

BEFORE THE KANSAS STATE BOARD OF NURSING

IN THE MATTER OF Case No. 14-657-0
BARBARA JEAN MOSLEY
License No. 23-4817-032 (Reinstatement) OAH No. 14BN0180

INITIAL ORDER

Now on this 4th day of November 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 Alma A. Heckler, Disciplinary Counsel for the Board. The Respondent, Barbara Jean Mosley, appears in person.

Findings of Fact

1. On April 7, 2014, the Board received reinstatement application for a license to practice nursing from the respondent.
2. The application contained information that was inconsistent with the Board's records. The respondent was allowed to resubmit the reinstatement application. It was received by the Board on April 28, 2014.
3. On question 14 of both the April 7, 2014 and April 28, 2014 applications, the respondent marked "no" where it asks:

"Has any license, certification or registration (nursing or other) ever been denied, revoked, suspended, limited or disciplinary action taken by a licensing authority by any state, agency of the U.S. government, territory of the U.S. or country?"
4. Even though the respondent was allowed to resubmit her reinstatement application due to the fact that it contained inaccurate information, the second submitted reinstatement application contained the same inaccurate information.
5. The respondent's license to practice nursing in the State of Kansas has been disciplined on more than one occasion. The discipline is as follows:
 - In August 1990, a Proposed Default Order was issued against the respondent for failing to participate in a hearing scheduled for August 23, 1990. The basis of the Petition in the 1990 hearing was that the respondent had two felony convictions against her. The respondent's Motion to Vacate the Default Order was denied.

- The respondent filed a reinstatement application with the Board on January 8, 1992. The license was reinstated. However, the respondent's license was suspended for two years. The suspension was stayed on the condition that the respondent complies with additional requirements of the Board.
 - The respondent allowed her license to lapse April 2002. On April 22, 2005, her license was reinstated subject to conditions of the Board including continuing nurse education.
 - The respondent let her license lapse again in 2012.
6. At hearing, the respondent's answers to questions and statement were evasive, non-focused and rambling. She was unable to keep her attention focused for even short periods of time. She had difficulty following questions and her answers to questions were inaccurate or unresponsive, and she would change answers midstream.

Applicable Law

1. The Kansas State Board of Nursing has the authority to examine, license, and renew licenses for duly qualified applicants and may limit, deny, suspend, or revoke a license or authorization to practice nursing or publically or privately censure a licensee if it is found the licensee has violated provisions of the Kansas Nurse Practice Act. K.S.A. 74-1106 and K.S.A. 65-1120.
2. The Board must show by a preponderance of the evidence that the respondent should not be reissued her license to practice nursing in the State of Kansas. A preponderance of the evidence means the evidence tips in one direction more than fifty percent.
3. It is a violation of the Kansas Nurse Practice Act to commit unprofessional conduct unprofessional conduct by inaccurately recording, falsify, or altering any record of a patient or agency or of the Board. K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(d).
4. It is a violation of the Kansas Nurse Practice Act to commit an act of professional incompetency through a pattern or practice or other behavior which demonstrates a manifesting capacity or incompetence to practice nursing. K.S.A. 65-1120(e)(3).

Discussion

1. The respondent clearly inaccurately recorded information on her April 7, 2014 reinstatement application. Given the opportunity to correct the misinformation, the respondent still knowingly supplied inaccurate information to the Board on her April 28, 2014 reinstatement application. This is a violation of the Kansas Nurse Practice Act by inaccurately recording a record of the Board. This is a violation of K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(d).

2. At hearing, the respondent's behavior showed an inability to focus and appropriately respond to questions. She repeatedly failed to take responsibility for past practices and for failing to correctly report to the Board. This is unprofessional conduct demonstrating an incapacity to practice nursing and is a violation of K.S.A. 65-1120(e)(3).

Conclusion

1. The Board's petition to deny the respondent's reinstatement application is affirmed.
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.



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 NOV. 26, 2014, I mailed this original document through State Building
Mail to:

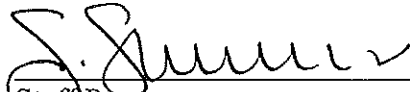
Mary Blubaugh
Executive Administrator
Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612
Telephone: 785-296-4325

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:

Barbara Jean Mosley
7630 West Dean Rd. #1
Milwaukee, WI 53223



Staff Person
Office of Administrative Hearings

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

FILED
JAN 20 2015
KSBN

IN THE MATTER OF)
)
Barbara Jean Mosley)
License No. 23-4817-032)

Case No. 14-657-0
OAH No. 14BN0180

**ORDER
DENYING RECONSIDERATION**

On January 20, 2015, the above-referenced matter comes for deliberation of the Petition for Reconsideration filed by Barbara Jean Mosley, pro se. The Kansas State Board of Nursing (Board) has delegated its authority to Board member Garet King to determine whether to grant or deny a Petition for Reconsideration and to issue an order accordingly.

After considering the Petition for Reconsideration and taking administrative notice of its records, the Board denies Respondent's Petition for the reasons set forth below.

Findings of Facts

1. An Initial Order in the above-referenced matter was issued by the Presiding Officer. The Initial Order revoked the nursing license of Barbara Jean Mosley (Respondent) for violating the Kansas Nurse Practice Act (Act). Specifically, Respondent was found to have violated K.S.A. 2014 Supp. 65-1120(a)(6) and K.A.R. 60-3-110(d) (committing unprofessional conduct by inaccurately recording, falsifying, or altering any record of a patient or agency or of the board) and K.S.A. 2014 Supp. 65-1120(a)(3) and (e)(3) (committing an act of professional incompetency by engaging in a pattern of practice or other behavior that shows a manifest incapacity or incompetence to practice nursing). The Initial Order is hereby incorporated by reference.

2. On December 12, 2014, the Board denied Respondent's pro se Petition for Review because she failed to state the basis for relief from the Initial Order. The Board's Order denying review is hereby incorporated by reference.

3. On December 29, 2014, Respondent filed a Petition for Reconsideration. In her Petition, Respondent attempts to re-litigate prior disciplinary actions and contends she did not report the prior disciplinary actions when she filed her renewal application

because the Board did not provide such records to her in 2013 when she requested a copy of all of her records.

Conclusions of Law

4. K.S.A. 77-529(a)(1) states: "Except as otherwise provided by paragraph (2), any party, within 15 days after service of a final order, may file a petition for reconsideration with the agency head, stating the specific grounds upon which relief is requested."

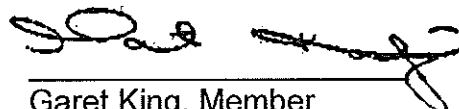
5. Respondent's Petition fails to show that any factual or legal error exists that warrants the reconsideration of the matter.

6. The Board concludes that Respondent has not shown cause to reconsider its Order denying review of the Initial Order and that Respondent's Petition for Reconsideration should be denied.

Order

Therefore, based upon the facts and conclusions, the Board determines that Respondent's Petition for Reconsideration be denied.

IT IS SO ORDERED.



Garet King, Member
On behalf of the
Kansas State Board of Nursing

NOTICE OF JUDICIAL RELIEF

A party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The designee who may receive service of a petition for judicial review on behalf of the Board is: Mary Blubaugh, Executive Director, Kansas State Board of Nursing, Landon State Office Building, 900 S.W. Jackson, Ste. #1051, Topeka, Kansas 66612-1230.

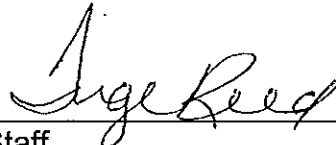
CERTIFICATE OF SERVICE

I hereby certify that on January 20th, 2015, a copy of the above Order and Notice was deposited with the United States Postal Service, postage pre-paid, and addressed to:

Barbara Jean Mosley
7630 West Dean Rd., #1
Milwaukee, WI 53223

and hand delivered to:

Alma Heckler
Assistant Attorney General
Disciplinary Counsel for the
Kansas State Board of Nursing
900 SW Jackson, Suite 1051
Topeka, KS 66612



Staff
Kansas State Board of Nursing