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BEFORE THE KANSAS STATE BOARD OF NURSING

IN THE MATTER OF
Nancy A. Bennett
License No. 13-090041-081

Case No. 04 388 7
OAH No. 08BN0018 KSBN

INITIAL ORDER

Now on this 2nd day of April 2008, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing, Sandra L. Sharon, duly appointed as Presiding Officer pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing, appears by Disciplinary Counsel, Alma A. Heckler. The Respondent, Nancy A. Bennett, appears in person and participated by phone. Witnesses were Karen Peschka, RN, Investigator, Kansas State Board of Nursing; John Childers, Executive Director of Heart of America Professionals Network, KNAP; and Ms. Bennett.

FINDINGS OF FACT

1. While employed as a nurse in March 2004, the Respondent was required to take an urinalysis test. The test resulted in a positive finding for the illegal drug marijuana.
2. On June 24, 2005, the Kansas State Board of Nursing (Board) referred Ms. Bennett to the Kansas Nursing Assistance Program (KNAP).
3. Ms. Bennett was to submit to random drug testing through this program. On April 24, 2006, Ms. Bennett tested positive for alcohol.
4. On a copy of the laboratory findings, Ms. Bennett wrote, "I don't drink, is there anything else that would make this test positive?"
5. On May 16, 2006, KNAP extended Ms. Bennett's period of participation to three years from the date she tested positive, or to March 24, 2009. The Respondent was evaluated by Choices, an alcohol and drug assessment, education and counseling facility. In the evaluation, the Respondent admitted she consumed a glass of wine after dealing with a particularly stressful event with her ill mother.
6. Ms. Bennett relayed to her evaluator that she consumed the wine without stopping to think of the potential harm it would cause her career if she tested positive for substance use. The evaluator found this perplexing considering the impact it could have with the appellant's license to practice nursing.
7. At hearing, Ms. Bennett indicated that she drank one glass of wine after dealing with her ill mother. However, by the time the hearing was concluded, Ms. Bennett admitted to having more than one glass of wine.

8. After the Respondent received notice from KNAP that her participation was extended until April 2009, the Respondent stopped participating with KNAP and stopped calling in for her random drug testing. KNAP discharged her from their program on July 12, 2006.
9. On June 2, 2006, Choices wrote a note concerning Ms. Bennett's ability to safely practice nursing. They indicated, "Provided that Ms. Bennett abstains from all substance abuse as directed by KNAP, and she adhere to and participate in the recommendations made in her evaluation, this evaluator sees no reason why this client cannot return safely to work." However, Ms. Bennett has not adhered to the recommendations by KNAP nor has she participated in recommendations made as a result of her evaluation by Choices. Choices qualified their statement by saying, "**provided** Ms. Bennett abstain ... she can return safely to work."

CONCLUSIONS OF LAW

1. The Kansas State Board of Nursing has the authority to deny, revoke, limit, or suspend a license to practice nursing if the individual is found guilty of unprofessional conduct as defined by the rules and regulations of the Board. Kansas Statutes Annotated (K.S.A.) 65-1120(6).
2. Kansas Administrative Regulation (K.A.R.) 60-3-110(s) addresses unprofessional conduct and includes failing to complete the requirements of the impaired provider program (KNAP) of the Board is unprofessional conduct.

DISCUSSION

1. Upon testing positive for an illegal substance, the Respondent was referred to KNAP. As a participant in KNAP, she was required to take random urinalysis. On April 24, 2006, the Respondent tested positive for alcohol. This positive UA put Ms. Bennett in non-compliance with KNAP. Further, because of the positive UA, her period of participation with KNAP was extended. At this point, the Respondent stopped participating in any KNAP activity or recommendation and she was discharged from the program on July 11, 2006.
2. The Respondent's failure to comply with KNAP requirements amounts to unprofessional conduct, pursuant to K.S.A. 65-1120(6) and K.A.R. 60-3-110(s), and subjects her license to revocation by the Kansas State Board of Nursing.

CONCLUSION

The Kansas State Board of Nursing's Petition to Revoke Ms. Bennett's license is hereby granted.

The Respondent shall pay costs of the action of \$70.00.

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.

OFFICE OF ADMINISTRATIVE HEARINGS

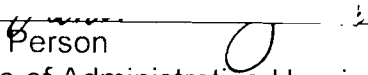
Sandra L. Sharon
Presiding Officer
Office of Administrative Hearings

CERTIFICATE OF SERVICE

On Apr 16, 2008, I mailed a copy of this document to:

Nancy A. Bennett
3203 N. 157th Terr.
Basehor, KS 66007

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