

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)
)
MICHAEL HARSCH)
(
LICENSE NO. 23-022266-032)

Case No: 94-0513-8

PROPOSED DEFAULT ORDER

NOW ON THIS 7th day of June 1995, the above-captioned matter comes on for hearing before Terry E. Beck, Hearing Officer designated by the Board. The Petitioner appears by and through Assistant Attorney General Mark S. Braun, Board Disciplinary Counsel. Respondent does not appear.

Whereupon, the Hearing Officer asks the Petitioner if he is ready to proceed. Petitioner's counsel states he is ready and, pursuant to K.S.A. 77-520, states an oral motion for a default judgment based on the Respondent's failure to appear. In support of the motion, the Petitioner states as follows:

1. Copies of the Notice of Proceedings and the Petition were served on the Respondent at his last address known to the Board, 3908 S.W. Dixie Court, Topeka, Kansas 66614-1108. The Notice of Proceedings included a Notice of Scheduling Docket for May 24, 1995 at 10:00 a.m., and a Notice of Hearing scheduled June 7, 1995 at 3:00 p.m.

2. More than ten (10) days have elapsed since the Respondent was served.

3. Respondent did not appear at the scheduling docket May 24, 1995.

4. Respondent did not appear at the hearing June 7, 1995.

5. No written notice, request for continuance, or other communication was received by the Board from the Respondent, or anyone on his behalf, as provided for in the Notice of Hearing.

6. Petitioner offers the Hearing Officer a proffer that if this matter were to proceed to hearing, witnesses would be called to establish that on or about May 2, 1994, the Respondent, while licensed and practicing as an L.P.N. in the State of Kansas, did the following: inserted a needle into a patient's abdomen to administer insulin to the patient; after inserting the needle into the patient's abdomen, but before administering any insulin, the Respondent removed the needle and reinserted the needle into the patient's deltoid muscle; the Respondent inserted the needle into the patient's abdomen and deltoid muscle without any alcohol wipe of the injection sites; and the injection into the deltoid muscle was also administered through the patient's sweatshirt. Further testimony would be presented that such conduct is below the applicable standard of care for giving an injection and amounts to gross negligence. Additional testimony would be presented to show that the Respondent's conduct is inappropriate and a violation of the policies and procedures of his employer that are designed to safeguard a patient.

Whereupon, after reviewing the Agency record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent has been entitled to practice in Kansas as a licensed practical nurse (L.P.N.), having been issued license number 23-022266-032, having an expiration date of March 31, 1996.

2. A copy of the Notice of Hearing and Petition were served on the Respondent by United States Mail, first class postage prepaid, on May 11, 1995, to the Respondent at his last address known to the Board, setting the hearing date for June 7, 1995.

3. More than ten (10) days have elapsed since Respondent was served. Therefore, notice and service are found to be proper in this case.

4. Respondent does not appear and the Board has not received any notice, request for continuance or other communication from the Respondent or anyone on his behalf.

5. Proffered testimony indicates the Respondent's conduct was below the standard of care and constituted gross negligence.

6. Proffered testimony indicates the Respondent's conduct was inappropriate and violated the facility's policies and procedures designed to safeguard a patient.

CONCLUSIONS OF LAW

1. The Board, and by designation this Hearing Officer, has jurisdiction to hear this matter pursuant to K.S.A. 65-1113, et seq, and K.S.A. 77-501 et seq.

2. This Board has jurisdiction over the Respondent as a licensee of the Board.

3. The Hearing Officer, by designation of the Board, has the authority to issue disciplinary action against the Respondent's license to practice as a licensed practical nurse (L.P.N.) in Kansas, according to the Kansas Administrative Procedures Act, K.S.A. 77-501, et seq.

4. Notice of Hearing and service of the notice were done in accordance with requirements of the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq., and the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., and therefore, are found to be proper.

5. K.S.A. 65-1120(b) authorizes the Board to conduct all proceedings in accordance with the provisions of the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq.

6. The Board, and the Hearing Officer by the Board's designation, has the authority to issue proposed default orders pursuant to the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq.

7. Respondent does not appear and is found to be in default in these proceedings.


8. The Respondent is found to have violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., specifically K.S.A. 65-1120(a)(3), committing an act of professional incompetency as defined by K.S.A. 65-1120(e)(1), one or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence.

9. The Respondent is found to have violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., specifically K.S.A. 65-1120(a)(6), committing an act of unprofessional conduct as defined by K.A.R. 60-3-110(c), failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

ORDER

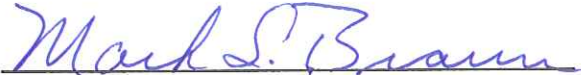
Based upon the Findings of Fact and Conclusions of Law, **It Is Ordered** that the license issued Michael Harsch to practice as a license practical nurse, (L.P.N.), in the State of Kansas is hereby **revoked** until further order of the Board. Respondent may not practice as a nurse in the State of Kansas.

IT IS SO ORDERED



Terry E. Beck
Hearing Officer

PREPARED AND SUBMITTED BY:


Mark S. Braun
Assistant Attorney General
Disciplinary Counsel
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson, Suite 551-S
Topeka, Kansas 66612-1230
(913) 296-8401

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 was served by depositing same in the United States Mail, first class postage prepaid, this 16th day of June, 1995,

to:

Michael Harsch
3098 S.W. Dixie Court
Topeka, Kansas 66614-1108

And by hand delivering a copy of same to:

Mark S. Braun
Disciplinary Counsel
Kansas State Board of Nursing
Landon State Office Building
900 S.W. Jackson, Room 551-S
Topeka, Kansas 66612-1230



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