

**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:

JONATHAN SWAYZE
REINSTATEMENT APPLICANT
LICENSE NO. 23-01646-101

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) Case No: 95-0189-5
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FINAL ORDER

Now on this 13th day of February, 1997, the above-captioned matter comes on for hearing before Terry E. Beck, the Board's designated Hearing Officer, on the Petition filed with the Board. The Petitioner appears by and through Assistant Attorney General Mark S. Braun, Disciplinary Counsel for the Board. The Respondent, Jonathan Swayze, appears in person and without counsel. The Hearing Officer inquires of the Respondent whether he received the Petition and Notice of Hearing and whether he understands the nature of the allegations contained in the Petition. Respondent states that he received the documents and understands the allegations. The Hearing Officer inquires of the Respondent whether he has any objection to the Board's jurisdiction in this matter. Respondent states he has no objection.

The Hearing Officer informs the Respondent he has the right to be represented by an attorney in these proceedings, if he chooses to obtain one at his own expense. Respondent acknowledges this right, but wishes to proceed without counsel.

The Hearing Officer advises the Respondent he 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 his 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, for which disciplinary action will be taken against the Respondent or his license. 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 he understands his options regarding the allegations. Respondent states that he understands his options. The Hearing Officer inquires of the Respondent whether he admits or denies the violation alleged in the Petition. Respondent admits to the violation alleged in the Petition.

The Hearing Officer accepts the admission to the violation and finds that the Respondent has violated the Kansas Nurse Practice Act as stated in the Petition.

The Petitioner presents evidence and argument why Respondent's application for licensure should be denied or, if granted, placed under suspension, which could be

stayed with conditions and or limitations of his practice. Admitted as exhibits, without objection, are: Petitioner's Exhibit No. 1, the original reinstatement application submitted by the Respondent in October, 1996; Petitioner's Exhibit No. 2, a copy of the U.S. District Court Judgment in a Criminal Case No. 6:95-10073-001, United States of America v. Jonathan Swayze; Petitioner's Exhibit No. 3, a copy of the Respondent's Adult Probation Contract for the 1995 DUI, in Sedgwick County District Court Case No. 95CR1902; and Petitioner's Exhibit No. 4, a copy of the Probation Agreement in the Wichita Municipal Court Case No. 94-CM13401, City of Wichita vs. Swayze, Jonathan. Petitioner rests.

The Respondent presents evidence and argument why his application should be granted. Respondent states a willingness to have his practice monitored. Respondent informs the Hearing Officer that all of his problems have related to while he was off work and intoxicated. Without excusing his actions, Respondent points out the progress he has made after being in custody, receiving treatment, involvement in an anger management class and positive conduct while on his supervised release. Admitted as exhibits without objection are: Respondent's Exhibit No. 1, a copy of an August 8, 1996 letter to the Respondent from his federal probation officer; Respondent's Exhibit No. 2, an undated letter to Mark S. Braun from Paula Haag, RN, and received by the Board December 22, 1995; Petitioner's Exhibit No. 3, an undated letter to Mark S. Braun from Chung Martin, RN, received by the Board December 22, 1995; an October 1, 1996 letter to Mark Braun; Respondent's Exhibit No. 5, titled Attachment Detail List of Jonathan Swayze; Respondent's Exhibit No. 6, a December 28, 1995 letter from Karen

M. Humphreys to Jon Swayze; Respondent's Exhibit No. 7, a letter from Jon Swayze to Diane Glynn with attachments a handwritten letter from Frances Muney and a two-page Wichita Fire Department Incident Report; Respondent's Exhibit No. 8, copies of two letters to Delores Price from Jon Swayze and a resume attached.

The Hearing Officer inquires information regarding the Respondent's aftercare, probation, and anger management as mentioned in his presentation. Respondent states there is more information available. The Hearing Officer inquires whether the parties object having this matter continued in order to have more information available for disposition.

Now on this 27th day of March, 1997, the above-captioned matter comes on for further hearing regarding the disposition in this matter. The Petitioner appears by and through Assistant Attorney General Mark S. Braun, Disciplinary Counsel for the Board. The Respondent, Jonathan Swayze, appears in person and with counsel, Jerry Rank, attorney at law, Wichita, Kansas. The Respondent and his counsel appear by telephone.

The Hearing Officer informs the parties that he received a letter from the Respondent's counsel with several attachments. Petitioner states he received a copy of the letter. The parties agree that the March 19, 1997 letter to the Hearing Officer from the Respondent's counsel shall be admitted without objection as Petitioner's Exhibit No. 5. (This exhibit was actually marked as Petitioner's Exhibit No. 1, but there had already been four exhibits admitted by the Petitioner.)

The parties also inform the Hearing Officer of an agreement by which the Respondent's application for a license would be granted, and a license issued. The license would be suspended. The suspension would be stayed, allowing the Respondent to practice nursing under certain limitations and restrictions as shall be stated in the order part of this agreement. The parties agree to waive any review, reconsideration or judicial review of this order in order to move up the effective date of this order. Respondent does so with the advice and consultation of his attorney.

Based upon the information already provided, the Hearing Officer makes certain 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 a licensed practical nurse, (L.P.N.), license number 23-016461-101, which expired October 31, 1995. Respondent submitted an application for reinstatement of his license to practice nursing in Kansas on or about October 3, 1996.

2. The Petition and Notice of Hearing in this matter were served by first class mail at Respondent's last known address, 301 W. 11th St. North, Wichita, Kansas 67203, on January 31, 1997.

3. Respondent was advised of his right to counsel, voluntarily waived that right at adjudication, but has counsel for disposition.

4. Respondent, after explanation of his options, admits:

A. That after having his work as a nurse criticized by a physician, he, while off duty, became intoxicated and made threats to hospital staff that he would kill the physician and others;

B. He has a history of alcohol abuse, and that he was convicted of D.U.I.s in 1991, 1992, and 1995. Respondent was also convicted of disorderly conduct in the Wichita Municipal Court;

C. Respondent was convicted in United States Federal Court of threatening the life of the President of the United States of America. Respondent was remanded to the custody of the U.S. Bureau of Corrections for four months. Respondent was placed in a half-way house and is currently on supervised release. Respondent has been through a treatment program.

5. Respondent admits that such conduct as described above constitutes professional incompetence in violation of K.S.A. 65-1120(a)(3), as defined by K.S.A. 65-1120(e)(3), a pattern and practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing.

6. 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 his right to counsel and has knowingly and voluntarily waived that right at adjudication. Respondent is represented by counsel at disposition.

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, he has violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., as stated in the Petition and the above Findings of Fact, by engaging in conduct constituting professional incompetence 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 indicating a manifest incapacity or incompetence to practice nursing.

7. The parties have agreed to waive their rights to review, reconsideration and judicial review afforded by the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq., and the Kansas Act for Judicial Review, K.S.A. 77-601 et seq. The intent and

effect of these waivers is to have this order effective as a Final Order the date this order is signed by the Hearing Officer.

ORDER

Based on the above findings of fact and conclusions of law, the agreement of the parties, and the Respondent's request, **IT IS THEREFORE ORDERED**, pursuant to the disciplinary remedies available under K.S.A. 65-1120 and K.S.A. 74-1110, that Respondent's application for a license to practice as a licensed practical nurse, (L.P.N.), is hereby granted. The license shall be issued, but the license shall be **suspended** until its expiration October 31, 1999. The license card shall have an "S" in the alert code portion of the license card. The suspension shall be stayed, allowing the Respondent to practice nursing under the following conditions:

1. Respondent shall cause his employer(s) to submit quarterly reports about his nursing practice through October 31, 1999. The reports shall be prepared by an R.N., other than a nurse consultant, who is in a supervisory role over the Respondent with regular familiarity with his daily practice. The first report shall be due July, 20, 1997. Subsequent reports shall be due October 20, 1997; January 20, 1998; April 20, 1998; July 20, 1998; October 20, 1998; January 20, 1999; April 20, 1999; July 20, 1999; and October 20, 1999.

2. In order for the Respondent's stay of suspension to remain in effect, Respondent shall sign, and keep current, any releases or authorizations for information from his probation/parole officer regarding any positive alcohol or drug screens

performed on the Respondent. The probation/parole officer shall notify the board's practice specialist of any positive screens as soon as possible.

3. In order for the Respondent's stay of suspension to remain in effect, the Board's practice specialist shall receive, quarterly reports about his status on probation/parole, as well as his anger management counselling program. Should Respondent be released from probation/parole or his anger management program prior to October 31, 1999, a report so indicating shall be provided to the board's practice specialist. The first report shall be due July, 20, 1997. Subsequent reports shall be due October 20, 1997; January 20, 1998; April 20, 1998; July 20, 1998; October 20, 1998; January 20, 1999; April 20, 1999; July 20, 1999; and October 20, 1999, unless released prior to any of these dates. It is understood that these reports shall be provided in letter form to the Respondent. The Respondent has the affirmative duty to forward a copy of these reports to the Board's practice specialist.

4. In order for the stay of suspension to remain in effect, the Respondent shall, at all times, remain in compliance with his probation/parole.

5. Respondent shall submit verification of attendance at his AA program. The AA reports shall be submitted to the Board's practice specialist on the same schedule as the employer reports.

6. Further, Respondent shall be assessed costs of these proceedings in the amount of thirty-five (\$35.00) dollars. The costs shall be paid by cashier's check or money order payable to the Board of Nursing and delivered to the Board office within 90 days of the effective date of this order.

IT IS SO ORDERED.



Terry E. Beck
Hearing Officer

PREPARED AND APPROVED BY:




Mark S. Braun
Disciplinary Counsel
Assistant Attorney General
900 S.W. Jackson Rm 551-S
Topeka, Kansas 66612-1230

APPROVED BY:



Jonathan Swayze
Respondent



Jerry D. Rank
Woodward, Blaylock, Hernandez,
Roth and Day,
Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that on the 17th day of April, 1997, I deposited a true and correct copy of the Final Order in the United States Mail, first class mail, postage prepaid to the following:

Jonathan Swayze
301 W. 11th St. North
Wichita, Kansas 67203

Jerry D. Rank
Woodward, Blaylock, Hernandez,
Roth and Day
833 N. Waco
Wichita, Kansas 67203

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