

FILED

BEFORE THE KANSAS STATE BOARD OF NURSING FEB 15 2007

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

KSBN

IN THE MATTER OF
DEBORAH L. EKBERG
License No. 23-029816-052

Case No. 05-807-9
OAH No. 07BN0010

CONSENT AGREEMENT AND FINAL ORDER

NOW ON THIS 13th day of Feb., 2007, the Kansas State Board of Nursing, represented by Assistant Attorney General, Mark A. Knight, and the Respondent, Deborah L. Ekberg, represented by Timothy W. Stock, 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 license to practice nursing in Kansas lapsed. Respondent submitted a reinstatement application. A summary denial of Respondent's license to practice nursing in Kansas was entered. The Respondent submitted a timely appeal. The Board has jurisdiction over the Respondent and the subject matter of this action.
2. Respondent's address of record is 114 South Main, P.O. Box 11, Morganville, KS 67468.
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 June, 1998 Respondent was convicted of misdemeanor giving a worthless check.

(b) On or about 5/2/01 Respondent submitted an employment application to Enterprise Estates Nursing Center, Enterprise, Kansas. On that application Respondent answered that she had never been convicted of a non-traffic related offense.

(c) On or about 3/7/2002 Respondent submitted an application to the Board for renewal of her license to practice nursing in the State of Kansas. On that application Respondent answered "No" to the question "Have you ever been convicted of a misdemeanor?"

(d) Judy Adee, RN was the evening charge nurse while the Respondent worked day shift at Enterprise Estates. Judy Adee advised that Respondent told her she was on Lortab for pain. Judy Adee advised Enterprise Estates had been experiencing controlled substance discrepancies. Ms. Adee stated the facility received a pharmacy delivery for resident AR's controlled substance; the Respondent signed for receipt of the delivery but failed to date the "received date" on the Individual Controlled Substance Record.

(e) Ms. Adee advised most residents that were on Lortab were prescribed 1-2 tabs prn. And that most nurses gave one (1) tablet but the Respondent signed out two (2) tablets. With regard to AR's Individual Controlled Substance Record, Ms. Adee signed out one (1) tablet on or about 11/25/04, but the Respondent signed out the remaining twenty-nine (29) doses. Ms. Adee stated the Respondent failed to document administration of these drugs on the resident's MAR. Ms. Adee advised this same scenario was noted regarding resident VS. The Respondent signed out doses at 0700 and 1400 on 12/27/04 but did not document the doses on the MAR. Upon reviewing records Ms. Adee found instances where the Respondent reported giving one (1) tablet of the controlled substance when she had signed out two (2) tablets.

(f) On more than one occasion the Respondent was offered KNAP information. Respondent denied needing KNAP assistance.

(g) On or about 8/4/2005, while the administrator and ADON were discussing the ongoing missing Lortab problem with the Respondent in the locked medication room, the Respondent pulled an empty Lortab bubble card from the trash can, explaining that this was the missing bubble card. Respondent explained that she took the label off the bubble card so a drug addict couldn't get the label and take it to a pharmacy for a refill. After further discussion with Respondent, Respondent verbally resigned.

(h) On 5/31/2006 Respondent's license to practice nursing in the state of Kansas expired. On 6/1/2006 Respondent clocked in and attended an in-service at her place of employment, Wakefield Rehabilitation Center, Wakefield, Kansas.

(i) Respondent submitted an application to the Board for reinstatement to practice nursing in the State of Kansas on or about 6/2/2006. A summary denial was issued. The Respondent submitted a timely appeal.

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)(1), to be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing;

K.S.A. 65-1120(a)(3), Professional Incompetency by K.S.A. 65-1120(e)(3), a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing;

K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110 (c), failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient;

K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110 (d), inaccurately recording, falsifying, or altering any record of a patient or agency or of the board;

K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110 (n), diverting drugs, supplies, or property of any patient or agency; K.S.A. 65-1120(a)(4), to be unable to practice with skill and safety due to current abuse of drugs or alcohol.

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)(1), to be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing.

Count 2: K.S.A. 65-1120(a)(3), Professional Incompetency by K.S.A. 65-1120(e)(3), a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing.

Count 3: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110 (c), failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient.

Count 4: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110 (d), inaccurately recording, falsifying, or altering any record of a patient or agency or of the board.

Count 5: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110 (n), diverting drugs, supplies, or property of any patient or agency.

Count 6: K.S.A. 65-1120(a)(4), to be unable to practice with skill and safety due to current abuse of drugs or alcohol.

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, and the Respondent has entered the Kansas Nurses Assistance Program (KNAP) and KNAP has issued a written statement to the Kansas State Board of Nursing which states Respondent has complete three consecutive months of compliance in KNAP, then 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 upon Respondent's license to practice nursing in Kansas being reinstated pursuant to this Consent Agreement and Final Order that the license will be

immediately suspended. The suspension will be stayed as long as the requirements and conditions of this agreement are met.

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.** Upon Respondent's license being reinstated, **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 the Kansas Nurses Assistance Program (KNAP);** sign releases of information necessary for KNAP to evaluate and monitor Respondent and for KNAP to report information to the board. Respondent will be deemed to have completed the KNAP program when KNAP issues written notification that Respondent has completed the program. Noncompliance with KNAP is a violation of this agreement.

(c) **Respondent must submit to random drug screens as determined or selected by the Board or by KNAP.** 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 with the exception that a positive drug screen for Ethyl Glucuronide (EtG) at a level below 1500 ng/ml, is not, standing alone, a violation of this agreement. Respondent agrees that a positive drug screen for (EtG), at any level, may be used as a factor in determining whether the Respondent has violated this agreement.

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

(e) The Respondent shall immediately inform all employers and prospective employers of this Consent Agreement and the Final Order.

(f) Respondent shall send a money order for \$70 to the Board upon entering into this agreement to pay the cost of this action.

(g) Respondent shall not violate the Kansas Nurse Practice Act during the duration of this agreement.

(h) 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.

(i) 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

(j) **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.**

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

Deborah L. Ekberg
Respondent
114 South Main
P.O. Box 11
Morganville, KS 67468

Deborah L. Ekberg must sign before a Notary Public.

State of Kansas, County of Clay ss.
SUBSCRIBED AND SWORN TO before me by Deborah L. Ekberg
on this 7th day of February, 2007.

My Commission Expires 3-18-2007
(Notary Public Seal)

Timothy W. Stock, #21809
Counsel for Respondent
Law office of Kurt L. James
115 SE 7th Street
Topeka, KS 66603

RENE BRADDOCK-ROBERTS
Notary Public
State of Kansas
My Appointment Expires: 3-18-2007

Mark A. Knight, #12183
Assistant Attorney General
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612-1230


Sandra L. Sharon, Hearing Officer

CERTIFICATE OF SERVICE

On the 15th day of February, 2007, I mailed a copy of this CONSENT AGREEMENT AND FINAL ORDER to:

Deborah L. Ekberg
114 South Main
P.O. Box 11
Morganville, KS 67468

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