

OCT 21 2010

KSBN

## BEFORE THE KANSAS STATE BOARD OF NURSING

IN THE MATTER OF  
BRIAN C. BARRAGER  
License No. 23 21291 031

Case No. 09 138 6; 10 059 6  
OAH No. 10BN0085

**INITIAL ORDER**

Now on this 27th day of September 2010, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing. Sandra L. Sharon was duly appointed as Presiding Officer pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing (Board), appears through Assistant Attorney General, Alma A. Heckler, Disciplinary Counsel for the Board. The Respondent, Brian C. Barrager, appears in person.

Findings of Fact

1. The respondent was convicted of Domestic Battery in the District Court of Wilson County in November 2008.
2. The respondent was also placed on diversion for a Driving While Under the Influence of Alcohol charge in the Municipal Court of the City of Independence, Kansas in June 2008.
3. The Board referred the respondent to the [REDACTED] in June 2009.
4. The respondent submitted to an evaluation and [REDACTED]
5. The respondent signed a contract with KNAP agreeing to be monitored by KNAP for 12 months.
6. The results of a Urinary Drug Screen (UDS) collected on August 18, 2009 indicated increased fluid intake which rendered the test results invalid. The respondent was advised that for his next three UDSs would have to have an acceptable level of creatinine for him to be considered in compliance.
7. On October 1 and 13, 2009, UDSs collected from the respondent were both diluted and positive for Benzodiazepine (Alprazolam).
8. A UDS collected from the respondent on October 22, 2009 was also diluted and positive for Alprazolam as well as amphetamine and methamphetamine.
9. A UDS collected on November 23, 2009 by the respondent was positive for marijuana.

10. On December 3, 2009, the respondent was advised by [REDACTED] that, pursuant to their agreement, the respondent would be placed in a three year program with [REDACTED].
11. [REDACTED] also advised the respondent to inform his employer of his positive UDSs and to have another drug and alcohol evaluation to determine his safety to practice.
12. The respondent did not return his three year contract to [REDACTED]. He stopped submitting to random drug screens after December 8, 2009. By letter dated January 18, 2010, KNAP closed the respondent's case for non-compliance.
13. The respondent reported to the individual conducting his drug and alcohol evaluation that he is positive for Hepatitis C. This was not reported to the Board by the respondent.

#### Applicable Law

1. The Kansas State Board of Nursing has the authority to examine, license, and renew licenses of qualified applicants and conduct hearings upon charges for limitation, suspension, or revocation of a license to practice nursing. Kansas Statutes Annotated (K.S.A.) 74-1106(4).
2. K.S.A. 65-1120 outlines grounds for disciplinary action. The Board may deny, revoke, limit, or suspend any license to practice nursing if violations listed in K.S.A. 65-1120 are deemed to have taken place.
3. It is a violation of the Kansas Nurse Practice Act if any of the following occur:
  - The individual is deemed to be unable to practice nursing with skill and safety due to current abuse of drugs or alcohol. K.S.A. 65-1120(a)(4);
  - The individual has demonstrated unprofessional conduct by failing to furnish the Board, its investigators, or representatives with any information legally requested by the Board, K.S.A. 65-1120(a)(6). Kansas Administrative Regulation (K.A.R.) 60-3-110(t);
  - The individual has demonstrated unprofessional conduct by failing to complete the requirements of the Impaired Provider Program of the Board. K.S.A. 65-1120(a)(6), K.A.R. 60-3-110(s);

- The individual demonstrates a pattern of practice or other behavior which demonstrates a manifest and capacity or incompetence to practice nursing. K.S.A. 65-1120(a)(3) and K.S.A. 65-1120(e)(3).

#### Conclusions of Law

1. The respondent's failure to participate in KNAP is a violation of K.S.A. 65-1120(a)(4), failure to demonstrate the ability to practice with skill and safety.
2. The respondent failed to provide information requested by the Board regarding his conviction of Domestic Battery and DUI Diversion. This is a violation of K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(t).
3. The respondent's failure to comply with his KNAP agreement and to complete the requirements of the KNAP program is a violation of K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(s).
4. The respondent's failure to report to the Board that he has Hepatitis indicates a practice which could cause him to be unsafe to practice. This is a violation of K.S.A. 65-1120(a)(3) and K.S.A. 65-1120(e)(3).

#### Conclusion

The respondent has repeatedly violated the Nurse Practice Act. The Board's Petition to Revoke the respondent's license to practice nursing is granted.

Cost of this action shall be assessed against the respondent in the amount of \$70.00 pursuant to K.S.A. 65-1120(d).

#### Appeal Rights and Other Administrative Relief

Pursuant to K.S.A. 77-527, either party may request a review of this initial order by filing a petition for review with the Kansas State Board of Nursing. A petition for review must be filed within 15 days from the date this initial order was served. 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: 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 initial 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 review is not made in the time and manner stated above, this initial order shall become effective as a final order 30 days after service.

OFFICE OF ADMINISTRATIVE HEARINGS

  
\_\_\_\_\_  
Sandra L. Sharon  
Presiding Officer  
Office of Administrative Hearings

CERTIFICATE OF SERVICE

On Oct 20, 2010, I mailed a copy of this document to:

Brian C. Barrager  
405 N. 18<sup>th</sup>  
Independence, KS 67301

Mary Blubaugh, Executive Director  
Alma A. Heckler, Assistant Attorney General  
Kansas State Board of Nursing  
900 SW Jackson, LSOB, Ste. 1051  
Topeka, KS 66612

  
\_\_\_\_\_  
Staff Person (J)  
Office of Administrative Hearings

**BEFORE THE KANSAS STATE BOARD OF NURSING**

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

**IN THE MATTER OF  
BRIAN C. BARRAGER  
License No. 23-21291-031**

**Case No. 09-138-6, 10-059-6**

**FILED  
MAY 28 2010  
KSBN**

**FILED - OAH  
1 JUN '10 AM 9:56**

**PETITION**

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, Brian C. Barrager, is licensed to practice nursing in Kansas through 3/31/2011. The Board has jurisdiction over the respondent and the subject matter of this action.
2. Respondent's address of record is 405 N. 18th, Independence, KS 67301.
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) In Case No. 09-136-6 the Board received certified documents that showed Respondent had been convicted of domestic battery, a misdemeanor, in Case No. 2008-CR-163 in the District Court of Wilson County, Kansas and he had entered into diversion on a

charge of driving while under the influence of alcohol. The Board referred Respondent to the [REDACTED] for evaluation and monitoring for at least one year.

(b) Respondent submitted to a substance abuse evaluation and diagnosed the Respondent with alcohol abuse but not alcohol dependence. The Respondent reported to the evaluator that he has Hepatitis C.

(c) On or about August 6, 2009, Respondent signed a contract with [REDACTED] agreeing to be monitored for at least twelve months. The contract required Respondent to submit to random urine drug screens (UDS), inform his employer of participation in [REDACTED], and supply [REDACTED] with copies of any prescriptions.

(d) By letter dated August 26, 2009, [REDACTED] informed Respondent that his UDS collected on August 18, 2009, had a creatinine level of 12.0 while a valid test requires a level of 20.0 or greater. The letter advised Respondent that he would be retested and to limit his fluid intake before providing a specimen or, if he had a medical condition affecting the test, to provide a doctor's letter. The letter further advised that the next three UDSs would have to have an acceptable level of creatinine for him to be considered in compliance.

(e) Respondent's UDS collected on October 1 and 13, 2009, were both dilute and positive for benzodiazepine (Alprazolam). Respondent's UDS collected on October 22, 2009, was dilute and positive for Alprazolam as well as amphetamine and methamphetamine. Respondent's UDS on November 23, 2009, was positive for marijuana.

(f) By letter of December 3, 2009, [REDACTED] advised Respondent that the positive drug screen, pursuant to the contract, would require a three-year program. The letter directed Respondent to contact [REDACTED], inform his employer of the positive UDS, and contact the person who conducted his initial drug and alcohol evaluation to evaluate his safety to return to work.

(g) Respondent did not return the three-year contract and stopped submitting to random drug screens on and after December 8, 2009. By letter of January 18, 2010, [REDACTED] informed

Respondent that his case had been closed for non-compliance, and reported the outcome to the Board.

(h) The Board received notice of Respondent's failure to complete [REDACTED] and opened another investigative file, Case No. 10-059-6 and by letter of February 15, 2010, the Board's investigator requested Respondent contact her to discuss the case. To date, Respondent has not responded, and the letter has not been returned.

### VIOLATIONS

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

Count 1: K.S.A. 65-1120(a)(4), to be unable to practice with skill and safety due to current abuse of drugs or alcohol;

Count 2: K.S.A. 65-1120(a)(6), unprofessional conduct as defined by K.A.R. 60-3-110(t), failing to furnish the board, its investigators, or its representatives with any information legally requested by the board.

Count 3: K.S.A. 65-1120(a)(6), unprofessional conduct as defined by K.A.R. 60-3-110(s), failing to complete the requirements of the impaired provider program of the board; and

Count 4: K.S.A. 65-1120(a)(2) "to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust..."

Count 5: K.S.A. 65-1120(a)(3), Professional Incompetency by K.S.A. 65-1120(e)(3) and K.S.A. 65-4921 through K.S.A. 65-4930, a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing. Respondent has reported he has been diagnosed with Hepatitis C and may not be safe to practice.

WHEREFORE, petitioner requests a finding that the respondent has violated the Nurse Practice Act, that respondent's license to practice nursing in Kansas be revoked, and that costs of this action be assessed to the respondent in the amount of \$70.00.

Respectfully submitted,

Stephen N. Six  
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