

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



From Helen Rice

IN THE MATTER OF: )  
 )  
BARTON CARNOALI )  
LICENSE NO. 13-050662-021)

CASE NO. 92-215-0



CONSENT AGREEMENT AND FINAL ORDER

COMES NOW the Petitioner, the Kansas State Board of Nursing, hereinafter referred to as the "Board", by and through Assistant Attorney General Mark S. Braun, and the Respondent, Barton L. Carnoali by and through his counsel, Terence A. Lober of Davis, Beall, McGuire & Thompson, Leavenworth, Kansas and respectfully request the Board, or its designee, to approve this Consent Agreement and Final Order as the resolution in this case. By entering into this Consent Agreement and Final Order, both parties waive their right to a full administrative hearing pursuant to K.S.A. 65-1120(b) and K.S.A. 77-523. This Consent Agreement and Final Order affects the Respondent's license to practice as a registered professional nurse (R.N.) in Kansas.

**AGREEMENT**

It is the intent and purpose of this Consent Agreement and Final Order to provide for settlement of all issues currently before the Board without the necessity of a formal hearing. Respondent, with the advice of counsel, knowingly and intelligently waives his right to a hearing on the issues currently before the Board relating to his license. The parties agree as follows:

1. Both parties to this Agreement acknowledge that the Board received information and conducted an investigation as to whether Respondent violated the Kansas Nurse Practice Act. Based on that investigation, there are reasonable grounds to believe Respondent violated the Act. Respondent's attorney was provided factual and documentary information regarding the specific counts stated in the Petition.

2. Respondent, with advice of counsel, acknowledges and understands that: he has the right to a full and fair hearing on the allegations made by the Petitioner. At such hearing, the Petitioner would be required to present witnesses and evidence in support of the allegations; he, through his counsel, has the opportunity to cross-examine Petitioner's witnesses; he, through counsel, has the opportunity to present witnesses and evidence on his behalf; the matter would be decided on the evidence presented and a decision would include findings of fact and conclusions of law; the right to seek reconsideration of any adverse order issued by the Board and the right to seek judicial review of any adverse Board order or decision. Respondent, with the advice of counsel, understands that by entering into this Consent Agreement and Final Order, he is waiving all of the above-mentioned rights.

3. In lieu of proceeding to a full hearing, Respondent stipulates to Counts I and II of the Petition. Respondent, with the advice of counsel, understands that by stipulating to those two counts, he is admitting to violations of the Kansas Nurse Practice Act.

4. Pursuant to the disciplinary remedies available in K.S.A. 65-1120, Respondent's license to practice as a registered professional nurse (R.N.) will be suspended for a period of three (3) years from the date the Consent Agreement and Final Order is approved by the Board, or its designee. Said suspension shall be stayed and Respondent may continue to practice nursing under the following conditions:

A. Respondent shall enroll and participate in the Kansas Nurse Assistance Program.

B. Respondent shall pay a fine of five hundred dollars (\$500.00). Half of that amount (\$250.00) shall be payable at the time Respondent submits the Consent Agreement and Final Order for approval to the Board or its designee. The other half of that amount (\$250.00) shall be payable within 120 days of the date this consent Agreement and Final Order is approved by the Board or its designee. Said fine shall be by money order made payable to the State of Kansas. The Board of Nursing shall deposit the fine payments in the State's General Fund and shall not be a part of the Board's funds.

C. Respondent shall notify the Board's Practice Specialist in writing within ten (10) days of any changes in residence, home telephone number, employment, or other work situations.

D. It shall be the Respondent's responsibility to see that the Board's Practice Specialist receives quarterly reports about Respondent's work from his closest supervising agent. The

reports shall include information about Respondent's attendance, quality of work performance and patient care.

E. Respondent shall obtain twelve (12) hours of continuing nursing education on the topic of charting, medication charting or the importance of accurate charting. Six of those hours are to be earned on or before February 28, 1995. The other six hours are to be earned on or before February 28, 1996. These twelve hours must be pre-approved by the Board's Practice Specialist. These 12 hours are in addition to, and not to be counted toward the thirty (30) hours of mandatory continuing nursing education for license renewals of 1995 and 1997. Proof of earning these twelve hours shall be submitted to the Board's Practice Specialist within ten (10) days of taking the classes.

F. Respondent's current license expires February 28, 1995. The re-issuance of his license shall be contingent upon this Agreement and Order remaining in effect until the three year period as previously identified.

5. By signing this Consent Agreement and Final Order, Respondent acknowledges he has read the entire document; that he has obtained counsel who advised him in this matter, and that he is satisfied with the representation in this matter and agrees to be bound by this document.

6. Should the Board, or its designee, modify or change the Consent Agreement and Final Order in any manner unsatisfactory to either party, either party may withdraw its consent and the matter will proceed to hearing. Further, if the Consent Agreement and

Final Order, as signed by the parties, is not acceptable to the Board, or its designee, neither party shall be bound to any representations made in this agreement, and any monies paid as a fine shall be returned to the Respondent

7. Respondent and his counsel acknowledge that they have received the factual and documentary information relating to the counts stated in the Petition. Respondent and his counsel further acknowledge that they have reviewed the Petition to be filed in this case and agree to waive formal notice of the filing of the Petition. Respondent and his counsel further understand that the Petition in this case will be simultaneously filed with this Consent Agreement and Final Order after Respondent and his counsel sign the Agreement. The parties to this Agreement and Order further agree that if any changes are made as stated in paragraph 6 of this Agreement, Respondent and his counsel shall receive notice of a hearing and will be provided sufficient time to prepare for the hearing.

#### FINDINGS OF FACT

1. Respondent is licensed to practice as a registered professional nurse (R.N.) in the State of Kansas, having been issued license number 13-050662-021, with an expiration date of 2/28/95.

2. The Board received in information and conducted an investigation into alleged violations of the Kansas Nurse Practice Act by the Respondent.

3. The Board found there were reasonable grounds to believe Respondent violated the Kansas Nurse Practice Act.

4. During the period of August 20, 1991 - October 25, 1991, Respondent falsified or altered patient and hospital records to cover up diversion of drugs, in violation of K.S.A. 65-1120(a)(6) as defined by K.A.R. 60-3-110(4).

5. During the period of August 20, 1991 - October 25, 1991, Respondent diverted 6,775 mg of Meperidine for his own use in violation of K.S.A. 65-1120(a)(6), as defined by K.A.R. 60-3-110(9).

6. There is no evidence Respondent denied any patients of their prescribed medication.

7. Respondent with the advice of counsel, stipulates to Counts I and II as contained in the Petition.

8. In lieu of proceeding to a full administrative hearing, the parties have agreed to enter into and be bound by this Consent Agreement and Final Order.

9. The Parties understand and acknowledge that, pursuant to K.S.A. 45-215 et seq., the signed original of the Consent Agreement and Final Order shall remain in the custody of the Board as a public record.

#### CONCLUSIONS OF LAW

1. The Kansas State Board of Nursing has jurisdiction over the Respondent and the subject matter pursuant to K.S.A. 65-1120.

2. Respondent is represented by counsel. Through the advice of counsel, Respondent is aware of his rights under the United

States and Kansas Constitutions, the Kansas Nurse Practice Act and the Kansas Administrative Procedures Act. Based on the knowledge of his rights and advice of counsel, Respondent has knowingly, intelligently, and voluntarily waived his rights and entered into this Consent Agreement and Final Order. In lieu of proceeding to a full administrative hearing, Respondent waives his rights to: an adjudicative administrative hearing in which the evidence and witnesses would be presented; cross-examination of those witnesses against him; the opportunity to present witnesses and evidence on his behalf; a decision by the Board or its designee based on the evidence; findings of facts and conclusions of law; the right to seek reconsideration by the Board of any adverse decision and the right to seek judicial review by a district court of any adverse decision by the Board.

3. Respondent has stipulated and admitted to Counts I and II contained in the Petition. Based on those stipulations, Respondent has violated the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq.

4. Respondent is guilty of unprofessional conduct in that during the time period of August 20, 1991 - October 25, 1991, he falsified a patient or hospital record in violation of K.S.A. 65-1120(a)(6), as defined by K.A.R. 60-3-110(a)(4).

5. Respondent is guilty of unprofessional conduct in that during the time period of August 20, 1991 - October 25, 1991, he diverted drugs of patients or agency in violation of K.S.A. 1120(a)(6), as defined by K.A.R. 60-3-110(a)(9).

6. The Petitioner and Respondent have entered into this Consent Agreement and Final Order which, when signed by both parties and the Board or its designee, will be binding on the parties and the Board.

7. Respondent and counsel have reviewed the Petition and waive formal notice of the filing of the Petition with the understanding that the Petition and Consent Agreement and Final Order will be filed with the Board simultaneously.

#### FINAL ORDER

WHEREFORE, based on the foregoing Agreement, Findings of Fact and Conclusions of Law, IT IS THEREFORE ORDERED that the following action will be taken against the Respondent's license to practice as a registered professional nurse (R.N.) in the State of Kansas:

Pursuant to the disciplinary remedies available in K.S.A. 65-1120, Respondent's license to practice as a registered professional nurse (R.N.) will be suspended for a period of three (3) years from the date this Consent Agreement and Final Order is approved by the Board or its designee. Said suspension shall be stayed and Respondent may continue to practice nursing under the following conditions:

1. Respondent shall enroll and participate in the Kansas Nurse Assistance Program.

2. Respondent shall pay a fine of five hundred dollars (\$500.00). Half of that amount (\$250.00) shall be payable at the time Respondent submits the Consent Agreement and Final Order for approval to the Board or its designee. The other half of that



amount (\$250.00) shall be payable within 120 days of the date this consent Agreement and Final Order is approved by the Board or its designee. Said fine shall be by money order made payable to the State of Kansas. The Board of Nursing shall deposit the fine payments in the State's General Fund and shall not be a part of the Board's funds.

3. Respondent shall notify the Board's Practice Specialist in writing within ten (10) days of any changes in residence, home telephone number, employment, or other work situations.

4. The Board's Practice Specialist shall receive quarterly reports about Respondent's work from his closest supervising agent. The reports shall include information about Respondent's attendance, quality of work performance and patient care.

5. Respondent shall obtain twelve (12) hours of continuing nursing education on the topic of charting, medication charting or the importance of accurate charting. Six of those hours are to be earned on or before February 28, 1995. The other six hours are to be earned on or before February 28, 1996. These twelve hours must be pre-approved by the Board's Practice Specialist. These 12 hours are in addition to, and not to be counted toward the thirty (30) hours of mandatory continuing nursing education for license renewals of 1995 and 1997. Proof of earning these twelve hours shall be submitted to the Board's Practice Specialist within ten (10) days of taking the classes.

6. Respondent's current license expires February 28, 1995. The re-issuance of his license shall be contingent upon this

Agreement and Order remaining in effect until the two year period as previously identified.

IN WITNESS WHEREOF, the parties hereunto execute this Consent Agreement and Final Order:

[Redacted Signature]  
Barton L. Carnoali  
Respondent

10 Feb 94  
DATE

[Redacted Signature]  
Terence A. Lober  
Attorney for the Respondent

10 Feb 94  
DATE

[Redacted Signature]  
MARK S. BRAUN  
Assistant Attorney General  
Board Disciplinary Counsel

3/03/94  
DATE

WHEREFORE, the provisions stated above are hereby adopted and made the Final Order of the Kansas State Board of Nursing.

IT IS SO ORDERED.

Dated this 7<sup>th</sup> day of March, 1994

[Redacted Signature]  
Board Representative or  
Board Designee