

Filed
DEC 13 2004
Board of Nursing

KANSAS

KANSAS STATE BOARD OF NURSING
MARY BLUBAUGH MSN, RN, EXECUTIVE ADMINISTRATOR

KATHLEEN SEBELIUS, GOVERNOR

December 13, 2004

Elvis Birgen
11322 Blue Ridge Blvd, Apt #4
Kansas City, MO 64134

Case 04-212-0

SUMMARY ORDER

Dear Mr. Birgen:

The Disciplinary Committee of the Kansas State Board of Nursing has reviewed your application materials and on behalf of the Board members I am denying your endorsement application to practice nursing as a licensed practical nurse (L.P.N.) in Kansas. This denial is based upon the following:

FINDINGS OF FACT

1. Respondent has submitted an application for an endorsement of his nursing license received by the Board 3/30/2004.
2. The respondent answered "yes" to the question "Is any action pending against any license?" The respondent indicated that his Missouri license had been disciplined.
3. The Missouri Board of Nursing Order 3/12/2004 stated that on or about 2/19/1999 Mr. Birgen pled guilty in the Circuit Court of Johnson County, Missouri, to driving while intoxicated (alcohol intoxication), a DWI. Case No. CR-17-0698-001423M. The Missouri Nursing Board Order immediately placed Mr. Birgen's license on probation for two (2) years, and required Mr. Birgen to continue treatment for chemical dependency by a licensed or certified chemical dependency professional.
4. The respondent had a Diversion Agreement in Miami County, Kansas Case 02TR1721 for a DUI arrest on 7/23/2002. He successfully completed the diversion agreement on 1/13/2004.
5. On or about 4/9/2004 the respondent was referred to the Kansas Nurses Assistance Program by the Kansas Board of Nursing for evaluation and recommendations by KNAP prior to endorsement.
6. On or about 6/11/2004 the Board received a letter from KNAP stating that the respondent's case was being closed for non-compliance. The respondent did not return the enrollment packet, which included his KNAP agreement, to KNAP and his KNAP case was closed.

CONCLUSIONS OF LAW

7. K. S. A. 65-1120(a) provides that it is a ground for denial of a license if the applicant is found to be guilty of violating the nurse practice act. The above incidents established evidence that the respondent violated:

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. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph (8).

K.S.A. 65-1120(a)(4) to be unable to practice with skill and safety due to current abuse of drugs or alcohol;

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;

8. 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.
9. Your conduct described herein violated the Kansas Nurse Practice Act.
10. If the information provided is incorrect, or if you wish to dispute this matter, please let us know immediately by following the procedure for requesting a hearing. A copy of your application will be sent to you upon request.
8. 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.

Kelly Arpin, L.P.N.
Board Member

CERTIFICATE OF SERVICE

I certify that on the 13th day of December, 2004, 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:

Elvis Birgen
11322 Blue Ridge Blvd, Apt #4
Kansas City, MO 64134

Betty Wright, Assistant Attorney General
Kansas State Board of Nursing
900 SW Jackson, Ste 1051
Topeka KS 66612-1230
785-296-7047
