

78BND #2
SLS

BEFORE THE KANSAS STATE BOARD OF NURSING

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

FILED

JUN 8 2009

KSBN

**IN THE MATTER OF
THOMAS M. BAKER
License No.**

Case No. 08-276-0

CONSENT AGREEMENT AND FINAL ORDER

NOW ON THIS 8th day of June, 2009, the Kansas State Board of Nursing, represented by Assistant Attorney General, Alma A. Heckler, and the Respondent, Thomas M. Baker, 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

1. Respondent is not licensed to practice nursing in Kansas but filed an endorsement application on or about March 19, 2008. Respondent will provide a new application to endorse immediately on signing this agreement because the prior application is stale and has lapsed. The Kansas State Board of Nursing (KSBN) has jurisdiction over the Respondent and the subject matter of this action.
2. Respondent's address of record is 206 Bitterwood Drive, Ballwin, MO 63021.
3. The Respondent understands that pursuant to K.S.A. 77-515, respondent may be represented at respondent's expense by, an attorney during these proceedings.
4. After an investigation, the Board's investigative committee found reasonable grounds to believe that the respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1120, and referred this matter for further proceedings.
5. 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.

6. (a) The certified record from the Missouri Board of Nursing (MBON) shows that the applicant entered into a disciplinary agreement in August of 2007 due to drug addiction. The applicant has a five year probation with the Missouri Board. The settlement agreement indicated the applicant failed to document wastage of morphine sulfate, fentanyl, lorazepam and hydromorphone from 1/17/07 to 1/31/07. The applicant failed to document the wastage thirty two (32) times.

(b) The applicant tested positive for lorazepam and morphine and admitted to testing positive UDS for lorazepam or morphine on or about 1/31/07, in the settlement agreement. He did not have a prescription for either lorazepam or morphine sulfate at the time. Applicant admitted to these facts in his disciplinary agreement with the Missouri Board.

7. The above incidents are violations of the nurse practice act. The Respondent agrees that the board is prepared to prove that respondent has violated:

(a) K.S.A. 65-1120(a)(8), to have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country.

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

8. 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.

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 is established.

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

Count 1 K.S.A. 65-1120(a)(8), to have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country.

Count 2 K.S.A. 65-1120(a)(4), to be unable to practice with skill and safety due to current abuse of drugs or alcohol.

POLICY STATEMENT

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

DISPOSITION

12. 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 and K.S.A.77-501 et seq. and to judicial review.

13. Upon the parties entering into this Consent Agreement and with the respondent having met all statutory requirements for endorsement of respondent's Kansas Nursing license, the

respondent's application for endorsement of respondent's Kansas Nursing license will be granted after he completes the following requirements: Respondent shall immediately upon signing this agreement, have the Missouri Board verify that he is currently in compliance with the disciplinary order of the Missouri Board and that no investigations or reports of non-compliance are pending before the Missouri Board of Nursing. Respondent will also immediately enroll in the Kansas Nurse Assistance Program and provide verification of his enrollment. Respondent shall submit a new endorsement application because the prior application filed in March 2008 is stale.

14. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that this Consent Agreement will continue through any renewal periods of respondent's nursing license until respondent completes each of the conditions and requirements of this agreement. Further, the parties agree that in the event of a lapse of Respondent's nursing license, reinstatement of Respondent's nursing license shall be contingent upon this Consent Agreement and Final Order remaining in effect until Respondent completes each of the conditions and requirements of this agreement.

15. 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. 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 limited. The limitations placed on the license and described below will remain in place until the requirements and conditions of this agreement are met or until the requirements and conditions of this agreement call for the modification of the limitations.

17. 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:

(a) When Respondent has immediately upon signing this agreement, the Missouri Board verify that he is currently in compliance with the disciplinary order of the Missouri Board and that no investigations or reports of non-compliance are pending before the Missouri Board of Nursing and provide proof that Respondent has enrolled in the Kansas Nurse Assistance Program and Respondent has submitted a new endorsement application; Respondent shall receive a license card which shall be issued with an "S" placed in the status code portion of the license card to indicate that the license is suspended with a Stay. The card will have an "L" indicating the limitations on the practice.

(b) Respondent agrees not to work physically in the state of Kansas and shall not accept employment in the state of Kansas for the duration of the Consent Agreement in Kansas and the disciplinary agreement in Missouri. If the consent agreement in Kansas and the disciplinary agreement in Missouri are extended for any reason, the limitations regarding practice in Kansas continue during the period of extension.

(c) 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 upon entering this agreement. Noncompliance with KNAP is a violation of this agreement.

(d) Respondent must submit to random drug screens as determined or selected by the Board or by KNAP. The costs of the drug screens will be paid by the respondent. Respondent agrees that a Positive Drug Screen is a violation of this agreement.

(e) Respondent shall have a narcotic key restriction on respondent's license for the first six (6) months after respondent secures employment that requires a nursing license. The narcotic key restriction prohibits the respondent from passing of narcotics, wasting of narcotics or having access to narcotics. The narcotic key restriction also prohibits the respondent from supervising nurses or others that have access to narcotics. After respondent completes six (6) months of employment that requires a nursing license, without violating any terms of this agreement, respondent may request that the narcotic key restriction be removed from respondent's license. Respondent's request shall include written verification from respondent's employer, to the Kansas State Board of Nursing, as to whether the respondent has been employed in a position that requires a nursing license; as to whether the respondent has held that position for at least six (6) months; as to whether the respondent has passed, wasted, had access to, or supervised others that had access to narcotics. With a showing that the narcotic key restriction term of this agreement has been met by the respondent, and the respondent is compliant with all other terms of this agreement, the narcotic key restriction will be removed from respondent's license and respondent will be issued a license card with no limitations on the practice.

(f) Respondent shall immediately notify the Legal Division of any use of alcohol, if prohibited by KNAP, or controlled substances, or any violation of this Consent Agreement and Final Order. Respondent shall report any violations of the Missouri Disciplinary Order and the Consent Agreement with the Kansas Board, to KBON immediately. Respondent shall remain compliant with the Disciplinary Order entered into with the Missouri Board of Nursing (MBON) in August of 2007 and sign any releases of information required so that the Kansas Board may verify compliance.

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

(h) Respondent shall send a money order for \$70 to the Board upon entering into this agreement to pay the cost of this action.

(i) Respondent shall not violate the Kansas Nurse Practice Act during the duration of this agreement. Not violate the Kansas Nurse Practice Act or the Missouri Nurse Practice Act during the duration of this agreement.

(j) 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.

(k) 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: Provide quarterly reports to the Kansas State Board of Nursing from your employer for the duration of the Consent Agreement and the Missouri Disciplinary Order, or until August 2012. When Licensee is employed in a position that utilizes his nursing license, or if Licensee is currently employed in a position that utilizes his nursing license, a nursing performance report is due by the 10th day of every third Month for the duration of the Consent Agreement and the Missouri Disciplinary Order. The report shall be prepared and signed by Licensee's immediate supervisor or by an R.N. 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.

Licensee may choose to use a Nursing Performance Report Form which can be obtained from the KSBN website. (www.ksbn.org)

(l) Respondent agrees to notify the Legal Division of any changes in address and phone number as well as all employment terminations or employer changes or additions. All such notifications shall be made in writing within fourteen (14) days of such a change.

18. Respondent acknowledges and agrees that Respondent is responsible for the costs related to satisfying the conditions and requirements of this Consent Agreement. Respondent further acknowledges and agrees that to provide the Board with false information regarding compliance with this Consent Agreement is a violation of this Consent Agreement.

19. If Respondent does not meet these conditions and requirements, the Kansas State Board of Nursing may request additional sanctions against Respondent's license or application for a license. Respondent would be sent notice of such action and would be entitled to a hearing as to whether Respondent had complied with this Consent Agreement, but Respondent could not contest the violations listed in this agreement.

20. All parties understand that if an action based on failure to meet the conditions and requirements of this Consent Agreement is filed, K.S.A. 77-531 requires the Notice of Hearing to be served upon the Respondent and the Respondent's attorney of record, if any. All parties agree that only serving the Notice of Hearing upon the Respondent will be proper service and it is the Respondent's responsibility to contact his or her attorney, if any, in reference to the action.

21. 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.

22. Respondent acknowledges and agrees that upon a second or subsequent 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 one year from the date of said finding. Respondent will not be allowed to practice nursing in the state of Kansas during the period of suspension.

23. Respondent acknowledges and agrees that upon the Stay of Suspension being lifted due to a finding of non-compliance with this Consent Agreement, the Suspension will not again be Stayed until the Respondent has, following the prescribed time period of suspension, provided written verification to the Board that Respondent is in compliance with all conditions and requirements of this Consent Agreement. Upon the Respondent providing said written verification the suspension will again be stayed.

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

25. This agreement is a discipline and must be reported on any future renewal or reinstatement applications. This agreement is a contract entered into by the parties to resolve an investigative case. The original of this agreement shall be placed in the Agency Record. This Agreement is a public record and will be reported to national disciplinary data banks.

26. After successful completion of all of the conditions and requirements of this Consent Agreement by the respondent, the Consent Agreement will be satisfied and the case will be inactivated.


27. By signing this Consent Agreement and Final Order, Respondent acknowledges that Respondent has read and understands the entire document, and agrees to be bound by its terms. This Consent Agreement and Final Order constitute the entire agreement of the parties

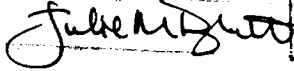
and may not be modified except in writing and approved by all parties. The effective date of this Consent Agreement and Final Order is the date shown on the certificate of service.

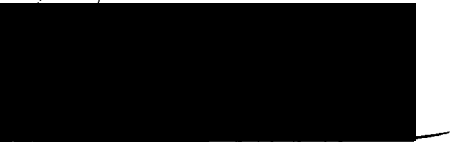
28. The hearing/presiding officer whose signature appears below has been designated pursuant to K.S.A. 77-514 and K.S.A. 77-526 to act on behalf of the Board/agency head and to hear discipline cases on behalf of the Board/agency head and to render either initial orders or final orders, if by agreement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

IN WITNESS WHEREOF, the parties hereto execute this CONSENT AGREEMENT AND FINAL ORDER.

IT IS SO ORDERED.


Thomas M. Baker
Respondent
206 Bitterwood Drive
Ballwin, MO 63021

Thomas M. Baker must sign before a Notary Public
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis County
My Commission Expires: Sept. 21, 2010
06429565
15th Day of June 2009



Alma A. Heckler, #11555
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612


Sandra L. Sharon, Presiding Officer

CERTIFICATE OF SERVICE

On the 9th day of June, 2009, I mailed a copy of this CONSENT AGREEMENT AND FINAL ORDER to:

Thomas M. Baker
206 Bitterwood Drive
Ballwin, MO 63021



Alma A. Heckler, #11555
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612