

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

JUL - 7 2008

KSBN**IN THE MATTER OF
JORITA S. HENRY****Case Nos. Case No. 98-0137-6, 03-538-1, 03-646-1,
05-423-2****License No. 13-067606-081****CONSENT AGREEMENT AND FINAL ORDER**

NOW ON THIS 8th day of July, 2008, the Kansas State Board of Nursing, represented by Assistant Attorney General, Alma A. Heckler, and the Respondent, Jorita S. Henry, represented by J. Scott Koksal of Lindner & Marquez, 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 licensed to practice nursing in Kansas through 8/31/2009. 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 726 Amy St #B, Garden City, KS 67846.
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 and the Respondent is represented by counsel, J. Scott Koksal.
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 petition was filed 10/24/2007 to take disciplinary action against Respondent's license and alleged the following:

(a) In Case No. 98-0137-6, Respondent failed to report a resident fall to the resident's doctor. Respondent were required to complete six (6) hours of Continuing Nurses Education on Legal Issues in Nursing. Respondent completed the required discipline.

(b) In Case No. 03-538-01, while Respondent was employed as the Director of Nursing (DON) at Garden Valley in Garden City, Kansas, Respondent was notified resident had a skin tear and needed emergency treatment. Two other nurses charted the incident regarding the skin tear and Respondent's inappropriate response, so Respondent removed the nursing notes from the resident's file, and the notes were allegedly shredded. Respondent supervised the writing and editing of a new Nurses Note (NN) and created one herself, even though Respondent was not present at the time of the incident. The new NN the Respondent created and nursing notes from before and after the ER visit apparently disappeared from the resident's file. The incident was not appropriately documented.

(c) In Case No. 03-646-1, as the DON, Respondent allowed a Practical Nurse (PN) Student to function as a Graduate Practical Nurse (GPN)/Licensed Practical Nurse (LPN) (charge position) starting 5/28/03. Respondent did not obtain a copy of the student's college transcript or other documents to validate the PN student's course completion. Respondent told the PN student she would be working under her license. Respondent mistakenly thought K.S.A. 65-1165 allowed Respondent to delegate to a PN student. Respondent did not do a skills checklist to document training or competency of the PN student as required by statute. The Respondent allowed the PN student to sign off as GPN during months of 5/03 through 7/03. When other staff complained, Respondent created a position for the PN student, titled Nurse Technician. The job

description Respondent developed allowed the PN student to do medication administration, to include insulin injections and treatment administration, to include Accu-checks and physical assessments. Respondent stated to nurse investigators Respondent had intended to co-sign the PN student's GPN entries but she failed to do so and so the PN student did not have any consistent oversight and supervision, when the PN student was allowed to act as a charge nurse.

(d) In Case No. 05-423-2 while Respondent was the Minimum Data Set (MDS) Coordinator at Garden Valley/Garden City Respondent created and backdated a resident's computerized nursing care plan . The document was created on 2/16/05 but back dated to 2/2/05.

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

Count 1: 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.

Count 2: K.S.A. 65-1120(a)(3), Professional Incompetency by K.S.A. 65-1120(e)(3), a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing.

Count 3: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(c), failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient.

Count 4: 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.

Count 5: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(h), delegating any activity that requires the unique skill and substantial specialized

knowledge derived from the biological, physical, and behavioral sciences and judgment of the nurse to an unlicensed individual in violation of the Kansas nurse practice act or to the detriment of patient safety.

Count 6: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(k), willfully or negligently failing to take appropriate action to safeguard a patient or the public from incompetent practice performed by a registered professional nurse or a licensed practical nurse.

Count 7: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(n), diverting drugs, supplies, or property of any patient or agency.

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)(1), to be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing.

Count 2: K.S.A. 65-1120(a)(3), Professional Incompetency by K.S.A. 65-1120(e)(3), a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing.

Count 3: K.S.A. 65–1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(c), failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient.

Count 4: 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.

Count 5: K.S.A. 65–1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(h), delegating any activity that requires the unique skill and substantial specialized knowledge derived from the biological, physical, and behavioral sciences and judgment of the nurse to an unlicensed individual in violation of the Kansas nurse practice act or to the detriment of patient safety.

Count 6: K.S.A. 65–1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(k), willfully or negligently failing to take appropriate action to safeguard a patient or the public from incompetent practice performed by a registered professional nurse or a licensed practical nurse.

Count 7: K.S.A. 65–1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(n), diverting drugs, supplies, or property of any patient or agency.

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. 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.

14. 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. Any supervision requirements will be for one calendar year from the date on this agreement.

15. 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) Respondent shall return her current license card to the Board with this Consent Agreement. 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.

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

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

(d) Respondent shall not violate the Kansas Nurse Practice Act during the duration of this agreement.

(e) 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.

(f) The respondent will complete two (2) hours of Continuing Nurses Education (CNE) on the topic of "Kansas Nurse Practice Act." Respondent shall complete five (5) hours of CNE on each of the following areas: (1) Nurse Ethics, (2) Documentation and (3) Legal Issues in Nursing. Respondent is to submit the original certificates for proof of the completion of the hours within 30 days of this agreement. Respondent may not use these hours to meet the CNE requirements of any renewal period.

(g) Respondent shall be supervised by an R.N. if available and 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: Prior to Licensee securing employment that utilizes her nursing license, Licensee is to mail to the Kansas State Board of Nursing a statement indicating that Licensee has not yet secured employment which utilizes Licensee's nursing license. This statement is due by the 10th day of each month beginning the next month after signing this consent agreement. Once Licensee is employed in a position that utilizes his or her nursing license, or if Licensee is currently employed in a position that utilizes his or her nursing license, a nursing performance report is due by the 10th day of every third Month until Licensee has caused the submission of four (4) separate nursing performance reports. 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.

(h) 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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 and is a public record.

24. 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.

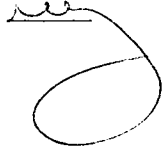
25. By signing this Consent Agreement and Final Order, Respondent acknowledges that Respondent has read and understands the entire document, and agrees to be bound by its terms. This Consent Agreement and Final Order constitute the entire agreement of the parties and may not be modified except in writing and approved by all parties.

26. 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.

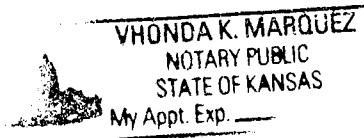
Jorita S. Henry
Respondent
726 Amy St #B
Garden City, KS 67846



Jorita S. Henry must sign before a Notary Public.

State of Kansas, County of Finney ss.
SUBSCRIBED AND SWORN TO before, me by Jorita S. Henry

on this 11 day of July, 2008.



Vhonda K. Marquez My Commission Expires 7-23-09
Signature of Notary Public (Notary Public Seal)

J. Scott Koksai, # 20914
Lindner & Marquez
505 North 6th
Garden City, Kansas 67846
Counsel for Respondent

Alma A. Beckler, #17555
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 July, 2008, I mailed a copy of this CONSENT AGREEMENT AND FINAL ORDER to:

Jorita S. Henry
726 Amy St #B
Garden City, KS 67846

J. Scott Koksai, # 20914
Lindner & Marquez
505 North 6th
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Counsel for Respondent


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