

**BEFORE THE KANSAS STATE BOARD OF NURSING
LONDON STATE OFFICE BUILDING
900 S.W. JACKSON, ROOM 551-S
TOPEKA, KANSAS 66612-1230**

IN THE MATTER OF:)
)
) **CASE NO. 95-0283-6**
TAMMY McINTIER)
LICENSE NO. 13-070550-071)

INITIAL ORDER

Now on this 13th Day of March, 1996, the above-captioned matter comes on the Scheduling Docket before Terry E. Beck, the Board's designated Hearing Officer, on the Petition filed with the Board. The Petitioner appears by and through Assistant Attorney General Mark S. Braun, Disciplinary Counsel for the Board. The Respondent, Tammy McIntier, appears in person without counsel.

The Hearing Officer informs the Respondent that the Petitioner filed a Petition with the Board alleging that in some respect, she has violated the Kansas Nurse Practice Act. The Hearing Officer inquires if the Respondent has received a copy of the Petition. Respondent states that she has. The Hearing Officer inquires whether the Respondent understands what the Petition says. The Respondent states she does.

The Hearing Officer informs the Respondent she has the option of admitting or denying the allegations in the Petition. If she denies them, the matter will be set for

hearing. The Board's counsel would present evidence and attempt to prove the allegations and the Respondent would have the opportunity to cross-examine Petitioner's witnesses, as well as the opportunity to present evidence on her behalf. After the hearing, the Hearing Officer would decide whether or not the allegations have been proven, and make the appropriate finding. If the finding is that the act has been violated, the Hearing Officer would then have the authority to take some disciplinary action against her license. Respondent is also advised that if she admits to the allegations, then the appropriate finding would be made and the Hearing Officer would have the authority to impose some disciplinary action. The Hearing Officer inquires whether the Respondent understands her options in this matter. Respondent states that she does understand.

The Hearing Officer advises the Respondent that she has the right to be represented by an attorney in these proceedings, if she chooses to obtain one, and that this matter could be conducted another day to give her the opportunity to have her attorney present. Respondent states she is aware of this right, but she is waiving that right and wishes to proceed without counsel.

The Hearing Officer states that the Petition states that she is a registered nurse, and that she violated the act by not being truthful in her application by misstating that the stated conviction was a misdemeanor, when in fact, it was a felony, and that she also failed to disclose another conviction. Respondent is informed that the Petitioner has alleged that such statements constitute fraud and deceit in the procurement or attempt to procure a license to practice nursing in Kansas. The Hearing Officer inquires whether the

Respondent admits or denies the allegations. Respondent admits that the information on the application was incorrect, but denies the intent to commit fraud and deceit.

Petitioner's counsel states that there is one preliminary matter. Notice of Proceedings in this matter states that this date is for a scheduling docket and the Hearing is to be in April, 1996 as stated in the Notice. Petitioner and Respondent spoke by telephone March 5, 1996. In that telephone conversation, the Respondent stated she wanted to get this matter concluded on March 13, 1996. The Petitioner states the Respondent was informed that the time was reserved for scheduling, but that if she was willing to waive the formal notice requirement, the matter could be scheduled for a March 13, 1996 hearing after the other scheduling matters have been handled. Further, Petitioner informs the Hearing Officer that this was confirmed by a March 5, 1996 letter to the Respondent. Therefore, Respondent has waived the previously scheduled hearing date and is prepared to conduct the hearing this March 13, 1996 date. The Hearing Officer informs the Respondent of her right to the hearing as scheduled, with more time to prepare, or she may waive the right and proceed to hearing now. The Respondent states she wants to go ahead with the hearing today.

The Parties proceed and present their cases. Petitioner offers the following exhibits: No. 1, the Respondent's original application for licensure as an RN, signed by the Respondent April 19, 1994; Exhibit No. 2, the Respondent's renewal application filed in July, 1995, signed by the Respondent June 22, 1995; Exhibit No. 3, a certified copy of a Complaint and a certified copy of an Order of Probation in Bourbon County District Court case No. 88 CR 390, for the class C felony, aggravated battery; and Exhibit No. 4, a

certified copy of Misdemeanor Journal Entry in Linn County District Court case no. 90 CR 40, for the misdemeanor, child endangerment. The Petitioner's Exhibits are admitted without objection.

Petitioner also calls the Respondent, who is sworn in as a witness for the Petitioner. Petitioner rests.

Respondent is given the opportunity to present her case. Respondent submits Respondent's Exhibit No. 1, a March 11, 1996 letter to "To whom it may concern," from Cathy Sallee, an LPN. Respondent testifies on her own behalf. Respondent's Exhibit No. 1 is admitted without objection.

The Hearing Officer asks the Respondent several questions regarding the evidence, primarily her convictions. When finished, the Hearing Officer gives both sides the opportunity to ask any further questions or make further statements. Both sides decline. The Hearing Officer invites both sides to present final argument.

Both sides make final statement

Based upon the testimony and evidence presented, the Hearing Officer makes the following findings of fact, conclusions of law, and issues an order.

FINDINGS OF FACT

1. Respondent submitted her initial application for licensure as a registered professional nurse (RN) in Kansas during the Spring of 1994. To question No. 9, asking applicants about any conviction history, Respondent marked "Yes," and indicated she had a Class C misdemeanor conviction.

2. Respondent submitted her renewal application in late June or early July, 1995. To question 9 on that application regarding criminal convictions, Respondent indicated that the information had already been provided.

3. Exhibit No. 3 indicates a felony conviction of aggravated battery in Bourbon County District Court. That conviction was reported as a class c misdemeanor.

4. Exhibit No. 4 indicates a misdemeanor conviction of child endangerment in Linn County District Court. That conviction was never reported to the Board.

5. Both applications contain an affidavit, in which the applicant is swearing under oath that all the information in the application is true in every respect.

6. Convictions are not incidents that are likely to be forgotten.

7. The Respondent stated the convictions were prior to being licensed by this Board. Had the information requested been truthfully provided at the time of application and/or renewal, the board would have had the opportunity to more closely scrutinize the Respondent to determine whether to grant licensure, and could have been an impediment to licensure.

8. Truth in documentation and attention to detail in documentation and record keeping are hallmarks in the practice nursing.

9. The Board has the right and duty to know who its nurses are. An applicant's background is part of the protection of the public duty so basic to the reasons for the existence of the Board.

10. The Respondent used fraud and deceit in procuring her initial license and her renewal license by not being truthful in the initial and renewal applications.

11. The Notice of Hearing and Petition in this matter were sent to the Respondent at her last address known to the board.

12. Respondent was informed of her rights to an attorney and a hearing in this matter, and knowingly waived that right and chose to appear on her own behalf.

CONCLUSIONS OF LAW

1. The Board and this Hearing Officer have jurisdiction to hear this matter pursuant to the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., and the Kansas Administrative Procedures Act, K.S.A. 77- 501 et seq. Respondent stipulates to such jurisdiction.

2. The Board, and by designation the Hearing Officer, have the authority, after a finding of a violation of the Nurse Practice Act, to impose any of the disciplinary sanctions identified in K.S.A. 65-1120 against the Respondent's license to practice nursing in the state of Kansas, pursuant to the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., and the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq.

3. K.S.A. 65-1120(b) requires these proceedings of the Board to be conducted pursuant to the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq.

4. Notice of these proceedings and service of the notices in these proceedings were done in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501 et seq., and are therefore proper.

5. Based on Petitioner's exhibits, the Respondent's exhibits, and the Respondent's statements, Respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., specifically that she was fraudulent and deceitful in procuring a attempting to procure a

license by not being truthful on the applications about two criminal convictions. Such action constitutes a violation of the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., specifically K.S.A. 65-1120(a)(1).

6. Respondent violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., as alleged in the Petition.

7. The Respondent knowingly and understandingly waived her rights to an attorney and a hearing in this matter.

ORDER

Based on the above findings of fact and conclusions of law, the Hearing Officer determines that disciplinary action must take some action. **IT IS THEREFORE ORDERED** pursuant to the disciplinary remedies available under K.S.A. 65-1120(a), Respondent's license is hereby suspended for a period of one year, or until all conditions of this order are met, from the effective date of this order. The suspension is stayed, allowing the Respondent to practice nursing under the following conditions:

1. There are to be no further violations or convictions of federal, state, or municipal laws, statutes or ordinances;

2. For this one year period, the Respondent's employer shall submit quarterly reports regarding the Respondent's nursing practice, patient care, and overall performance. Said reports are to be prepared and submitted by the Respondent's closes nursing supervisor to the Board's Practice Specialist. The first report shall be submitted on or before July 20, 1996. Subsequent reports are to be submitted October 20, 1996; January 20, 1997; and April 20, 1997.

3. Respondent is assessed an administrative fine of one hundred (\$100.00) dollars to be paid within the one-year period. Said fine is to be paid by cashier's check or money order payable to the State of Kansas, but delivered to the Board office. The Board shall deposit the fine in the State's general fund.

4. Respondent is assessed the costs of these proceedings in the amount of thirty-five (\$35.00) dollars. Said costs are to be paid within the one-year period. Said costs are to be paid by a cashier's check or money order payable to the Board of Nursing, and delivered to the board office.

IT IS SO ORDERED.



Terry E. Beck
Hearing Officer

Prepared and Submitted by:



Mark S. Braun
Disciplinary Counsel
Assistant Attorney General
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Topeka, Kansas 66612-1230
Telephone No. (913) 296-8401

NOTICE REGARDING RELIEF FROM THIS ORDER
STATEMENT OF APPEAL RIGHTS

This is an Initial Order. The parties to whom this Initial Order is issued may file a petition for review with the Agency Head within fifteen (15) days after service of this order. The petition for review must state the specific grounds upon which relief is requested. Unless a later date is stated within the Initial Order, a stay is granted, or the order is reviewed, an Initial Order shall become a final order without further notice or proceedings thirty (30) days after the date of service as indicated by the attached certificate of service.

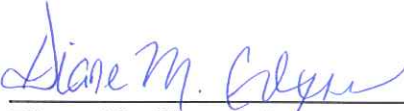
CERTIFICATE OF SERVICE

This is to certify that on the 29th day of May, 1996, I deposited a true and correct copy of the Initial Order in the United States Mail, first class mail, postage prepaid to the following:

Tammy McIntier
1518 W. Third Street
Chanute, Ks. 66720-1969

and by hand delivery to:

Mark S. Braun
900 S.W. Jackson Rm 551-S
Topeka, Kansas 66612-1230



Diane M. Glynn, J.D., R.N.
Practice Specialist