

Mark S. Braun, #12795  
Assistant Attorney General  
Kansas State Board of Nursing  
Landon State Office Building  
900 SW Jackson, Suite 551-S  
Topeka, Kansas 66612-1230

BEFORE THE KANSAS STATE BOARD OF NURSING  
LONDON STATE OFFICE BUILDING  
900 S.W. JACKSON, #551-S  
TOPEKA, KANSAS 66612-1230

IN THE MATTER )

OF )

Case No: 92-389-8


ROBERT AGEE )  
23-016324-112 )



NUNC PRO TUNC

NOW ON THIS 21<sup>st</sup> day of February, 1994, this Order is issued to clarify the case number in this case. During the investigative phase of this case, the wrong case number (92-100-8) was given to this case. The wrong number was used in the filing of the Petition and during the February 11, 1994 hearing in this case. In preparing the Proposed Default Order the wrong number was discovered. Therefore the Proposed Default Order, and any future pleadings will have the correct number, 92-389-8, used.

IT IS SO ORDERED.

  
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Helen R. Rice  
Hearing Officer

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Case No: 92-389-8

ROBERT AGEE )  
23-016324-112 )

PROPOSED DEFAULT ORDER

This matter comes on for hearing on this 11th day of February, 1994, before Helen R. Rice, Hearing Officer designated by the Kansas State Board of Nursing to hear this case. The hearing was conducted in Room 106 of the Landon State Office Building, Topeka, Kansas.

The Petitioner appears through Assistant Attorney General Mark S. Braun, Disciplinary Counsel for the Board. The Respondent does not appear. The matter comes on for hearing on the disciplinary Petition filed with the Board.

The Hearing Officer calls the case, then reviews the Petition, stating it was mailed to the Respondent at his last address known to the Board, 6923 Towerview Lane, Topeka, Kansas, on or about January 27, 1994. The Hearing Officer states that the

Respondent is not present, has not provided any notice of a delay nor requested a continuance. The Hearing Officer asks the Petitioner's counsel if he is ready to proceed.

Petitioner's counsel states he is ready to proceed and requests that the Hearing Officer issue a Proposed Default Order in this case after a proffer of evidence. Counsel then proffers that if the matter proceeded to hearing, evidence would be presented to show: that on or about November 21, 1992, the Respondent was employed as a licensed practical nurse, (LPN), at the Kansas Neurological Institute (KNI) in Topeka, Kansas; that a resident/patient at that facility had a physician's order for Diazepam (Valium) injection 10mg./2cc: 10 mg. pr (per rectum)/IV 4 hours prn (as needed) seizure > 1 minute or more than 3 hr.; that it was reported to the Respondent that the resident/patient was having a seizure and needed the prescribed medication; and that Respondent gave the medication by injection into the patient/resident's calf rather than as directed by the physician's order. Petitioner's counsel asserts that the actions of the Respondent violate Counts I, II, and III as stated.

The Hearing Officer accepts the proffer and requests recess for her deliberation. After due deliberation the Hearing Officer reconvenes the hearing and makes the following Findings of Fact, Conclusions of Law and issues her order in this case.

#### FINDINGS OF FACT

1. Respondent was issued license number 23-016324-112, to practice as a licensed practical nurse (L.P.N.) in the State of Kansas. Said license is to expire November 30, 1994.

2. The Notice of Hearing in this matter was sent to the Respondent by placing such notice in the United States Mail, first class, postage prepaid, to the Respondent's last address known to the Board, 6923 Towerview Lane, Topeka, Kansas 66619. Notice was sent more than ten (10) days prior to the hearing date.
3. Respondent is not present, nor has there been any response to the Notice or Petition received from him in the way of requests for delays or continuances. Petitioner's counsel states the Petition and Notice have not been returned.
4. Based on the proffer of testimony, Respondent was employed by the Kansas Neurological Institute (KNI) as a licensed practical nurse (L.P.N.) on or about November 21, 1992.
5. A Resident/patient at KNI had a physician's order/prescription for Diazepam injection 10 mg/2 cc: 10 mg pr/IV 4 hrs prn seizure > 1 minute or more than 3 hours.
6. Within the common translation of nursing/medical notes, the term "pr" means the medication is to be administered per rectum or rectally, by injection without a needle.
7. Within the common translation of nursing/medical notes, the term "prn" means the medication is to be administered per request or as needed.
8. Within the nursing/medical field, an L.P.N. does not have the authority to deviate from a physician's order in any way, specifically related to this case, Respondent does not have the authority to change the route or method of administering a medication as ordered.

9. After receiving information that the patient/resident was having a seizure, Respondent administered the medication in this case by injection with a needle into the calf of the patient/resident's leg rather than as ordered by the physician.
10. Respondent recorded the medication in patient/hospital records as being given as ordered.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear this matter pursuant to the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., and because Respondent is a licensee of the Board.
2. The Hearing Officer has authority to hear this matter pursuant to the Kansas Administrative Procedures Act (KAPA), K.S.A. 77-501 et seq., and the authority by the Board's designation to order any of the disciplinary option available under K.S.A. 65-1120(a).
3. K.S.A. 65-1120(b) authorizes the Board to conduct all proceeding in accordance with the Kansas Administrative Procedures Act (KAPA) K.S.A. 77-501.
4. Notice of these proceedings and service of the Notice in this case were done pursuant to the requirements of KAPA and the KNPA by mailing the Notice to the Respondent at his address last known to the Board at least ten (10) days prior to the hearing.
5. K.S.A. 77-520(a) authorizes this Hearing Officer to serve notice of Proposed Default Order on all parties if a party

fails to attend or participate in a hearing or other stage of an adjudicative proceeding.

6. Petitioner has proffered substantial competent evidence that Respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., specifically K.S.A. 1120(a)(6), guilty of unprofessional conduct as defined by K.A.R. 60-3-110(1), by performing acts beyond the authorized scope of the level of nursing for which the individual is licensed by giving the medication prescribed in the calf by needle injection, rather than by injection in the rectum without a needle as ordered by the physician.
7. Petitioner has proffered substantial competent evidence that Respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., specifically K.S.A. 65-1120(a)(6), guilty of unprofessional conduct as defined by K.A.R. 60-3-110(3), by failing to take appropriate action or follow policies and procedures in the practice situation designed to safeguard the patient by giving the ordered injection into the calf, rather than rectally as ordered by the physician.
8. Petitioner has proffered substantial competent evidence that Respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., specifically K.S.A. 1120(a)(6), guilty of unprofessional conduct as defined by K.A.R. 60-3-110(4), inaccurately recording or falsifying the record of a patient or agency by indicating in patient and hospital records that the prescribed medication was given per rectum when it was given by needle injection into the calf.

9. Petitioner has presented a request and reasonable grounds for issuance of a Proposed Default Order.

**ORDER**

Based upon the Findings of Fact, Conclusions of Law, and pursuant to the options available under K.S.A. 65-1120(a), IT IS ORDERED that Respondent's license to practice as a licensed practical nurse (L.P.N.) in the State of Kansas is hereby revoked. The Hearing Officer shall reconsider this Order upon a timely filed request by the Respondent.



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Helen R. Rice  
Hearing Officer

NOTICE REGARDING THIS PROPOSED DEFAULT ORDER

This is a Proposed Default Order. The party against whom it is issued may file a written motion with seven (7) days after service, requesting that the Proposed Default Order be vacated and stating the grounds relied upon.

The Proposed Default Order shall become effective after expiration of the time within which the party may file a written motion to vacate the Order is filed with the agency within such time.

Upon receipt of a motion to vacate a Proposed Default Order, the Presiding Officer shall either vacate the Proposed Order or issue the Default Order as proposed. If the Hearing Officer issues a Default Order as proposed, the Order shall become effective upon service.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing PROPOSED  
DEFAULT ORDER AND NUNC PRO TUNC WERE SERVED BY DEPOSITING same in  
the United States mail, first class postage prepaid, this 21<sup>st</sup>  
day of February, 1994, to:

Robert Agee  
6923 Towerview Lane  
Topeka, Kansas 66619

~~and by hand delivering a copy to:~~

and

Mark S. Braun, Disciplinary Counsel  
Assistant Attorney General  
Kansas State Board of Nursing  
Landon State Office Building  
900 SW Jackson, Suite 551-S  
Topeka, Kansas 66612-1230



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Helen R. Rice  
Hearing Officer