

BEFORE THE KANSAS STATE BOARD OF NURSING

IN THE MATTER OF
Sandra Jo Blumer
License No. 24-24840-121

Case No. 10-1363-9
OAH No. 14BN0108

INITIAL ORDER

Now on this 27th day of May 2014, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing's (Board). This matter was originally set for a pre hearing conference for May 27, 2014. The matter was converted into a conference hearing pursuant to KSA 77-516(c)(7).

Sandra L. Sharon was duly appointed presiding officer pursuant to KSA 77-514. The petitioner, the Kansas State Board of Nursing, appears through Assistant Attorney General Alma A. Heckler, disciplinary council for the board. The respondent, Sandra Jo Blumer appears in person.

Findings of Fact

1. The respondent signed an agreement with the Kansas Nurse Assistants Program on February 28, 2009. The respondent entered into KNAP after a co-worker noted the respondent smelled of alcohol and had slurred speech.
2. The respondent's KNAP case was closed December 7, 2009 for non-compliance with the agreement she had with KNAP. The respondent failed to meet her agreement with KNAP by failing to attend 12 step meetings, monthly monitor meetings, and providing urinary drug screens (UDS) as required.
3. The respondent's license was revoked by Summary Order on January 20, 2010.
4. Upon request of the respondent, the Board allowed the respondent to reenter KNAP and her license was reinstated.
5. The respondent entered her second agreement with KNAP on April 25, 2011.
6. While participating under her second agreement with KNAP the respondent was fired from a nursing position for HIPPA violations.
7. The respondent's KNAP was closed April 11, 2012 for non compliance.
8. The respondent was allowed to re enter KNAP May 30, 2012.
9. On August 2, 2012 the respondent attempted to provide a fraudulent UDS. This was considered a relapse and her KNAP case was closed.

10. On November 5, 2012 the respondent entered into a consent agreement with the Board allowing her to again participate in KNAP.
11. The respondent had a positive UDS on August 15, 2013. Her KNAP case was closed as unsuccessful.
12. The respondent allowed her nursing license to lapse December 31, 2013.
13. A reinstatement application was received by the Board from the respondent on January 25, 2014.
14. On January 29, 2014, the Board filed the petition to deny the respondent's reinstatement application of January 25, 2014.

Conclusion of Law

1. Pursuant to KSA 74-1106 the Board has the authority to examine, license, and renew licenses to practice nursing for duly qualified applicants. The Board may limit, deny, suspend, or revoke a license or authorization to practice nursing pursuant to K.S.A. 65-1120.
2. It is a violation of the Kansas Nurse Practice Act to be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing. K.S.A. 65-1120(a)(1).
3. It is a violation of the Kansas Nurse Practice Act to willfully or repeatedly violate the provisions of the Kansas Nurse Practice Act or any rules or regulations adopted pursuant to the act, including failing to complete the requirements of the impaired provider program of the Board. K.S.A. 65-1120(a)(7) and K.A.R. 60-3-110(s).
4. It is a violation of the Kansas Nurse Practice Act to be unable to practice with skill and safety due to current abuse of drugs or alcohol. K.S.A. 65-1120(a)(4).
5. When determining whether a license should be reinstated after there has been a disciplinary finding, *Vakas v. Kansas State Board of Healing Arts*, 248 KAN. 589 (1991) set out factors that must be addressed. The factors are:
 - The present moral fitness of the petitioner;
 - The demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought to the profession;
 - The extent of the petitioners rehabilitation;
 - The nature and seriousness of the original misconduct;

- The conduct subsequent to discipline;
- The time elapsed since the original discipline;
- The petitioners character, maturity, and experience at the time of the original revocation;
- The petitioners present competence in medical skills.

Discussion

1. At the hearing the respondent failed to demonstrate her present moral fitness and distinguish it from her character, maturity, and experience at the time of the violations.
2. The respondent has not demonstrated a consciousness of her wrong doing or the disrepute she brought upon the profession, or the seriousness of her misconduct.
3. The respondent has not shown rehabilitation or what her conduct has been since her license has lapsed. The respondent's license lapsed December 31, 2013 and in less than 30 days she filed her reinstatement application.
4. The respondent has not met the requirements of *Vakas* in order to demonstrate rehabilitation in that her license should be reinstated.
5. When the respondent submitted a fraudulent UDS on August 2, 2012 she violated the Kansas Nurse Practice Act through unprofessional conduct by fraud or deceit in practicing nursing. This is a violation of KSA 65-1120(a)(1).
6. The respondent was allowed to enter into the KNAP program four separate times. Each time she failed to complete the program. She willfully and repeatedly violated the Kansas Nurse Practice Act by failing to complete the requirements of the Boards impaired provider program. This is a violation of the K.S.A. 65-1120(a)(7) and K.A.R. 60-3-110(s).
7. The respondent last had a positive UDS for alcohol on August 15, 2013. She has failed to show that since this date she is able to practice with the skill and safety related to her alcohol misuse.

Conclusion

1. The petitioner has shown by a preponderance of the evidence that the respondent's reinstatement application for a license to practice nursing in the state of Kansas should be denied.
2. Cost of this action shall be assessed against the respondent in the amount of \$70.

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, Suite 1051, 900 SW Jackson, 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

CERTIFICATE OF SERVICE

On August 4th, 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:

Sandra Jo Blumer
21999 W Road
Holton, KS 66436

Sharon J. Miles
Staff Person
Office of Administrative Hearings