

BEFORE THE KANSAS STATE BOARD OF NURSING

FILED

OCT 19 2015

KSBN

IN THE MATTER OF
NAKISHA D. WEBSTER
License No. 23-29710-101 (Reinstatement)

Case No. 08-1046-5
OAH No. 15BN0143

INITIAL ORDER

Now on this 8th day of October 2015, 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 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, Nakisha D. Webster, appears in person.

Findings of Fact

1. On or about May 16, 2011, the respondent entered into a Consent Agreement and Final Order with the Board. The Consent Agreement and Final Order addressed:
 - a. In 2008, the respondent was convicted of three counts of misdemeanor theft in Sedgwick County District Court due to falsified time records with her employer.
 - b. The respondent failed to report three misdemeanor convictions, one of disorderly conduct and two of theft, on her applications with the Board since 2000.
 - c. The respondent was convicted of misdemeanor driving on a suspended license in 2006. She failed to report this to the Board on her next reinstatement application.
 - d. On the respondent's 2009 renewal application, she indicated she had never been convicted of a misdemeanor. This was incorrect. The respondent had been convicted of seven misdemeanors.
2. The Consent Agreement and Final Order outlines terms, to which the respondent agreed, in order for the respondent to continue to practice nursing.
3. Paragraph 17 outlines the obligations which the respondent must meet. The respondent violated these requirements as follows:
 - 17(b) The respondent failed to have her employer submit quarterly reports to the Board regarding the respondent's nursing performance.
 - 17(c) The respondent was precluded from working with a nurse registry, a temporary nursing service or agency, a home health care service or agency, or as a private

duty nurse without prior written consent of the Board. The respondent violated this by working as a home health nurse without notifying the Board.

- 17(f) The respondent was required to notify all of her employers and/or prospective employers that she entered into a Consent Agreement and Final Order with the Board. She did not.
 - 17(j) The respondent was required to complete two hours of Certified Nurse Education (CNE) on the Kansas Nurse Practice Act, 3-6 hours on Nursing Ethics, and 3-6 hours on Nursing Law within 60 days of the date of the Consent Agreement and Final Order. She did not.
- 4. On March 25, 2014, the respondent was sent notice of a prehearing conference to address her violations of the Consent Agreement and Final Order as addressed above. The hearing was scheduled for April 24, 2014. The respondent did not participate and a Proposed Default Order was issued pursuant to K.S.A. 77-520(d).
 - 5. On January 12, 2015, the respondent filed a reinstatement application with the Board. The Board filed a petition to deny the respondent's application for reinstatement of her license to practice nursing in the State of Kansas.

Applicable Law

- 1. The Kansas State Board of Nursing has the authority to limit, deny, suspend, or revoke a license to practice nursing in the State of Kansas for proper legal cause. K.S.A. 74-1106(c)(4).
- 2. Violations of the Kansas Nurse Practice Act are legal cause for disciplinary action on an individual's license to practice nursing. Grounds for disciplinary action are found at K.S.A. 65-1120.
- 3. It is a violation of the Kansas Nurse Practice Act to be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a licensure to practice nursing. K.S.A. 65-1120(a)(1).
- 4. It is a violation of the Kansas Nurse Practice Act to engage in unprofessional conduct by diverting drugs, supplies, or property of any patient or agency. K.S.A. 65-1120(1)(6) and K.A.R. 60-3-110(n).
- 5. Demonstration of professional incompetency by a pattern of practice or behavior which demonstrates a manifest incapacity or incompetence to practice nursing is a violation of the Kansas Nurse Practice Act. K.S.A. 65-1120(a)(3).
- 6. It is a violation of the Kansas Nurse Practice Act to fail to comply with a disciplinary order of the Board. K.A.R. 60-3-110(r).

7. Factors the Board must consider when determining whether a licensee should be reinstated are found at *Vakas v. the Kansas State Board of Healing Arts*, 248 Kan. 589 (1991). Factors to consider include:
- The present moral fitness of the petitioner;
 - The demonstration of consciousness of the wrongful conduct and disrepute which the conduct has brought to the profession;
 - The extent of the 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; and
 - The petitioner's present competence in medical skills.

Discussion

1. The respondent clearly violated the Kanas Nurse Practice Act as she admitted in the Consent Agreement and Final Order of May 16, 2011. The respondent admitted to fraud and deceit in procuring her license to practice nursing. She violated the portions of the Kansas Nurse Act as identified in Findings of Fact paragraph 1.
2. In March 2014, the respondent failed to answer the Board's petition regarding her failure to comply with the disciplinary order she entered into with the Board, and her license was revoked by default.
3. When an individual is filing a reinstatement application to have a license to practice nursing reinstated, she must address issues of moral fitness, character, and competency. These factors are outlined in *Vakas*.
4. In addressing the *Vakas* factors, the respondent has indicated she understands the wrongfulness of her conduct; that she has grown and is presently morally fit to practice nursing. However, the respondent merely indicated that she had talked to her pastor about her past behavior. There is no documentation to support her moral rehabilitation. The respondent was able to state that she understood that her criminal past was wrong, and she has grown. However, her behavior subsequent to the discipline or after she entered into the Consent Agreement and Final Order reflects a failure to follow through and be accountable for her actions. The respondent did not perform several activities she agreed to in the Consent Agreement and Final Order.
5. She violated the Consent Agreement and Final Order by working in home health care. This was in violation of paragraph 17(c).
6. Employment in home health care put the respondent in a position to work unsupervised by an RN. This is a violation of 17(e) of the Consent Agreement and Final Order.

7. Further, the respondent failed to inform her employer of the Consent Agreement and Final Order. This is a violation of paragraph 17(f) of the Consent Agreement and Final Order.
8. Finally, the respondent failed to have her employer submit quarterly reports to the Board. This is a violation of the Consent Agreement and Final Order at paragraph 17(b).
9. It has been one year since the respondent violated her Consent Agreement and Final Order with the Board. Because her conduct was not in compliance with the Consent Agreement and Final Order and such a short time has elapsed since she entered into the Consent Agreement and Final Order, the respondent's character and maturity are still at issue.
10. Because the respondent has failed to provide independent evidence of her moral fitness and rehabilitation, and because the respondent has so recently violated the Consent Agreement and Final Order of the Board, the respondent has not shown that she is rehabilitated pursuant to *Vakas*.

Conclusion

1. The Board's petition to deny the respondent's reinstatement application is granted.
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 Oct. 16, 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:

Nakisha D. Webster
7025 O'Neil
Wichita, KS 67212



Staff Person
Office of Administrative Hearings