

BEFORE THE KANSAS STATE BOARD OF NURSING
LONDON STATE OFFICE BUILDING, 900 S.W. JACKSON #1051
TOPEKA, KANSAS 66612-1230

FILED
NOV 8 2006

IN THE MATTER OF
ROBERT W. SWANSON
LICENSE NO. 23-031175-072

KSBN
CASE NO. 04-229-3

MEMORANDUM DECISION
AND INITIAL ORDER

NOW on this 6th day of November, 2006, comes on for decision the renewal application filed by the Respondent, Robert W. Swanson.

A hearing was held November 1, 2006. Appearances were Mark A. Knight, Disciplinary Counsel for the Board and the Respondent, Robert W. Swanson in person by telephone.

After hearing the evidence, reviewing the Agency file, and hearing the statements and arguments of the Respondent and counsel for the Board, and after being otherwise well and duly advised in the premises, the Hearing Officer finds and orders as follows:

1. The Respondent, Robert W. Swanson, filed a renewal application with the Board on July 24, 2006. Respondent was a licensed practical nurse, holding license number 23-031175-072.
2. The Respondent's license was suspended by an Order entered September 20, 2005. The Respondent timely sought review of the Order of Suspension and the same was affirmed and review denied by the Board on October 20, 2005. The Respondent sought a renewal of his license by the Application for Renewal filed July 24, 2006.

3. The Order of September 20, 2005, determined that the Respondent's license suspension would continue through his current licensure period and if there were an Application for Renewal or Reinstatement, conditions for relicensing could be addressed at that time. Further, the Order required the Respondent to pay the costs of the proceeding of \$70.00 within thirty (30) days of the finality of the Order.

4. The Hearing Officer conducted a Scheduling Conference on August 9, 2006. The Respondent was advised that the factors set forth in the case of *Vakas v. Kansas State Board of Hearing Arts*, 248 Kan. 589 Syl. ¶ 2 would be considered and that the Respondent would have the burden of showing fitness to practice under said factors.

5. At the hearing conducted November 1, 2006, the Respondent introduced his Exhibit 1 consisting of four (4) pages setting forth his contentions regarding the underlying reasons for the initial disciplinary action and why he took issue with them. Further, the Respondent introduced Respondent's Exhibit 2 which was his renewal application. Also, the Respondent presented testimony on his own behalf.

6. The Respondent has not practiced nursing since his suspension in September, 2005.

7. The Respondent currently lives in Muskogee, Oklahoma and has obtained a cosmetology license in that state and presently is employed as a cosmetologist there.

8. The Respondent felt he did not deserve to lose his nursing license in the first place. He explained that the odor of alcohol on his breath reported by his employer at that time was due to the odor of alcohol being present in his clothing.

9. The Respondent held a nursing license in the State of Texas but that has not been renewed.

10. The Respondent believes he does not have an alcohol or substance abuse problem. He continues to drink socially but does not ingest illegal drugs. He has had no alcohol or chemical dependency evaluation treatment or follow-up since his suspension in 2005. The Respondent has no current plans to return to nursing in the State of Kansas. He desires a renewal of his Kansas nursing license in order to obtain licensure in another state, presumably Oklahoma, and possibly pursue employment as a dialysis technician.

11. The Respondent has not paid the costs ordered by the September 20, 2005, Order but testified he mistakenly believed he was relieved of his obligation to pay those costs by the Board's former disciplinary counsel.

12. Respondent has not been charged or convicted of any crime since his suspension in September, 2005.

13. The Hearing Officer concludes as follows:

a. The Board has jurisdiction of Respondent and the subject matter.

b. The Board's previous Findings of Fact with respect to the Respondent's suspension have become final and conclusive and must be accepted as true. There can be no relitigation of the question of Respondent's misconduct. See *Crawford v. Prudential Insurance Company of America*, 245 Kan. 724, 728, 783 P.2 900 (1989).

c. There's little evidence presented concerning the current moral fitness of Mr. Swanson. However, it appears that he is not engaged in any conduct since his suspension which would make him morally unfit to hold a license.

d. Respondent demonstrates little consciousness of the initial wrongful conduct and disrepute which that conduct brought to the profession. He continues to dispute that his license should have been suspended in the initial instance although he concedes that his conduct was unprofessional.

e. The extent of Mr. Swanson's rehabilitation is unknown. He has not undertaken any action by way of evaluation and/or treatment of any alcohol or chemical dependency problem.

f. Respondent's original misconduct was serious. A resident placed in his care had not been put to bed all night and was found in a wheelchair by the day shift the next day. The patient was soaked in his own urine and his employer terminated him for this incident.

g. Subsequent to the suspension of his license, the Respondent has not practiced nursing but has, instead, pursued a license and employment as a cosmetologist in Oklahoma.

h. Approximately one (1) year has expired since the time of the original discipline.

i. No evidence was produced as to Mr. Swanson's character, maturity and experience at the time of the original suspension.

j. Mr. Swanson's present competence and skills is unknown although he has fulfilled the required continuing nursing education requirements in order to obtain renewal of his license.

k. The seventy dollar (\$70.00) costs assessed previously are due and unpaid.

I. The Respondent has not met his burden of proof by clear and convincing evidence that he is sufficiently rehabilitated to justify full licensure as a licensed practical nurse in the State of Kansas. Accordingly, any license issued by the Board should be conditioned, limited or otherwise structured to assure protection of the public's safety should he return to a nursing employment in the State of Kansas.

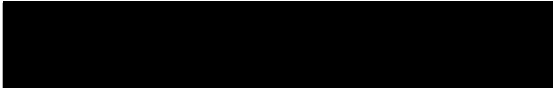
IT IS THEREFORE ORDERED:

1. The renewal application of the Respondent Robert W. Swanson be and is hereby granted and the Respondent's license as a practical nurse be renewed by the Board.

2. Upon renewal of the Respondent's license, the same shall immediately be suspended and the Respondent not be allowed to practice nursing until removal of the suspension.

3. Respondent shall be entitled to request a removal of the suspension but will be required to demonstrate justification for the ~~renewal~~ ^{removal} of the suspension again under the factors of *Vakas v. State Board of Healing Arts*.

4. The costs of this action, \$70.00, are assessed to the Respondent, Robert W. Swanson.



TERRY E. BECK, Hearing Officer

CERTIFICATE OF SERVICE

I certify that on the 8th day of November, 2006, the foregoing copy of the Memorandum Decision and Initial Order was served by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Robert Swanson
416 N. 16th
Muskogee, OK 74401-3121



Mark A. Knight /
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson, Suite 1051
Topeka, Kansas 66612-1230

Filed

SEP 20 2005

BEFORE THE KANSAS STATE BOARD OF NURSING
LONDON STATE OFFICE BUILDING, 900 S.W. JACKSON #1051
TOPEKA, KANSAS 66612-1230

Board of Nursing

IN THE MATTER OF
ROBERT SWANSON
LICENSE NO. 23-031175-072

CASE NO. 04-229-3

ORDER TO SUSPEND LICENSE

NOW on this 15th day of September, 2005, the above matter came on for hearing upon the Petition. The respondent appears personally by telephone, and the petitioner, the Board of Nursing, by and through disciplinary counsel for the board, Betty Wright. After a full and fair hearing the hearing officer makes the following findings and orders:

FINDINGS OF FACT

1. Respondent is licensed to practice nursing until 7/31/2006.
2. The respondent's address is 6368 Ridgecrest Trail #708, Fort Worth, Texas 76132.
3. The licensee has a previous case regarding his original licensure, KSBN Case 01-532-3. As an applicant he revealed a misdemeanor conviction in Ellis County Case 94CR230 for possession of drug paraphernalia. The court records are admitted into the record.
4. Testimony was given by the respondent who admitted that in October 2003 and February 2004 while employed as a nurse at Hays Good Samaritan, Hays, Kansas the licensee was reported to have alcohol on his breath and urine drug screens revealed an alcohol content on those two occasions. The respondent's employer provided a General Rehabilitation Agreement on or about 10/20/2003 which stated as a condition of his employment he would seek a drug/alcohol abuse assessment with subsequent counseling and rehabilitation as recommended by the treatment provider. In February 2004 the respondent was referred to EAP by the employer. The respondent testified that he completed the 9 week program.
5. On or about 6/4/2004 to 6/5/2004 the respondent failed to put a resident to bed all night. The resident was found in a wheelchair by the day shift on 6/5/2004. The resident was soaked

in urine, and there was no documentation as to why the resident was left up all night. The respondent testified that it was a very difficult night and he had relied upon his staff to care for the resident. He admitted that the resident may have wanted to be up and this was his right, but that not putting him to bed could have been abuse or neglect. The facility terminated him shortly after the incident.

CONCLUSIONS OF LAW

6. After hearing testimony of the respondent, the hearing officer finds that violations of the nurse practice act have occurred. The respondent was forthright and credible and admits to not applying for a nursing license in Texas and he is not in treatment or in an impaired provider program in Texas. It has been proven the respondent has violated the Nurse Practice Act on all counts alleged in the petition. The violations are:

- K.S.A. 65-1120(a)(4), to be unable to practice with skill and safety due to current abuse of drugs or alcohol.
- 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.A.R. 60-3-110. Unprofessional conduct (c) failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient.

7. The hearing officer finds that the license should be **suspended**. The suspension will continue through the current licensure period since the board cannot monitor whether the respondent is currently safe to practice nursing. If there is an application for renewal or reinstatement, conditions for relicensing can be addressed at that time.

8. The costs of \$70 of this proceeding are assessed to the respondent and are payable to the board within 30 days.

9. Disciplinary counsel shall mail a copy of this order to respondent's last known address.

IT IS SO ORDERED.



Terry E. Beck, Hearing Officer

NOTICE OF RIGHT TO APPEAL

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 your request to:


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

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

CERTIFICATE OF SERVICE

On the 21st day of September, 2005, I deposited a copy of this Order with the United States Postal Service, postage pre-paid, addressed to:

Robert Swanson
6368 Ridgecrest Trail #708
Fort Worth, Texas 76132


Betty Wright, Assistant Attorney General
785-296-7047