

BEFORE THE KANSAS STATE BOARD OF NURSING
Landon State Office Building, 900 S.W. Jackson #1051
Topeka, Kansas 66612-1230

RECEIVED
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KSBN Legal

IN THE MATTER OF
SHENA KAY FAULKNER

OAH No. 16BN0094

License No. ENDORSEMENT
Case No. 15-1492-0

NOTICE OF PROPOSED DEFAULT ORDER
AND
PROPOSED DEFAULT ORDER

This matter comes on for prehearing before the Kansas State Board of Nursing (Board/Petitioner). Pursuant to K.S.A. 77-514, Sandra L. Sharon was appointed Administrative Law Judge (ALJ)/Presiding Officer. The Board appears through Bryce D. Benedict, Disiplinary Counsel for the Board. The respondent, Shena Kay Faulker, failed to appear. In consideration of this matter, a Proposed Default Order is entered against respondent.

The presiding ALJ finds as follows:

1. The respondent filed for licensure by endorsement on or about August 3, 2015.
2. The Petitioner, the Kansas State Board of Nursing Board (Board), has jurisdiction over the respondent and the subject matter of this action.
3. On December 9, 2015, a Petition was filed by the Board seeking to deny the respondent's application by endorsement. It was sent to her at her last known address and was not returned as undeliverable.
4. On December 11, 2015, a Notice of Prehearing Conference was sent to the respondent. The conference was scheduled for March 29, 2016 at 9:00 a.m. The notice was not returned as undeliverable.
5. On March 29, 2016, a prehearing conference was convened. The Board appeared by disciplinary counsel, Bryce D. Benedict. The respondent did not appear in person or by phone.
6. Pursuant to Kansas Statutes Annotated (K.S.A.) 77-520(a), "[i]f a party fails to attend or participate in a prehearing conference, hearing or other

stage of an adjudicative proceeding, the presiding officer may serve upon all parties written notice of a proposed default order.”

7. The respondent is in default pursuant to K.S.A. 77-520.
8. This Proposed Default Order shall become effective and deemed an initial order, seven days after service or ten days after mailing of this order unless the respondent files a written motion stating why the Proposed Default Order should be vacated and the order is then vacated. A motion to vacate shall be mailed or personally delivered to: Kansas State Board of Nursing, Legal Division, Landon State Office Building, 900 SW Jackson, Ste. 1051, Topeka KS 66612-1230, with a copy to be mailed or personally delivered to: Sandra L. Sharon, Administrative Law Judge, Office of Administrative Hearings, 1020 S. Kansas Ave., Topeka, KS 66612-1327.
9. If this Proposed Default Order becomes effective, the allegations contained in the Petition will be deemed uncontroverted and the Petition will be granted and incorporated into this order as if fully set forth herein. The respondent's license to practice nursing will be revoked. The respondent will immediately forward his or her original Kansas nursing license to the Board.
10. In addition, costs of the action in the amount of \$100.00 will be assessed to the respondent to be paid to the Board by cashier's check or money order within 30 days of the effective date of this order.

The presiding ALJ, being well and duly advised in the premises, now enters this Proposed Default Order against the respondent. It shall take effect as specified in the above findings.

IT IS SO ORDERED.

Appeal Rights and Other Administrative Relief

Pursuant to K.S.A. 77-520, if the proposed default order becomes effective, it is deemed an initial order, as set forth above. Pursuant to K.S.A. 77-527, either party may request review of the initial order by filing a petition for review with the Kansas State Board of Nursing within 15 days from date the order is deemed an initial order. Failure to timely request review may preclude further judicial review. Petitions for review shall be mailed or personally delivered to: Kansas State Board of Nursing, Legal Division, Landon State Office Building, 900 SW Jackson, Ste. 1051, Topeka, KS 66612-1230.

If neither party requests review, the initial order becomes a final order and is binding on the 30th day following its mailing.

A party may seek judicial review of a final order by filing a petition for judicial review pursuant to K.S.A. 77-601, *et seq.* Reconsideration of a final order is not a prerequisite to judicial review. A copy of any petition for judicial review shall be served on Mary Blubaugh, Executive Administrator, Kansas State Board of Nursing, 900 SW Jackson, Suite 1051, Topeka, KS 66612-1230.



Sandra L. Sharon
Administrative Law Judge
Office of Administrative Hearings
1020 S. Kansas Ave.
Topeka, KS 66612-1327

CERTIFICATE OF SERVICE

On March 30, 2016, 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:

Bryce D. Benedict
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:

Shena Kay Faulker
2306 Donald Drive
Hays, KS 67601



Staff Person

Office of Administrative Hearings

BEFORE THE KANSAS STATE BOARD OF NURSING
Landon State Office Building, 900 S.W. Jackson #1051
Topeka, Kansas 66612-1230

IN THE MATTER OF
Shena Kay Faulkner

License No. Endorsement
Case No. 15-1492-0

FILED

DEC 09 2015

KSBN

PETITION

COMES NOW the petitioner, the Kansas State Board of Nursing, by and through Assistant Attorney General assigned to the Board, Bryce D. Benedict, and for its cause of action states that:

1. Respondent, Shena Faulkner, filed for licensure by endorsement on or about August 3, 2015. The Board has jurisdiction over the respondent and the subject matter of this action.
2. Respondent's address of record is 2306 Donald Drive, Hays KS 67601.
3. The role of the Kansas State Board of Nursing is to protect citizens of Kansas.
4. The Kansas State Board of Nursing has the authority under K.S.A. 74-1106(c)(4), K.S.A. 65-1117(a) and K.S.A. 65-1120(a) to examine, license, renew or reinstate licenses and may limit, deny, suspend or revoke a license or authorization to practice nursing, and may issue a public or private censure and levy administrative fines consistent with K.S.A. 74-1110.
5. The Kansas State Board of Nursing may deny a license as a registered nurse if the applicant is deficient in qualification, or in the quality of education, or if there are disqualifying factors under K.S.A. 65-1120 and amendments thereto. K.S.A. 65-1115 (a) & (b) & (c)(1).
6. Among the disqualifying factors enumerated in K.S.A. 65-1120 is unprofessional conduct as defined by the rules and regulations of the Kansas State Board of Nursing. K.S.A. 65-1120(a)(6). Unprofessional conduct is defined by K.A.R. 60-3-110.
7. After an investigation, the Board's investigative committee found reasonable grounds to believe that the applicant failed to meet the requirements to practice as a nurse in Kansas, and referred this matter for further proceedings.

FINDING OF FACTS

8. (a) In 2005 the Respondent was found guilty of a misdemeanor count of interference with a peace officer in Albany county, Wyoming. The Respondent stated the initial charge was driving while impaired.

(b) In 2006 the Respondent was found guilty of a misdemeanor count of fleeing from an accident in Albany county, Wyoming. The Respondent stated that this too had an initial charge of driving while impaired.

(c) In January 2013 the respondent was arrested for driving while impaired, refusing a chemical test, and child endangerment for having her daughter in the vehicle. The DWI charge was dismissed for lack of evidence, and the Respondent was granted diversion. The Respondent failed the terms of diversion, and In October 2014 she was found guilty of child endangerment and refusal of a chemical test.

(d) In April 2014 the Respondent was arrested in Colorado for driving while impaired and child endangerment for having her daughter in the vehicle; she was found guilty of these charges in July 2015.

(e) The Colorado Board of Nursing, in disciplinary case no. 2014-3521, on or about October 15, 2015, accepted the relinquishment of the Respondent's nursing license.

(f) The Colorado Board of Nursing, citing the Respondent's July 13, 2015 plea to driving while impaired , and two alcohol related offenses in 2005 and 2006, found the Respondent was unable to practice safely by reason of alcohol abuse.

(g) A mental health evaluation ordered by the Colorado Board of Nursing found the Respondent was unsafe to practice nursing without monitoring under a treatment program.

(h) No evidence has been presented to indicate the Respondent has undergone this monitored treatment program.

(i) The Respondent reports that following her 2006 conviction she took a DWI education class, and a PEER Assistance program was successfully completed after 1 ½ years; that after

her January 2013 arrest she completed a 30 day rehabilitation program in Phoenix; and that after her April 2014 arrest she saw a licensed CAC II counselor, completed a DWI II education course, and "participated" in AA. Assuming such statements are true, the Respondent's repeated alcohol related infractions indicate she is not amenable to treatment.

VIOLATIONS

9. Count 1: K.S.A. 65-1120(a)(4), to be unable to practice with skill and safety due to current abuse of drugs or alcohol.

Count 2: 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.

WHEREFORE, petitioner that the Respondent's application by endorsement be denied, and that costs of this action be assessed to the respondent.

Respectfully submitted,

Derek Schmidt
Kansas Attorney General

By: 

Bryce D. Benedict, #11663
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612