

BEFORE THE KANSAS STATE BOARD OF NURSING

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

FILED
MAY 08 2008
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KSBN

**IN THE MATTER OF
DONNA L. BRATTON
License No. 23-012668-051**

**Case No. 99-386-7, 00-061-9
OAH No. 07BN0019**

CONSENT AGREEMENT AND FINAL ORDER

NOW ON THIS 7th day of May, 2008, the Kansas State Board of Nursing, represented by Assistant Attorney General, Mark A. Knight, and the Respondent, Donna L. Bratton, represented by Marlin Johanning, 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 Respondent's license to practice nursing in Kansas was revoked on 3/19/2008. Respondent submitted an application for reinstatement. 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 515 "U" Street, Atchison, KS 66002.
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.
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) On or about 11/13/1997, in case number 97-0022-7, an order was entered finding that the respondent violated that Nurse Practice Act by obtaining checks from residents at a nursing home where respondent was employed. As a result the respondent was given a license which was suspended. The suspension was stayed allowing respondent to practice subject to terms and conditions.

(b) On or about 6/8/1999 respondent submitted a reinstatement application to the Board. The Board determined that the respondent violated the terms and conditions of the 11/13/1997 Order and a Petition was filed.

(c) On or about 12/14/2000 a Stipulation and Agreement was entered by the parties. In the Agreement the respondent stipulated that she violated that Nurse Practice Act, by not following the terms and conditions of the 11/13/1997 Board Order in that she did not timely pay the cost assessed against her, she did not supply the Board with the name and address of her employer, and that she did not provide quarterly reports from her employer to the Board.

(d) On or about 3/6/2001 a default order was entered finding the respondent violated the Stipulation and Agreement of 12/14/2000. As a result respondent's nursing license was revoked.

(e) Respondent applied for reinstatement of her nursing license. On or about 1/22/2003 following a hearing it was ordered that the respondent be granted a nursing license for the sole purpose of participating in the KNAP program. [REDACTED]

[REDACTED]

(f) On or about 9/19/03 the respondent entered a Consent Agreement which reinstated her nursing license without limitations. As part of the agreement respondent agreed to participate in and complete the KNAP program.

(g) On or about 6/4/04 an emergency petition was filed by the board d [REDACTED]
[REDACTED] On or about

6/10/2004 an order was entered finding respondent violated the Nurse Practice Act, K.S.A. 65-1120(a)(4), to be unable to practice with skill and safety due to current abuse of drugs or alcohol, and K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(s), failing to complete the requirements of the impaired provider program of the board. As a result the stay of suspension on respondent's license was lifted and the respondent's license was suspended until 7/21/04.

(h) On or about 7/21/04 an order was entered extending the suspension of respondent's license until 10/20/04 due to [REDACTED]

(i) On or about 10/20/04 a default order was entered extending the suspension of respondent's license until further order. Respondent filed a timely appeal to the default order.

(j) On or about 1/19/05 the Board filed an Amended Request for Emergency Proceeding to Revoke d [REDACTED] On 1/25/05 a hearing was held during which it was ordered that the suspension order on 7/21/04 remain in effect [REDACTED] The request to revoke respondent's license was denied. The respondent's license was suspended until 3/3/05.

(k) On or about 5/4/05 a hearing was held regarding the suspension of respondent's license. A finding was made that the respondent was safe to practice. It was ordered that the 1/25/05 orders remain in effect but the suspension of respondent license was stayed. It was further ordered that the suspension and stay remain in effect through future renewals until successful completion of KNAP.

(l) On or about 9/6/05 the Board filed a request for emergency proceedings to revoke the respondent's license. [REDACTED]

[REDACTED] On or about 9/14/05 the board withdrew the request st [REDACTED]

(m) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(n) [REDACTED]

(o) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(p) On or about 11/7/2007, a proposed default order was entered to revoke respondent's license.

(q) On or about 11/15/2007, the Respondent filed a Motion to Vacate the default order.

(r) On or about 1/29/2008, a hearing was held on the Motion to Vacated the default order.

The Initial Order was issued on 1/30/2008 denying the Motion to Vacate.

(s) On or about 1/29/2008, an Initial Order denying the Motion to Vacate and Revoking Respondent's license was entered.

(t) Respondent filed a Petition for review and Petition to Stay. On or about 3/4/2008 a Final Order Denying Review was entered. On or about 3/4/2008, Respondent's employer terminated Respondent's employment. On or about 3/19/2008, the Initial Order became Final.

(u) [REDACTED]

[REDACTED]

[REDACTED].

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: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110 (s) failing to complete the requirements of the impaired provider program of the board; K.S.A. 65-1120(a)(7), to have willfully or repeatedly violated the provisions of the Kansas nurse practice act or any rules and regulations adopted pursuant to that act.

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 (s) failing to complete the requirements of the impaired provider program of the board.

Count 2: K.S.A. 65-1120(a)(7), to have willfully or repeatedly violated the provisions of the Kansas nurse practice act or any rules and regulations adopted pursuant to that act.

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. 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 return his or her current license card to the Board with this Consent Agreement. Respondent shall receive a license card which shall be issued with an "S" placed in the status code portion of the license card to indicate that the license is suspended with a Stay.**

(b) **Respondent will participate in and complete the reasonable recommendations and requirements of New Freedom, Inc. Counseling Center, Atchison, Kansas** (New Freedom) including random urine drug screens; sign releases of information necessary for New Freedom to evaluate and monitor respondent and for New Freedom to report information to the board. Respondent will be deemed to have completed the New Freedom program when New Freedom issues written notification that respondent has completed the program. Noncompliance with New Freedom is a violation of this agreement.

(c) **Respondent must submit to random drug screens as determined or selected by the Board or by New Freedom.** The costs of the drug screens will be paid by the respondent. Respondent agrees that a Positive Drug Screen is a violation of this agreement.

(e) **Respondent shall immediately notify the Legal Division of any use of alcohol, if prohibited by New Freedom, or controlled substances, or any violation of this Consent Agreement and Final Order.**

(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.

(k) **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 his or 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 his or 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.

(l) 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.

17. 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.

18. 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.

19. 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.

20. Respondent acknowledges and agrees that upon a first finding of Respondent not complying with 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.

21. Respondent acknowledges and agrees that upon a second or subsequent finding of Respondent not complying with 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.

22. Respondent acknowledges and agrees that upon the Stay of Suspension being lifted due to a finding of non-compliance with 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 with all conditions and requirements of this Consent Agreement. Upon the Respondent providing said written verification the suspension will again be stayed.

23. 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.

24. This agreement is a discipline and must be reported on any future renewal or reinstatement applications. This agreement is a contract entered into by the parties to resolve an investigative case. The original of this agreement shall be placed in the Agency Record and is a public record.

25. 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.

26. 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.

27. 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.

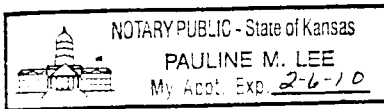
IN WITNESS WHEREOF, the parties hereto execute this CONSENT AGREEMENT
AND FINAL ORDER.

IT IS SO ORDERED.

Donna L. Bratton
Respondent
1322 N. 17th, Apt B15
Atchison, KS 66002

Donna L. Bratton must sign before a Notary Public.

State of Kansas, County of Atchison ss.
SUBSCRIBED AND SWORN TO before, me by Donna L. Bratton



on this 1st day of May, 2008.

Pauline M. Lee My Commission Expires 2-6-2010
Signature of Notary Public (Notary Public Seal)

Marlin Johanning
Counsel for Respondent
Johanning Law Office
500 Commercial Street
Atchison, KS 66002

Mark A. Knight, #12183
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612

Sandra L. Sharon, Presiding Officer

CERTIFICATE OF SERVICE

On the 9th day of May, 2008, I mailed a copy of this CONSENT AGREEMENT AND FINAL ORDER to:

Donna L. Bratton
1322 N. 17th, Apt B15
Atchison, KS 66002

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