

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

IN THE MATTER OF:)
)
MARK WEISER)
LICENSE NO.23-022264-022)

CASE NO. 94-0197-8



CONSENT AGREEMENT AND FINAL ORDER

COMES NOW the Petitioner, the Kansas State Board of Nursing, hereinafter referred to as the "Board", by and through Assistant Attorney General Mark S. Braun, and the Respondent, Mark Weiser, and respectfully request that the Board, or its designee, approve this Consent Agreement and Final Order as the resolution in this case. By entering into this Consent Agreement and Final Order, both parties waive their right to a full administrative hearing pursuant to K.S.A. 65-1120(b) and K.S.A. 77-523. This Consent Agreement and Final Order affects the Respondent's license to practice as a licensed practical nurse (L.P.N.) in Kansas.

AGREEMENT

It is the intent and purpose of this Consent Agreement and Final Order to provide for settlement of all issues currently before the Board without the necessity of a formal hearing. Respondent, knowingly and intelligently waives his right to a

hearing on the issues currently before the Board relating to his license. The parties agree as follows:

1. Both parties to this Agreement acknowledge that the Board received information and conducted an investigation as to whether Respondent violated the Kansas Nurse Practice Act. Based on that investigation, there are reasonable grounds to believe Respondent violated the Act. Respondent's attorney was provided factual and documentary information regarding the specific counts stated in the Petition.

2. Respondent, acknowledges and understands that: he has the right to an attorney, and he has the right to a full and fair hearing on the allegations made by the Petitioner. At such hearing, the Petitioner would be required to present witnesses and evidence in support of the allegations. Respondent, would have the opportunity to cross-examine Petitioner's witnesses and the opportunity to present witnesses and evidence on his behalf. The matter would be decided on the evidence presented and a decision would include findings of fact and conclusions of law. He has the right to seek reconsideration of any adverse order issued by the Board and the right to seek judicial review of any adverse Board order or decision. Respondent, understands that by entering into this Consent Agreement and Final Order, he is waiving all of the above-mentioned rights.

3. In lieu of proceeding to a full hearing, Respondent stipulates to Count I of the Petition. Count II will be dismissed. Respondent, understands that by stipulating to that count, he is

admitting to violations of the Kansas Nurse Practice Act and that disciplinary action can be, and is being taken against his license to practice as an L.P.N.

4. Pursuant to the disciplinary remedies available in K.S.A. 65-1120, Respondent's license to practice as a licensed practical nurse (L.P.N.) will be suspended for a period of one year from the date the Consent Agreement and Final Order is approved by the Board, or its designee, or until all requirements of this agreement and order are met, whichever is later. Said suspension shall be stayed allowing the Respondent to continue to continue to practice as long as he meets the following conditions:

A. Respondent shall obtain three (3) hours of continuing nursing education on the topic of patient assessment. These hours are to be earned on or before June 1, 1995, and must be pre-approved by the Board's Practice Specialist. These three hours are in addition to, and not to be counted toward, the thirty (30) hours of mandatory continuing nursing education for his next license renewal. Proof of earning these additional hours shall be submitted to the Board's practice specialist within ten (10) days of taking the class.

B. Respondent shall pay a fine of fifty (\$50.00) dollars. Said fine shall be made by money order or cashier's check made payable to the State of Kansas. Said fine shall be delivered to the Board of Nursing on or before March 1, 1995. The Board shall deposit the fine into the State's general fund.

C. Respondent shall pay the Board of Nursing thirty-five (\$35.00) dollars in costs of these proceedings. Said costs shall be made by money order or cashier's check payable to the Board of Nursing. *This is to be paid by March 1, 1995.* TAD

D. Respondent shall notify the Board's practice specialist in writing within ten (10) days of any changes in residence, home telephone number, employment, or other work situations

E. The Board's practice specialist shall receive quarterly reports about Respondent's work from his closest nursing supervising agent. The reports shall include information about Respondent's attendance, quality of work performance and patient care, with a specific focus on his assessment skills. Said quarterly employer reports shall be submitted on or before April 20, 1995; July 20, 1995; October 20, 1995; and January 20, 1996.

5. By signing this Consent Agreement and Final Order, Respondent acknowledges he has read the entire document; that he has obtained counsel who advised him in this matter; to be bound by this document.

6. Should the Board, or its designee, modify or change the Consent Agreement and Final Order in any manner unsatisfactory to either party, either party may withdraw its consent and the matter will proceed to hearing. Further, if the Consent Agreement and Final Order, as signed by the parties, is not acceptable to the Board, or its designee, neither party shall be bound to any representations made in this agreement.

FINDINGS OF FACT

1. Respondent is licensed to practice as a licensed practical nurse (L.P.N.) in the State of Kansas, having been issued license number 23-022264-022, with an expiration date of February 29, 1996.

2. The Board received information and conducted an investigation into alleged violations of the Kansas Nurse Practice Act by the Respondent.

3. The Board found there were reasonable grounds to believe Respondent violated the Kansas Nurse Practice Act.

4. On or about June 1, 1994, while working as a licensed practical nurse at Courtyard Terrace in Topeka, Kansas, Respondent failed give a diabetic resident a prescribed insulin injection, and failed to assess the resident's condition.

5. Such activity constitutes unprofessional conduct in that Respondent failed to follow procedures and policies designed to safeguard the patient in violation of K.S.A. 65-1120(a)(6), as defined by K.A.R. 60-3-110(a)(3).

6. Respondent, stipulates and admits to Count I as contained in the Petition. By Agreement of the parties, Count II is dismissed.

7. In lieu of proceeding to a full administrative hearing, the parties have agreed to enter into and be bound by this Consent Agreement and Final Order.

8. The Parties understand and acknowledge that, pursuant to K.S.A. 45-215 et seq., the signed original of the Consent Agreement

and Final Order shall remain in the custody of the Board as a public record.

CONCLUSIONS OF LAW

1. The Kansas State Board of Nursing has jurisdiction over the Respondent by virtue of his status as a licensee of the Board of Nursing, and pursuant to the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., specifically K.S.A. 65-1120.

2. The Kansas State Board of Nursing has jurisdiction over the subject matter of this case because of the allegations of violations of the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., specifically K.S.A. 65-1120.

3. Respondent is not represented by counsel. Respondent is aware of his rights under the United States and Kansas Constitutions, the Kansas Nurse Practice Act and the Kansas Administrative Procedures Act as previously stated in the Agreement Section. Based on the knowledge of his rights Respondent has knowingly, intelligently, and voluntarily waived his rights and entered into this Consent Agreement and Final Order. In lieu of proceeding to a full administrative hearing, Respondent waives his rights to: an attorney; an adjudicative administrative hearing in which the evidence and witnesses would be presented; cross-examination of those witnesses against those; the opportunity to present witnesses and evidence on his behalf; a decision by the Board or its designee based on the evidence; findings of facts and conclusions of law; the right to seek reconsideration by the Board

of any adverse decision and the right to seek judicial review by a district court of any adverse decision by the Board.

4. Respondent has stipulated and admitted to Count I contained in the Petition. Based on those stipulations, Respondent has violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq.

5. Respondent is guilty of unprofessional conduct in that on or about June 1, 1994, while working as a licensed practical nurse at Courtyard Terrace in Topeka, Kansas, Respondent failed give a diabetic resident a prescribed insulin injection, and failed to assess the resident's condition.

6. Such activity constitutes unprofessional conduct in that Respondent failed to follow procedures and policies designed to safeguard the patient in violation of K.S.A. 65-1120(a)(6), as defined by K.A.R. 60-3-110(a)(3).

7. The Petitioner and Respondent have entered into this Consent Agreement and Final Order which, when signed by both parties and the Board or its designee, will be binding on the parties and the Board.

8. Count II is dismissed.

FINAL ORDER

WHEREFORE, based on the foregoing Agreement, Findings of Fact and Conclusions of Law, IT IS THEREFORE ORDERED that the following action will be taken against the Respondent's license to practice as a licensed practical nurse (L.P.N.) in the State of Kansas:

Pursuant to the disciplinary remedies available in K.S.A. 65-1120, Respondent's license to practice as a licensed practical

nurse (L.P.N.) will be suspended for a period of one year from the date the Consent Agreement and Final Order is approved by the Board, or its designee, or until all requirements of this Agreement and order are met, whichever is later. Said suspension shall be stayed allowing the Respondent to continue to practice as long as he meets the following conditions:

A. Respondent shall obtain three (3) hours of continuing nursing education on the topic of patient assessment. These hours are to be earned on or before June 1, 1995, and must be pre-approved by the Board's Practice Specialist. These three hours are in addition to, and not to be counted toward, the thirty (30) hours of mandatory continuing nursing education for his next license renewal. Proof of earning these additional hours shall be submitted to the Board's practice specialist within ten (10) days of taking the class.

B. Respondent shall pay a fine of fifty (\$50.00) dollars. Said fine shall be made by money order or cashier's check made payable to the State of Kansas. Said fine shall be delivered to the Board of Nursing on or before March 1, 1995. The Board shall deposit the fine into the State's general fund.

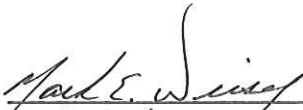
C. Respondent shall pay the Board of Nursing thirty-five (\$35.00) dollars in costs of these proceedings. Said costs shall be made by money order or cashier's check payable to the Board of Nursing.

D. Respondent shall notify the Board's practice specialist in writing within ten (10) days of any changes in

residence, home telephone number, employment, or other work situations

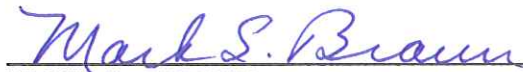
E. The Board's practice specialist shall receive quarterly reports about Respondent's work from his closest nursing supervising agent. The reports shall include information about Respondent's attendance, quality of work performance and patient care, with a specific focus on his assessment skills. Said quarterly employer reports shall be submitted on or before April 20, 1995; July 20, 1995; October 20, 1995; and January 20, 1996.

IN WITNESS WHEREOF, the parties hereunto execute this Consent Agreement and Final Order:



Mark Weiser
Respondent

1-11-95
DATE



MARK S. BRAUN
Assistant Attorney General
Board Disciplinary Counsel

1/11/95
DATE

WHEREFORE, the provisions stated above are hereby adopted and made the Final Order of the Kansas State Board of Nursing.

IT IS SO ORDERED.

Dated this 11th day of January, 1995



Board Representative or
Board Designee

CERTIFICATE OF SERVICE

This is to certify that a copy of this CONSENT AGREEMENT AND FINAL ORDER was served by hand delivering a copy this 11th day of January, 1995, to:

Mark Weiser
at the Kansas State Board of Nursing
900 S.W. Jackson Rm 551-S
Topeka, Kansas 66612-1230

and

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

 /BP

Diane M. Glynn, J.D., R.N.
Practice Specialist