

BEFORE THE KANSAS STATE BOARD OF NURSING

FILED

JAN 15 2015

IN THE MATTER OF  
MICHELLE LEE BROWN  
License No. 23-33990-082

Case No. 13-2234-2

OAH No. 14BN0147

KSBN

**INITIAL ORDER**

Now on this 2<sup>nd</sup> day of December 2014, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing (Board/Petitioner). 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, Michelle Lee Brown, appears in person.

Findings of Fact

1. In October 2013, the respondent was employed at Prairie Senior Living Complex in Colby, Kansas. She was involved in a medication error; wherein, one Lortab was missing. The respondent indicated the error was made on the shift before her and she simply crossed out a count number to correct it. This happened on or about October 21, 2013. This medication error was the last in a series of errors made by the respondent. The respondent's employer referred her to the Kansas Nurse Assistance Program (KNAP).
2. The respondent failed to meet with her employer regarding the October 21, 2013 medication issue. She was terminated from employment.
3. The respondent was evaluated under KNAP. It was determined highly probable for the respondent to have substance abuse. This evaluation was completed by Thomas County Alcohol and Drug Abuse Counsel.
4. Because of the outcome of the alcohol and drug evaluation, KNAP offered the respondent a three year contract; wherein, she would be monitored for drug and alcohol usage and for her safety to practice nursing. The respondent refused to participate further with KNAP and her KNAP case was closed.
5. The respondent has a history of DUI in 2006 with an April 2007 conviction.
6. At hearing, the respondent indicated she has no defense for the Board's Count I, Count II, and Count III. She indicated that she believes Count IV is false.

Applicable Law

1. It is a violation of the Kansas Nurse Practice Act to be guilty of unprofessional conduct by fraud or deceit in practicing nursing. K.S.A. 65-1120(a)(1).
2. It is a violation of the Kansas Nurse Practice Act to participate in unprofessional conduct by inaccurately recording, falsifying or altering documents. K.S.A. 65-1120(a)(6).
3. It is a violation of the Kansas Nurse Practice Act to willfully violate the Kansas Nurse Practice Act by failing to complete the requirements of the impaired provider program. K.S.A. 65-1120(a)(7) and K.A.R. 60-3-110(s).
4. It is a violation of the Kansas Nurse Practice Act to be unable to practice nursing with skill and safety due to current abuse of drugs or alcohol. K.S.A. 65-1120(a)(4).
5. The Board must show by a preponderance of the evidence that the respondent violated the Kansas Nurse Practice Act. A preponderance of the evidence means the weight of the evidence tips to one side more than fifty percent.

#### Discussion

1. The respondent asserts she has no defense of Count I, Count II and Count III of the Kansas Nurse Practice Act. These are serious violations. These violations are cause to revoke the respondent's license to practice nursing.
2. As to Count IV and the respondent being unable to practice nursing with skill and safety due to the current abuse of drugs or alcohol, it has been determined highly probable for the respondent to abuse drugs or alcohol. Nevertheless, she fails to participate in KNAP, which would allow her to be monitored while practicing nursing and assure the Board that she is able to practice with skill and safety. The respondent testified that she understands that she may not be able to keep her nursing license by refusing to participate in KNAP.
3. It is the duty of the Board to ensure the nurses that it license are able to practice with skill and safety.

#### Conclusion

1. The Board has shown by a preponderance of the evidence that the respondent has violated the Kansas Nurse Practice Act. Further, the Board has shown that it cannot ensure the respondent is safe to practice nursing due to drug or alcohol abuse. The Board has met its burden and the respondent's license to practice nursing shall be revoked. The petition to revoke the respondent's license to practice nursing in the State of Kansas is hereby granted.
2. Cost of this action shall be assessed against the respondent in the amount of \$70.00 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.



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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 Jan. 12, 2015, I mailed this original document through State Building  
Mail to:

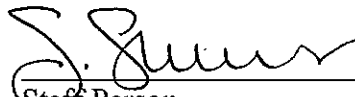
Mary Blubaugh  
Executive Administrator  
Kansas State Board of Nursing  
900 SW Jackson, LSOB, Ste. 1051  
Topeka, KS 66612  
Telephone: 785-296-4325

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:

Michelle Lee Brown  
855 W. Plum Street  
Colby, KS 67701-2929



Staff Person

Office of Administrative Hearings