

KANSAS STATE BOARD OF NURSING

Landon State Office Building
900 SW Jackson, Suite 1051
Topeka, Kansas 66612-1230

FILED

MAR 23 2015

KSBN

IN THE MATTER OF)
)
Deanne Mary Evans)
License No. 23-24149-052)

Case No. 13-1130-8
OAH No. 14BN0194

**ORDER
DENYING REVIEW**

On March 23, 2014, the above-referenced matter comes for consideration of the Petition for Review filed by Deanne Mary Evans, pro se. Pursuant to K.S.A. 2014 Supp. 77-527(a)(2), the Kansas State Board of Nursing (Board) has delegated to Garet King, a member of the Board, its authority to determine whether to grant or deny a Petition for Review of an Initial Order and to issue an order accordingly.

After considering the Petition filed by the Board's discipline counsel, the Initial Order, and the Petition for Review of the Initial Order, the Board denies the Petition for Review based upon the following facts and conclusions of law.

Findings of Fact

1. In June 2014, the Board's discipline counsel filed a Petition requesting the revocation of the nursing license issued to Deanna Mary Evans (Respondent) based upon allegations that she violated several provisions of the Kansas Nurse Practice Act (KNPA).

2. After conducting an evidentiary hearing, the Presiding Officer at the Office of Administrative Hearings served Respondent with the Initial Order on February 19, 2015. The Initial Order is incorporated herein by reference.

3. In the Initial Order, the Presiding Officer found that Respondent had falsified a patient's medical record to prescribe a medication, Percocet; had picked up the prescription drug at the pharmacy; signed the patient's name for receipt of the prescription drug; and used the patient's insurance benefits for payment of the prescription drug. The Presiding Officer also found that Respondent failed to respond to an inquiry from Board's investigator about the incident.

4. Based upon the above factual findings, the Presiding Officer concluded that Respondent had violated the following four provisions the KNPA: (1) K.S.A. 2014 Supp. 65-1120(a)(6) and K.A.R. 60-3-110(n) (committing unprofessional conduct by diverting drugs of any patient or agency); (2) K.S.A. 65-1120(a)(1)(committing fraud or deceit in practicing nursing); (3) K.S.A. 2014 Supp. 65-1120(a)(6) and K.A.R. 60-3-110(o) (committing unprofessional conduct by exploitation of a patient); and (4) K.S.A. 2014 Supp. 65-1120(a)(6) and K.A.R. 60-3-110(d)

(committing unprofessional conduct by failing to furnish to the board or its investigators with any information legally requested).

5. On March 2, 2015, Respondent filed with the Board a Petition for Review of the Initial Order. Her Petition for Review stated: "I feel the case that Mr. Fitzgibbons [the Board's disciplinary counsel] presented was not enough evidence to revoke my license. I had presented several items that would show that I am not guilty of what he presented."

Conclusions of Law

6. K.S.A. 2014 Supp. 77-527(c) requires the Petition for Review to state a basis for relief.

7. K.S.A. 2014 77-527(d) provides that review of an initial order is subject to K.S.A. 77-621, and amendments thereto. Subsection (c) of K.S.A. 2014 Supp. 77-621 states that relief can be granted only on grounds specified in paragraphs (1) through (8).

8. One of those grounds is whether the decision was based on a finding "of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this act." K.S.A. 2014 Supp. 77-621(c)(7).

9. While Respondent challenges the evidence presented at the hearing, her Petition for Review is only a generic denial. Her general denial fails to address how the factual findings in the Initial Order are not supported by substantial evidence proving she violated the KNPA or supporting the revocation of her nursing license.

Based upon the above factual findings and conclusions of law, the Board concludes it should not exercise review because Respondent has not stated a basis exists to grant relief from the Initial Order.

WHEREFORE, it is the decision and order of the Board that Respondent's Petition for Review of the Initial Order in the above-referenced case be denied and that the Initial Order be affirmed.

IT IS SO ORDERED.



Gareth King, Board Member
As directed by and on behalf of the
Kansas State Board of Nursing

NOTICE OF ADMINISTRATIVE RELIEF

The above Order denying review of the Initial Order is a final order. Pursuant to K.S.A. 77-529, a party may file with the Board a petition for reconsideration within 15 days from the

date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

Pursuant to K.S.A. 77-530, a party may file, if applicable, a petition for stay of effectiveness of the order prior to the expiration of the time in which to file a petition for judicial review. The filing of a petition for a stay of effectiveness is not a prerequisite for seeking judicial review.

NOTICE OF JUDICIAL RELIEF

If a petition for reconsideration is not filed pursuant to K.S.A. 77-613, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The designee who may receive service of a petition for reconsideration or a petition for judicial review on behalf of the Board is: Mary Blubaugh, Executive Director, Kansas State Board of Nursing, Landon State Office Building, 900 S.W. Jackson, Ste. #1051, Topeka, Kansas 66612-1230.


CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of March 2015, copies of the above Order, Notice of Administrative Relief, and Notice of Judicial Relief were deposited in the United States mail, first-class postage prepaid, and addressed to:

Deanna Mary Evans
7766 Anderson Road
Meriden, KS 66512

and hand delivered to:

Michael R. Fitzgibbons
Disciplinary Counsel for the
Kansas State Board of Nursing
900 SW Jackson, Suite 1051
Topeka, KS 66612


Staff
Kansas State Board of Nursing

FILED

BEFORE THE KANSAS STATE BOARD OF NURSING

FEB 24 2015

KSBN

IN THE MATTER OF
DEANNA MARY EVANS
License No. 23-24149-052

Case No. 13-1130-8
OAH No. 14BN0194

INITIAL ORDER

Now on this 5th day of February 2015, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing (Board/Petitioner). Sandra L. Sharon was duly appointed Administrative Law Judge/Presiding Officer pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing, appears by Assistant Attorney General Michael R. Fitzgibbons, Disciplinary Counsel for the Board. The Respondent, Deanna Mary Evans, appears in person.

Findings of Fact

1. In August 2012, the respondent was employed by Cotton-O'Neil Clinic in Topeka, Kansas. She accessed one patient account through her employer from August 2012 to April 2013.
2. The respondent would cause a prescription for Percocet, 100 tablets, to be issued for another individual who also was employed by the Cotton-O'Neil Clinic.
3. After causing the prescription to be issued, the respondent would go to the pharmacy, make the copayment on the prescription and sign for the prescription under the other individual's name so as to charge her insurance company.
4. The individual under whose name these prescriptions were being filled had an appointment at the Cotton-O'Neil clinic. When going over a medication history, the APRN asked the individual if she was still taking Percocet. The individual indicated that she was not and had not taken Percocet.
5. This discrepancy was brought to the administration of the Cotton-O'Neil Clinic and an investigation was initiated. Initially, the investigation was for the charting practices of the respondent. However, this did not yield any suspicious activity. Next, the clinic went into the chart of its patient/employee and the individual under whose name the prescriptions were being issued. Initially, there was no record of this individual being prescribed Percocet. On closer examination, it was shown that the respondent would activate a prescription for the Percocet in the other individual's name each month then a few days later enter the chart and deactivate the prescription. Deactivating the prescription took this information and archived it in a different part of the patient's electronic file.

6. When the respondent was asked about this activity she explained that the patient asked a mutual friend to ask the respondent to pick up the patient's medication for the patient. On questioning, the patient indicated she had never received any of these prescriptions.
7. This information was sent to the Board by a Risk Management Report.
8. On May 13, 2014, Betty Stewart, RN, Board investigator, sent communication to the respondent requesting that the respondent contact the Board to discuss this matter. The respondent did not contact Ms Stewart and the file was transferred to the Board's disciplinary counsel.

Applicable Law

1. Unprofessional conduct by drug diversion is a violation of the Kansas Nurse Practice Act. K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(n).
2. Unprofessional conduct through fraud or deceit in practicing nursing is a violation of the Kansas Nurse Practice Act. K.S.A. 65-1120(a)(1).
3. Exploitation by misappropriating a patient's property or taking unfair advantage of a patient's physical or financial resources for the licensee's or another individual's personal or financial advantage by use of undue influence, coercion, harassment, duress, deception, false pretense or false representation is a violation of the Kansas Nurse Practice Act at K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(o).
4. It is unprofessional conduct to fail to furnish the Board, its investigators, or any of its representatives with information legally requested by the Board. K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(t).

Discussion

1. When the respondent caused prescription drugs to be prescribed on behalf of another individual and then collect the drugs herself, the respondent committed unprofessional conduct through drug diversion. This is a violation of the Kansas Nurse Practice Act at K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(n).
2. When the respondent caused a prescription drug to be issued for a patient who otherwise did not require the prescription and then obtained the prescription herself by signing the other individual's name, she committed unprofessional conduct by fraud and deceit. This is a violation of the Kansas Nurse Practice Act at K.S.A. 65-1120(a)(1).
3. Further, when the respondent caused the prescription to be generated on behalf of another patient who otherwise would not need the prescription and then obtain the prescription for herself, she misappropriated the patient's property and took unfair advantage of the patient's physical and financial resources (her insurance payments) through deception

and false representation. This is a violation of the Kansas Nurse Practice Act at K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(o).

4. When the respondent failed to respond to the Board's investigator's written request for contact to discuss these issues, she violated the Kansas Nurse Practice Act by failing to furnish the Board information legally requested by the Board. This is a violation of the Kansas Nurse Practice Act at K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(t).

Conclusion

1. The Board has shown by a preponderance of the evidence that the respondent has violated the Kansas Nurse Practice Act. The Board's petition to revoke the respondent's license to practice nursing in the State of Kansas is granted.
2. 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, 900 SW Jackson, Suite 1051, 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.



Sandra L. Sharon
Administrative Law Judge/Presiding Officer
Office of Administrative Hearings
1020 S. Kansas Ave.
Topeka, KS 66612
Telephone: 785-296-2433

CERTIFICATE OF SERVICE

On Feb. 19, 2015, I mailed this original document through State Building
Mail to:

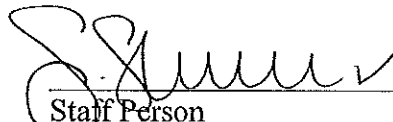
Mary Blubaugh
Executive Administrator
Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612
Telephone: 785-296-4325

and a copy of this document through State Building Mail to:

Michael R. Fitzgibbons
Assistant Attorney General
Disciplinary Counsel for the Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612
Telephone: 785-296-4325

and a copy of this document through first class mail to:

Deanna Mary Evans
7766 Anderson Road
Meriden, KS 66512



Staff Person

Office of Administrative Hearings