

## BEFORE THE KANSAS STATE BOARD OF NURSING

IN THE MATTER OF  
DENNIS E. CLARK  
License No. 13-86682-081

Case No. 14-952-7  
OAH No. 15BN0073

**EMERGENCY ORDER**

NOW on this 5th day of December, 2014, the above-captioned matter comes on for an emergency proceeding before the Kansas State Board of Nursing (Board/Petitioner) pursuant to K.S.A. 77-536. Sandra L. Sharon was duly appointed Administrative Law Judge/Presiding Officer pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing, appears by Assistant Attorney General Alma A. Heckler, Disciplinary Counsel for the Board. The Respondent, Dennis E. Clark, appears through his attorneys, Diane L. Bellquist and Christopher M. Joseph. The only witness at the emergency proceeding was Karen Peschka.

Findings of Fact

1. On or about November 14, 2014, the Board filed a Petition for Emergency Proceedings against Dennis E. Clark, who is licensed by the Board to practice nursing in the State of Kansas.
2. The Petition alleges three incidents of inappropriate touching in a sexual manner of patients while the licensee was performing duties as a nurse.
3. The Petition alleges the licensee was charged with Aggravated Sexual Battery, a Level 5 felony, in the District Court of Wyandotte County on or about October 15, 2014.
4. The licensee is currently incarcerated related to these charges. He has a \$75,000.00 bond. He may be released at any time upon making the bond.
5. The Board's Exhibit 1 is a First Amended Information filed in the District County of Wyandotte County in the State of Kansas. Exhibit 2 is a Second Amended Information filed in the District County of Wyandotte County in the State of Kansas.
6. Currently, the licensee is charged with two counts of rape and two counts of aggravated sexual battery.

Conclusions of Law

1. A state agency may use an emergency proceeding in a situation involving an immediate danger to the public, health, safety or welfare requiring immediate state agency action. K.S.A. 77-536(a).

2. The state may take only such action as necessary to prevent or avoid the immediate danger to the public health, safety or welfare . K.S.A. 77-536(b).
3. As allowed by statute, the state agency record at the emergency proceeding did not constitute the exclusive basis for the state agency action in the emergency proceeding. K.S.A. 77-536(g).
4. The state shall proceed as quickly as feasible to complete any proceedings that may be required if the matter did not justify the use of the emergency proceeding. K.S.A. 77-536(e).
5. The Board has the authority to conduct hearings upon charges for limitation, suspension or revocation of a license to practice nursing in the State of Kansas. K.S.A. 74-1106(c)(4).
6. The Board has the grounds to discipline a licensee by revocation, suspension, public or private censure if the licensee is found to be guilty of a violation of the Kansas Nurse Practice Act. K.S.A. 65-1120(a).
7. It is a violation of the Kansas Nurse Practice Act to be guilty of unprofessional conduct by the commission of any act of sexual abuse, sexual misconduct , or sexual exploitation related to the licensee's practice. K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(f).

#### Discussion

1. An administrative proceeding was held on December 5, 2014 addressing the Board's allegation of the licensee's sexual misconduct while performing duties as a nurse.
2. While the respondent is currently incarcerated, he has a bond of \$75,000.00. He could make bond at any time and could be released.
3. Pursuant to K.S.A. 77-536, the State may take any action necessary to prevent or avoid the imminent danger to public health, safety or welfare that it deems justified.
4. The Board has provided evidence that the respondent is facing two counts of rape and two counts of aggravated sexual battery related to the Board's petition. This information is allowed to be considered, pursuant to K.S.A. 77-536(g).
5. If the respondent is released from jail and his license is not suspended, he is free to practice nursing. Because of the serious nature of the Board's allegations and the criminal charges pending against the respondent, the Board is justified in taking action immediately suspending the respondent's license to practice nursing.
6. The Board has requested that the respondent's license be immediately suspended and continue to be suspended until the criminal charges are resolved.

7. The petition for an emergency suspension is granted pursuant to K.S.A. 77-536, K.S.A. 74-1106(c)(4), K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(f). However, pursuant to K.S.A. 77-536(e), the Board shall proceed with this matter as quickly as feasible to complete the proceeding as would be required if the matter did not justify the use of this emergency proceeding.

#### Conclusion

1. The Board is charged with matters relating to public health, safety and welfare. Allowing the licensee to continue to practice nursing under the severity of the accusations against him is a violation of the public health, safety and welfare concerns.
3. For the reasons discussed above, there are grounds for the licensee's immediate, temporary suspension of Mr. Clark's license to practice nursing in the State of Kansas is granted.
4. The Board is directed to proceed with this matter as quickly as feasible as would be required if it did not justify the use of an emergency suspension.
5. This Order is effective when rendered, December 5, 2014.

#### Appeal Rights and Other Administrative Relief

Notice of this order, issued orally and in writing on December 5, 2014, constitutes service of this order. Any appeal of this order shall be made pursuant to the Act for Judicial Review and Civil Enforcement of Agency Actions.

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Sandra L. Sharon  
Administrative Law Judge/Presiding Officer  
Office of Administrative Hearings  
1020 S. Kansas Ave.  
Topeka, KS 66612  
Telephone: 785-296-2433

CERTIFICATE OF SERVICE

On Dec. 5, 2014, I mailed this original document through State Building  
Mail to:

Mary Blubaugh  
Executive Administrator  
Kansas State Board of Nursing  
900 SW Jackson, LSOB, Ste. 1051  
Topeka, KS 66612  
Telephone: 785-296-4325

and a copy of this document was given to Betty Stewart at the Office of Administrative  
Hearings for:

Alma Heckler  
Assistant Attorney General  
Disciplinary Counsel for the Kansas State Board of Nursing  
900 SW Jackson, LSOB, Ste. 1051  
Topeka, KS 66612  
Telephone: 785-296-4325

and a copy of this document through first class mail to:

Diane L. Bellquist  
Christopher M. Joseph  
Joseph, Hollander & Craft, LLC  
1508 SW Topeka Blvd.  
Topeka, KS 66612

Dennis E. Clark  
112 West McDonald St.  
Edgerton, KS 66021

( )  
Staff Person

Office of Administrative Hearings