

BEFORE THE KANSAS STATE BOARD OF NURSING

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

FILED

FEB - 4 2010

**IN THE MATTER OF
DAVID D. MITCHELL
License No. 23-32417-072**

KSBN

Case No. 06-909-7, 09-648-7


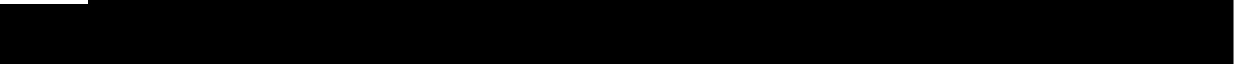
CONSENT AGREEMENT AND FINAL ORDER

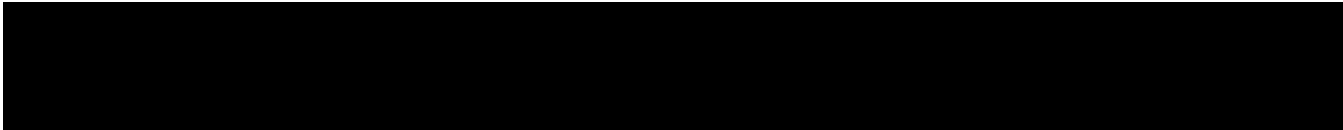
NOW ON THIS 8th day of February 2010, the Kansas State Board of Nursing, by and through Assistant Attorney General Brenda J. Clary, and the Respondent, David D. Mitchell, hereby enter into this agreement and proffer evidence and the hearing officer adopts those recommendations and makes the following findings of fact and orders:

AGREED FINDINGS OF FACT

1. Respondent is licensed to practice nursing in Kansas through the 31st day of July 2010.
2. Respondent's address of record is 16 Ventura Lane, Olathe, KS 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. 65-1113 *et seq.*, and referred this matter for further proceedings.
4. As a result of discrepancies in medication administration records, Respondent's employer requested on or about September 25, 2006, that Respondent submit to a urine drug screen.
5. Respondent declined, stating that the test would be positive because he had used his wife's prescription Percocet, but stated he wanted to enter the Kansas Nurse Assistance Program (KNAP).



7. 




9. A petition was filed January 12, 2010, to take disciplinary action against the licensee's license.

10. Respondent has the assistance of retained counsel, Jerry L. Wallentine.

11. After consultation with counsel, Respondent has tendered voluntary surrender of his license to practice nursing in Kansas, and the Board is willing to accept the the license without further proceedings.

12. Respondent acknowledges that he 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. Respondent is waiving those rights.

13. Respondent acknowledges that this agreement and order constitutes a final disciplinary action against against his license and must be reported as such in the future.

AGREED CONCLUSIONS OF LAW AND POLICY STATEMENT

14. 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, upon making any of the findings listed in K.S.A. 65-1120(a).

15. The Kansas State Board of Nursing (KSBN) has jurisdiction over the Respondent and the subject matter of this action.

16. Respondent would be subject to disciplinary action on the following ground: K.S.A. 65-1120(a)(6), unprofessional conduct as defined by K.A.R. 30-3-110 (s), failure to complete the requirements of the impaired provider program of the board.

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

18. 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.

19. 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. The effective date of this Consent Agreement and Final Order is the date shown on the certificate of service.

20. 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.



David D. Mitchell
Respondent
16 Ventura Lane
Olathe, KS 66061

State of Kansas)
County of Johnson)

This instrument was acknowledged and signed before me on the 3rd day of February 2010.

Linda J. Lowdermilk
(Notary's signature)

LINDA J. LOWDERMILK Notary Public - State of Kansas My Appt. Expires <u>10-15-2011</u>
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My appointment expires October 15, 2011

David D. Mitchell must sign before a Notary Public

[REDACTED]
Jerry L. Wallentine, # 22399
130 N. Cherry, Suite 201
Olathe, KS 66061
Counsel for Respondent

[REDACTED]
Brenda J. Clary, #18770
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612

ORDER

Now on this 8th day of February 2010, pursuant to the foregoing agreement of the parties, Respondent surrenders his license to practice nursing in Kansas, and his authorization to practice nursing is therefore revoked.

IT IS SO ORDERED.

[REDACTED]
Sandra L. Sharon, Presiding Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of February 2010, she caused a true and correct copy of the foregoing **CONSENT AGREEMENT AND FINAL ORDER** to be placed in the United States mail, first class postage prepaid, addressed to the following:

David D. Mitchell
16 Ventura Lane
Olathe, KS 66061

Jerry L. Wallentine
130 N. Cherry, Suite 201
Olathe, KS 66061
Counsel for Respondent

[REDACTED]
Brenda J. Clary
Assistant Attorney General