

BEFORE THE KANSAS STATE BOARD OF NURSING

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

FILED

DEC 15 2006

KSBN

**IN THE MATTER OF
MELISSA D. POUNCIL
License No. 23-032462-072**

Case No. 05-681-5, 04-538-5

CONSENT AGREEMENT AND FINAL ORDER

NOW ON THIS 13th day of December, 2006, the Kansas State Board of Nursing, represented by Assistant Attorney General, Mark A. Knight, and the Licensee, Melissa D. Pouncil, 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. Licensee is licensed to practice nursing in Kansas through 7/31/2008. The Kansas State Board of Nursing (Board) has jurisdiction over the Licensee and the subject matter of this action.
2. Licensee's address of record is 2551 S. Hydraulic St., Wichita, KS 67216.
3. The Licensee understands that pursuant to K.S.A. 77-515, Licensee may be represented at Licensee's expense by, an attorney during these proceedings.
4. After an investigation, the Board's investigative committee found reasonable grounds to believe that the Licensee 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) The licensee submitted a renewal application on or about 7/22/04. Licensee answered "YES" to both the conviction and disciplinary action questions. With the application, licensee submitted a statement indicating she had been ticketed on 7/9/04 for driving on a

suspended driver's license, tag not assigned and no proof of car insurance. Licensee did not report the drivers license suspensions on her initial nursing application in 2003.

(b) Licensee was employed at Haysville Health Care Center, Haysville, Kansas, as a nurse, from on or about 7/22/03 to on or about 5/24/05.

(c) During the spring of 2005 Haysville staff began to notice irregularities in the quantity and tracking of resident's narcotic medications. Staff also noted that narcotic medication deliveries from the pharmacy were not being logged. Haysville had in place since October of 2004 a policy that all controlled drugs received from the pharmacy were to be recorded on the master drug sheet. In addition, the policy also required that all empty narcotic cards were to remain on the cart until removed by the director of nursing (DON) or the assistant director of nursing.

(d) Following an investigation the Haysville DON found that resident #1878 was missing a full card of Lortab that was delivered from the pharmacy on or about 5/2/05. The same resident was also missing an additional card of Lortab that was delivered from the pharmacy on or about 4/19/05. There was no entry made in the master drug sheet for the two cards of Lortab belonging to resident #1878. The DON also found that delivery receipts from the pharmacy were missing from the facility. The DON found that licensee was responsible for making the entries in the master drug sheet.

(e) The DON questioned the licensee regarding the location of the missing cards of Lortab. Licensee provided no response. Licensee was suspended from the facility on or about 5/18/05 and terminated from the facility on or about 5/24/05.

7. The above incidents are violations of the nurse practice act. The Licensee agrees that the board is prepared to prove that Licensee 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.

8. Licensee 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. Licensee 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. Licensee 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.

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. 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 Licensee's nursing license until Licensee completes each of the conditions and requirements of this agreement.

14. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that the Licensee'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.

15. The Kansas State Board of Nursing will not take additional disciplinary action against Licensee's nursing license for the violations stated above as long as Licensee completes each of the following conditions and requirements:

(a) **Licensee 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.**

Licensee shall return his or her current license cards to the Board with this Consent Agreement.

(b) Licensee shall not work as a director of nursing or in a charge or supervising position for one year from the effective date of this Consent Agreement.

After one year without violating any terms of this agreement, Licensee may request that the employment limitation be removed from her license. Licensee's request shall include written verification from her employer, to the Kansas State Board of Nursing, as to whether the Licensee has been employed as a director of nursing or in a charge or supervising position during term of her employment limitations. With a showing that the employment limitation of this agreement has been met by the Licensee, and the Licensee is compliant with all other terms of this agreement, the employment limitation will be removed from her license and she will be issued a license card with no limitations on the practice.

(c) Licensee 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 Licensee and for KNAP to report information to the board. Licensee will be deemed to have completed the KNAP program when KNAP issues written notification that Licensee has completed the program. Noncompliance with KNAP is a violation of this agreement.

(d) Licensee 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 Licensee. Licensee agrees that a Positive Drug Screen is a violation of this agreement.

(e) Licensee 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.

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

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

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

(i) Licensee 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.

(j) The Licensee will complete six (6) hours of Continuing Nurses Education (CNE) on the topic of "Documentation." Licensee is to submit the original certificates for proof of the completion of the hours by February 15, 2007. Licensee may not use these hours to meet the CNE requirements of any renewal period.

(j) Licensee will Submit Reports from the Licensee'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 Licensee securing employment that utilizes his or her nursing license, Licensee is to mail to the Kansas State Board of Nursing a statement indicating that Licensee has not yet secured employment which utilizes Licensee's nursing license. This statement is due by the 10th day of each month beginning the next month after signing this consent agreement. Once Licensee is employed in a position that utilizes his or her nursing license, or if Licensee 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 Licensee has caused the submission of four (4) separate nursing performance reports. The report shall be prepared and signed by Licensee's immediate supervisor or by an R.N. who evaluates Licensee'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)

Licensee's name, address, telephone number, license number. (5) A short explanation of the Licensee'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.

(k) Licensee 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. Licensee is responsible for the costs related to satisfying these conditions and requirements.

17. If Licensee does not meet these conditions and requirements, the Kansas State Board of Nursing may request additional sanctions against Licensee's license or application for a license. Licensee would be sent notice of such action and would be entitled to a hearing as to whether Licensee had complied with this Consent Agreement, but Licensee 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 Licensee and the Licensee's attorney of record, if any. All parties agree that only serving the Notice of Hearing upon the Licensee will be proper service and it is the Licensee's responsibility to contact his or her attorney, if any, in reference to the action.

19. Licensee acknowledges and agrees that upon a finding of Licensee not complying with the conditions or requirements of this Consent Agreement, the Stay of Suspension of Licensee's license to practice nursing in the State of Kansas, shall be lifted. Licensee will not be allowed to practice nursing in the state of Kansas during the period the Stay is lifted.

20. The Board will inactivate this case file once Licensee satisfies this agreement. This agreement does not prohibit the agency from taking disciplinary action against Licensee's

license for any additional or cumulative violation of the Kansas Nurse Practice Act committed by the Licensee before or after this agreement is entered into.

21. This agreement is a discipline and must be reported on any future renewal 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.

22. By signing this Consent Agreement and Final Order, Licensee acknowledges that Licensee has read and understands the entire document, and agrees to be bound by its terms.

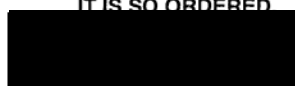
This Consent Agreement and Final Order constitutes the entire agreement of the parties and may not be modified except in writing and approved by all parties.

23. After successful completion of all of the conditions and requirements of this Consent Agreement by the Licensee, the Consent Agreement will be satisfied and the case will be inactivated.

24. 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

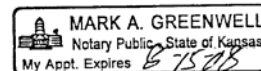

Melissa D. Pouncil
Licensee
2551 S. Hydraulic St.
Wichita, KS 67216

Melissa D. Pouncil must sign before a Notary Public.

State of Kansas, County of Sedgewick ss.
SUBSCRIBED AND SWORN TO before, me by Melissa D. Pouncil

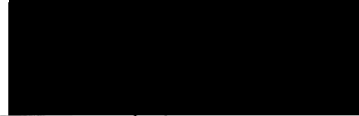
on this 7 day of December, 2006.

Signature of notary public: Mark A. Greenwell My Commission Expires 8/15/08
(Notary Public Seal)





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

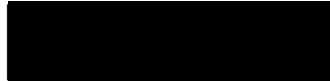


Terry E. Beck, ~~Notary~~ Hearing Officer

CERTIFICATE OF SERVICE

On the 15th day of December, 2006, I mailed a copy of this CONSENT AGREEMENT AND FINAL ORDER to:

Melissa D. Pouncil
2551 S. Hydraulic St.
Wichita, KS 67216



Mark A. Knight, #12183
Assistant Attorney General
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