

**BEFORE THE KANSAS STATE BOARD OF NURSING**

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

Filed  
JUL 30 2004  
Board of Nursing

IN THE MATTER OF  
**KIMBERLY DIANE DAY**  
LICENSE NO. 24-031996-031

CASE NO. 03-740-5

**CONSENT AGREEMENT TO SUSPEND LICENSE WITH A STAY AND FINAL ORDER**

NOW ON THIS 20<sup>th</sup> day of July, 2004, the Kansas State Board of Nursing, represented by Assistant Attorney General, Betty Wright, and the respondent, Kimberly Day, enter into the following agreement:

1. Respondent is licensed to practice nursing in Kansas as an L.P.N. through 3/31/2005.
2. Respondent's address of record is 1010 Highway 187 North, Eureka Springs, Arkansas 72631.
3. After an investigation, the Board's investigative committee found reasonable grounds to believe that respondent violated the nurse practice act 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.

**AGREED FINDINGS OF FACT**

5. On or about 10/6/2003 the licensee submitted to a pre-employment urine drug screen for a position as a companion at Fort Scott Presbyterian Village, Ft. Scott, KS. The facility was aware she was an LPN. The UDS was positive for cocaine. The respondent denies use of cocaine and states that she is prescribed a number of medications for her back injury; she takes oxycontin, methadone and other drugs for pain. These drugs did not appear in the urine test. Respondent admits that the drugs she is taking are mind altering drugs, and these drugs could make her unsafe to practice nursing at times.

6. Respondent understands that the Board has evidence of a violation of the nurse practice act at:

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

7. Respondent has the right to a hearing with evidence and witnesses and to seek review of the findings from that hearing in accordance with the Kansas Administrative Procedure Act and the Act for Judicial Review and Civil Enforcement of agency actions. Respondent is waiving those rights and voluntarily entering into this agreement instead of proceeding to such a hearing.

8. 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.

#### POLICY STATEMENT

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

#### DISPOSITION

10. By entering into this Consent Agreement and consenting to the entry of the Final Order, both parties waive their right to full administrative proceedings pursuant to K.S.A. 65-1120(b) and K.S.A.77-501 *et seq.* and to judicial review.

11. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that the license will be **suspended** but such **suspension shall be stayed** and respondent will be allowed to practice under the following conditions:

a. If the licensee returns to Kansas she shall notify the legal division of the board and participate in and complete the recommendations and requirements of the **Kansas Nurses**

**Assistance Program (KNAP)**; sign releases of information necessary for KNAP to evaluate and monitor licensee and for KNAP to report information to the board. If she is licensed in any other state, she must enter and participate in the impaired provider program in that state within 30 days of entering the state and becoming licensed there.

b. The licensee must have a chemical dependency evaluation within 30 days of this agreement in Arkansas, a list of addictionologists used by the Arkansas State Board of Nursing is provided with this agreement. The licensee must have the evaluation and follow recommendations of her treater. She must provide a copy of the evaluation to the legal division of the board, and provide evidence of compliance to the board through this licensure period. If she is noncompliant, a letter from her treater should be mailed to the legal division of the Board of Nursing in Kansas.

c. Licensee shall send a **money order for \$70** to the Board upon entering into this agreement.

d. Licensee **shall return current Ks. license card with agreement.**

e. Licensee is responsible for the costs related to satisfying these conditions.

12. If licensee does not meet these requirements, petitioner will file a motion to lift the stay and may request additional sanctions against licensee's license or application for a license. Licensee would be sent notice of such action and would be entitled to a hearing as to whether he/she had complied with this agreement, but he/ she could not contest the established violation(s).

13. Licensee agrees to notify the Legal Division of any changes in his/her address and phone number as well as all nursing employment terminations or employer changes or additions. All such notifications shall be made within fourteen (14) days of such a change, address correspondence to: Legal Division, Ks. State Board of Nursing, LSOB, 900 SW Jackson, Suite 1051, Topeka, KS 66612-1230.

14. Licensee shall immediately notify the Legal Division of any use of controlled substances, or any violation of this Consent Agreement and Final Order.

15. The Board will inactivate this case file once licensee satisfies this agreement. This agreement does not prohibit the agency from taking disciplinary action against licensee's license for any additional or cumulative violation of the Nurse Practice Act committed by the licensee before or after this agreement is entered into.

16. The parties understand and acknowledge that this is a disciplinary action, it will be in the newsletter and on the website. The original of this agreement shall be placed in the Agency Record and is a public record.

17. By signing this Consent Agreement, respondent acknowledges that he/she has read and understands the entire document, and agrees to be bound by its terms. This Consent Agreement constitutes the entire agreement of the parties and may not be modified except in writing and approved by all parties.

#### **IN CONCLUSION**

18. This case will be inactivated and a card with no suspension will be issued when:

- a) When the KNAP program issues a letter stating the evaluation and recommendations have been completed successfully; or when her addictionologist sends such a letter.
- b) cost of \$70 is paid.
- c) No further violations of the Nurse Practice Act are reported.

Once all of above are met , the licensee may request that a new card be issued by sending the request in writing and return the license card with the "S" to the Board, if all requirements are met a new card will be issued with no restrictions.

**IN WITNESS WHEREOF**, the parties hereto execute this Consent Agreement to Suspend License with a Stay and request for a Final Order.



Kimberly Day  
Licensee  
1010 Highway 187 North  
Eureka Springs, Arkansas 72631.

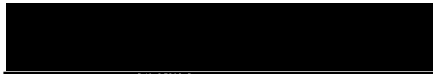
State of ~~Kansas~~ *Arkansas* )  
County of *Carroll* )

SS

Subscribed to before me by Kimberly Day on *July 20*, 2004.  
(seal)

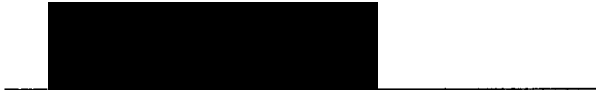
**IRENE BAHR** Notary Public  
Carroll County State of Arkansas  
My Commission Expires Sept. 9, 2008

\_\_\_\_\_  
Signature of Notary Public



Betty Wright, Assistant Attorney General  
900 SW Jackson, Suite 1051  
Topeka, Kansas 66612-1230  
(785) 296-7047

IT IS SO ORDERED.

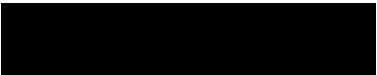


Terry Beck  
Hearing Officer

**CERTIFICATE OF SERVICE**

On the <sup>*4th*</sup> ~~2nd~~ day of <sup>*August*</sup> ~~July~~, 2004, I caused a copy of this document to be mailed, postage prepaid, to:

Kimberly Day  
1010 Highway 187 North  
Eureka Springs, Arkansas 72631.



Betty Wright, Assistant Attorney General