

FILED

BEFORE THE KANSAS STATE BOARD OF NURSING

JUN 16 2008

KSBN

IN THE MATTER OF

Case No. 06 1008 7

04 161 1

Leon R. Baird

OAH No.

08BN0027

License No. 13 069140 032

INITIAL ORDER

Now on this 22nd day of May 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 (Board), appears by Assistant Attorney General Mark A. Knight, Disciplinary Counsel for the Board. The Respondent, Leon R. Baird, appears in person.

FINDINGS OF FACT

1. Leon R. Baird was licensed by the Kansas State Board of Nursing. He allowed his license to lapse in March 2008.
2. The parties have stipulated to the following facts:
 - (a) On or about 8/6/1990, Respondent was convicted of Careless Driving, a misdemeanor, in the Municipal Court of Wichita, Kansas, case number 90-C9512.
 - (b) On or about 8/6/1990, Respondent was convicted of Failure to Report an Accident, a misdemeanor, in the Municipal Court of Wichita, Kansas, case number 90-C3664.
 - (c) On or about 11/8/1990, Respondent was convicted of Battery on a Law Enforcement Officer, a misdemeanor, in the Municipal Court of Wichita, Kansas, case number 90-C3664.
 - (d) On or about 12/16/1992, Respondent submitted an application for licensure to the KSBN. In that application Respondent answered "Yes" to the question have you ever been convicted of a crime other than traffic violations. Respondent disclosed that he was convicted of battering a police officer.
 - (e) On or about 3/20/1995, Respondent was convicted of Driving While Suspended Due to DUI Conviction, a misdemeanor, in the Municipal Court of Wichita, Kansas, case number 94-C62215.
 - (f) On or about 3/20/1996, Respondent was convicted of Driving with an Open Container, a misdemeanor, in the Municipal Court of Wichita, Kansas, case number 94-C62215.
 - (g) On or about 3/30/2000, the KSBN received a license renewal application from Respondent. In the application Respondent answered "No" to the question have you ever been convicted of a misdemeanor or felony.

- (h) On or about 12/6/2000, Respondent was convicted of Driving Under the Influence, a misdemeanor, in the Municipal Court of Wichita, Kansas, case number 00-C63561.
- (i) On or about 7/31/2001, Respondent was convicted of Driving Under the Influence, a misdemeanor, in the Municipal Court of Dodge City, Kansas, case number 980020307.
- (j) On or about 2/27/2003, Respondent was convicted of Driving While Suspended, a misdemeanor, in the Municipal Court of Dodge City, Kansas, case number 02-119012A.
- (k) On or about 2/27/2003, Respondent was convicted of Obstruction of Legal Process, a misdemeanor, in the Municipal Court of Dodge City, Kansas, case number 02-119012B.
- (l) On or about 4/28/2003, Respondent was convicted of Driving Under the Influence, 4th or subsequent, a felony, in the District Court of Ford County, Kansas, case number 02CR200.
- (m) On or about March of 2002, the KSBN received an online license renewal application from Respondent. In the application Respondent answered "No" to question have you ever been convicted of a misdemeanor. In the application Respondent answered "No" to question have you ever been convicted of a felony.
- (n) On or about 3/2/2004, the KSBN received a license renewal application from Respondent. In the application Respondent answered "Yes" to question have you ever been convicted of a misdemeanor. In the application Respondent answered "Yes" to question have you ever been convicted of a felony. In a letter that accompanied the 3/2/2004 renewal application, Respondent disclosed multiple convictions for DUI. As a result of the information the KSBN initiated an investigation in KSBN case number 04-161-1.
- (o) On or about 3/2/2004, Respondent entered the Kansas Nurses Assistance Program (KNAP). Pursuant to the KNAP program Respondent submitted to an evaluation. Following the evaluation a diagnosis of Alcohol and Cocaine Dependence in remission was issued.
- (p) As a result of the investigation in 04-161-1, Respondent was notified to remain compliant with the Kansas Nurses Assistance Program (KNAP). Respondent was also notified in a letter dated 12/17/2004, to reveal all convictions on all future applications for licensure submitted to the KSBN.
- (q) On or about 12/6/2005, Respondent was convicted of Disorderly Conduct, a misdemeanor, in the District Court of Johnson County, Kansas, case number 05DV1166.
- (r) KNAP reports that Respondent has had multiple attempts a treatment regarding alcohol and drug abuse. KNAP reports the following since Respondent entered the KNAP program: Respondent tested positive for alcohol on or about 3/31/2004; Respondent admitted to a relapse involving alcohol in June of 2004; Respondent tested positive for alcohol on or about 10/28/2005. Respondent reported to KNAP that the positive test may have been the result of taking Hy-Vee Cough Syrup; Respondent relapsed during May of 2006.

(s) On or about 3/13/2006, the KSBN received a license renewal application from Respondent. In the application Respondent answered "Yes" to the question have you ever been convicted of a misdemeanor or felony. Respondent explained that the convictions were previously submitted in KSBN case number 04-161-1. Respondent did not reveal the 12/6/2005 conviction for Disorderly Conduct.

(t) On or about 3/25/2008, Respondent contacted KNAP personnel and advised that on or about 3/14/2008, Respondent consumed alcohol in violation of his KNAP contract and was arrested for driving under the influence of alcohol. Respondent reported that on the date of the arrest his blood alcohol level was 1.8.

3. On March 25, 2008, the Respondent was advised by the Kansas Nurse Assistance Program (KNAP) that he must be reevaluated for drug and alcohol treatment. This notice indicated that as of March 25, 2008, there could not be a determination that the Respondent was safe to practice nursing.

CONCLUSIONS OF LAW

1. The Kansas State Board of Nursing may revoke, limit, or suspend any license to practice as a nurse that is issued by the Board:
 - A. If the holder of such license is unable to practice with skill and safety due to current abuse of drugs or alcohol. Kansas Statutes Annotated (K.S.A.) 65-1120(a)(4).
 - B. Is guilty of unprofessional conduct. K.S.A. 65-1120(a)(6).
 - By inaccurately recording, falsifying, or altering any record of a patient or agency or of the Board. Kansas Administrative Regulation (K.A.R.) 60-3-110(d).
 - By failing to comply with any disciplinary order of the Board. K.A.R. 60-3-110(s).
 - C. Demonstrates a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetency to practice nursing. K.S.A. 65-1120(e)(3).

DISCUSSION

1. Since the Respondent has been participating in the KNAP program, he has tested positive for alcohol on five separate occasions. On March 25, 2008, KNAP indicated that the Respondent is not safe to practice pending the outcome of a reevaluation for his drug and alcohol issues. The appellant has violated K.S.A. 65-1120(a)(4).

2. In December 2004, the Respondent sent correspondence to the Kansas State Board of Nursing wherein he admitted falsifying his nurse license renewal application by failing to report convictions. This is in violation of K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(d).
3. The Respondent failed compliance with KNAP on six occasions, the last one being March 14, 2008. The failure to comply with the impaired provider program was testing positive for alcohol use. The Respondent has violated K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(s).
4. The Respondent's actions for approximately the last 18 years indicate that he misuses alcohol and has difficulty remaining sober. The Respondent also has incidents of clashing with authorities. By these behaviors, the Respondent manifests incapacity to safely practice nursing. The Respondent has violated K.S.A. 65-1120(e)(3).

CONCLUSION

The Board's Petition to Revoke the Respondent's license to practice nursing in the State of Kansas is hereby granted.

Cost of this action shall be assessed to the Respondent in the amount 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 June 16, 2008, I mailed a copy of this document to:

Leon R. Baird
10556 US Hwy 50
Dodge City, KS 67801

Mark Knight
Assistant Attorney General
Disciplinary Counsel for the Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612

~~Staff Person~~  _____
Office of Administrative Hearings