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BEFORE THE KANSAS STATE BOARD OF NURSING

IN THE MATTER OF
JAMIE L. RODRIGUEZ
License No. 23-29322-042/REINSTATEMENT

Case No. 15-428-5
OAH No. 16BN0044

INITIAL ORDER

Now on this 12th day of April 2016, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing (Board/Petitioner) pursuant to K.S.A. 77-536. Sandra L. Sharon was duly appointed Administrative Law Judge (ALJ)/Presiding Officer pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing, appears by Assistant Attorney General Bryce D. Benedict, Disciplinary Counsel for the Board. The Respondent, Jamie L Rodriguez, appears in person.

Findings of Fact

1. The respondent was licensed by the Board to practice nursing in the State of Kansas. On or about August 4, 2008, she entered into a Consent Agreement and Order; wherein, she admitted diverting Lortab and Morphine from her employer. She agreed to enter into the Kansas Nurse Assistance Program (KNAP). However, the respondent was not successful in completing KNAP and was terminated from the program for non-compliance on or about October 6, 2008.
2. In the Consent Agreement and Order was the condition that on violation of the agreement, the Stay of Suspension of the respondent's license to practice nursing in the State of Kansas shall be lifted for a period of six months.
3. Due to the respondent's non-compliance with KNAP, the suspension of stay of the respondent's license to practice nursing in the State of Kansas was lifted.
4. On or about April 27, 2010, the suspension was once again stayed after the respondent became compliant with KNAP.
5. The respondent, once again, became non-compliant with KNAP by missing scheduled drug testing and failing to report twelve-step meeting attendance. By an Initial Order dated November 23, 2015, after a hearing, the Stay of Suspension was once again lifted on the respondent's license to practice nursing in the State of Kansas. The Stay of Suspension was for one year.
6. While serving the one year suspension, the respondent was still a participant in KNAP. Once again, the respondent became non-compliant with the program by having positive drug screens for opiates on January 18, 2011 and February 17, 2011.

7. As a result of an Administrative Hearing held on or about July 27, 2011, the respondent's license to practice nursing in the State of Kansas was revoked for her failure to abide by her Consent Agreement and Order with the Board.
8. On or about March 2, 2012, the respondent filed a reinstatement application for a license to practice nursing with the Board. With the March 2, 2012 reinstatement application, the respondent failed to show any evidence that she had been rehabilitated. She also failed to address any of the *Vakas* factors, *Vakas v. Kansas State Board of Healing Arts*, 248 Kan. 589 (1991).
9. Also on the March 2, 2012 application, the respondent failed to report her conviction of two misdemeanors. In response to the question, "Have you ever been convicted of a misdemeanor?" the respondent answered "no". The respondent was convicted on or about October 3, 2011, in the Municipal Court of Hesston, Kansas, for driving while her license was suspended, revoked, or cancelled. She was also convicted of no proof of insurance in Sedgwick County District Court on September 11, 2011.
10. The respondent filed a second reinstatement application with the Board on April 13, 2015. At the hearing of this matter, April 12, 2016, the respondent asserts that she has been clean and drug free since 2011. However, she has provided no corroborating evidence of this. She failed to address any of the *Vakas* factors.

Conclusions of Law

1. By failing to complete the requirement of the Impaired Provider Program of the Board (KNAP), the respondent has violated the Kansas Nurse Practice Act at K.S.A. 65-1120(a)(6) and K.A.R. 30-3-110(s).
2. By being unable to practice nursing with skill and safety due to current use of drugs or alcohol, the respondent has violated the Kansas Nurse Practice Act at K.S.A. 65-1120(a)(4).
3. By failing to comply with the Consent Agreement and Order the respondent entered into with the Board, the respondent has violated the Kansas Nurse Practice Act at K.S.A. 65-1120(a)(6).
4. By failing to correctly report she has been found guilty of two misdemeanors and reporting that she had not been found guilty of any misdemeanors, the respondent is guilty of fraud and/or disseat in attempting to procure a license to practice nursing. This is a violation of the Kansas Nurse Practice Act at K.S.A. 65-1120(1)(a).
5. The Supreme Court of Kansas has enumerated factors which are to be considered in determining whether a license to practice nursing should be reinstated. These factors include:
 - The present moral fitness of the petitioner;

- The demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
 - The extend of petitioner's rehabilitation;
 - The nature and seriousness of the original misconduct;
 - The conduct subsequent to discipline;
 - The time elapsed since the original discipline;
 - The petitioner's character, maturity, and experience at the time of the original revocation;
 - The petitioner's present competence in medical skills.
6. The respondent clearly has a history of being unable to practice nursing with skill and safety due to abuse of drugs and alcohol. Currently, the respondent has failed to establish with the Board any level of rehabilitation and has failed to address specific factors as outlined in *Vakas*.
 7. The respondent has failed to show that she is rehabilitated, can practice nursing with skill and safety, and that she should be granted a license to practice nursing in the State of Kansas.

Conclusion

1. The Petition to deny the respondent's application for a license to practice nursing in the State of Kansas is affirmed.
2. Cost of this action shall be assessed against the respondent in the amount of \$100.00 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 April 28, 2016, 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:

Bryce D. Benedict
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:

Jamie L. Rodriguez
3232 Clifton #703
Wichita, KS 67216



Staff Person
Office of Administrative Hearings