

BEFORE THE KANSAS STATE BOARD OF NURSING
LONDON STATE OFFICE BUILDING
900 S.W. JACKSON, ROOM 551-S
TOPEKA, KANSAS 66612-1230
913/296-8401

IN THE MATTER OF:

BRENDA PURCELL
LICENSE NO. 23-012628-042

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) Case No: 96-0036-8
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INITIAL ORDER

Now on this 26th day of June, 1996, the above-captioned matter comes on for Scheduling Docket before Terry E. Beck, the Board's designated Hearing Officer, on the Petition filed with the Board based upon the Reinstatement Application filed with the Board by the Respondent seeking reinstatement of her license to practice as a licensed practical nurse (L.P.N.). The Petitioner appears by and through Assistant Attorney General Mark S. Braun, Disciplinary Counsel for the Board. The Respondent, Brenda Purcell, appears in person and without counsel.

The Hearing Officer inquires of the Respondent whether she received the Petition and whether she understands the nature of the allegations contained in the Petition. Respondent states that she received and understands the allegations. Respondent inquires of the Respondent whether she has any objection to the Board's jurisdiction in this matter. Respondent states she has no

objection.

The Hearing Officer advises the Respondent that she has the right to be represented by an attorney in these proceedings, if she chooses to obtain one. Respondent acknowledges this right, but wishes to proceed without counsel.

The Hearing Officer inquires of the parties of the status of the continuance motion filed by the Respondent. The Respondent informs the Hearing Officer that she wishes to proceed today without a continuance. The Hearing Officer notes that the record includes Respondent's request for a continuance and her intent to withdraw her reinstatement application. The issue of the continuance has already been dealt with by the Respondent's presence and her statement to proceed to day. The Hearing Officer also notes that there does not appear to be any statutory authority to withdraw an application.

The Petitioner informs the Hearing Officer that the parties have discussed this matter prior to this scheduled hearing and have an agreed upon resolution to present to the Hearing Officer. Petitioner further informs the Hearing Officer that the Respondent submitted a reinstatement application seeking to continue to practice nursing in the State of Kansas.

The Hearing Officer advises the Respondent she may either admit or deny the allegations in the Petition. If Respondent denies the allegations, the matter will proceed to hearing in which the Petitioner will have to prove, through witnesses and evidence, that the Respondent committed the act(s). The Respondent will have

the opportunity to cross-examine the Petitioner's witnesses, as well as the opportunity to present witnesses and evidence on her own behalf. If Respondent admits the allegations, there will be no hearing. Based on the admission(s), the Hearing Officer will make a finding that the Respondent committed the act(s) complained of and that Respondent has violated the Kansas Nurse Practice Act as specified by the Petitioner. The matter will then proceed to disposition to determine and impose the appropriate discipline for the violation.

The Hearing Officer inquires of the Respondent if she understands her options regarding the allegations. Respondent states that she understands her options. The Hearing Officer inquires of the Respondent whether she admits or denies the violation alleged in Counts I, II, and III. Respondent admits to the violations alleged in those counts.

The Hearing Officer accepts the admission and finds that the Respondent has violated the Kansas Nurse Practice Act as stated in the Petition. Based upon the Respondent's admissions to the violations, the Hearing Officer makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Respondent was issued a license to practice nursing in the State of Kansas as an licensed practical nurse (L.P.N.), license number 23-012628-042, which expired September 30, 1988.

2. Respondent submitted an application for reinstatement of her license to practice as an L.P.N. on or about March 26, 1996.

3. Respondent has not been licensed to practice nursing since expiration of her license, April 30, 1988, nor were there any applications for licensure submitted by the Respondent until the current application for reinstatement.

3. The Notice of Proceedings in this matter were sent to the Respondent at her last address known to the Board by first class mail on June 13, 1996.

4. Respondent has been advised of her right to counsel and voluntarily waived that right.

5. Respondent, after explanation of her options, admitted to presenting an altered license to two doctors' offices in Topeka to indicate she was licensed to practice nursing when, in fact, she was not so licensed, in violation of K.S.A. 65-1120(a)(1), fraud and deceit in the practice of nursing, as specified in Count I.

6. Respondent, after explanation of her options, admitted to offering to practice nursing as an L.P.N., and to practicing nursing in the State of Kansas as an L.P.N., without a license to do so, in violation of K.S.A. 65-1120(a)(7), willfully and repeatedly violating provisions of the Kansas Nurse Practice Act, or the rules and regulations adopted pursuant to that act, including K.S.A. 65-1114, which makes it an offense to practice practical nursing in Kansas without a license. This violation is specified in Count II.

7. Respondent, after explanation of her options, admitted that her general conduct of practicing for at least five years without a license; submitting an altered license to show she was

licensed when she was not licensed; and drinking alcoholic or cereal malt beverages during the work shift, constitutes professional incompetency, in violation of K.S.A. 65-1120(a)(3), as defined by K.S.A. 65-1120(e)(3). a pattern or practice, or other behavior, demonstrating a manifest incapacity or incompetence to practice, as described in Count III.

8. Respondent has violated the Kansas Nurse Practice Act, for which disciplinary action may be taken by the Board, or its designated hearing officer against the license or licensee.

CONCLUSIONS OF LAW

1. The Board and this Hearing Officer have jurisdiction to hear this matter pursuant to the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., and the Kansas Administrative Procedures Act, K.S.A. 77- 501 et seq. Respondent stipulates to such jurisdiction.

2. The Respondent has been advised of her right to counsel and has knowingly and voluntarily waived that right.

3. The Respondent has been properly served with the Petition and Notice of Proceedings in this matter pursuant to the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq.

4. The Board, and by designation the Hearing Officer, have the authority, after a finding of a violation of the Nurse Practice Act, to impose any of the disciplinary sanctions identified in K.S.A. 65-1120 and K.S.A. 74-1110 against the Respondent or the Respondent's license to practice nursing in the State of Kansas.

5. K.S.A. 65-1120(b) requires these proceedings of the Board to be conducted pursuant to the Kansas Administrative Procedures


Act, K.S.A. 77-501 et seq.

6. Based on Respondent's admissions, Respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., as stated in Counts I, II, and III, specifically: K.S.A. 65-1120(a)(1), committing fraud and deceit in the practice of nursing, as described in Count I and Finding of Fact No. 5; K.S.A. 65-1120(a)(7), willfully and repeatedly violating provisions of the Nurse Practice Act, including K.S.A. 65-1114, as described in Count II and Finding of Fact No. 6; and K.S.A. 65-1120(a)(3), professional incompetency as defined by K.S.A. 65-1120(e)(3), a patten or practice, or other behavior, which demonstrates a manifest incapacity or incompetence to practice.

ORDER


Based on the above findings of fact and conclusions of law, IT IS THEREFORE ORDERED pursuant to the disciplinary remedies available under K.S.A. 65-1120(a) that the Respondent's application for reinstatement of her license to practice as a licensed practical nurse, (L.P.N.), is hereby **denied**. The Respondent may not practice nursing as an L.P.N. in the State of Kansas.

IT IS SO ORDERED.



Terry E. Beck
Hearing Officer

Prepared and Submitted by:



Mark S. Braun
Disciplinary Counsel
Assistant Attorney General

NOTICE REGARDING RELIEF FROM THIS ORDER
STATEMENT OF APPEAL RIGHTS

This is an Initial Order. The parties to whom this Initial Order is issued may file a petition for review with the Agency Head within fifteen (15) days after service of this order. The petition for review must state the specific grounds upon which relief is requested. Unless a later date is stated within the Initial Order, a stay is granted, or the order is reviewed, an Initial Order shall become a final order without further notice or proceedings thirty (30) days after the date of service as indicated by the attached certificate of service.

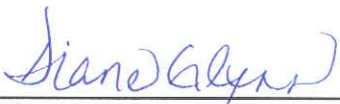
CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of July, 1996, I deposited a true and correct copy of the Initial Order in the United States Mail, first class mail, postage prepaid to the following:

Brenda Purcell
3131 W. 32nd Terrace
Topeka, Ks. 66614

and by hand delivery to:

Mark S. Braun
Assistant Attorney General
Kansas State Board of Nursing
900 S.W. Jackson Rm 551-S
Topeka, Kansas 66612-1230



Diane M. Glynn, J.D., R.N.
Practice Specialist