

FILED

BEFORE THE KANSAS STATE BOARD OF NURSING

MAR 1 2011

KSBN

IN THE MATTER OF

Case No. 96 099 0; 05 088 4;
07 049 4

Claudia A. Delgado
License No. 24 025795 011

OAH No. 09BN0085

INITIAL ORDER

Now on this 10th day of February 2011, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing. Sandra L. Sharon was duly appointed as Presiding Officer pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing (Board), appears through Assistant Attorney General, Alma A. Heckler, Disciplinary Counsel for the Board. The Respondent, Claudia A. Delgado, appears through her attorney, Michael Francis.

Findings of Fact

1. On November 19, 2009, the respondent entered into a Consent Agreement and Final Order with the Kansas State Board of Nursing (Board).
2. Within this agreement, among other things, the respondent agreed to enroll in the Kansas Nurse Assistance Program (KNAP) within 30 days of entering the agreement.
3. The respondent also agreed to immediately inform all employers and prospective employers of the Consent Agreement and Final Order.
4. In the agreement, the respondent agreed that she would not violate the laws of the United States, of any state, or of any political subdivision of any state during the terms of the agreement.
5. Further, the licensee agreed that she would submit reports to the Board from her employers' quarterly, statements explaining the respondent's performance during the previous quarter.

Applicable Law

1. The controlling authority in this case is the Consent Agreement and Final Order entered into by the respondent and the Board on November 19, 2009. It reads in part:

14. Based upon this agreement and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that the respondent's license to practice nursing in Kansas is immediately suspended. The

suspension will be stayed as long as the requirements and conditions of this agreement are met.

16. The Kansas State Board of Nursing will not take additional disciplinary action against respondent's nursing license for the violations stated above as long as respondent completes each of the following conditions and requirements:

(b) Respondent will participate in and complete the reasonable recommendations and requirements of the Kansas Nurses Assistance Program (KNAP); sign releases of information necessary for KNAP to evaluate and monitor respondent and for KNAP to report information to the board. Respondent will be deemed to have completed the KNAP program when KNAP issues written notification that respondent has completed the program. Respondent must enroll in the KNAP program within thirty (30) days of entering this agreement. Noncompliance with KNAP is a violation of this agreement.

(e) The respondent shall immediately inform all employers and prospective employers of this Consent Agreement and the Final Order.

(h) Respondent shall not violate the laws of the United States, of State, or of any political subdivision of any State during the term of this agreement. Traffic infractions shall not be considered violations of the law.

(i) Licensee will Submit Reports from the Licensee's employer to the attention of the Legal Division, Kansas State Board of Nursing, Landon State Office Building, 900 S.W. Jackson, Suite 1051, Topeka, Kansas 66612-1230 on the following schedule: Prior to Licensee securing employment that utilizes his or her nursing license, Licensee is to mail to the Kansas State Board of Nursing a statement indicating that Licensee has not yet secured employment which utilizes Licensee's nursing license. This statement is due by the 10th day of each month beginning the next month after signing this consent agreement. Once Licensee is employed in a position that utilizes his or her nursing license, or if Licensee is currently employed in a position that utilizes his or her nursing license, a nursing performance report is due by the 10th day of every third Month until Licensee has caused the submission of four (4) separate nursing performance reports. The report shall be prepared and signed by Licensee's immediate supervisor or by an RN. who evaluates Licensee's performance on a regular basis and be based on the following guidelines: (1) Incorporation of information on facility letterhead stationary is preferred. (2) Letter format is acceptable, with the date of the report identified. (3) Evaluator's name, telephone number, address, license number and nursing credentials. (4) Licensee's name, address, telephone number, license number. (5) A short explanation of the Licensee's work

performance in the following areas: (a) Standards met regarding facility policies and procedures. (b) Compliance with the Kansas Nurse Practice Act. (c) Supervisor evaluations. (d) Overall appropriateness. (e) Interactions with patients. (f) Interactions with staff and administration.

20. Respondent acknowledges and agrees that upon a first finding of respondent not complying with the conditions or requirements of this Consent Agreement, the Stay of Suspension of Respondent's license to practice nursing in the State of Kansas, shall be lifted for a period of six months from the date of said finding. Respondent will not be allowed to practice nursing in the state of Kansas during the period of suspension.

Discussion

1. As to the first violation alleged by the Board, the respondent was to enroll and comply with KNAP within 30 days of the date of the Consent Agreement and Final Order. The respondent did not comply with this requirement. [REDACTED] Her explanation of her failure to do as outlined in the Consent Agreement and Final Order is that she was ill during this time and required two hospitalizations, with a total of five days hospitalization. While the respondent may have been ill during these four months, that does not excuse her failure to comply with the agreement she entered into with the Board.
2. The Board's second allegation is that the respondent failed to immediately inform all of her employers that she had entered into the Consent Agreement and Final Order. At hearing, the respondent rationalized that she did not tell one of her employers because her nursing license was not required for that employment. However, the respondent had worked in this employer's facility as a nurse. Whether the respondent believed her nursing license was utilized through this employment, she agreed to inform all employers of this Consent Agreement and Final Order and she did not.
3. The third violation alleged by the Board is that the respondent violated a city ordinance and plead Nolo Contendere to disorderly conduct in the Municipal Court of Hutchinson, Kansas on November 25, 2009. The respondent asserts that the actual behavior which caused the conviction for disorderly conduct happened prior to her entry into the Consent Agreement and Final Order with the Board. She therefore did not consider conduct prior to November 19, 2009 a violation of the Consent Agreement's requirement that she not violate any laws of any political subdivision of any state. While, in the interest of full disclosure, it would have been prudent for the respondent to report her subsequent conviction of disorderly conduct, it is true that the respondent's conduct was not a violation of any law of any political subdivision of any state after she entered into the agreement and is therefore not a violation of the agreement.

4. The Board's fourth allegation of violation of the Consent Agreement and Final Order is that the respondent failed to cause her employers to submit quarterly reports to the attention of the Board's legal division at the Landon State Office Building, 900 SW Jackson, Suite 1051, Topeka, Kansas 66612-1230. The respondent's explanation of this failure is that she believed her employers were to send the employer's letters to KNAP. Her belief is in direct contradiction of the terms of the agreement that she entered into with the Board. Paragraph 16(i) of the agreement specifically states that she shall submit to the Legal Division of the Kansas State Board of Nursing the employer's statements. Further, paragraph 16(i) of the Consent Agreement gives the specific address where the employer letters are to be sent. The respondent's alleged misunderstanding is a direct failure to comply with the agreement she entered into with the Board.

Conclusion

1. As discussed above, the respondent has violated the Consent Agreement and Final Order she entered into with the Board on November 19, 2009. Pursuant to the agreement between the parties, a first violation shall be cause to lift the Stay on the respondent's suspension of her license to practice nursing for a period of six months, as of the date of the finding. It is ordered that the Stay of Suspension of the respondent's license to practice nursing in the State of Kansas is lifted for a period of six months from the date of this order.
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).

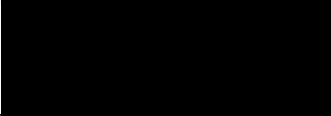
Appeal Rights and Other Administrative Relief

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, 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.

OFFICE OF ADMINISTRATIVE HEARINGS


Sandra L. Sharon, Presiding Officer
Office of Administrative Hearings
1020 S. Kansas Ave.
Topeka, Kansas 66612

CERTIFICATE OF SERVICE

On Feb 28, 2011, I mailed a copy of this document to:

Claudia A. Delgado
318 E. Bond
Salina, KS 67401

Michael Francis
Attorney at Law
434 SW Topeka Blvd.
Topeka, KS 66603

Mary Blubaugh, Executive Director
Alma A. Heckler, Assistant Attorney General
Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612


Staff Person
Office of Administrative Hearings