

BEFORE THE KANSAS STATE BOARD OF NURSING

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

07-996-0, 04-404-6
FILED

FEB 14 2008

KSBN

**IN THE MATTER OF
DANLEY R. KING
License No. 24-026009-052**

Case No. 07-996-0, 04-404-6

CONSENT AGREEMENT TO SURRENDER AND REVOKE LICENSE AND FINAL ORDER

NOW ON THIS 15th day of February, 2008, the Kansas State Board of Nursing, represented by Assistant Attorney General, Mark A. Knight, and the Licensee, Danley R. King, hereby enter into this agreement and proffer evidence and the hearing officer adopts those recommendations and makes the following findings of fact and orders:

AGREED FINDINGS OF FACT

The hearing officer makes the following findings of fact based on the evidence presented and statements of the parties.

1. Licensee is licensed to practice nursing in Kansas through 5/31/2008. The Kansas State Board of Nursing (KSBN) has jurisdiction over the licensee and the subject matter of this action.
2. Licensee's address of record is Box 44, Altoona, KS 66710.
3. 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 is established.
4. The Board has requested that a petition be filed to take disciplinary action against the licensee's license.
5. Following a petition being filed by the Board, a hearing would also be held at a later date at which time the Board would have to prove that licensee violated K.S.A. 65-1120(a).
6. Licensee has the right to these hearings and the right to seek review of the findings from the hearings in accordance with the Kansas Administrative Procedure Act and the Act for

Judicial Review and Civil Enforcement of agency actions. Licensee is waiving those rights and knowingly and voluntarily entering into this agreement instead of proceeding to these hearings. This agreement will conclude Board action pending at this time against licensee's license.

7. Licensee understands that pursuant to K.S.A. 77-515, licensee may be represented at licensee's expense by, an attorney during these proceedings.

8. (a) On or about 10/27/2003, Licensee, a licensed practical nurse and at the time a licensed adult care home administrator, was employed as the Administrator of Caney Nursing Center (Caney), Caney, Kansas. On or about 10/27/2003 Licensee was called to Caney regarding a resident, J.D., repeatedly turning on his call light and demanding to smoke a cigarette. During a telephone call to Licensee a member of Caney staff was advised by Licensee to not respond to J.D.'s call light. The staff member advised Licensee stated he would come to the facility.

(b) When Licensee arrived at Caney, Licensee went to the smoking room. Caney staff advised Licensee began speaking to J.D. in a loud and angry manner. Caney staff advised J.D. became upset and left the room.

(c) Caney staff advised a report documenting the incident was started. However, when Licensee discovered this he stopped the continuation of the report.

(d) On or about 9/2/2005, Licensee entered a Consent Agreement and Order with the Kansas Board of Adult Care Home Administrators. Said Consent Agreement and Order is attached and incorporated herein as if set fourth in full.

(e) As part of the 9/2/2005 Consent Agreement and Order with the Kansas Board of Adult Care Home Administrators, Licensee stipulated to the following:

"...(a) On May 6, 2004, Licensee was the administrator of Caney Nursing Facility. On that date a Survey was completed by the Kansas Department on Aging. A statement of Deficiencies, Form CMS 2567, was prepared and provided to the Board.

(b) A review of the facility's ledger for nine residents with trust accounts showed a balance of combined trust accounts of \$4,792.19 and one resident with a negative balance on the trust account ledger. However, the bank account records showed a savings account balance on that date of \$2192.85 and a checking account balance of \$937.91 on that date, for a total deficiency of \$1661.43.

(c) Pursuant to the Social Security Amendments of 1994 [§1819(c)(6)(B)(i)], balances in excess of \$100.00 are required to be maintained in interest-bearing accounts for all Medicare SNF residents. Section 1908 of the Social Security Act. In this case, interest had not been paid to eligible accounts for more than one year.

(d) 42 CFR 483, 10(c)(2) & (3) addresses protection of resident funds and states 'Upon written authorization of a resident, the facility must hold, safeguard, manage and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c)(3-8) of this section. The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf. The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident. The individual financial record must be available through quarterly statements and on request to the resident or his or her legal representative.'

(e) KAR 28-39-149(b) and (c) contain the same requirements as the federal regulation set forth in paragraph (d) above.

(f) When requested to provide an explanation and documentation of expenditures for the missing funds. Licensee stated that the ledger and the bank records had

never been reconciled during the time he was administrator and that he received inadequate training. He stated that all checks were made to Cash and the funds were spent on miscellaneous items, such as haircuts, clothing and cigarettes, for the residents. However, receipts were not kept. Licensee admits he can't say where the money was spent and has no record of the petty cash fund. Licensee claims that he did not use any of the resident trust money for his own use but admits he did not maintain the trust ledger properly."

(f) On or about 5/4/2006, Licensee submitted to the Kansas State Board of Nursing an application to renewal his nursing license. Question 13 on the application reads "Has any license or certification ever been denied, revoked, suspended, limited or disciplinary action taken by a licensing authority of any state, agency of the US government, territory of the US or country?" Licensee answered "No" to question 13 even though he had been disciplined by the Kansas Board of Adult Care Home Administrators during 2005.

CONCLUSIONS OF LAW

9. 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.

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

Count 1: K.S.A. 65-1120(a)(3), Professional Incompetency by K.S.A. 65-1120(e)(1), one or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board.

Count 2: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(g), verbal abuse, which shall be defined as any word or phrase spoken inappropriately to or in the

presence of a patient that results in or might reasonably be expected to result in the patient's unnecessary fear, emotional distress, or mental distress.

Count 3: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(c), failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient.

Count 4: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(c), failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient.

POLICY STATEMENT

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

DISPOSITION

12. Based upon this agreement, the parties agree that Licensee is surrendering licensee's license to practice nursing in the state of Kansas.

13. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that Licensee's license to practice nursing in Kansas is immediately revoked. Licensee shall not practice nursing in the state of Kansas.

14. Upon signing this agreement and returning it to the Board, licensee shall return licensee's license card with the agreement.

15. The Board will report this surrender and revocation to data banks, other entities, and in its newsletter. This is a disciplinary action on licensee's license. The original of this document shall be kept in the Board's agency file and its contents may be disclosed to the public upon request.

16. If licensee does seek reinstatement of licensee's license, the agreed facts and listed violations are admitted, licensee has waived the right to a hearing on the facts in this matter, however to receive a reinstatement of licensee's license the licensee will have the opportunity at that time to prove licensee's fitness to practice nursing in Kansas.

17. The hearing/presiding officer whose signature appears below has been designated pursuant to K.S.A. 77-514 and K.S.A. 77-526 to act on behalf of the Board/agency head and to hear discipline cases on behalf of the Board/agency head and to render either initial orders or final orders, if by agreement of both parties, in those discipline cases.

18. By their signatures, the parties hereby acknowledge this agreement.

IN WITNESS WHEREOF, the parties hereto execute this CONSENT AGREEMENT TO SURRENDER AND REVOKE LICENSE AND FINAL ORDER.

IT IS SO ORDERED.

[Redacted]

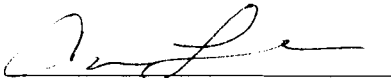
Danley R. King must sign before a Notary Public.

Danley R. King
Licensee
Box 44
Altoona, KS 66710

State of Kansas, County of Wilson ss.

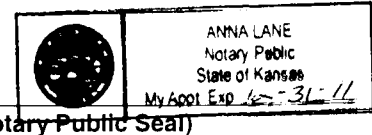
SUBSCRIBED AND SWORN TO before, me by Danley R. King

on this 12 day of February, 2008.



Signature of Notary Public

My Commission Expires _____



(Notary Public Seal)

[Redacted]

Mark A. Knight, #12183
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612

[Redacted]

Sandra L. Sharon, Presiding Officer

CERTIFICATE OF SERVICE

On the 18th day of February, 2008, I mailed a copy of this CONSENT AGREEMENT TO SURRENDER AND REVOKE LICENSE AND FINAL ORDER to:

Danley R. King
Box 44
Altoona, KS 66710



Mark A. Knight, #12183
Assistant Attorney General

Marty M. Snyder, Supreme Court #11317
Kansas Attorney General's Office
120 SW 10th St. Second Floor
Topeka, KS 66612-1597
(785) 296-2215

BEFORE THE BOARD OF ADULT CARE HOME ADMINISTRATORS

In the Matter of)
)
Danley Rae King) Case No. AG-04-05
License No. 3020)
Respondent)

CONSENT AGREEMENT AND ORDER

NOW on this 2nd day of September, 2005, the above-captioned matter comes before the Kansas Board of Adult Care Home Administrators (Board) by agreement of Danley Rae King (Licensee) and the Board for the purpose of resolving the above-captioned case.

Licensee hereby acknowledges the following:

1. Danley Rae King is currently, and at all times relevant has been, a Licensed Adult Care Home Administrator within the meaning of the Kansas Licensure of Adult Care Home Administrators Act, K.S.A. 65-3501 *et seq.*, and amendments thereto. His current license will expire on June 30, 2005.

2. On or about May 28, 2004, the Board received a report of information concerning Licensee's conduct, alleging Licensee may have violated certain statutes and regulations governing his practice as a Licensed Adult Care Home Administrator. A Statement of Deficiencies dated May 6, 2004 was attached to the report. [Exhibit A]

3. The Board conducted an investigation concerning Licensee's alleged violation of statutes and regulations.

4. During the investigation, Licensee was informed of the reported information, was given the opportunity to respond to the allegations and did respond to the allegations on August 10, 2004. [Exhibit B]

5. As a result of the investigation, the Board finds probable cause to believe the following facts:

(a) On May 6, 2004, Licensee was the administrator of Caney Nursing Facility. On that date a Survey was completed by the Kansas Department on Aging. A Statement of Deficiencies, Form CMS 2567, was prepared and provided to the Board.

(b) A review of the facility's ledger for nine residents with trust accounts showed a balance of combined trust accounts of \$4,792.19 and one resident with a negative balance on the trust account ledger. However, the bank account records showed a savings account balance on that date of \$2,192.85 and a checking account balance of \$937.91 on that date, for a total deficiency of \$1,661.43.

(c) Pursuant to the Social Security Amendments of 1994 [§1819(c)(6)(B)(i)], balances in excess of \$100.00 are required to be maintained in interest-bearing accounts for all Medicare SNF residents. Section 1908 of the Social Security Act. In this case, interest had not been paid to eligible accounts for more than one year.

(d) 42 CFR 483.10(c)(2) & (3) addresses protection of resident funds and states "Upon written authorization of a resident, the facility must hold, safeguard, manage and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c)(3-8) of this section. The facility must establish and maintain a system that

assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf. The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident. The individual financial record must be available through quarterly statements and on request to the resident or his or her legal representative."

(e) KAR 28-39-149(b) and (c) contain the same requirements as the federal regulation set forth in paragraph (d) above.

(f) When requested to provide an explanation and documentation of expenditures for the missing funds, Licensee stated that the ledger and the bank records had never been reconciled during the time he was administrator and that he received inadequate training. He stated that all checks were made to Cash and the funds were spent on miscellaneous items, such as haircuts, clothing and cigarettes, for the residents. However, receipts were not kept. Licensee admits he can't say where the money was spent and has no record of the petty cash fund. Licensee claims that he did not use any of the resident trust money for his own use but admits he did not maintain the trust account ledger properly.

6. The Board finds that reasonable grounds exist to believe Licensee has willfully violated state and federal regulations in violation of K.S.A. 65-3508(c) as defined as follows:

(a) K.A.R. 28-39-149 (b) - Upon written authorization ... the facility shall hold, safeguard, manage and account for the personal funds of the resident deposited with the facility.

(b) K.A.R. 28-39-149 (c) - The facility shall establish and maintain a system that assures a full, complete and separate accounting, according to generally accepted

accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf. (3) The facility shall provide a written report which includes accounting for all transactions and which states the current fund balance to the resident or the resident's legal representative at least quarterly. (4) The facility shall deposit any resident's funds in excess of \$50 in one or more interest bearing accounts which are separate from any of the facility's operating account and which credit all interest when earned on the resident's account to the personal account of the resident.

(c) 42 CFR 483.10(c)(2) & (3).

However, Licensee and the Board mutually desire to enter a Consent Agreement and Order in lieu of adjudicative proceedings to resolve this complaint.

WHEREFORE, Licensee waives all rights to an adjudication of facts and law which could be determined pursuant to a hearing conducted in accordance with the Kansas Administrative Procedure Act in relation to Case No. AG 04-05.

WHEREFORE, Licensee waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions in relation to Case No. AG 04-05.

WHEREFORE, Licensee

- (a) Stipulates to the facts as set forth above in paragraphs 1 through 4;
- (b) Stipulates that the manner in which the residents' trust funds were managed violates the state and federal statutes set forth above in paragraphs 5 and 6;
- (c) Notes that his Kansas license expired on June 30, 2005 and agrees that in consideration for the Board closing this file he will not attempt to renew the license;
- (d) Agrees that this complaint shall be reinstated and processed prior to Licensee

receiving a Kansas license should he ever seek to renew or reinstate this license.

(e) Agrees that Licensee shall be responsible for any costs incurred in satisfying the terms of this Consent Agreement and Order;

(f) Agrees that evidence of Licensee's breach, violation or failure to comply with any of the conditions will result in an order to show cause why his license should not be temporarily suspended. At the show cause hearing, the sole issues shall be whether Licensee has in fact breached, violated or failed to comply with any conditions of this Consent Agreement and Order and the appropriate sanction. Upon determination at such hearing that Licensee has breached, violated or failed to comply with any condition of this Consent Agreement and Order, Licensee understands and agrees that his license shall be suspended or not renewed until further order of the Board;

(g) Acknowledges that proof submitted to the Board by affidavit or other form of competent evidence that Licensee has breached, violated or failed to meet the conditions of this Consent Agreement and Order shall be good and sufficient evidence to support an alleged violation of breach, violation or non-compliance;

(h) Understands that a notification of this Consent Agreement and Order shall be provided to any other state licensing board if Licensee is also licensed, registered or certified in Kansas or another state;

(i) Acknowledges an affirmative duty to notify the Board within five (5) days of any changes in personal or professional status which would inhibit compliance with any condition of this Consent Agreement and Order. In such event, a designee of the Board is authorized to modify or amend this Consent Agreement and Order in writing;

(j) Agrees that if the Board does not approve this Consent Agreement and Order,

Licensee waives any right he may have to object to the composition of any subsequent hearing panel due to hearing panel members having knowledge of matters contained within this Consent Agreement and Order; and

(k) Agrees that this Consent Agreement and Order constitutes the entire agreement between the Licensee and the Board and may be modified or amended only by written agreement signed by Licensee and the Board or a designee of the Board.

WHEREFORE, Licensee consents to the submission of this Consent Agreement and Order to the Board's Complaint Investigation Committee and understands that, upon approval of the Committee, this Consent Agreement and Order will become a Final Order of the Board. The Board has authorized the Complaint Investigation Committee to determine approval of this Consent Agreement and Order.

WHEREFORE, the Board agrees that, so long as Licensee complies with the above conditions, the Board will not initiate further disciplinary action against Licensee in relation to violations of K.S.A. 65-3508 (c) or other law as a result of this complaint.

WHEREFORE, the foregoing provisions are consented to by Licensee and the Board, are hereby made the Final Order of the Kansas Board of Adult Care Home Administrators and become effective on the date indicated in the Certificate of Service below.

IT IS SO ORDERED.

Chair, Complaint Investigation Committee
Kansas Board of Adult Care Home Administrators

