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Topeka, KS 66612

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Bob L. Corkins, Director

Sam Brownback, Governor

June 24, 2014

FILED

JUN 25 2014

RE: PATRICIA A. MARSHALL  
License No.: 23-28272-011  
Case No.: 13-817-7  
OAH No.: 14BN0054

KSBN

Marc H. Berry  
Olathe Legal Clinic  
110 S. Cherry, Suite 101  
Olathe, KS 66061

Alma A. Heckler  
Assistant Attorney General  
Kansas State Board of Nursing  
900 SW Jackson, Suite 1051  
Topeka, KS 66612-1230

Dear Mr. Berry and Ms Heckler:

This correspondence is in response to Mr. Barry's Petition for Review of Initial Order or in the alternative, Motion to Vacate Proposed Default Order.

The Petition in above-captioned matter was filed by the Kansas State Board of Nursing (Board) on October 25, 2013.

A prehearing conference was held January 28, 2014. Ms Marshall participated in the prehearing conference. As reflected in the Prehearing Order of January 28, 2014, Ms Marshall agreed to a hearing date of May 13, 2014, and was aware the hearing was to be held at the Office of Administrative Hearings unless she provided a telephone where she could be reached if she wanted to participate in the hearing by telephone. Also outlined in the Prehearing Order were deadlines to exchange witness lists and exhibits.

Ms Marshall did not provide a telephone number where she could be reached to participate in the hearing. She did not file a witness list, exhibits or exhibit list.

Ms Marshall did not appear for the hearing at the scheduled time or place nor did she request a continuance of the hearing.

The Board's Disciplinary Counsel was contacted by Mr. Berry on May 5, 2014. He did not enter his appearance until May 22, 2014, well after Ms Marshall failed to participate in the scheduled hearing.

Ms Marshall has failed to establish good cause for her failure to participate in the hearing as scheduled. The Motion to Vacated is denied

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Sharon', written in a cursive style.

Sandra L. Sharon  
Administrative Law Judge/Presiding Officer  
Office of Administrative Hearings

SLS:

cc: Patricia A. Marshall

14BNO054  
5/13

**BEFORE THE KANSAS STATE BOARD OF NURSING**  
Landon State Office Building, 900 S.W. Jackson #1051  
Topeka, Kansas 66612-1230

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**IN THE MATTER OF**  
**PATRICIA A. MARSHALL**  
License No. 23-28272-011

MAY 15 2014

14 MAY '14 AM 9:19

KSBN

Case No: 13-817-7

**PROPOSED DEFAULT ORDER TO REVOKE LICENSE**

NOW ON THIS 13th day of May, 2014, petitioner, the Kansas State Board of Nursing, appears by disciplinary counsel, Alma A. Heckler, Assistant Attorney General (AAG), for a Hearing on the Petition. Respondent does not appear.

Wherefore, the Presiding Officer finds as follows:

1. Respondent is licensed to practice nursing as an LPN in Kansas through 1/31/2015 and was licensed to practice nursing at the time of the misconduct alleged in the petition. 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 and notice of this hearing to respondent's last known address and service is proper. Respondent contacted the Board at 9:03 a.m. May 13, 2014 and requested a continuance. Mark Berry, an attorney, was with her on the phone call. Mark Berry has not entered his appearance in this case. Mark Berry did contact the Board, and the AAG returned his phone call on 5/5/2014. Mr. Berry indicated he did not intend to enter his appearance on behalf of the respondent until she had entered into a contract with him. He inquired about the possibility of a continuance. The AAG told him to enter his appearance in writing and send a request for a continuance to the Presiding Officer and the AAG. The Presiding Officer and the Board did not receive an entry of appearance, request for a continuance prior to the hearing scheduled for 9:00 a.m. May 13, 2014. The Prehearing Order of January 28, 2014 stated that the respondent may participate in the hearing on May 13, 2014 by phone but must provide a phone number where she can be reached to the legal division of the

Kansas State Board of Nursing. The legal division of the Board did not receive a phone number from the respondent where she could be reached prior to the hearing on May 13, 2014 at 9:00 a.m.

3. Petitioner moves for issuance of a proposed default order revoking respondent's LPN 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 license to practice nursing is revoked. Respondent may not practice nursing in Kansas.

6. Costs of the action of \$70 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. Respondent shall immediately forward her original Kansas nursing certificate and any license cards in his or her possession to the Kansas State Board of Nursing.

8. 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.

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

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

**IT IS SO ORDERED.**



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Sandra Sharon, 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.



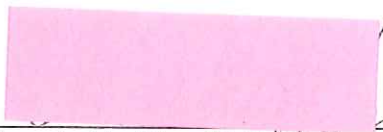
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Alma A. Heckler, #11555  
Disciplinary Counsel  
Kansas State Board of Nursing  
900 S.W. Jackson, Suite #1051  
Topeka, KS 66612-1230  
785-296-4325

CERTIFICATE OF SERVICE

I certify that on the 15<sup>th</sup> day of May, 2014, the foregoing copy of the PROPOSED DEFAULT ORDER TO REVOKE LICENSE was served by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Patricia A. Marshall  
802 West Prairie  
Olathe, Kansas 66061



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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

OCT 25 2013

**IN THE MATTER OF**  
**PATRICIA A. MARSHALL**  
License No. 23-28272-011

KSBN

**Case No: 13-817-7**

**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, Patricia A. Marshall, is licensed to practice nursing in Kansas through 1/31/2015. The Board has jurisdiction over the respondent and the subject matter of this action.
2. Respondent's address of record is 802 West Prairie, Olathe, Kansas 66061.
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 was employed by Shawnee Gardens, Shawnee Mission, Kansas. She was hired on 3/14/2008 and her employment was terminated on 4/12/2010. She was terminated for violating policy and procedures and is not eligible for rehire.

- (b) Respondent accepted employment at Assisted Life Styles of Kansas in Olathe, Kansas, sometime in March of 2012.
- (c) Respondent was reprimanded on 6/13/2013 for unprofessionalism when dealing with the State of Kansas Inspector. She was also reprimanded for lying to the Director of Assisted Life Styles and staff members about keeping discontinued medication in her office. Her employer, Assisted Life Styles documented the Respondent failed to timely document the death of a resident on the resident's chart. The death occurred two to three weeks before the Respondent charted notes about the death. Negotiated Service Agreements and functional capacity assessments to assess change of condition were not completed in a timely manner, either.
- (d) Respondent denied being unprofessional. She argued that her failure to tell the State Inspectors about medications stored in her office, that had not been destroyed, was not a lie. She asserted in a written statement that it was simply an omission because the Director and State Inspectors failed to ask the right questions.
- (e) Respondent while employed at Assisted Lifestyles offered patients' old or discontinued medications and deceased patients' medications to other staff. One incident was witnessed on or about April 1, 2013.
- (f) Respondent while employed at Assisted Lifestyles administered medication to a patient without a physician's order. The medication had been stored in her office. The incident was witnessed on or about January 10, 2013.
- (g) Respondent has a history of violating employers' policy and procedures, and practicing beyond scope. It is dangerous for her to continue to practice nursing.

VIOLATIONS

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

Count 1: K.S.A. 65-1120(a)(6), unprofessional conduct, by 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 2: 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 3: K.S.A. 65-1120(a)(6), unprofessional conduct, by drug diversion, K.A.R. 60-3-110(n);

Count 4: K.S.A. 65-1120(a)(3), to have committed an act of professional incompetence as defined in subsection (e)(1), one or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board;

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 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