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BEFORE THE KANSAS STATE BOARD OF NURSING

IN THE MATTER OF  
JEFFERY B. WHITE  
License No. 23-377762-052

Case No. 14-361-6  
OAH No. 15BN0164

**ORDER**

This matter comes on for consideration on an Order from the Kansas State Board of Nursing (Board) remanding this matter to the Presiding Officer/Administrative Law Judge (ALJ).

The Presiding ALJ finds:

1. On May 8, 2015, a Notice of Prehearing Conference was served on the respondent by first class mail at his last known address. The notice did not return from the US Post Office as undeliverable.
2. The Prehearing Conference was scheduled for August 25, 2015 at 9:00 a.m. The respondent failed to participate in the Prehearing Conference as scheduled.
3. A Proposed Default Order was issue September 1, 2015.
4. Paragraph 7 of the Proposed Default Order instructs, "[T]his Proposed Default Order shall become effective seven days after service or ten days after mailing of this order unless the Respondent files a written motion with the Board stating why the Proposed Default Order should be vacated."
5. K.S.A. 77-520(b) states:

Within seven days after service of a proposed default order, the party against whom it was issued may file a written motion requesting that the proposed default order be vacated and stating the grounds relied upon.
6. On September 10, 2015 the Board received correspondence from the respondent explaining that he had relocated to Little Rock, Arkansas and was looking forward to working with the Board.
7. The respondent's correspondence to the Board fails to make any motion and fails to state grounds on which the Proposed Default Order should be vacated.

The presiding ALJ, being well and dully advised in this matter finds no cause to vacate the Proposed Default Order and hereby issues the Default Order.

**IT IS SO ORDERD.**

### Appeal Rights and Other Administrative Relief

Pursuant to K.S.A. 77-520, if the proposed default order becomes effective, it is deemed an initial order, as set forth above. Pursuant to K.S.A. 77-527, either party may request review of the initial order by filing a petition for review with the Kansas State Board of Nursing within 15 days from date the order is deemed an initial order. Failure to timely request review may preclude further judicial review. Petitions for review shall be mailed or personally delivered to: Kansas State Board of Nursing, Legal Division, Landon State Office Building, 900 SW Jackson, Ste. 1051, Topeka, KS 66612-1230.

If neither party requests review, the initial order becomes a final order and is binding on the 30th day following its mailing.

A party may seek judicial review of a final order by filing a petition for judicial review pursuant to K.S.A. 77-601, et seq. Reconsideration of a final order is not a prerequisite to judicial review. A copy of any petition for judicial review shall be served on Mary Blubaugh, Executive Administrator, Kansas State Board of Nursing, 900 SW Jackson, Suite 1051, Topeka, KS 66612-1230.



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Sandra L. Sharon  
Administrative Law Judge  
Office of Administrative Hearings  
1020 S. Kansas Ave.  
Topeka, KS 66612

CERTIFICATE OF SERVICE

On March 23, 2016, I mailed this original document through State Building  
Mail to:

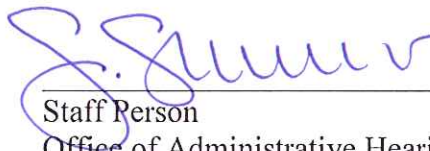
Mary Blubaugh  
Executive Administrator  
Kansas State Board of Nursing  
900 SW Jackson, LSOB, Ste. 1051  
Topeka, KS 66612  
Telephone: 785-296-4325

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

Bryce D. Benedict  
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:

Jeffery B. White  
6101 Alcoa Rd, Apt # 10112  
Benton, AR 72015



Staff Person  
Office of Administrative Hearings

KANSAS STATE BOARD OF NURSING  
Landon State Office Building  
900 SW Jackson, Suite 1051  
Topeka, Kansas 66612-1230

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IN THE MATTER OF )  
 )  
Jeffrey Bruce White )  
Reinstatement Application )  
License No. 23-37762-052 )

Case No. 14-361-6

ORDER

Now, on this 18<sup>th</sup> day of March 2016, the above-captioned matter comes for consideration on the motion filed by Jeffrey Bruce White. The motion seeks relief from the Proposed Default Order issued by the Presiding Officer of the Office of Administrative Hearings. Pursuant to K.S.A. 2015 Supp. 77-527(a)(2), the Kansas State Board of Nursing (Board) has delegated to Board member Carol Bragdon its authority as agency head to review post-hearing pleadings and to issue an order accordingly.

After reviewing the Proposed Default Order and the motion, the Board hereby makes the findings of fact and conclusions of law as set forth below.

Findings of Fact

1. Jeffrey Bruce White (Respondent) filed with the Board an application for reinstatement of his license to practice as a practical nurse. His application was sent to the Office of Administrative Hearings (OAH) for a hearing. Respondent was sent a Notice of a Hearing scheduled for August 28, 2015.

2. Respondent did not appear in person, by telephone, or by counsel at the hearing. The Presiding Officer granted the motion for a default judgment made by the Board's disciplinary counsel. A copy of the Presiding Officer's Proposed Default Order was mailed to Respondent on September 1, 2015.

3. On September 10, 2015, Respondent filed a motion. In his motion, Respondent alleged he had relocated and asked to have his license reinstated so that he could obtain a nursing license from the Arkansas State Board of Nursing.

Conclusions of Law

4. Pursuant to K.S.A. 2015 Supp. 65-1120(b), proceedings to deny, limit, suspend, or revoke a nursing license are conducted under the Kansas Administrative

Procedure Act (KAPA), K.S.A. 77-501 *et seq.* The Board has authorized a presiding officer assigned by the Office of Administrative Hearings to conduct its KAPA proceedings and to issue an initial order. See K.S.A. 77-514(a) and K.S.A. 77-526(b).

5. A default order is governed by K.S.A. 2015 Supp. 77-520. In pertinent part, it provides:

(a) If a party fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties written notice of a proposed default order, including a statement of the grounds.

(b) Within seven days after service of a proposed default order, the party against whom it was issued may file a written motion requesting that the proposed default order be vacated and stating the grounds relied upon. . . .

(c) The proposed default order shall become effective after expiration of the time within which the party may file a written motion under subsection (b) unless a written motion to vacate the order is filed with the agency within such time. Upon receipt of a motion to vacate a proposed default order, the presiding officer shall either vacate the proposed order or issue the default order as proposed. If the presiding officer issues a default order as proposed, the order shall become effective upon service.  
. . .

(e) If the presiding officer is not the agency head, and has not been designated to issue a final order under K.S.A. 77-514, and amendments thereto, the order shall be deemed an initial order.

6. The Proposed Default Order was served on Respondent by mail on September 1, 2015; thus, seven days expired on September 8, 2015. See K.S.A. 2015 Supp. 77-520(b).

7. Because Respondent was served the Proposed Default by mail, three (3) days are added to the computation. See K.S.A. 2015 Supp. 77-531. This provision extended the time in which to file a motion to September 11, 2015. Respondent filed his motion on September 10, 2015, thus, it was filed timely as a motion to vacate under K.S.A. 2013 Supp. 77-520(c).

8. Based upon the above facts and conclusions, the Board determines that Respondent's motion should be treated as a Motion to Vacate the Proposed Default Order even though it is not clearly articulated as such. See *State v. Kelly*, 291 Kan. 563, 565 (2010) (Pleadings filed by pro se litigants are liberally construed to give effect

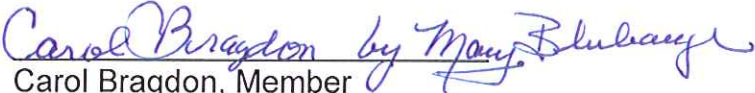
to the pleading's content; a pro se litigant's failure to cite the correct statutory grounds for his or her claim is immaterial).

9. The Board further determines that K.S.A. 2015 Supp. 77-520(c) requires the Presiding Officer, not the agency head, to determine whether a Motion to Vacate should be granted or denied. Thus, the Presiding Officer at the Office of Administrative Hearings should hear Respondent's Motion to Vacate.

Order

WHEREFORE, it is the decision and order of the Board that the motion filed by Respondent shall be treated as a Motion to Vacate the Proposed Default Order and that Respondent's Motion to Vacate the Proposed Default Order shall be remanded to the Presiding Officer at the Office of Administrative Hearings for further proceedings.

IT IS SO ORDERED.

  
Carol Bragdon, Member  
On behalf of the  
Kansas State Board of Nursing

CERTIFICATE OF SERVICE

This is to certify that on this 18<sup>th</sup> day of March 2016, a copy of the above Order remanding the matter to the Office of Administrative Hearings was deposited in the United States mail, first-class postage prepaid, and addressed to:

Jeffrey Bruce White  
3124 Crawford  
Parsons, Kansas 67357

and hand delivered to:

Bryce Benedict  
Assistant Attorney General  
Disciplinary Counsel for the  
Kansas State Board of Nursing  
900 SW Jackson, Ste. 1051  
Topeka, KS 66612-1365

  
Staff, Kansas State Board of Nursing

**BEFORE THE KANSAS STATE BOARD OF NURSING**  
Landon State Office Building, 900 S.W. Jackson #1051  
Topeka, Kansas 66612-1230

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**IN THE MATTER OF JEFFREY BRUCE WHITE**

**License No. 23-37762-052 REINSTATEMENT APPLICANT**

**Case No. 14-361-6**

**PROPOSED DEFAULT ORDER TO DENY LICENSE**


NOW ON THIS *28th* day of August, 2015, petitioner, the Kansas State Board of Nursing, appears by disciplinary counsel, Michael R. Fitzgibbons, Assistant Attorney General, for a Hearing on the Petition. Respondent does not appear.

Wherefore, the Presiding Officer finds as follows:

1. Respondent has a reinstatement application to practice nursing as an LPN in Kansas. The Kansas State Board of Nursing has jurisdiction over the Respondent and the subject matter of this action.
2. Respondent was sent a copy of the petition and notice of this hearing to respondent's last known address and service is proper. Respondent does not appear.
3. Petitioner moves for issuance of a proposed default order denying respondent's Reinstatement application. The petitioner's request is granted by default pursuant to K.S.A. 77-520.
4. The petition is hereby granted and incorporated into this order as if set forth herein. Respondent violated the Nurse Practice Act as alleged in the petition.
5. Per Petitioner's request, Respondent's application to practice nursing is denied. Respondent may not practice nursing in Kansas.
6. Costs of the action of \$100 are assessed to respondent to be paid to the board by cash or money order within 30 days of the effective date of this order.

7. This Proposed Default Order shall become effective seven days after service or ten days after mailing of this order unless the Respondent files a written motion with the Board stating why the Proposed Default Order should be vacated and the order is then vacated.
8. If this Proposed Default Order becomes effective, the Respondent's request for administrative hearing is dismissed pursuant to K.S.A. 77-520(d).
9. Disciplinary counsel shall mail a copy of this proposed default order to respondent's last known address.

**IT IS SO ORDERED.**

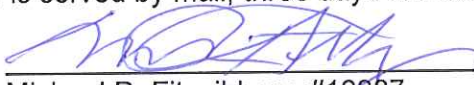
  
\_\_\_\_\_  
Sandra Sharon, Presiding Officer  
Office of Administrative Hearings  
1020 S Kansas Ave.  
Topeka, KS 66612-1327

**NOTICE**

Pursuant to K.S.A. 77-527, either party may request a review of this order by filing a petition for review with the Kansas State Board of Nursing. The petition for review shall state its basis. A petition for review must be filed within 7 days from the date this order becomes effective. 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: State Board of Nursing - Legal Division, Landon State Office Building, 900 SW Jackson, Ste 1051, Topeka, KS 66612-1230.

Pursuant to K.S.A. 77-530, if neither party requests a review by the Kansas State Board of Nursing, then this initial order becomes final and binding on both parties on the 30<sup>th</sup> day following its service.

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.

  
\_\_\_\_\_  
Michael R. Fitzgibbons #12287  
Disciplinary Counsel  
Kansas State Board of Nursing  
900 S.W. Jackson, Suite #1051  
Topeka, KS 66612-1230  
785-296-4325



CERTIFICATE OF SERVICE

I certify that on the 1st day of September 2015, the foregoing copy of the PROPOSED DEFAULT ORDER TO DENY LICENSE was served by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Jeffrey Bruce White  
3124 Crawford  
Parsons, Kansas 67357

  
Michael R. Fitzgibbons #12287

**BEFORE THE KANSAS STATE BOARD OF NURSING**  
Landon State Office Building, 900 S.W. Jackson #1051  
Topeka, Kansas 66612-1230

FILED

MAY 06 2015

KSBN

**IN THE MATTER OF JEFFREY BRUCE WHITE**

**License No. 23-37762-052 REINSTATEMENT APPLICANT**

**Case No. 14-361-6**

**PETITION**

COMES NOW the petitioner, the Kansas State Board of Nursing, by and through Assistant Attorney General assigned to the Board, Michael R. Fitzgibbons, and for its cause of action states that:

1. Respondent, Jeffrey Bruce White, has an pending application to reinstate his license to practice nursing in Kansas. The Board has jurisdiction over the respondent and the subject matter of this action.
2. Respondent's address of record is 3124 Crawford Parsons, Kansas 67357.
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. 65-1120, and referred this matter for further proceedings.
4. 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(a) is established.

**FACTS COMMON TO ALL COUNTS**

5. The facts below are common to all counts:
  - (a) According to a report, applicant has submitted an application for reinstatement of his nursing license on the 16<sup>th</sup> day of October, 2014.
  - (b) Applicant has not worked in nursing since 2012.

- (c) Applicant has had prior DUI offenses on his record.
- (d) Applicant has been in intensive out patient treatment on 10<sup>th</sup> day of October 2013.
- (e) Applicant continues to attend AA meetings.
- (f) It was the Boards decision to refer applicant to KNAP and license only after a chemical dependency evaluation done and recommendations satisfied.
- (g) Applicant was referred to the KNAP program.
- (h) The KNAP case was closed as applicant failed to return agreement.

**VIOLATIONS**

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

Count 1: K.S.A. 65-1120(a)(4) unable to practice with skill and safety due to current abuse of drugs or alcohol.

Count 2: K.S.A. 65-1120(a)(7), willfully and repeatedly violation provisions of the Kansas Nurse Practice Act by failing to complete the requirements of impaired provider program KAR 60-3-110(s).

WHEREFORE, petitioner requests a finding that the respondent has violated the Nurse Practice Act, that respondent's request his license to practice nursing in Kansas be denied, and that costs of this action be assessed to the respondent in the amount of \$100.00.

Respectfully submitted,

Derek Schmidt  
Kansas Attorney General

By: 

Michael R. Fitzgibbons #12287  
Assistant Attorney General  
Kansas State Board of Nursing  
Landon State Office Building  
900 SW Jackson #1051  
Topeka, KS 66612

**BEFORE THE KANSAS STATE BOARD OF NURSING**

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

FILED

**IN THE MATTER OF JEFFREY BRUCE WHITE**

APR 13 2015

**License No. 23-37762-052 REINSTATEMENT APPLICANT**

KSBN

**Case No. 14-361-6**

**SUMMARY ORDER**

NOW ON THIS 13<sup>th</sup> day of April, 2015, THE ABOVE MATTER COMES BEFORE THE Kansas State Board of Nursing (Board) pursuant to authority granted to the Board by K.S.A. 65-1120. The Board hereby proposed to find facts and take disciplinary action against the licensee's license by way of Summary Order as provided by K.S.A. 77-537.

**FINDINGS OF FACT**

1. This Licensee has an application for reinstatement to practice nursing in the state of Kansas. The Board has jurisdiction over the Licensee and the subject matter of this action.
2. Licensee's address of record is 3124 Crawford Parsons, Kansas 67537.
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. 65-1120, and referred this matter for further proceedings.
4. Review of the information gathered by the Board revealed the following upon which this action is based.
  - (a) According to a report, applicant has submitted an application for reinstatement of his nursing license on the 16<sup>th</sup> day of October, 2014.
  - (b) Applicant has not worked in nursing since 2012.
  - (c) Applicant has had prior DUI offenses on his record.
  - (d) Applicant has been in intensive out patient treatment on 10<sup>th</sup> day of October 2013.
  - (e) Applicant continues to attend AA meetings.
  - (f) It was the Boards decision to refer applicant to KNAP and license only after a chemical dependency evaluation done and recommendations satisfied.
  - (g) Applicant was referred to the KNAP program.
  - (h) The KNAP case was closed as applicant failed to return agreement.

5. This Licensee violated the Nurse Practice Act by unprofessional conduct by failing to comply with the KNAP program to assure the Board of sobriety and possible monitoring.

**CONCLUSIONS OF LAW**

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

b. K.S.A. 65-1120(a)(7), willfully and repeatedly violation provisions of the Kansas Nurse Practice Act by failing to complete the requirements of impaired provider program KAR 60-3-110(s).

6. Pursuant to K.S.A. 65-1120(a), the Kansas State Board of Nursing may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse , as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under authorization, if the Licensee, Licensee or holder of a certificate of qualifications or authorization is found to have violated the Nurse Practice Act.

7. The above fact findings established evidence that the Licensee violated the following provisions of the Nurse Practice Act:

Count 1: K.S.A. 65-1120(a)(4) unable to practice with skill and safety due to current abuse of drugs or alcohol.

Count 2: K.S.A. 65-1120(a)(7), willfully and repeatedly violation provisions of the Kansas Nurse Practice Act by failing to complete the requirements of impaired provider program KAR 60-3-110(s).

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

**POLICY STATEMENT**

1. Use of alcohol affecting the ability of the nurse to practice safely.
2. Failure to comply with the impaired provider program is a violation of the public trust and places patients at risk.

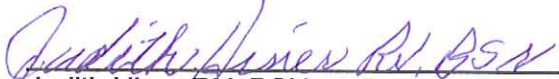
3. Monitoring the nurse when returning to nursing is essential to assure public safety.

**IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF NURSING THAT**

1. **Licensee's reinstatement application to practice nursing in the state of Kansas is denied.**
2. **Licensee shall pay \$100.00 costs of this action to the Board within thirty (30) days of the effective day of this Order.**

Pursuant to K.S.A. 77-537, the decision, which is called a Summary Order, is subject to your request for hearing. If you desire a hearing, you must submit or direct a **written** request for hearing to: Kansas State Board of Nursing, Legal Division, 900 SW Jackson, Suite 1051, Topeka, Kansas 66612-1230, (785) 296-4325. **THIS REQUEST MUST BE SUBMITTED WITHIN FIFTEEN (15) DAYS FROM THE DATE OF THIS ORDER.** If a hearing is not requested in the time and manner stated, this Summary Order becomes effective as a final order, without further notice, upon the expiration of the time for requesting a hearing.

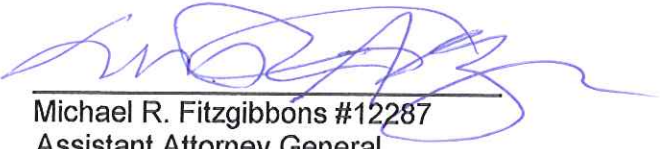
Pursuant to K.S.A. 77-531, if the Summary Order is served by mail, three days are added to the time limits set out above.

  
Judith Hiner RN, BSN  
Investigative Committee, Chair  
Kansas State Board of Nursing

**CERTIFICATE OF SERVICE**

On the 13<sup>th</sup> day of April, 2015, I deposited a copy of this SUMMARY ORDER with the United States Postal Service, postage pre-paid, addressed to:

Jeffrey Bruce White  
3124 Crawford  
Parsons, Kansas 67357

  
Michael R. Fitzgibbons #12287  
Assistant Attorney General