

BEFORE THE KANSAS STATE BOARD OF NURSING

KSBN

IN THE MATTER OF

Case No. 91 211 7; 03 753 7;
06 1115 0; 07 350 7Judith A. Berry
License No. 13 064258 121

OAH No. 10BN0027

INITIAL ORDER

Now on this 2nd day of December 2009, 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 (Board), appears through Assistant Attorney General, Alma A. Heckler, Disciplinary Counsel for the Board. The Respondent, Judith A. Berry, appears in person.

Findings of Fact

1. This matter comes before the Kansas State Board of Nursing on the Board's Petition to deny respondent's reinstatement application for a license to practice nursing in the State of Kansas.
2. The respondent was previously licensed to practice nursing in Kansas. This license was revoked July 28, 2005.
3. The respondent had a license to practice in the State of Missouri. This license was revoked in December 2006. This revocation dealt with the respondent's ability to practice nursing safely.
4. In August 2003, the respondent entered into the [REDACTED] [REDACTED]. In approximately March 2005, the respondent's KNAP case was closed with unsuccessful completion.
5. The respondent filed a reinstatement application with the Board on July 3, 2007. On said application, the respondent failed to report a 1982 felony for attempted forgery; two misdemeanor assault convictions in 1982; and two misdemeanor DUIs, including urinating in public and possession of an open container in 2002.
6. Since the respondent's reinstatement of 2007 was denied, she has received three new DUI convictions. One conviction was in February 2006 in the Shawnee Municipal Court of Johnson County. Another conviction occurred in February 2007 in Johnson County, Kansas. The most recent conviction occurred in September 2008 in Johnson County, Kansas. The last two convictions are felony convictions.

7. At hearing, the respondent testified that she has been sober since her last DUI from September 2008.

Conclusions of Law

1. Pursuant to Kansas Statutes Annotated (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 issued by the board if the applicant, licensee, or holder of a certificate of qualification or authorization is found to have violated the Kansas Nurse Practice Act.
2. It is a violation of the Kansas Nurse Practice Act to:
 - a. To be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing. K.S.A. 65-1120(a)(1).
 - b. To be unable to practice with skill and safety due to current abuse of drugs or alcohol. K.S.A. 65-1120(a)(4).
 - c. To be guilty of unprofessional conduct pursuant to K.A.R. 60-3-110(d), by inaccurately recording, falsifying, or altering any record of a patient or agency or of the Board. K.S.A. 65-1120(a)(6).
 - d. To have a license to practice nursing as a registered nurse denied, revoked, limited, or suspended, by a licensing authority of another state. K.S.A. 65-1120(a)(8).
 - e. To have acted unprofessionally by violating K.A.R. 60-3-110(s), failing to complete the requirements of the impaired provider program of the Board.
3. Factors to be considered in determining whether a licensee should be reinstated after disciplinary finding has been made are found in *Vakas v. Kansas State Board of Healing Arts*, 248 Kan. 589 (1991). These factors include the following:
 - The present moral fitness of the petitioner;
 - The demonstrated consciousness of wrongful conduct and disrepute which the conduct has brought to the profession;
 - The extent of the petitioner's rehabilitation;
 - The nature and seriousness of the original misconduct;
 - The conduct subsequent to discipline;
 - Time elapsed since the original discipline petitioner's character, maturity and experience at the time of the original revocation;
 - Petitioner's present competence in nursing skills.

Conclusion

1. The respondent acknowledges that she is an alcoholic.

2. The respondent has an excessive history of legal difficulties due to her use of alcohol.
3. The respondent's history also includes periods of soberness and then relapse.
4. The respondent's most recent legal trouble occurred within 14 months of the date of this hearing.
5. She has been sober only 14 months.
6. When applying the factual circumstances of this case to the *Vakas* standards, it would appear that while the respondent demonstrates a consciousness of the wrongdoing in which she has been involved. However, her rehabilitation has not been sufficiently established.
7. The respondent has misdemeanors and felonies, most related to alcohol, some not. The respondent failed to accurately report her difficulties to the Board on her reinstatement applications. Further, the respondent's license to practice nursing has been revoked in another state. This revocation is related to her ability to practice with skill and safety.
8. Considering the extensive nature of the respondent's violations of the Kansas Nurse Practice Act, alcohol related violations and failures to correctly and truthfully report her past and her legal difficulties, the respondent has failed to show that she is adequately rehabilitated to the extent that she could safely practice nursing in the State of Kansas.
9. The respondent failed to correctly report her history of misdemeanors and felonies when asked on her reinstatement applications. The respondent has violated K.S.A. 65-1120(a)(1).
10. While the respondent alleges that she has been sober for a period of 14 months, she has failed to show that, considering her extensive history, she will remain sober and that she can practice nursing with skill and safety. The respondent has a violated K.S.A. 65-1120(a)(4).
11. The respondent has participated in unprofessional conduct by falsifying a record of the Board as recent as July 2007. The respondent has violated K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(d).
12. The respondent has had her license to practice nursing in the State of Missouri revoked. This is a violation of K.S.A. 65-1120(a)(8).
13. The respondent has failed to complete her participation in [REDACTED] [REDACTED] This is a violation of K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(s).

14. The Board's petition to deny the respondent's reinstatement application is hereby affirmed.
15. 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

CERTIFICATE OF SERVICE

On Dec 31, 2009, I mailed a copy of this document to:

Judith A. Berry
8438 Legler
Lenexa, KS 66219

Mary Blubaugh, Executive Director
Alma A. Heckler, Assistant Attorney General
Kansas State Board of Nursing
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Staff Person
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