

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

FILED

AUG 29 2011

KSBN

IN THE MATTER OF
CARY D. MYERS
License No. applicant

Case No. 11-1048-0

SUMMARY ORDER

Now this 29th day of August, 2011, 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 deny the endorsement RN application of Cary D. Myers by way of Summary Order as provided by K.S.A. 77-537.

FINDINGS OF FACT

1. Applicant submitted an endorsement RN application on 7/14/2011 to practice nursing in the state of Kansas. The Board has jurisdiction over the Applicant and the subject matter of this action.
2. Applicant's address of record is 626 W. 26th St., Sioux Falls SD 57105.
3. On or about 7/14/2011, the Board received Applicant's endorsement RN application to practice nursing in the state of Kansas.
4. Review of the Application and other information gathered by the Board revealed the following information upon which this action is based.
5. Per Applicant's application, he was employed as a nurse with DakotAbilities, Sioux Falls South Dakota, from 09/2008 until 04/2010.
6. On or about 9/2/2010, a complaint was filed against the Applicant in the Circuit Court, Second Judicial Circuit, State of South Dakota, County of Minnehaha. The complaint, case number CIV 10-3304, asked the Court to enter a temporary restraining order ex parte pursuant to SDCL 15-6-65 and SDCL Ch. 21-8. The complaint alleged that:
 - a. Defendant's employment relationship with DakotAbilities ended effective April 16, 2010.
 - b. Following Defendant's termination, Defendant has visited clients of more than one of DakotAbilities' residential units for developmentally disabled adults.
 - c. On or about June 8, 2010, Defendant was seen at DakotAbilities' Valley location where he visited at least one female developmentally disabled adult who is a client of DakotAbilities.
 - d. Following Defendant's visit to the Valley location on or about June 8, 2010, Defendant was sent a letter, dated June 17, 2010, from Heather Springer, legal counsel for DakotAbilities, wherein Defendant was asked to no longer come to

- the premises of DakotAbilities and/or have any contact with DakotAbilities' employees during working hours or with DakotAbilities' clientele.
- e. Following receipt of the June 17, 2010 letter, Defendant has visited DakotAbilities' locations on at least two occasions:
 - i. Sometime during the weekend of July 17-18, 2010, Defendant visited DakotAbilities' Sycamore location.
 - ii. On August 29, 2010, Defendant returned to DakotAbilities' Sycamore location to visit M.G., a female DakotAbilities client. Defendant was observed rubbing the back of M.G., underneath M.G.'s shirt. Defendant was also observed holding M.G.'s hand and repeatedly placing M.G.'s hand on Defendant's own knee. Defendant spoke of drinking alcohol and stated, "[M.G.], you would leave me if you saw my brother," and "you won't leave me [M.G.]." Before leaving M.G.'s apartment, Defendant told M.G. Defendant would be back and he wanted to give M.G. a ride in Defendant's new car. Defendant also said he would continue to email M.G. This was the first occasion in which DakotAbilities learned that Defendant was contacting residents electronically, via email.
7. On or about 9/27/2010, in case number CIV 10-3304, the court entered an Order For Protection, whereby Applicant was enjoined and restrained from:
 - a. Directly or indirectly communicating with any clients or residential guests of DakotAbilities by any means, including, but expressly not limited to, electronic communication, including email and text messaging.
 - b. Willfully, maliciously, or repeatedly contacting or harassing the officers, employees or clients of DakotAbilities.
 - c. Entering or remaining in an area within 1,000 feet of any property or facility owned or operated by DakotAbilities
 8. On or about 7/18/2011, an Order Dismissing Order Of Protection was entered in case number CIV 10-3304.
 9. On or about 8/11/2011, in a phone call, Applicant indicated to Board investigator Betty Stewart that he wished to withdraw his RN endorsement application as he decided to stay in South Dakota.

CONCLUSIONS OF LAW

1. 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 does not meet the requirements of the Nurse Practice Act as set out in the following provisions:
 - a. K.S.A. 65-1120(a)(3): to have committed an act of professional incompetency as defined in subsection (e), 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.

POLICY STATEMENT

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

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

1. **Applicant's endorsement RN 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 29th day of August, 2011, 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:

Cary Myers
626 W. 26th St.
Sioux Falls SD 57105



Danielle Sanger #24587
Assistant Attorney General