

BEFORE THE KANSAS STATE BOARD OF NURSING

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

FILED

JUN 23 2010

KSBN

**IN THE MATTER OF
JOSHUA J. VOLM
License No.**

Case No. 09-1020-0

CONSENT AGREEMENT AND FINAL ORDER

NOW ON THIS 24th day of June, 2010, the Kansas State Board of Nursing, represented by Assistant Attorney General, Alma A. Heckler, and the Respondent, Joshua J. Volm, by and through counsel Theodore J. Lickteig, 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 not licensed to practice nursing in Kansas. 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 6630 Park Street, Shawnee, KS 66216.
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. Respondent acknowledges that this agreement will be an open record pursuant to the Kansas Open Records Act, K.S.A 45-215 et seq., and may be published or disseminated notwithstanding any state or federal law otherwise restricting public access to, or dissemination of, any personal or health care information, or any information or records of substance abuse evaluation and/or treatment contained herein.
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 5/27/2010 to take disciplinary action against the licensee's license and alleged the following:

(a) On or about September 25, 2009, the Board received applicant's application for endorsement to practice nursing in the state of Kansas. Applicant is licensed to practice as a registered nurse in Utah.

(b) By letter dated September 29, 2009, staff notified applicant that the application was incomplete and that applicant should send a new application. On October 5, 2009, the Board received applicant's second application, and based on what the applicant reported, a temporary permit was issued October 9, 2009.

(c) Applicant answered "no" to question number 9 on both applications; "Have you ever been convicted of a misdemeanor listed in KAR 60-3-113?" Question number 10 of the application asks, "Have you ever been convicted of a felony?" On both applications, applicant marked "No."

(d) Question number 11 of the application asks, "Are criminal proceedings pending in any federal or state court?" On both applications, applicant marked "No."

(e) On a "Waiver Agreement and Statement" dated October 3, 2009, and received by the Board on October 5, 2009, applicant authorized a fingerprint based criminal history record check and disclosed a conviction of "Issuing Bad Check" in Provo, Utah, District Court.

(f) On October 14, 2009, a search of criminal history records revealed three arrests in Utah in June 2009. On June 4, 2009, applicant was arrested for contempt of court (warrant)

and open container. On June 14, 2009, applicant was arrested for intoxication and criminal mischief. On June 24, 2009, applicant was booked for "Fraud-Issuing Bad Check."

(g) By letter of October 29, 2009, the Board's investigator requested Applicant provide certified copies of court documents pertaining to the arrests and conviction, a letter of explanation for each, and a copy of his driving record due to the alcohol related arrests. On February 6, 2010, applicant's temporary permit expired.

(h) On February 11, 2010, the Board received a copy of a Judgment and Order on a conviction of criminal mischief and unsigned letters from applicant addressing the arrests. On February 12, 2010, the Board's investigator acknowledged receipt of the letters and document and advised applicant in a letter certified documents would be required.

(i) The Board subsequently received the requested documents and a copy of the applicant's driving record. The documents showed the following convictions and pending criminal charges:

1. On May 5, 2009, applicant was convicted of transporting an open container of alcohol in a vehicle, a class C misdemeanor, in Springville City Justice Court, Utah County, State of Utah, Case Number 09-1954.

2. In Springville City Justice Court case number 09-1344, applicant was charged on March 26, 2009, with domestic violence assault and child abuse (domestic violence in the presence of a child). On May 5, 2009, applicant entered a plea in abeyance, meaning that he pled guilty to an amended charge of assault with the charge to be dismissed upon successful completion of 12-month probation. Conditions included intake through "DCFS" for evaluation and treatment if recommended.

3. On May 8, 2009, the court issued an order to show cause for failure to comply with a court order in case no. 09-1344, and a bench warrant issued on May 20, 2009. Applicant was arrested on June 4, 2009, on the warrant and also charged with transporting an open container alcohol in his vehicle.

4. By July 16, 2009, applicant was in counseling following the completed DCFS intake. By August 27, 2009, Applicant was noncompliant and a show cause order was issued.

5. On November 2, 2009, Applicant appeared in court and provided information about a counseling program in Kansas, and the court ordered it be completed within three months. According to a certified copy of the appearance docket from Springville City Justice Court, an order to show cause was mailed January 22, 2010, and a bench warrant was issued on February 12, 2010, for failure to comply with the November 2, 2009 court order.

6. Applicant did not provide a letter of explanation of the assault charge or the status of the pending case.

7. Applicant was charged and convicted of issuing a bad check on 7/22/09 and ordered to pay restitution, fined and ordered to do 120 hours of community service in the 4th District Court, Provo, Utah County, Utah.

8. Applicant pled guilty to an amended charge of criminal mischief on or about 9/23/09 in the District Court of Sanpete County, Utah.

9. Applicant pled guilty to an amended charge of denied Driver's License and open container on 5/5/09 in Springville City Justice Court, Utah.

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)(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 3: 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..."

Count 4: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(t), failing to furnish the board, its investigators, or its representatives with any information legally requested by the board.

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)(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 3: 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..."

Count 4: K.S.A. 65-1120(a)(6), unprofessional conduct by K.A.R. 60-3-110(t), failing to furnish the board, its investigators, or its representatives with any information legally requested by the board.

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. Upon the parties entering into this Consent Agreement, the respondent shall provide the agency with an update of the status of the Springville City Justice Court Case Number 09-1344 and a letter of explanation. After receipt of the status report and letter of explanation, and with the respondent having met all statutory requirements for endorsement of respondent's Kansas Nursing license, the respondent's application for endorsement of respondent's Kansas Nursing license will be granted.

14. 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.

15. 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.

16. 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 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) Respondent will participate in and complete the reasonable recommendations and requirements of the Kansas Nurses Assistance Program (KNAP); sign releases of information necessary for KNAP to evaluate and monitor respondent and for KNAP to report information to the board. Respondent will be deemed to have completed the KNAP program when KNAP issues written notification that respondent has completed the program.

Respondent has indicated he will also sign releases so that Darcy Pratt (Nursing License number 13-78836-112) will have access to Respondent's KNAP records. Respondent must enroll in the KNAP program within thirty (30) days of entering this agreement. Noncompliance with KNAP is a violation of this agreement.

(c) Respondent must submit to random drug screens **as determined** or selected by KNAP. The costs of the drug screens will be paid by the respondent. Respondent agrees that a Positive Drug Screen is a violation of this agreement.

(d) Respondent shall immediately notify the Legal Division of any use of alcohol, if **prohibited by KNAP**, or controlled substances, or any violation of this Consent Agreement and Final Order.

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

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

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

(i) 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.

(j) Licensee shall not practice without onsite supervision by a qualified nurse, for a period of one year from the date of nursing employment. The parties agree that this provision prohibits the Licensee from practicing nursing unless the supervising nurse is present within the same facility as the Licensee and the supervising nurse is available for periodic inspection of Licensee's nursing tasks.

(k) Respondent shall not seek or accept employment with a nursing registry, a temporary nursing service or agency, a home health care service or agency, or as a private duty nurse without prior written consent of the Board.

(l) Respondent will not violate his probation in Springville City, Utah, Justice Court Case Number 09-1344. Respondent agrees that Springville City, Utah probation/community corrections officer will report violations to the Board.

(m) Respondent agrees to sign any release(s) necessary so that all reports, tests, or evaluations ordered as part of Respondent's probation with Springville City, Utah, may be forwarded to the Kansas State Board of Nursing to the attention of the Board's Legal Division. In addition, upon request the respondent will provide the Board with any release necessary to confirm that respondent remains compliant with his probation agreement. The revocation of any release will be a breach of this Consent Agreement. Said records shall not be kept as public records.

(n) Respondent will submit reports from the respondent'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 respondent securing employment that utilizes his or her nursing license, respondent is to mail to the Kansas State Board of Nursing a statement indicating that respondent has not yet secured employment which utilizes respondent's nursing license. This statement is due by the 10th day of each month beginning the next month after signing this consent agreement.

Once respondent is employed in a position that utilizes his or her nursing license, or if respondent 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 respondent has caused the submission of four (4) separate nursing performance reports.

The report shall be prepared and signed by respondent's immediate supervisor or by an R.N. who evaluates respondent'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) Respondent's name, address, telephone number, license number.
- (5) A short explanation of the respondent'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.

Respondent may choose to use a Nursing Performance Report Form which can be obtained from the KSBN website. (www.ksbn.org)

(o) On or about 7/1/2007, K.S.A. 65-1117(c)(1)(B) became effective. K.S.A. 65-1117(c)(1)(B) requires nurses licensed in the state of Kansas to report felony convictions and certain misdemeanor convictions to the KSBN within 30 days from the date the conviction becomes final.

(p) 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.

17. 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.

18. 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.

19. 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.

20. Respondent acknowledges and agrees that if any action based on failure to meet the conditions and requirements of this Consent Agreement is filed during the term of this Consent Agreement and Final Order, or within 30 days after the expiration date, the conditions of this Consent Agreement and Final Order shall continue in effect until the Board or a hearing/presiding officer designated pursuant to K.S.A. 77-514 and K.S.A. 77-526, rules on the action.

21. Respondent acknowledges and agrees that upon a first finding of Respondent not complying with any of 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. Respondent acknowledges and agrees that all conditions and requirements of this Consent Agreement remain in effect during the period of suspension.

22. Respondent acknowledges and agrees that upon a second or subsequent finding of Respondent not complying with any of 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. Respondent acknowledges and agrees that all conditions and requirements of this Consent Agreement remain in effect during the period of suspension.

23. Respondent acknowledges and agrees that upon the Stay of Suspension being lifted due to a finding of non-compliance with any of the conditions or requirements of 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 and has remained in compliance during the period of suspension, with all

conditions and requirements of this Consent Agreement. Upon the Respondent providing said written verification the suspension will again be stayed.

24. 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.

25. 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. This Agreement is a public record and will be reported to national disciplinary data banks.

26. 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.

27. 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. The effective date of this Consent Agreement and Final Order is the date shown on the certificate of service.

28. 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.

[Redacted]

Joshua J. Volm must sign before a Notary Public.

Joshua J. Volm
Respondent
6630 Park Street
Shawnee, KS 66216

[Redacted]

Theodore J. Lickteig
Mark I Building, Suite 301
10100 West 87th Street
Overland Park, Kansas 66212
Counsel for Respondent

[Redacted]

Alma A. Heckler, #11555
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[Redacted]

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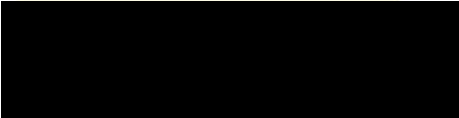

Sandra L. Sharon, Presiding Officer

CERTIFICATE OF SERVICE

On the 24th day of June, 2010, I mailed a copy of this CONSENT AGREEMENT AND FINAL ORDER to:

Joshua J. Volm
6630 Park Street
Shawnee, KS 66216

Theodore J. Lickteig
Mark I Building, Suite 301
10100 West 87th Street
Overland Park, Kansas 66212
Counsel for Respondent



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