

BEFORE THE KANSAS STATE BOARD OF NURSING

IN THE MATTER OF

Coleen D. Smith
License No. 24-030412-111

Case No. 01 285 6, 03 638 6,
03 357 6, 04 324 6
OAH No. 07BN0011

INITIAL ORDER

Statement of the Case

Now on this 7th day of December, 2006, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing, Sandra L. Sharon, duly appointed as Presiding Officer, pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing, appears by Disciplinary Counsel, Mark Knight, Assistant Attorney General. The Respondent, Coleen D. Smith, appears in person. The only witness at hearing was the Respondent.

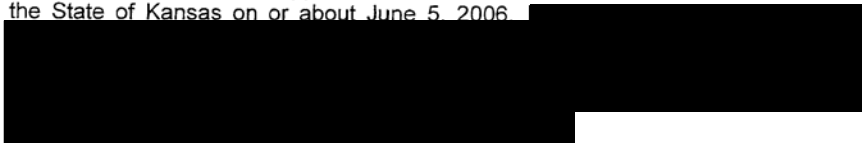
Findings of Fact

1. On or about May 4, 2005, a default order was entered in KSBN case numbers 03-357-6, 03-638-6, 04-324-6, and 04-580-6 finding the following violations.

K.S.A. 65-1120(a)(6), unprofessional conduct, by drug diversion (K.A.R. 60-3-110(n); K.A.R. 60-3-110(d), by inaccurately recording, falsifying, or altering any record of a patient, or agency or of the board; K.S.A. 65-1120(a)(3), to have committed an act of professional incompetency as defined in subsection (e);

Professional incompetency defined. As used in this section, "professional incompetency" means: (3) a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing; K.S.A. 65-1120(a)(4), to be unable to practice with skill and safety due to current abuse of drugs or alcohol; K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(s) failing to complete the requirements of the impaired provider program of the board."

2. Respondent submitted an application to the Board for reinstatement as a nurse in the State of Kansas on or about June 5, 2006.



3. A summary denial was entered on August 1, 2006. The respondent filed a timely appeal.
4. The respondent's testimony was that she does not have a case except for her word she is once again able to practice nursing.

Applicable Law

1. Factors to be weighed in making a determination whether a license should be reinstated after disciplinary action are set at in Vakas v. Kansas State Board of Healing Arts, 248 Kan. 589 (1991). They are as follows:
 - The present moral fitness of the petitioner;
 - The demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
 - The extent of petitioner's rehabilitation;
 - The nature and seriousness of the original misconduct;
 - The conduct subsequent to discipline;
 - The time elapsed since the original discipline;
 - The petitioner's character, maturity, and experience at the time of the original revocation;
 - The petitioner's present competence in medical skills.

Conclusions of Law

1. The respondent has completely failed to show she meets the requirements of *Vakas* in order for her license to practice nursing be reinstated.

Conclusion

The action of the Kansas State Board of Nursing in denying reinstatement of the respondent's license to practice nursing is affirmed.

The respondent shall pay costs of the action of \$70.00.

Appeal Rights and Other Administrative Relief

The procedures available and time limitations for seeking review or other relief as follows: Any party, within fifteen (15) days after service of this notice, may file a petition for review with the agency head, send you request to:

Mary Blubaugh, Executive Director, Board of Nursing
Landon State Office Building
Suite 1051, 900 SW Jackson
Topeka, KS 66612-1230

The petition for review shall state its basis, pursuant to K.S.A. 77-527.

OFFICE OF ADMINISTRATIVE HEARINGS



Sandra L. Sharon
Presiding Officer
Office of Administrative Hearings

CERTIFICATE OF SERVICE

On Jan 5, 2007, I mailed a copy of this document to:

Coleen D. Smith
217 N. 3rd St.
Neodesha, KS 66757

Mark Knight
Assistant Attorney General
Disciplinary Counsel for the Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612



Staff Person
Office of Administrative Hearings