization to practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto;

2. The Respondent is a person with a felony conviction for crimes against persons in accordance with K.S.A. 21-4501(a).
3. The statute, as amended, does not allow the Board the discretion to determine a person convicted of a crime against persons is sufficiently rehabilitated to warrant public trust and practice nursing.

Conclusion

1. The Kansas State Board of Nursing's Petition to deny the Respondent her license to practice as a Licensed Practical Nurse in the state of Kansas is hereby affirmed.
2. The Respondent shall pay costs of the action of \$70.00.

Appeal Rights and Other Administrative Relief

The procedures available and time limitations for seeking review or other relief as follows: Any party, within fifteen (15) days after service of this notice, may file a petition for review with the agency head, send you request to:

Mary Blubaugh, Executive Director, Board of Nursing
Landon State Office Building
Suite 1051, 900 SW Jackson
Topeka, KS 66612-1230

The petition for review shall state its basis, pursuant to K.S.A. 77-527.

OFFICE OF ADMINISTRATIVE HEARINGS



Sandra L. Sharon
Presiding Officer
Office of Administrative Hearings

CERTIFICATE OF SERVICE

On Feb. 16, 2007, I mailed a copy of this document to:

Linda D. Davis
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Wichita, KS 67219

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Office of Administrative Hearings