

October 10th, 2007

Judith A. Berry
8438 Legler
Lenexa, KS 66219

Case No. 91-211-7, 03-753-7, 06-1115-0, 07-350-7
License No. 13-064258-121

SUMMARY ORDER

Dear Ms. Berry:

The Investigative Committee of the Kansas State Board of Nursing (KSBN) has reviewed your application materials. It is the decision of the Board that your reinstatement application to practice nursing as a registered nurse in Kansas is denied. This denial is based upon the following:

FINDINGS OF FACT

1. (a) Case No. 07-350-7 Respondent submitted an application to the Board for reinstatement as a registered nurse in the State of Kansas on 7/3/2007.

(b) Respondent had an RN license in Kansas and Missouri. Respondent's license was revoked in Kansas on July 27, 2005 based on her failure to comply with her requirements in the Kansas Nurse Assistance Program and she had at least three alcohol relapses.

(c) Case No. 06-1115-0 KBON received notice the Respondent's license was subsequently revoked in Missouri. Respondent's Missouri nursing license was originally issued on or about January 19, 2001 and was current and active until it was revoked in December of 2006. The Respondent was employed in Missouri at the Renal Care Group-Saint Lukes, located in Kansas City, Missouri. On or about June 4, 2005, Respondent was assigned to care for patient L.H. L.H. was a dialysis patient. Respondent initiated L.H.'s hemodialysis treatment and per the patient's request, the arterial line was connected to the patient via the fistula needle, and the clamps on the dialysis bloodlines were opened. As saline was drained from the system, blood was allowed to fill the bloodlines. Respondent became distracted by a patient who nearly fell down and this disruption resulted in the venous tubing to be left in the waste handling option (WHO) by the Respondent, causing the patient's blood to go down the drain. The patient L.H. called the Respondent back to her station when she began to feel lightheaded. Respondent returned and noticed the venous bloodline still in the WHO and connected it to the venous needle. Respondent then gave the patient L.H. normal saline to stabilize her blood pressure. Respondent reported the incident and she was counseled and retrained on the initiation procedure and given a written warning.

(d) During an interview with MBON on September 1, 2005 the Respondent acknowledged she was taking a break from nursing because "she could have killed the patient."

Respondent's Kansas nursing license had already been revoked at the time of her interview with MBON.

(e) Case No. 03-7583-7 Respondent entered KNAP on 8/20/03. She had a diagnosis of alcohol dependence. Respondent relapsed on 12/20/03. She was on-call with her employer. KNAP directed Respondent to complete a re-evaluation on 12/29/03 and Respondent admitted the relapse on 12/20/03 was not an isolated episode. She was required to complete three (3) weeks of Intensive Outpatient Treatment and attend ninety (90) meetings in ninety (90) days. Respondent's KNAP completion date was extended to 12/20/06.

(f) Respondent relapsed in April of 2004 and again in June 2004. In May, 2004 Respondent had a UDS collection that tested below normal creatinine levels. KNAP instructed her to cease practice and referred her to be reevaluated for further treatment. Respondent's relapse in June, 2004 was again not an isolated incident and Respondent told co-workers she did not want to give up drinking. The Respondent was referred to inpatient treatment at Atchison Valley Hope on or about July 8, 2004. Respondent entered treatment in July, 2004. After completion of treatment, Respondent was cleared to resume practice but lost her Hospice job in December 2004 and started working in Missouri for Renal Care Group. Respondent entered into a consent agreement to suspend license with a stay, so long as the Respondent remained compliant with KNAP on 1/6/2005. On 1/13/05 Respondent tested positive for alcohol. KNAP directed the Respondent to again suspend all nursing practice. The Respondent continued to practice nursing and work at Renal Care Group. A request for an emergency hearing was filed by KBON on February 8, 2005 and an agreed order filed lifting the stay of suspension on Respondent's license for the period of 1/26/05 to 3/2/05. The Respondent was again allowed to practice after 3/2/05. The Respondent was again positive for alcohol on 3/11/05 and was again directed by KNAP to suspend all nursing practice. KBON, through its disciplinary attorney, again filed for an amended motion to lift stay and to revoke Respondent's license. The Respondent failed to appear and Respondent's license was revoked on May 23, 2005. The hearing officer set aside the default order at the request of the Respondent and the matter was reset for July 12, 2005. Respondent again relapsed on June 1, 2005 and failed to attend meetings since February and March of 2005. Respondent's KNAP case was closed and Respondent told her therapist she was "done with KNAP". On July 28, 2005 the Respondent's license was revoked in Kansas.

(g) Case No. 07-350-7 The Respondent filed for reinstatement on 7/3/07 and failed to report a 1982 felony conviction, Attempted Forgery, Class E Felony in District Court in Johnson County, Kansas; another 1982 conviction of two counts of misdemeanor assault in Miami County, Kansas; a 2002 misdemeanor conviction of DUI, urinating in public and open container in Municipal Court, Shawnee, Kansas and a conviction for misdemeanor DUI in Municipal Court of Olathe, Kansas in 2002.

(h) The Respondent did admit to other pending DUI prosecutions, one in Olathe, Kansas, that allegedly occurred in February 2007 and another in 2006.

(i) The Respondent denies that she intentionally withheld information. She also denies responsibility for the 2007 DUI and the officer may have not had a "good" reason to pull her over. She reports she quit KNAP because she was trying to remain sober but she kept testing positive. She says she has been sober off and on for the past two years. Her driver's license is currently suspended.

(j) The history of the Respondent in KNAP, with KBON and her multiple arrests for DUI do not indicate that the respondent has met any of the Vakas factors to show that she is currently safe to practice and has been rehabilitated:

The present moral fitness of the petitioner;

The demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;

The extent of petitioner's rehabilitation;

The nature and seriousness of the original misconduct;

The conduct subsequent to discipline;

The time elapsed since the original discipline;

The petitioner's character, maturity, and experience at the time of the original revocation;

The petitioner's present competence in medical skills.

CONCLUSIONS OF LAW

2. Pursuant to K.S.A. 65-1120(a), the Kansas State Board of Nursing may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization, if the applicant, licensee or holder of a certificate of qualification or authorization is found to have violated the Nurse Practice Act. The above fact findings establish evidence that the applicant violated the following provisions of the Nurse Practice Act:

(a) K.S.A.65-1120(a)(1), to be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing.

(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.

(c) K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110 (d), inaccurately recording, falsifying, or altering any record of a patient or agency or of the board.

(d) 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.

(e) K.S.A. 65-1120(a)(2) "to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust..."

(f) K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110 (r), failing to comply with any disciplinary order of the board.

(g) K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110 (s) failing to complete the requirements of the impaired provider program of the board.

3. K.S.A. 77-511(a)(2)(A) of the Kansas Administrative Procedure Act authorizes the use of summary proceedings by a state agency when denying an application in whole or in part.

4. Your conduct described herein violates the Kansas Nurse Practice Act.


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

6. If you wish to dispute this matter, contact the Board immediately by following the procedure for requesting a hearing. A copy of your application will be sent to you upon request.

7. Pursuant to K.S.A. 77-537, this decision, which is called a Summary Order, is subject to your request for a hearing. If you desire a hearing, you must submit or direct a written request for hearing to:

Kansas State Board of Nursing
Legal Division
900 SW Jackson, Suite 1051
Topeka, Kansas 66612-1230
(785) 296-4325

THIS REQUEST MUST BE SUBMITTED WITHIN FIFTEEN (15) DAYS FROM THE DATE OF THIS ORDER. If a hearing is not requested in the time and manner stated above, this Summary Order becomes effective and final upon the expiration of the time for requesting a hearing.


Judith Hiner, RN, BSN, CNA
Investigative Committee, Chair
Kansas State Board of Nursing

CERTIFICATE OF SERVICE

I certify that on the 10th day of October 2007, the foregoing copy of the Summary Order was served by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Judith A. Berry
8438 Legler
Lenexa, KS 66219



Alma A. Heckler, #11555
Assistant Attorney General