

Filed

JUN 2 2004

Board of Nursing

BEFORE THE KANSAS STATE BOARD OF NURSING
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Landon State Office Building, 900 S.W. Jackson # 1051
Topeka, Kansas 66612-1230

IN THE MATTER)
OF REBECCA DONOVAN)
LICENSE NO. 23-31515-081)

CASE NO. 03-023-9

CONSENT AGREEMENT to REINSTATE with LIMITATIONS and SUSPENSION
WITH STAY and FINAL ORDER

NOW on this 2nd day of June, 2004, the petitioner, the Board of Nursing, represented by disciplinary counsel Betty Wright, and the respondent, Rebecca Donovan, enter into the following agreement:

AGREED FINDINGS OF FACT

1. Respondent's license to practice nursing lapsed 8/31/2003.
2. Respondent's address of record is 44811-3 Washington St., Fort Riley, KS 66442.
3. Respondent submitted a Reinstatement Application received on May 3, 2004.
4. Respondent was convicted January 14, 2003 in Pottawatomie County Case No 00CR 569 in September 2001, for obtaining a prescription-only drug by fraudulent means, a Class A misdemeanor.

5.



6. After an investigation, the Board's Investigative Committee found reasonable grounds to believe that respondent violated the nurse practice act and referred this matter for further proceedings. The board may deny or limit a nursing license or may issue a censure if a violation of K.S.A. 65-1120 is established.

7. As the basis for this agreement and its enforcement, it shall be considered that respondent violated the Nurse Practice Act.

8. Respondent admits the allegations and acknowledges and stipulates that the Board is prepared to prove those allegations with clear and convincing evidence. The respondent stipulates, for the purpose of resolving this matter, to the entry of a Final Order making those allegations as finding of fact.

9. 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 and the Kansas State Board of Nursing are waiving those rights and voluntarily entering into this consent agreement instead of proceeding to such a hearing.

10. 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(b) and K.S.A.77-501 *et seq.* and to judicial review.

CONCLUSIONS OF LAW

11. 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(a) is established.

12. Respondent has violated:

(a) K.S.A. 65-1120(a)(6), unprofessional conduct, by drug diversion (K.A.R. 60-3-110(n)

(b) K.S.A. 65 1120(a)(4) to be unable to practice with skill and safety due to current abuse of drugs or alcohol;

(c) K.S.A. 65-1120(a)(2) guilty of a misdemeanor involving an illegal drug offense

POLICY STATEMENT

13. The role of Kansas State Board of Nursing is to protect the citizens of Kansas.

DISPOSITION

14. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that respondent shall complete the following conditions and requirements of this agreement:

(a) Respondent is being referred by the board to the Kansas Nurses Assistance Program (KNAP). Respondent must re-enter the program and comply with and remain compliant with all the recommendations and requirements of the program. It is the respondent's obligation to meet all the requirements of the program. Respondent must follow and successfully complete any treatment or counseling recommended. In the event respondent does not qualify for participation in KNAP, respondent shall immediately enroll in such other peer assistance program designated by the Board, and respondent must follow and successfully complete any treatment or counseling recommended.

(b) 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.

(c) Respondent must abstain from the use of all controlled substances except as prescribed for legitimate reasons by a licensed medical provider from whom he/she seeks medical attention. Respondent shall inform all providers who authorize prescriptions for narcotics, psychotropic medicines, or other mood altering drugs, or other pain relief for him of this Consent Agreement and the Final Order. Respondent shall submit written reports to the Legal Division of the Board within ten (10) days of each prescription. The written reports shall identify the medication prescribed, the reason for the prescription, the dosage, the date of prescription, and the number of refills authorized. Respondent agrees that if he/she accepts a prescription for narcotics, psychotropic medicines, or other mood altering drugs, that the Board may impose additional requirements or terms. Provided, however, respondent may challenge the need for additional terms and conditions.

(d) When respondent is approved for practice by KNAP, he/she shall **immediately** inform all employers, prospective employers, and the director of any nursing education program,

involving any clinical component, in which she enrolls or teaches, of this Consent Agreement and the Final Order

(e) Respondent shall comply with all laws and regulations governing the practice of nursing. Respondent shall also comply with all laws and regulations of the United States of America and its States. Minor traffic violations will not automatically be deemed a violation of this Consent Agreement and Final Order. Depending on the circumstances, repeated minor traffic violations could, however, be evidence of a pattern and practice which may demonstrate a manifest incapacity to practice nursing. Traffic offenses involving drugs or alcohol are not minor traffic offenses and will be deemed to be a violation of this Consent Agreement and Final Order.

(f) Respondent agrees to sign any release(s) necessary so that all reports, tests, or evaluations may be forwarded to the Kansas State Board of Nursing to the attention of the Board's Legal Division. In addition, upon request the respondent will provide the Board with any release necessary to confirm that respondent remains alcohol and drug free. The revocation of any release will be a breach of this Consent Agreement. Said records shall not be kept as public records.

(g) Respondent agrees to notify the Legal Division of the name of his/her employer and immediate supervisor within fourteen (14) days from the date he accepts employment and within fourteen (14) days of any change of employment or change in immediate supervisor.

(h) 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.

(i) Respondent shall immediately notify the Board of any use of controlled substances, or any violation of this Consent Agreement and Final Order.

(j) Respondent shall not seek or accept employment with a **temporary nursing service** or agency, a **home health care service** or agency, or as a **private duty nurse** without prior written consent of the Board.

(k) 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. The suspension will be **stayed** as long as requirements within this agreement are met. The card will have an "L" indicating the limitations on the practice.

15. Respondent admits that any use of controlled substances, except as specifically allowed herein, will not only be a violation of this Consent Agreement, but also independent grounds for additional discipline pursuant to K.S.A.65-1120, and may, at the sole discretion of the Board, constitute conclusive and irrefutable proof that respondent should not be licensed to practice nursing, and will justify immediate action to revoke or suspend respondent's license to practice nursing. Respondent agrees that **within 48 hours of any request**, he/she will surrender nursing license to the Board by mailing to the Legal Division, if the Board, after any investigation, determines that he/she has violated the terms and conditions of this Consent Agreement and Final Order. Respondent further agrees that, if he/she fails to surrender the license to the Board within 48 hours of a request as provided above, the Board will be authorized and justified in taking action pursuant to K.S.A. 77-501, including emergency action against her pursuant to K.S.A. 77-536. Furthermore, in the event the Board should move for an order revoking respondent's license, the only issue will be whether respondent has strictly complied with every term and condition herein.

16. Respondent understands that any unsatisfactory reports from the Kansas Nurse Assistance Program, from a supervisor, or any reports of a reportable incident under Risk Management Law, or a violation of the Kansas Nurse Practice Act, or failure to comply with any of the conditions of this Consent Agreement and Final Order may, at the sole discretion of the Board, constitute a breach of this agreement and the Final Order, and may result in further proceedings against respondent under the Kansas Administrative Procedures Act.

17. Respondent further understands that each and every condition outlined in this Consent Agreement is mandatory and if he fails to meet any one of the conditions the Board will proceed to cause a petition or other proceedings to be filed in this matter and that a full adjudicative

proceeding will follow. Respondent further understands that as a result he/she may be denied, suspended, limited, or revoked pursuant to K.S.A.65-1120 or K.S.A. 74-1110.

18. In deciding to enter into this Consent Agreement the respondent relied upon his/her own knowledge and judgment and did not rely on any statement, representation or promise from the Board or anyone acting on its behalf. Respondent further acknowledges that he/she entered into this Consent Agreement and consented to the entry of the Final Order freely, knowingly, and voluntarily, and without any coercion, pressure, or duress from the Board or anyone on its behalf.

19. Respondent acknowledges and agrees that neither this Consent Agreement or the Final Order are intended to be , nor will they operate as, a waiver or estoppel of the Board's right to take action against respondent for any act or omission not specifically made a part of this agreement, and that nothing in this Consent Agreement and Final Order shall be construed to deny the Board jurisdiction to investigate and prosecute other alleged violations of the Nurse Practice Act regardless of when they occur(ed) or when called to the attention of the Board. Respondent acknowledges that each and every term and condition imposed herein is mandatory and that she is required to comply with each and every one.

20. Respondent acknowledges and understands that he/she will be responsible for payment of any costs associated with compliance with this Consent Agreement, and that it is his/her responsibility to insure that all reports required to be submitted to the Board, including those of employer or other third party, are submitted in a timely manner.

21. Respondent will pay costs in the sum of **\$70.00**. Said payment shall be made to the Board by certified check, or money order upon entering this agreement.

22. By signing this Consent Agreement, respondent acknowledges that he/she has read and understands the entire document, and agrees to be bound by its terms. This Consent Agreement constitutes the entire agreement of the parties and may not be modified except in writing and approved by all parties.

IN CONCLUSION

23. The requirements are in effect until KNAP is completed.

24. This case will be inactivated and a card with no suspension or limitation will be issued when:

- a) The Board receives a letter of satisfactory completion of the KNAP program;
- b) No further violations of the Nurse Practice Act are reported;
- c) cost of \$70 is paid.

Once all of above are met the respondent may request in writing and return the license card with the "S" and "L" to the Board, and a new card can be made with no restrictions.

IN WITNESS WHEREOF, the parties hereto execute this CONSENT AGREEMENT to REINSTATE with LIMITATIONS and SUSPENSION WITH STAY FINAL ORDER.

Terry Beck
Hearing Officer

Rebecca Donovan
Respondent

STATE OF KANSAS)
SS _____)
COUNTY OF GEARY)
Subscribed and sworn to before me, this _____ day of _____

27th day of May



Signature of Notary Public

Betty Wright
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of June, 2004, I deposited a true and correct copy of the above foregoing in the United States mail, postage prepaid to:

Rebecca Donovan
44811-3 Washington St.
Ft. Riley, KS 66442

Betty Wright, Assistant Attorney General