

FILED

JUL 14 2008

KSBN

BEFORE THE KANSAS STATE BOARD OF NURSING

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

**IN THE MATTER OF
MARY C. WUEST
License No. 23-030043-112**

Case No. 05-679-2, 08-122-3

CONSENT AGREEMENT AND FINAL ORDER

NOW ON THIS 15th day of July, 2008, the Kansas State Board of Nursing, represented by Assistant Attorney General, Mark A. Knight, and the Respondent, Mary C. Wuest, 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

1. Respondent's license to practice nursing in Kansas expired. Respondent has made application for reinstatement of her license to practice nursing in Kansas. The Kansas State Board of Nursing (KSBN) has jurisdiction over the Respondent and the subject matter of this action.
2. Respondent's address of record is 208 Pershing, Courtland, KS 66939.
3. The Respondent understands that pursuant to K.S.A. 77-515, respondent may be represented at respondent's expense by, an attorney during these proceedings.
4. 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.
5. 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 is established.

6. (a) On or about 9/14/2004, Respondent entered a Consent Agreement To Suspend License and Final Order with the Board to resolve KSBN case number 03-384-2. The following facts were a part of the Agree Findings of Fact in said Consent Agreement To Suspend License and Final Order:

Respondent has a history of marijuana use. Respondent was terminated from employment on 7/17/2003, from the Norton County Hospital due to a positive urine drug screen for marijuana. As a result, Respondent was referred by the Board to the Board's impaired provider program, KNAP, for a chemical dependency evaluation. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

During 2002 and 2003, Respondent worked as a nurse while her license was expired. Respondent paid the unlicensed practice fine.

(b) Pursuant to the Consent Agreement To Suspend License and Final Order in KSBN 03-384-2, Respondent's license to practice nursing in Kansas was suspended until Respondent completed conditions and requirements of the Consent Agreement To Suspend License and Final Order.

(c) On or about 7/19/2005, Respondent's application to practice nursing in the state of Nebraska was denied. The basis of the Nebraska denial was the Suspended status of the Respondent's Kansas nursing license.

(d) On or about 11/30/2006, Respondent's license to practice nursing in the state of Kansas expired. At the time Respondent's license expired the license was in a suspended status as Respondent had not completed the terms and conditions of the Consent Agreement To Suspend License and Final Order.

(e) On or about 2/18/2008, the KSBN received Respondent's application for reinstatement of her license to practice nursing in Kansas.

(f) On or about 6/27/2008, the KSBN received a letter from Respondent which pointed out what Respondent believed to be inaccuracies in the 9/14/2004 Consent Agreement To Suspend License and Final Order. In the letter Respondent states in July of 2004, she completed an intake evaluation with Ms. Judi Leibrock of the Nebraska License Assistance Program in Omaha, NE. In the letter Respondent states she sent documentation of attendance at AA meetings directly to KNAP along with her program fees and that the checks cleared the bank. In the letter Respondent states she did not fail a second drug test but that she did not submit to a test. Respondent states she was out of state and could not get to the test site. Respondent states she contacted KNAP and was told the test could be postponed and that it would be documented as such. Respondent states she later found out KNAP had not documented her call in their records.

7. The above incidents are violations of the nurse practice act. The Respondent agrees that the board is prepared to prove that respondent has violated: K.S.A. 65-1120(a)(8), to have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country; K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(s), failing to complete the requirements of the impaired provider program of the board; K.S.A. 65-1120(a)(4), to be unable

to practice with skill and safety due to current abuse of drugs or alcohol; K.S.A. 65–1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(r), failing to comply with any disciplinary order of the board.

8. Respondent has the right to a hearing with evidence and witnesses and to seek review of the findings from that hearing in accordance with the Kansas Administrative Procedure Act and the Act for Judicial Review and Civil Enforcement of agency actions. Respondent is waiving those rights and voluntarily entering into this agreement instead of proceeding to such a hearing.

CONCLUSIONS OF LAW

9. 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 is established.

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

Count 1: K.S.A. 65-1120(a)(8), to have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country.

Count 2: K.S.A. 65–1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(s), failing to complete the requirements of the impaired provider program of the board.

Count 3: K.S.A. 65-1120(a)(4), to be unable to practice with skill and safety due to current abuse of drugs or alcohol.

Count 4: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(r), failing to comply with any disciplinary order of the board.

POLICY STATEMENT

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

DISPOSITION

12. By entering into this Consent Agreement and consenting to the entry of the Final Order, both parties waive their right to full administrative proceedings pursuant to K.S.A. 65-1120 and K.S.A.77-501 et seq. and to judicial review.

13. Upon the parties entering into this Consent Agreement and Final Order, the Respondent's application for reinstatement of Respondent's Kansas Nursing license will be granted once the following conditions have been met: (a) Respondent has met all statutory requirements for reinstatement of Respondent's Kansas Nursing License; (b) Respondent has entered the Kansas Nurses Assistance Program (KNAP); (c) KNAP has issued a written statement to the Kansas State Board of Nursing which states the Respondent has submitted to at least two drug screens since entering this consent agreement, the result of which are negative for substances prohibited by KNAP; and (d) KNAP has issued a written statement to the Kansas State Board of Nursing which states that the Respondent has completed three consecutive months of compliance in KNAP since entering this consent agreement and that the Respondent is safe to practice nursing in the State of Kansas.

14. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that this Consent Agreement will continue through any renewal periods of respondent's nursing license until respondent completes each of the conditions and requirements of this agreement. Further, the parties agree that in the event of a lapse of Respondent's nursing license, reinstatement of Respondent's nursing license shall be contingent upon this Consent Agreement and Final Order remaining in effect until Respondent completes each of the conditions and requirements of this agreement.

15. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that once Respondent's application for reinstatement of his license to practice nursing in Kansas is granted pursuant to paragraph 13 of this Consent Agreement and Final Order, then Respondent's license to practice nursing in Kansas will be immediately suspended. The suspension will be stayed as long as the requirements and conditions of this agreement are met.

16. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that once Respondent's application for reinstatement of his license to practice nursing in Kansas is granted pursuant to paragraph 13 of this Consent Agreement and Final Order, then Respondent's license to practice nursing in Kansas is immediately limited. The limitations placed on the license and described below will remain in place until the requirements and conditions of this agreement are met or until the requirements and conditions of this agreement call for the modification of the limitations.

17. The Kansas State Board of Nursing will not take additional disciplinary action against respondent's nursing license for the violations stated above as long as respondent completes each of the following conditions and requirements:

(a) **Respondent shall return his or her current license card to the Board with this Consent Agreement.** Once Respondent's license to practice nursing in Kansas has been granted pursuant to paragraph 13 of this Consent Agreement and Final Order, Respondent shall receive **a license card which shall be issued with an "S" placed in the status code portion of the license card to indicate that the license is suspended with a Stay.** The card will have an **"L"** indicating the limitations on the practice.

(b) **Respondent will participate in and complete the reasonable recommendations and requirements of the Kansas Nurses Assistance Program (KNAP);** sign releases of information necessary for KNAP to evaluate and monitor respondent and for KNAP to report information to the board. Respondent will be deemed to have completed the

KNAP program when KNAP issues written notification that respondent has completed the program. Noncompliance with KNAP is a violation of this agreement.

(c) **Respondent must submit to random drug screens as determined or selected by the Board or by KNAP.** The costs of the drug screens will be paid by the respondent. Respondent agrees that a Positive Drug Screen is a violation of this agreement.

(d) **Respondent shall have a narcotic key restriction on respondent's license for the first six (6) months after respondent secures employment that requires a nursing license.** The narcotic key restriction prohibits the respondent from passing of narcotics, wasting of narcotics or having access to narcotics. The narcotic key restriction also prohibits the respondent from supervising nurses or others that have access to narcotics. After respondent completes six (6) months of employment that requires a nursing license, without violating any terms of this agreement, respondent may request that the narcotic key restriction be removed from respondent's license. Respondent's request shall include written verification from respondent's employer, to the Kansas State Board of Nursing, as to whether the respondent has been employed in a position that requires a nursing license; as to whether the respondent has held that position for at least six (6) months; as to whether the respondent has passed, wasted, had access to, or supervised others that had access to narcotics. With a showing that the narcotic key restriction term of this agreement has been met by the respondent, and the respondent is compliant with all other terms of this agreement, the narcotic key restriction will be removed from respondent's license and respondent will be issued a license card with no limitations on the practice.

(e) **Respondent shall immediately notify the Legal Division of any use of alcohol, if prohibited by KNAP, or controlled substances, or any violation of this Consent Agreement and Final Order.**

(f) **The respondent shall immediately inform all employers and prospective employers of this Consent Agreement and the Final Order.**

(g) **Respondent shall send a money order for \$70 to the Board upon entering into this agreement to pay the cost of this action.**

(h) Respondent shall **not violate the Kansas Nurse Practice Act** during the duration of this agreement.

(i) Respondent shall **not violate the laws of the United States, of State, or of any political subdivision of any State during the term of this agreement.** Traffic infractions shall not be considered violations of the law.

(j) The respondent will **complete two (2) hours of Continuing Nurses Education (CNE) on the topic of "Kansas Nurse Practice Act."** Respondent is to submit the original certificates for proof of the completion of the **hours within 30 days** of this agreement. Respondent may not use these hours to meet the CNE requirements of any renewal period.

(k) **Respondent agrees to notify the Legal Division of any changes in address and phone number as well as all employment terminations or employer changes or additions. All such notifications shall be made in writing within fourteen (14) days of such a change.**

18. Respondent acknowledges and agrees that Respondent is responsible for the costs related to satisfying the conditions and requirements of this Consent Agreement. Respondent further acknowledges and agrees that to provide the Board with false information regarding compliance with this Consent Agreement is a violation of this Consent Agreement.

19. If Respondent does not meet these conditions and requirements, the Kansas State Board of Nursing may request additional sanctions against Respondent's license or application for a license. Respondent would be sent notice of such action and would be entitled to a hearing as to whether Respondent had complied with this Consent Agreement, but Respondent could not contest the violations listed in this agreement.

20. All parties understand that if an action based on failure to meet the conditions and requirements of this Consent Agreement is filed, K.S.A. 77-531 requires the Notice of Hearing to

be served upon the Respondent and the Respondent's attorney of record, if any. All parties agree that only serving the Notice of Hearing upon the Respondent will be proper service and it is the Respondent's responsibility to contact his or her attorney, if any, in reference to the action.

21. Respondent acknowledges and agrees that upon a first finding of Respondent not complying with the conditions or requirements of this Consent Agreement, the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, shall be lifted for a period of six months from the date of said finding. Respondent will not be allowed to practice nursing in the state of Kansas during the period of suspension.

22. Respondent acknowledges and agrees that upon a second or subsequent finding of Respondent not complying with the conditions or requirements of this Consent Agreement the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, shall be lifted for a period of one year from the date of said finding. Respondent will not be allowed to practice nursing in the state of Kansas during the period of suspension.

23. Respondent acknowledges and agrees that upon the Stay of Suspension being lifted due to a finding of non-compliance with this Consent Agreement, the Suspension will not again be Stayed until the Respondent has, following the prescribed time period of suspension, provided written verification to the Board that Respondent is in compliance with all conditions and requirements of this Consent Agreement. Upon the Respondent providing said written verification the suspension will again be stayed.

24. The Board will inactivate this case file once respondent satisfies this agreement. This agreement does not prohibit the agency from taking disciplinary action against Respondent's license for any additional or cumulative violation of the Kansas Nurse Practice Act committed by the Respondent before or after this agreement is entered into.

25. This agreement is a discipline and must be reported on any future renewal or reinstatement applications. This agreement is a contract entered into by the parties to resolve

an investigative case. The original of this agreement shall be placed in the Agency Record and is a public record.

26. After successful completion of all of the conditions and requirements of this Consent Agreement by the respondent, the Consent Agreement will be satisfied and the case will be inactivated.

27. By signing this Consent Agreement and Final Order, Respondent acknowledges that Respondent has read and understands the entire document, and agrees to be bound by its terms. This Consent Agreement and Final Order constitute the entire agreement of the parties and may not be modified except in writing and approved by all parties.

28. 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.

IN WITNESS WHEREOF, the parties hereto execute this CONSENT AGREEMENT AND FINAL ORDER.

IT IS SO ORDERED.



Mary C. Wuest
Respondent
208 Pershing
Courtland, KS 66939

Mary C. Wuest must sign before a Notary Public.

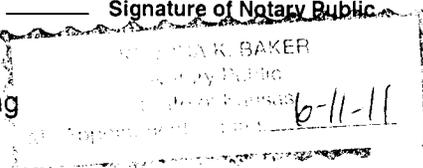
State of Kansas, County of Norton ss.
SUBSCRIBED AND SWORN TO before, me by Mary C. Wuest

on this 7th day of July, 2008.

Kendra K Baker My Commission Expires 6-11-11

Signature of Notary Public (Notary Public Seal)

Mark A. Knight, #12183
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612



Sandra L. Sharon, Presiding Officer

CERTIFICATE OF SERVICE

On the 16th day of July, 2008, I mailed a copy of this CONSENT AGREEMENT AND FINAL ORDER to:

Mary C. Wuest
208 Pershing
Courtland, KS 66939

Mark A. Knight, #12183
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612