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SEP 1 2009

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BEFORE THE KANSAS STATE BOARD OF NURSING

Landon State Office Building, 900 S.W. Jackson #1051
Topeka, Kansas 66612-1230

**IN THE MATTER OF
ERIN N. SCHWING**

License No. Endorsement Application

Case No. 09-549-0

SUMMARY ORDER

Now this 31st day of August, 2009, the above matter comes before the Kansas State Board of Nursing (Board) pursuant to authority granted to the Board by K.S.A. 65-1120. The Board hereby proposes to find facts and take disciplinary action against the endorsement application of Erin N. Schwing (Applicant) by way of Summary Order as provided by K.S.A. 77-537.

FINDINGS OF FACT

1. (a) Applicant submitted an endorsement application to practice nursing in the state of Kansas. The Board has jurisdiction over the Applicant and the subject matter of this action.
- (b) Applicant's address of record is 115 West O Street, McCook, Nebraska 69001.
- (c) On or about 6/1/2009, the Board received Applicant's endorsement application to practice nursing in the state of Kansas.
- (d) Review of the Application and other information gathered by the Board revealed the following information upon which this action is based.
- (e) Applicant has been disciplined in Nebraska and has a probationary license. The probationary order was issued by the Nebraska Division of Public Health on May 19, 2009. Nebraska found the following, in part:

1. On April 29, 2008, the Department received Appellant's application for an initial licensed practical nurse license. With her application, Appellant listed and included an explanation of her prior convictions. She failed to list an October 2001 California felony conviction for burglary that had been set aside and dismissed on June 15, 2007. Appellant's listed convictions included five drug related convictions and a dog at large conviction in Nebraska during the period of November 2004 to August 2007.

2. On July 23, 2008, Appellant was interviewed by a Department Investigator and confirmed all of her convictions. She explained that she had failed to list the California felony conviction because her California attorney advised her she didn't have to list it. She said she pursued the expungement before she started nursing school because she knew she might not be licensed with a felony conviction. Appellant also explained that all of the California convictions were caused by her drug addiction. She said she has been off drugs since she completed her court ordered rehabilitation in 2002. Appellant explained her Nebraska convictions were largely the result of her being targeted by the McCook police who were

apparently aware of her California record. After the interview, Appellant voluntarily submitted to a drug test that was negative.

3. On August 21, 2008, Appellant's application was considered by the Board of Nursing. The Board considered the information Appellant submitted as well as the Department Investigator's report that contained a significant amount of unverified information regarding Appellant. The Board recommended denial of her initial license request.

4. Subsequent to the Board's recommendation, the Board requested that Appellant complete a current alcohol/drug assessment to assist them in making a decision on what action to take on her application. [REDACTED]

[REDACTED] the Nebraska Licensee Assistance Program recommended a relapse prevention program with qualified alcohol/drug counselor and that Appellant attend at least one 12-Step recovery meeting each week or at least one year.

(f) After a hearing the Chief Medical Officer and Director of the Division of Public Health issued an opinion allowing the Applicant to have a probationary license on May 19, 2009. The Applicant is on probation in Nebraska for two years. The order requires the Applicant to do the following:

- 1) Abstain from the use of controlled substances, unless prescribed for the Applicant, abstain from the use of alcohol,
- 2) To submit to random urinalysis, report the use of any controlled substances, prescription drugs or mood altering substances,
- 3) Begin and complete a chemical dependency program, comply with all aftercare treatment recommended,
- 4) Attend a minimum of 1 narcotics anonymous or alcoholics anonymous or other chemical dependency support group meetings per week,
- 5) Advise all personal treating physicians or other practitioners of her history of dependency and any and all medications,
- 6) Notify all employers of this action, submit quarterly reports,
- 7) No employment with home health or staffing agencies, work only under supervision of an RN;
- 8) No access to controlled substances for the first active year of probation and limited access during the second year of active practice, etc.

CONCLUSIONS OF LAW

2. Pursuant to 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, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization, if the applicant, licensee or holder of a certificate of qualification or authorization is found to have violated the Nurse Practice Act. The above fact findings establish evidence that the applicant violated the following provisions of the Nurse Practice Act:

(a) 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.

(b) K.S.A. 65-1120(a)(2) "to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust..."

3. Applicant's conduct described herein violates the Kansas Nurse Practice Act.

4. K.S.A. 77-511(a)(2)(A) of the Kansas Administrative Procedure Act authorizes the use of summary proceedings by a state agency if the use of summary proceedings does not violate any provision of law and the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties.

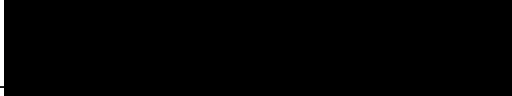
5. The role of the Kansas State Board of Nursing is to protect citizens of Kansas.

IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF NURSING THAT

1. Applicant's endorsement application to practice nursing in the state of Kansas is denied.

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, this Summary Order becomes effective as a final order, without further notice, upon the expiration of the time for requesting a hearing.

Pursuant to K.S.A. 77-531, if the Summary Order is served by mail, three days are added to the time limits set out above.


Janet Jacobs, LPN
Investigative Committee, Chair
Kansas State Board of Nursing

CERTIFICATE OF SERVICE

I certify that on the 15th day of September, 2009, 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:

Erin N. Schwing
115 West O Street
McCook, Nebraska 69001


Alma A. Heckler, #11555
Assistant Attorney General