

BEFORE THE KANSAS STATE BOARD OF NURSING

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

FILED

SEP 23 2010

**IN THE MATTER OF
MICKEY L. WHITNEY
License No. 23-12715-101**

KSBN

Case No. 08-725-5

CONSENT AGREEMENT TO SURRENDER AND REVOKE LICENSE AND FINAL ORDER

NOW ON THIS 27th day of September, 2010, the Kansas State Board of Nursing, represented by Assistant Attorney General, Alma A. Heckler, and the Licensee, Mickey L. Whitney, by and through counsel, Christopher O'Hara, 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

The hearing officer makes the following findings of fact based on the evidence presented and statements of the parties.

1. Licensee is licensed to practice nursing in Kansas through 10/31/2011. The Kansas State Board of Nursing (KSBN) has jurisdiction over the licensee and the subject matter of this action.
2. Licensee's address of record is 1508 Tulsa, Wichita, KS 67216.
3. 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.
4. The Board requested that a petition be filed to take disciplinary action against the licensee's license.

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5. Following a petition being filed by the Board, the licensee entered a Consent Agreement and Final Order with the Board on January 11, 2010.

6. Licensee has the right to these hearings and the right to seek review of the findings from the hearings 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 knowingly and voluntarily entering into this agreement instead of proceeding to these hearings. This agreement will conclude Board action pending at this time against licensee's license.

7. Licensee understands that pursuant to K.S.A. 77-515, licensee may be represented at licensee's expense by, an attorney during these proceedings.

8. The licensee admitted to the following facts and violations as listed in the January 11, 2010 Consent Agreement and Final Order:

(a) A petition was filed 10/27/09 to take disciplinary action against the licensee's license.

(b) On 6/1/1981, Respondent was licensed by the Kansas State Board of Nursing as a Licensed Practical Nurse (LPN).

(c) On 12/28/1998, Respondent was moved to the position of Clinical Nurse Coordinator by Family Medicine East. During his employment at Family Medicine East, Respondent used a title/abbreviation to indicate he was a registered professional nurse (RN).

(d) On 10/30/2000, Respondent submitted an application for employment to Via Christi Medical Center, Wichita, Kansas. The application was for the position of RN - Attending and Unit Manager. During the application process Respondent submitted a KSNB license card which purported to show Respondent to be licensed in the state of Kansas as a Registered Nurse (RN). During the application process Respondent submitted a resume which provided that Respondent was a member of the Kansas State Board of Nursing Practice Committee from 1992 to 1996.

(e) On 12/13/2001, Respondent submitted an application for employment to Galichia Heart Hospital, Wichita, Kansas. The application was for the position of RN - Manager - Supervisor - Educator. During the application process Respondent submitted a KSBN license card which purported to show Respondent to be licensed in the state of Kansas as a Registered Nurse. During the application process Respondent submitted Curriculum Vitae which provided that Respondent was an RN and a member of the Kansas State Board of Nursing Practice Committee from 1992 to 1996.

(f) In March of 2002, Respondent began employment at Galichia Heart Hospital. During his employment at Galichia Heart Hospital, Respondent used a title/abbreviation to indicate he was a registered professional nurse (RN).

(g) On 9/25/2006, Respondent resigned his position with Galichia Heart Hospital. In the resignation letter, Respondent's signature appears over "Mickey Whitney, RN, MSN".

(h) On or about November of 2006, Respondent submitted an application for employment to GraceMed Health Clinic, Inc., Wichita, Kansas. The application was for the position of Clinic Service Manager. During the application process Respondent submitted a KSBN license card which purported to show Respondent to be licensed in the state of Kansas as a Registered Nurse. During the application process Respondent submitted a resume which provided that Respondent was and RN and a member of the Kansas State Board of Nursing Practice Committee from 1992 to 1996.

(i) In November of 2006, Respondent began employment at GraceMed Health Clinic.

(j) On 11/8/2006, Respondent signed a GraceMed Health Clinic Job Description Acknowledgement for the position Clinic Service Manager. The Job Description Acknowledgement provided that the position required current RN licensure.

(k) During his employment at GraceMed Health Clinic, Inc., Respondent used a title/abbreviation to indicate he was a registered professional nurse (RN).

(l) Kansas State Board of Nursing records show Respondent was not a member of the Kansas State Board of Nursing Practice Committee from 1992 to 1996.

(m) Kansas State Board of Nursing records show Respondent has never been licensed as a Registered Professional Nurse (RN) by the Kansas State Board of Nursing. Kansas State Board of Nursing records show Respondent has always been licensed as an LPN. His license card was altered to show respondent was a Registered Professional Nurse (RN). No alterations were made by the Kansas State Board of Nursing.

9. The above incidents are violations of the nurse practice act. The Respondent agrees that the board is prepared to prove that respondent has violated:

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)(6), unprofessional conduct by K.A.R. 60-3-110(a) Performing acts beyond the authorized scope of the level of nursing for which the individual is licensed.

Count 3: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(b), assuming duties and responsibilities within the practice of nursing without making or obtaining adequate preparation or maintaining competency.

Count 4: K.S.A. 65-1120(a)(7), to have willfully or repeatedly violated the provisions of the Kansas nurse practice act or any rules and regulations adopted pursuant to that act, by K.S.A. 65-1115(a) failing to meet the qualifications for licensure as a professional nurse.

Count 5: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(m), engaging in conduct related to licensed nursing practice that is likely to deceive, defraud, or harm the public.

10. Licensee agreed to pay a fine of \$15,000.00, at \$625.00 per month, until paid in full. Respondent made two payments but has not made any more payments since he reports he lost

employment. Respondent is in violation of the January 11, 2010 Consent Agreement and Final Order.

POLICY STATEMENT

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

DISPOSITION

11. Based upon this agreement, the parties agree that Licensee is surrendering licensee's license to practice nursing in the state of Kansas.

12. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that Licensee's license to practice nursing in Kansas is immediately revoked. Licensee shall not practice nursing in the state of Kansas.

13. The Board will report this surrender and revocation to data banks, other entities, and in its newsletter. This is a disciplinary action on licensee's license. The original of this document shall be kept in the Board's agency file. This Agreement is a public record and will be reported to national disciplinary data banks. The effective date of this Consent Agreement to Surrender and Revoke is the date shown on the certificate of service.

14. If licensee does seek reinstatement of licensee's license, the agreed facts and listed violations in the Consent Agreement are already admitted, licensee has waived the right to a hearing on the facts in this matter, however to receive a reinstatement of licensee's license the licensee will have the opportunity at that time to prove licensee's fitness to practice nursing in Kansas. Additionally, the licensee was fined \$15, 000.00 in the Consent Agreement and Final Order entered into by the licensee on January 11, 2010. Any amounts still due and owing by the licensee to satisfy the fine assessed in the January 11, 2010 Consent Agreement and Final Order, will not lapse. If the licensee seeks reinstatement, he will have to present a plan to the Board to pay the balance of the fine to the Board with his reinstatement application. The Board will have the option to approve or disapprove any plan. The Board may also require completion of any other requirements of the January 11, 2010 Consent Agreement and Final Order.

15. 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.

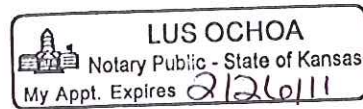
16. By their signatures, the parties hereby acknowledge this agreement.

IN WITNESS WHEREOF, the parties hereto execute this CONSENT AGREEMENT TO SURRENDER AND REVOKE LICENSE AND FINAL ORDER.

IT IS SO ORDERED.

Mickey L. Whitney
Licensee
1508 Tulsa
Wichita, KS 67216

Mickey L. Whitney must sign before a Notary Public.



Christopher S. O'Hara, # 21195
Counsel for Licensee
1223 E. First Street
Wichita, KS 67214

Alma A. Heckler, #11555
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612

Sandra L. Sharon, Presiding Officer

Pursuant to K.S.A. 77-527, either party may request a review of this final order by filing a petition for reconsideration with the Kansas State Board of Nursing. A petition for reconsideration must be filed with 15 days from the date this final order was served. Failure to timely request a reconsideration by the Kansas State Board of Nursing may preclude further judicial review. The petition for reconsideration shall be mailed or personally delivered to: Mary Blubaugh, Executive Director, Board of Nursing, Landon State Office Building, Suite 1051, 900 SW Jackson, Topeka, KS 66612-1230.

Pursuant to K.S.A. 77-531, if the final order is served by mail, three days are added to the time limits set out above.

Pursuant to K.S.A. 77-530, if a request for reconsideration is not requested in the time and manner stated above, this initial order shall become effective as a final order 30 days after service.

CERTIFICATE OF SERVICE

On the 28th day of September, 2010, I mailed a copy of this CONSENT AGREEMENT TO SURRENDER AND REVOKE LICENSE AND FINAL ORDER to:

Mickey L. Whitney
1508 Tulsa
Wichita, KS 67216

Christopher S. O'Hara
Attorney at Law
1223 E First Street
Wichita, KS 67214



Alma A. Heckler, #11555
Assistant Attorney General