

BEFORE THE KANSAS STATE BOARD OF NURSING

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

IN THE MATTER OF
MALINDA R. MANIS
License No. 23-28400-071

FILED

NOV 10 2011

KSBN

Case No. 10-589-7

CONSENT AGREEMENT TO SURRENDER AND REVOKE LICENSE AND FINAL ORDER

NOW ON THIS 9 day of November, 2011, the Kansas State Board of Nursing, represented by Assistant Attorney General, Danielle R. Sanger, and the Respondent, Malinda Manis, hereby enter into this agreement and proffer evidence and the hearing officer adopts those recommendations and makes the following findings of fact and orders:

AGREED FINDINGS OF FACT

The hearing officer makes the following findings of fact based on the evidence presented and statements of the parties.

1. Respondent is licensed to practice nursing in Kansas through 07/31/2013. The Kansas State Board of Nursing (Board) has jurisdiction over the Respondent and the subject matter of this action.
2. Respondent's address of record is 1004 N. Cherry, Ottawa KS 66067.
3. The Kansas State Board of Nursing has the authority under K.S.A. 74-1106 *et seq.* to examine, license and renew licenses 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.
4. The Board requested that disciplinary action be taken against the Respondent's license.
5. If a petition is filed by the Board, a hearing would also be held at a later date at which time the Board would have to prove that Respondent violated K.S.A. 65-1120(a).

6. Respondent has the right to these hearings and the right to seek review of the findings from the hearings in accordance with the Kansas Administrative Procedure Act and the Kansas Judicial Review Act. Respondent is waiving those rights and knowingly and voluntarily entering into this agreement instead of proceeding to these hearings. This agreement will conclude Board action pending at this time against Respondent's license.
7. Respondent understands that pursuant to K.S.A. 77-515, Respondent may be represented, at Respondent's expense, by an attorney during these proceedings.
8. On or about 4/5/2010, the Board received a report alleging that during the time period 08/2008-09/2009, while employed by Olathe Medical Center and working under Dr. Daniel Schaper, Respondent called in prescriptions for pain medications, allegedly authorized by Dr. Schaper, to be filled under her spouse's name, L.M.
9. In a statement dated 8/7/2009, Dr. Daniel Schaper stated that he had never prescribed any pain medication for Respondent's husband, L.M.
10. Between the dates of 8/15/2008 and 8/3/2009, sixteen pain medication prescriptions written for L.M. and allegedly authorized by Dr. Schaper were filled at Walgreen's of Ottawa Kansas, Wal-Mart of Ottawa Kansas, or Briscoe's of Ottawa Kansas.
11. In a statement to the Board, dated 10/21/2011, Respondent indicated that she wanted to surrender her license.

CONCLUSIONS OF LAW

1. The Kansas State Board of Nursing has the authority under K.S.A. 74-1106 *et seq.* to examine, license and renew licenses 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.
2. Respondent has violated the Kansas Nurse Practice Act as follows:

- a. K.S.A. 65-1120(a)(6), to be guilty of unprofessional conduct as defined by rules and regulations of the Board, by KAR 60-3-110(a), performing acts beyond the authorized scope of the level of nursing for which the individual is licensed.

POLICY STATEMENT

1. The role of the Kansas State Board of Nursing is to protect citizens of Kansas.

DISPOSITION

1. Respondent is surrendering Respondent's license to practice nursing in Kansas.
2. Upon signing this agreement and returning it to the Board, Respondent shall not practice nursing in Kansas.
3. The Board will report this surrender and revocation to national data banks and in its newsletter. This is a disciplinary action on Respondent's license. The original of this document shall be kept in the Board's agency file.
4. Respondent acknowledges that this agreement is an open record pursuant to the Kansas Open Records Act, K.S.A 45-215 *et seq.*, and may be published or disseminated pursuant to a request.
5. If Respondent does seek reinstatement of Respondent's license, the agreed facts are admitted, and Respondent has waived the right to a hearing on the facts in this matter. However, to receive a reinstatement of Respondent's license, the Respondent will have the opportunity, at that time, to prove Respondent's fitness to practice nursing in Kansas.

- a. Per *Vakas v. Kansas State Board of Healing Arts*, 248 Kan. 589 (1991), the factors to be considered in determining whether a license should be reinstated after a disciplinary finding has been made are the following:

- i. The present moral fitness of the petitioner;
- ii. The demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
- iii. The extent of petitioner's rehabilitation;

- iv. The nature and seriousness of the original misconduct;
- v. The conduct subsequent to discipline;
- vi. The time elapsed since the original discipline;
- vii. The petitioner's character, maturity, and experience at the time of the original revocation;
- viii. The petitioner's present competence in medical skills.

6. The hearing/presiding officer whose signature appears below has been designated pursuant to K.S.A. 77-514 and K.S.A. 77-526 to act on behalf of the Board/agency head and to hear discipline cases on behalf of the Board/agency head and to render either initial orders or final orders, if by agreement of both parties, in those discipline cases.

7. By their signatures, the parties hereby acknowledge this agreement.

IN WITNESS WHEREOF, the parties hereto execute this CONSENT AGREEMENT TO SURRENDER AND REVOKE LICENSE AND FINAL ORDER.

IT IS SO ORDERED.

[Redacted signature area]

Malinda Manis
Respondent
1004 N. Cherry
Ottawa KS 66067

[Redacted signature area]

Danielle R. Sanger, #24587
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612

Malinda Manis sign in front of a notary public.



This 9th day of November, 2011

[Redacted signature area]

Sandra Sharon, Presiding Officer

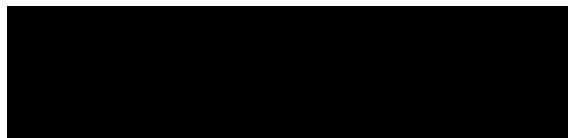
Pursuant to K.S.A. 77-527, either party may request a review of this final order by filing a petition for reconsideration with the Kansas State Board of Nursing. A petition for reconsideration must be filed within 15 days from the date this final order was served. Failure to timely request a reconsideration by the Kansas State Board of Nursing may preclude further judicial review. The petition for reconsideration 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 final order is served by mail, three days are added to the time limits set out above.

CERTIFICATE OF SERVICE

On the 15th day of November, 2011, I certify that I mailed a true copy of this
CONSENT AGREEMENT TO SURRENDER AND REVOKE LICENSE AND FINAL ORDER to:

Malinda Manis
1004 N. Cherry
Ottawa KS 66067



Danielle R. Sanger, #24587
Assistant Attorney General