

FILED

BEFORE THE KANSAS STATE BOARD OF NURSING

DEC 18 2014

KSBN

IN THE MATTER OF  
JEFFREY W. WILLIAMS  
License No. 23-36201-012

Case No. 10-044-9 & 11-1350-8

OAH No. 13BN0140

### INITIAL ORDER

Now on this 29<sup>th</sup> day of October 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 and through Assistant Attorney General Alma A. Heckler, Disciplinary Counsel for the Board. The Respondent, Jeffrey W. Williams, appears through his attorney, Andrew M. Moskow.

This matter comes on for hearing as a remand from the District Court of Shawnee County, Kansas. Within the memorandum decision and order from the District Court, the court made the following findings:

- As to the Board's Count III, that the respondent violated K.S.A. 65-1120(a)(6) and K.A.R. 30-3-110(s), committing unprofessional conduct by failing to complete the requirements of the impaired provider program of the Board, the Court ruled, "[O]n this issue, the Petition's request for relief is denied."
- The Court GRANTS the Petition as to Respondent's [Board's] finding that Petitioner was unable to practice nursing with skill and safety due to *current* abuse of drugs or alcohol in violation of K.S.A. 65-1120(a)(4); and
- The Court REMANDS the case to the Respondent [Board] for further finding of fact on the issue of whether the petitioner has sufficiently rehabilitated himself to warrant the public trust. K.S.A. 65-1120(a)(2).
- The Court instructed the Board to reexamine its decision to revoke the petitioner's license in light of these findings, and to otherwise proceed in a manner not inconsistent with its order.

#### Findings of Fact

1. As related to the respondent's failure to complete the requirements of the impaired provider program of the Board, the Court found that the impaired provider program's "three strike" policy which was implemented in closing the respondent's case did not violate the petitioner's due process or equal rights protections and denied the respondent relief based on his challenge to the Board's impaired provider program.

2. The Court further pointed out as to the respondent's failure to complete the Board's impaired provider program that his failures consisted of being selected to take a random drug test and failing to take the test. The respondent did this on August 29, 2011, November 15, 2011, and February 5, 2013. It is noted that these are technical non-compliances in that the respondent failed to meet a requirement of the impaired provider program. The respondent did not relapse or have a positive urine drug screen. The respondent's third violation of failing to take a random drug test occurred on February 5, 2013. At that point in time, the respondent still had 18 months before he successfully completed the program.
3. As to the Court granting the remand related to the respondent's failure to practice nursing with skill and safety due to current abuse of drugs or alcohol, a violation of K.S.A. 65-1120(a)(4), it is noted that the Court's Memorandum Decision and Order was mailed May 8, 2014. On April 5, 2014, in Douglas County, Kansas, the respondent was arrested and charged with a violation of K.S.A. 8-1567, driving under the influence. However, at the time of the hearing on remand, the disposition of this matter had not taken place. Because there is no disposition of this matter, reliance on the charged violation of this statute as *current* evidence of the abuse of drugs or alcohol which renders the respondent unable to practice nursing with skill and safety is premature.
4. As to the Board's count that the respondent has been found guilty of a misdemeanor involving an illegal drug offense, and therefore, subject to discipline, the statute allows the respondent to establish sufficient rehabilitation to warrant the public trust. Once again, reliance on the respondent's arrest for driving under the influence of April 5, 2014, is premature and cannot be used at this point. K.S.A. 65-1120(a)(2).
5. At the remand hearing, the respondent provided evidence that the respondent's employer, supervisor, coworker, patient, father, and therapist believe he has demonstrated rehabilitation. These individuals testified they believe the respondent warrants their trust. There is nothing negating this evidence.

#### Conclusion of Law

1. Each Count as alleged in the Board's Petition has been discussed above. It can be said with certainty that the respondent failed to complete the Board's impaired provider program. This is because his case was closed by the impaired provider program on a "strike three" or third technical non-compliance. Even though there is nothing attached to this closure which would indicate that the respondent cannot practice with skill and safety because of drug and alcohol abuse there is a violation of K.S.A. 65-1120(a)(6) and K.A.R. 30-3-110(s).
2. The Court found no violation of K.S.A. 65-1120(a)(4). Even though there is an arrest for driving under the influence, the matter is pending. There can be no reliance of this at this point in time. There is no violation of K.S.A. 65-1120(a)(4).

3. It is clear the respondent's community, which includes his employer, supervisor, coworker, patient, father, and therapist, believe he is rehabilitated. They testified the respondent warrants their trust. There is no violation of K.S.A. 65-1120(a)(2).

Order

1. The respondent is ordered to enter KNAP and complete the remaining 18 months of his agreement with the program. During these 18 months, the respondent's license to practice nursing shall be suspended. Upon successful completion of the KNAP program, the suspension on the respondent's license will be lifted.
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 Dec. 15, 2014, 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:

Jeffrey W. Williams  
2438 Ridge court  
Lawrence, KS 66046

Andrew Moskow  
Danielle Sanger  
5040 Bob Billings Parkway, Ste. C-1  
Lawrence, KS 66049



Staff Person

Office of Administrative Hearings