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BEFORE THE KANSAS STATE BOARD OF NURSING

IN THE MATTER OF
Holly R. Moore (Bratcher)
License No. 23-28544-021


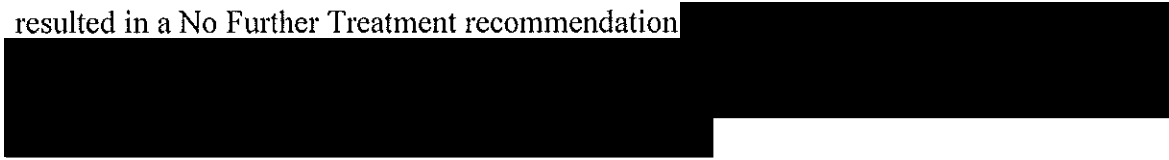
Case No. 03-242-3, 11-211-4
OAH No. 11BN0068

INITIAL ORDER

Now on this 20th day of October 2011, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing. Sandra L. Sharon was duly appointed Presiding Officer pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing (Board), appears by Assistant Attorney General, Alma Heckler, Disciplinary Counsel for the Board. The Respondent, Holly R. Moore, appears through attorney, Arlene Burrow. Witnesses were Karen Peschka, John Childers, Jennier Clasen, Beth Adelgren, Norma Cape, Chrystal Moore, Melody Bratcher, and Holly Moore Bratcher.

Findings of Fact

1. The respondent was licensed with the Board to practice nursing in the State of Kansas. On February 21, 2005, the Board filed a petition to revoke the respondent's license to practice nursing in the state of Kansas. A prehearing was scheduled for April 6, 2005. The respondent failed to appear for the prehearing and a default order was issued. The default order became effective approximately April 16, 2005 and the respondent was no longer licensed to practice nursing in the state of Kansas.
2. On or about August 27, 2010, the respondent filed a reinstatement application to practice nursing with the Board.
3. At question 14 of the reinstatement application, the respondent indicated "no" when asked, "Has any license, certification, or registration (nursing or other) ever been denied, or 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?"
4. The respondent's answer to question 14 of the reinstatement application was incorrect. There was action taken against the respondent's license to practice nursing in the state of Kansas in April 2005.
5. The respondent indicated that she believed her license had lapsed and had not had any disciplinary action taken against it.
6. At question 10 of the reinstatement application, the respondent indicated "yes" when asked, "Have you ever been convicted of a misdemeanor?"
7. At question 11 of the reinstatement application, the respondent indicated yes when asked, "Have you ever been convicted of a felony?"

8. The appellant has been convicted of four drug-related misdemeanors and one drug-related felony.
9. The appellant spent one year in Reno County jail for the four misdemeanors related to drugs.
10. The respondent is currently under Community Correction Supervision regarding her felony drug conviction.
11. Prior to her incarceration at the Reno County jail, and after inpatient treatment with Mirrors in November 2008, the respondent relapsed on methamphetamines.
12. After her release from the Reno County jail, the appellant went into intense supervision with Reno County Community Corrections. Jennifer Clasen, of Reno County Community Corrections, reports that since being under her supervision the appellant has tested negative in all urinalysis the respondent has taken. Ms. Clasen characterizes these urinalysis as random. However, the urinalysis is done at regularly scheduled supervision meetings. This negates the random manner of the testing. The respondent is not called in on any given day for a urinalysis, but knows that she may be required to take a urine analysis on the day she goes to Reno County Community Corrections.
13. The appellant relapsed on alcohol on March 17, 2011. This relapse was called into the Reno County Community Corrections. The appellant was called in and admitted that she had relapsed on alcohol. The reaction from Reno County Community Corrections was to increase their evening surveillance on the respondent.
14. 
15. However, Ms. Adelgren had not been informed by the respondent that she had relapsed on alcohol in March of 2011. This information was not considered in the evaluation that resulted in a No Further Treatment recommendation 
16. None of the individuals recommending the respondent for reinstatement of her nursing license were not aware of her relapse.
17. The reason the appellant's license to practice nursing was initially suspended is that she diverted Darvocet from a pediatric patient with whom she working. The respondent was able to acknowledge her behavior was wrong and convey that she is ashamed of her behavior and accepts responsibility for it.

18. In an effort to regain her license, the respondent was able to complete the refresher course in theory and clinical areas of nursing.

19.



Conclusions of Law

1. The Board has the authority to limit, to deny, revoke, or suspend any license to practice nursing when a licensee is found to have violated the Kansas Nurse Practice Act. K.S.A. 65-1120.
2. Reasons to limit, deny, revoke, or suspense to practice nursing in the state of Kansas include in part the following:
 - Participating in unprofessional conduct by failing to comply with the disciplinary order of the Board. K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(r).
 - Participating in unprofessional conduct by failing to complete the requirements of the impaired provider program of the Board. This is an evaluation of K.S.A. 65-1120(a)(6) and K.A.R. 30-3-110(s).
 - To be guilty of fraud or deceit in practicing nursing or procuring or attempting to procure license to practice nursing. K.S.A. 65-1120(a)(1).
 - To have been found guilty of a felony or to have been guilty of misdemeanor involving an illegal drug offense without establishing sufficient rehabilitation to warrant the public trust. K.S.A. 65-1120(a)(2).
 - To have a license to practice nursing denied, revoked, limited, or suspended by licensing authority of any state. K.S.A. 65-1120(a)(8).
3. In *Vakas v. Kansas State Board of Healing Arts*, 248 Kan. 589 (1991), factors to be considered in determining whether a license should be reinstated after disciplinary findings are outlined as the following:
 - The present moral fitness of the petitioner;
 - The demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
 - The extent of petitioner's rehabilitation;
 - The nature and seriousness of the original misconduct;
 - The conduct subsequent to discipline;
 - The time elapsed since the original discipline;
 - The petitioner's character, maturity, and experience at the time of the original revocation;
 - The petitioner's present competence in medical skills.

Discussion

1. After being referred by the Board to the Kansas Nurse Assistance Program and in failing to complete the program, the respondent has violated K.S.A. 65-1120(a)(6), K.A.R. 60-3-110(r), and K.A.R. 30-3-110(s).
2. By being convicted of four misdemeanor drug offenses and a felony drug offense, the respondent has violated K.S.A. 65-1120(a)(2).
3. In regard to the respondent's reinstatement application, because the respondent allowed her nursing license to be suspended by default in April 2005, she is subject to denial of her reinstatement application pursuant to K.S.A. 65-1120(8)(a).
4. The respondent testified that she was not aware that she had wrongfully answered question 13 on her reinstatement application. While it may be true the respondent failed to keep the Board apprised of her recent address and she did not receive any of the three certified mailings by the Board, the respondent was aware that she had disciplinary action against her license [REDACTED]. The respondent's failure to indicate "yes" to this question indicates deceit and attempting to procure her license to practice nursing. This is an violation of K.S.A. 65-1120(a)(1).
5. Further, in order to show rehabilitation, the courts under *Vakas* have outlined factors that need to be considered in determining whether a license should be reinstated after disciplinary action has been taken. There are eight factors to be considered. These factors are listed above. Each factor will not be discussed at this point as the extent of the petitioner's rehabilitation remains in question. The respondent relapsed after her first inpatient treatment. After one year in the Reno County jail, the respondent presents herself as being rehabilitated. There are two factors that shed doubt on the respondent's position. First, the respondent relapsed again in March of 2011. [REDACTED] [REDACTED] Thus, leaving questions about the respondent's motivation for not revealing this information and the reliability of the recommendation.
6. Finally, the respondent remains under intense Community Correction Supervision. While this supervision is reporting going well, the appellant's behavior, without such intense supervision is unknown. However, surveillance of the respondent was increased by Community Corrections in March 2011. Further, the information obtained by the corrections officer is suspect in that the method for testing the respondent for drugs is less than desirable. First, the drug screens are not random. The respondent knows that she may have one at any scheduled appointment she has with her corrections officer. Second, the corrections office does not rely upon its own testing when there is a positive outcome but sends the urine specimen off to a lab for verification. Thus, a negative result is not verified.

7. While the respondent reports to have been doing well since her release from incarceration in December 2009, the fact that the respondent remains under intense community correction supervision and has experienced relapse draws questions to the extent of the petitioner's rehabilitation.

Conclusion

The Board's petition denying her application for a reinstatement license and revoking her temporary license to practice nursing in the state of Kansas is affirmed.


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, Suite 1051, 900 SW Jackson, 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

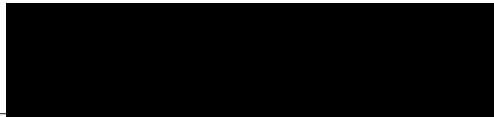
CERTIFICATE OF SERVICE

On Nov. 8, 2011, I mailed a copy of this document to:

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