

**BEFORE THE KANSAS STATE BOARD OF NURSING**

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

**IN THE MATTER OF  
BRENDA LEE BACON  
License No. 23-18676-052**

**Case No. 12-368-5**

**FILED**

MAR 28 2013

**KSBN**

FILED OAH  
22 MAR '13 PM 2:23

**PROPOSED DEFAULT ORDER TO DENY**

NOW ON THIS 19th day of March, 2013, petitioner, the Kansas State Board of Nursing, appears by disciplinary counsel, Alma A. Heckler, Assistant Attorney General, for a Hearing on the Petition. Respondent does not appear.

Wherefore, the Presiding Officer finds as follows:

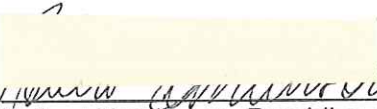
1. Respondent filed a reinstatement application to practice nursing in Kansas on or about April 3, 2012. The Kansas State Board of Nursing has jurisdiction over the respondent and the subject matter of this action.
2. Respondent was sent a copy of the petition to deny reinstatement and notice of this hearing to respondent's last known address and service is proper. Respondent does not appear.
3. Petitioner moves for issuance of a proposed default order denying reinstatement of respondent's license. The petitioner's request is granted by default pursuant to K.S.A. 77-520.
4. The petition is hereby granted and incorporated into this order as if set forth herein. Respondent violated the Nurse Practice Act as alleged in the petition.
5. Per Petitioner's request, Respondent's reinstatement application and license to practice nursing is denied. Respondent may not practice nursing in Kansas.
6. Costs of the action in at least the amount of \$70.00 are assessed to respondent to be paid to the board by cash or money order within 30 days of the effective date of this order.

7. This Proposed Default Order shall become effective seven days after service or ten days after mailing of this order unless the respondent files a written motion with the Board stating why the Proposed Default Order should be vacated and the order is then vacated.

8. If this Proposed Default Order becomes effective, the respondent's request for administrative hearing is dismissed pursuant to K.S.A. 77-520(d).

9. Disciplinary counsel shall mail a copy of this proposed default order to respondent's last known address.

**IT IS SO ORDERED.**

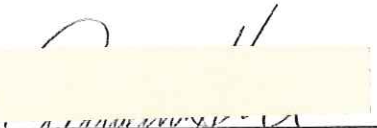
  
Robert Tomlinson, Presiding Officer  
Office of Administrative Hearings  
1020 S Kansas Ave.  
Topeka, KS 66612-1327

**NOTICE**

Pursuant to K.S.A. 77-527, either party may request a review of this order by filing a petition for review with the Kansas State Board of Nursing. The petition for review shall state its basis. A petition for review must be filed within 7 days from the date this order becomes effective. Failure to timely request a review by the Kansas State Board of Nursing may preclude further judicial review. The petition for review shall be mailed or personally delivered to: State Board of Nursing - Legal Division, Landon State Office Building, 900 SW Jackson, Ste 1051, Topeka, KS 66612-1230.

Pursuant to K.S.A. 77-530, if neither party requests a review by the Kansas State Board of Nursing, then this initial order becomes final and binding on both parties on the 30<sup>th</sup> day following its service.

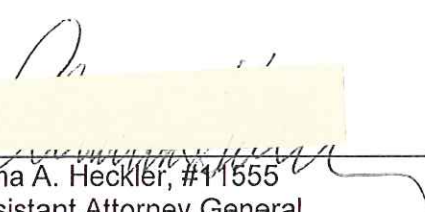
Pursuant to K.S.A. 77-531, if the initial order is served by mail, three days are added to the time limits set out above.

  
Alma A. Heckler, #11555  
Disciplinary Counsel  
Kansas State Board of Nursing  
900 S.W. Jackson, Suite #1051  
Topeka, KS 66612-1230  
785-296-4325

CERTIFICATE OF SERVICE

I certify that on the 28<sup>th</sup> day of March, 2013, the foregoing copy of the PROPOSED DEFAULT ORDER TO DENY REINSTATEMENT was served by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Brenda Lee Bacon  
1254 Hoover Road  
South Haven, Kansas 67140

  
Alma A. Heckler, #11555  
Assistant Attorney General

**BEFORE THE KANSAS STATE BOARD OF NURSING**

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

FILED #722  
DEC 10 2012 pjk

**IN THE MATTER OF  
BRENDA LEE BACON  
License No. 23-18676-052**

KSBN

**Case No. 12-368-5**

**PETITION TO DENY**

COMES NOW the petitioner, the Kansas State Board of Nursing, by and through Assistant Attorney General assigned to the Board, Alma A. Heckler, and for its cause of action states that:

1. Respondent, Brenda Lee Bacon, has filed a reinstatement application with the Board on or about April 3, 2012. The Board has jurisdiction over the respondent and the subject matter of this action.
2. Respondent's address of record is 1254 Hoover Road, South Haven, Kansas 67140.
3. After an investigation, the Board's investigative committee found reasonable grounds to believe that the respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1120, and referred this matter for further proceedings.
4. 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(a) is established.

**FACTS COMMON TO ALL COUNTS**

5. The facts below are common to all counts:
  - (a) Respondent has two prior investigative cases in which she admitted to practicing nursing without a license. In Case No. 98-504-4 she admitted to practicing without a license

from 6/1/1998 to 10/6/1998 and in Case No. 06-743-4 she admitted to practicing without a license from 6/1/2006 to 9/8/2006.

(b) Respondent let her LPN nursing license lapse 5/31/2010. She has been unlicensed since 5/31/2010. Respondent operates and owns Glenwood House, a Home Plus facility in Wellington, Kansas. Glenwood House was licensed by the Kansas Department for Aging and Disability Services (KDADS). A Home Plus facility is defined as: "...any residence or facility caring for not more than five individuals not related within the third degree of relationship to the operator or owner by blood or marriage unless the resident in need of care is approved for placement by the Kansas Secretary of the Department of Social and Rehabilitation Services. Individuals include those who, due to functional impairment, need personal care and **may need supervised nursing care** to compensate for activities of daily living limitations. The level of care provided residents shall be determined by preparation of the operator and rules and regulations developed by the Kansas Department of Health and Environment." (Emphasis added.)

(c) Respondent admitted she has been unlicensed since 5/31/2010 to the Board investigator. Respondent admitted Glenwood House did not have a medical director and did not have an RN supervisor or consulting RN. Respondent was licensed as a LPN and was allegedly unaware she could not work independently if she was licensed as an LPN, but had to work under a physician and RN.

(d) Respondent's license as the owner/operator of Glenwood House was revoked after hearing on or about October 3, 2012 in KDADS Case No. 12 SCC 58 and OAH Appeal No. 12DA0034 N. Respondent failed to report the revocation of her operator license to KBON. The presiding officer found the Respondent is the owner/ operator of Glenwood House and when a survey was conducted on March 26, 27 and 28 of 2012 the facility had eight residents. The presiding officer found that the survey team found numerous deficiencies, including the most

serious level of deficiencies (a Level L) in scope and severity in facility administration of medications. This deficiency posed a risk of harm to all residents.

(e) A second survey was conducted on April 18, 19, 23 and 24 of 2012. Again numerous deficiencies were found, one of which was again a Level L in the area of reports, records and inspections.

(f) The presiding officer found that the Respondent identified an RN Consultant who came to the facility when needed but the RN reported that she was unaware her license or status were being used at the facility and she had not been responsible for licensed staff, nor had she reviewed any resident charts. The RN identified by the Respondent as a consulting RN had not been licensed until 2004. Respondent reported the RN was employed off and on since 2002.

(g) The presiding officer found violations of K.S.A. 39-931, K.S.A. 39-940(b) and K.A.R. 26-42-102. K.A.R. 26-42-102 provides:

(a) the administrator or operator of each home plus shall ensure the provision of a sufficient number of qualified personnel to provide each resident with services and care in accordance with that resident's functional capacity screening, health care service plan, and negotiated service agreement.

...

(c) a registered professional nurse shall be available to provide supervision to licensed practical nurses, pursuant to K.S.A. 65-1113 and amendments thereto.

(h) The presiding officer in her discussion found that:

1. The seriousness of the deficiencies in the surveys of Glenwood House is extreme and distressing. There was no licensed personnel providing care or directing the care provided by certified personnel. Records were incomplete or not kept. This included types of medications a resident was on, when medications were provided, the doctor's orders regarding the medications and resident care.

2. In addition to the failure by the facility to comply with regulations governing nursing facility care, the owner of the facility perpetrated fraud by lying to the surveyor and submitting false documentation in furtherance of the fraud.

3. Due to the failure to keep adequate records, and adequate staffing, the resident's at Glenwood House were placed in extreme risk. The deficiencies cited and the owner's fraudulent actions are a substantial failure to comply with

the regulations, standards or rules and regulations for nursing facilities. The agency's Notice of Intent to Revoke Adult Care Home License is hereby affirmed.

### VIOLATIONS

6. Respondent has violated the Kansas Nurse Practice Act as follows:

Count 1: K.S.A. 65-1120(a)(8), to have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States, or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or county.

Count 2: K.S.A. 65-1120(a)(6), unprofessional conduct, by practicing without a license or while the license has lapsed, K.A.R. 60-3-110(v);

Count 3: K.S.A. 65-1120(a)(6), unprofessional conduct, failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient, K.A.R. 60-3-110(c);

Count 4: K.S.A. 65-1120(a)(6), unprofessional conduct, by performing acts beyond the authorized scope of the level of nursing for which the individual is licensed, K.A.R. 60-3-110(a);

Count 5: K.S.A. 65-1120(a)(6), Unprofessional conduct, by physical abuse, which shall be defined as any act or failure to act performed intentionally or carelessly that causes or is likely to cause harm to a patient, through the failure or omission to provide any goods or services that are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm, K.A.R. 60-3-110(e)(4).

WHEREFORE, petitioner requests a finding that the respondent's behavior in failing to maintain a nursing license, and her disregard of the requirements of the Kansas Nurse Practice Act and the Home Plus Residential Facility regulations was intentional and careless and placed

her clients at risk of substantial harm, that respondent's reinstatement application to be licensed to practice nursing in Kansas be denied, and that costs of this action be assessed to the respondent in the at least the amount of \$70.00.

Respectfully submitted,

Derek Schmidt  
Kansas Attorney General

By: 

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