

BEFORE THE KANSAS STATE BOARD OF NURSING

FILED
DEC 05 2013
KSBN

IN THE MATTER OF
ROBERT C. MARTINEZ
License No. 23-35549-111

Case No. 12-710-0
OAH No. 13BN0166

INITIAL ORDER

Now on this 14th day of November 2013, the above-captioned matter comes on for a Show Cause 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, Alma A. Heckler, Disciplinary Counsel for the Board. The Respondent, Robert C. Martinez, appears in person.

Findings of Fact

1. On April 5, 2012, the respondent entered into a Final Order and Consent Agreement (Agreement) with the Board.
2. The Agreement addresses violations by the respondent of the Kansas Nurse Practice Act.
3. Further, within Agreement the respondent agrees to comply with specific conditions laid out in the Agreement.
4. As required by the Agreement, the respondent participates in the Kansas Nurse Assistance Program (KNAP). During his participation with KNAP, the respondent has been non-compliant twice. The first time was the respondent's failure to call in to see if he was randomly selected for drug testing and failed to test. This missed check-in and drug test occurred September 14, 2012. The second non-compliance with KNAP was when the respondent failed to timely submit documentation of his attendance of two twelve-step meetings per week (a minimum of eight per month). This occurred July 10, 2012.
5. Also, during the respondent's participation with KNAP, he tested positive for marijuana twice. First on January 2, 2013 and again on March 1, 2013.
6. The Agreement also acknowledges the respondent is employed at Elmhaven East and Elmhaven West in Parsons, Kansas, and the respondent will cause his employer to provide eight quarterly reports to the Board regarding his performance as a nurse. The Agreement also indicates the respondent was employed by Medicalodge.
7. Per the Agreement between the respondent and the Board, the respondent agreed to be supervised by an RN at all times and to serve a narcotic key-restriction for six months.

8. The respondent caused Elmhaven East and Elmhaven West to provide quarterly reports as outlined in the Agreement. However, Medicalodge's provided no employment reports regarding the respondent's performance as a nurse. The respondent asserts this is due to restrictions within the Agreement requiring the respondent to be supervised by an RN at all times and a six month key restriction placed on him by the Agreement. The respondent indicated because of these restrictions, he did not accept any employment from Medicalodge. He was on a PRN status with Medicalodge.
9. Related to employment, the Agreement also requires the respondent to notify the Board if he leaves employment with any employers and his reason for doing so.
10. The respondent also agreed to complete ten (10) hours of Continuing Nurse Education (CNE) on the topic of patient rights and ten (10) hours of CNE on patient abuse.
11. The respondent submitted CNE to the Board regarding five (5) hours of elder abuse and fifteen (15) hours of ethical decision making.

Applicable Law

1. The Kansas State of Board of Nursing has the authority under K.S.A. 74-1106(c)(4) to limit, deny, suspend, or revoke a license or authorization to practice nursing in the State of Kansas when there exists grounds for such action pursuant to K.S.A. 65-1120.
2. The terms and conditions of the Final Order and Consent Agreement signed and entered into between the Board and the respondent are controlling. Relevant sections of the Final Order and Consent Agreement are as follows:
 16. (b) Respondent will participate in and complete the reasonable recommendation and requirements of the Kansas Nurses Assistance Program (KNAP)...Noncompliance with KNAP is a violation of this agreement.
 - (d) Respondent may have a narcotic key restriction on respondent's license for the first six (6) months after respondent enrolls in KNAP. The narcotic key restriction prohibits the respondent from passing of narcotics, wasting of narcotics or having access to narcotics...
 - (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 Final Order and Consent Agreement and Final Order.
 - (h) Respondent shall not seek or accept employment with a nursing registry, a temporary nursing service or agency, a

home health care service or agency, as a private duty nurse, nursing or care home, or rehabilitation center without prior written consent of the Board. Respondent is allowed to work at Elmhaven East and Elmhaven West in Parsons...and if he provides any patient care, he will be supervised by an RN at all times. Respondent is also allowed to work at the Medical Lodge in Pittsburg, Kansas as long as an RN supervisor is present to supervise the Respondent at all times. His position at Medical Lodge involves patients care and Respondent agrees to submit eight (8) quarterly reports from the facility as outlined in item 16(i) below. If the Respondent leaves employment with any of these employers, he must immediately contact the Board with the reason for doing so...

- (m) The respondent will complete ten (10) hours of Continuing Nurses Education (CNE) on the topic of Patient Rights and ten (10) hours of CNE of Patient Abuse. Respondent is to submit the original certificates for proof of the completion of the hours within 30 days of this agreement. Repondent may not use these hours to meet the CNE requirements of any renewal period.
21. Respondent acknowledges and agrees that upon a first finding of Respondent not complying with any of the conditions or requirements of this Final Order and 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. Respondent acknowledges and agrees that all conditions and requirements of this Final Order and Consent Agreement remain in effect 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 any of the conditions or requirements of this Final Order and Consent Agreement, the Suspension with not again be Stayed until the Respondent has, following the prescribed time period of suspension, provide written verification to the Board that Respondent is in compliance and has remained in compliance during the period of suspension, with all conditions and requirements of this Final Order and Consent Agreement. Upon the Respondent providing said written verification the suspension will again be stayed.

Discussion

1. The respondent violated the Agreement at paragraph 16(b) and 16(e) when he tested positive for marijuana on January 2, 2013 and March 1, 2013.
2. While the respondent was compliant in providing quarterly reports from his employer, Elmhaven East and Elmhaven West, he failed to inform the Board that because of his narcotic key restriction and supervision requirements, he terminated employment with Medicalodge.
3. Further, the respondent did not meet the Agreement when he submitted five (5) hours of CNE for Elder Abuse and fifteen (15) hours of CNE on Ethical Decision Making. The respondent was required to take ten (10) hours of CNE on Patient Rights and ten (10) hours of CNE on Patient Abuse.
4. The Agreement outlines consequences for its violation. On the first failure to comply with the Agreement the Stay of Suspension of the respondent's license will be lift for a period of six months. Respondent will not be allowed to practice nursing in the State of Kansas during the period of suspension.
5. The respondent, in Paragraph 21 of the Agreement, also agrees he shall continue to meet all conditions and requirements of the Agreement during the period of suspension.
6. Conditions for the suspension to be stayed once again are found at Paragraph 23. The respondent must verify in writing to the Board he is in compliance with the Agreement and has remained in compliance during the suspension of his license.

Conclusion

1. The Board has shown the respondent has violated the Final Order and Consent Agreement between the parties dated April 5, 2012. Pursuant to the Agreement, the respondent's license to practice nursing in the State of Kansas shall be suspended for six months. Such suspension shall end at the end of six months, or when the respondent notifies the Board he is and has been in compliance with the Agreement, whichever is longer.
2. The 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.



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 Dec. 4, 2013, I mailed this original document through State Building
Mail to:

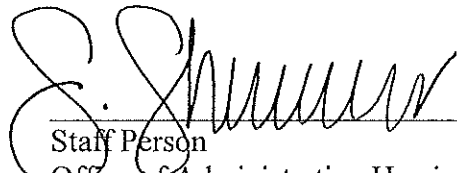
Mary Blubaugh
Executive Administrator
Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612
Telephone: 785-296-4325

and a copy of this document through State Building Mail to:

Alma Heckler
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:

Robert C. Martinez
1401 Appleton
Parsons, KS 67357



Staff Person
Office of Administrative Hearings