

BEFORE THE KANSAS STATE BOARD OF NURSING

FILED

APR 06 2015

IN THE MATTER OF
ANGELIA K. DAVIS
License No. 14-65010-121

Case No. 12-1861-0
OAH No. 15BN0072

KSBN

INITIAL ORDER

Now on this 20th day of March 2015, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing (Board/Petitioner). Sandra L. Sharon was duly appointed Presiding Officer/Administrative Law Judge pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing, appears by Assistant Attorney General Michael R. Fitzgibbons, Disciplinary Counsel for the Board. The Respondent, Angelia K. Davis, appears in person.

Findings of Fact

1. The respondent was licensed to practice nursing in the State of Kansas. By order dated December 14, 2011, her license was revoked.
2. The respondent filed a reinstatement application with the Board on November 30, 2012 and December 11, 2012. The reinstatement application was denied by an order dated May 30, 2013.
3. On September 24, 2014, the respondent again filed an application for reinstatement of her license to practice nursing in the State of Kansas. The Board petitions to deny the September 24, 2014 reinstatement application. The Board's position is the respondent has failed to show she has complied with *Vakas v. Kansas State Board of Healing Arts*, 248 Kan. 589 (1991); failed to report discipline on her license to practice nursing in the State of Texas; and she failed to report pending criminal charges in the District Court of Johnson County, Kansas.
4. On or about August 19, 2014, the respondent was charged with using a computer system for the purpose of obtaining money, property, services or any other thing of value by means of false or fraudulent pretense and theft from her employer. The theft was in the amount of approximately \$7,500.00. On the same date, the respondent's bond was set. The respondent had court dates for these charges on September 16, 2014 and September 25, 2014.
5. The respondent's criminal charges were not reported on her September 24, 2014 reinstatement application.
6. Since denial of her reinstatement application of May 30, 2013, the respondent has completed Cypress Recovery, Inc. and AppleCore Treatment Center rehabilitation

treatment programs. Between January 30, 2013 and February 18, 2015, the respondent has attended twelve-step meetings between one to nine meetings per month. The respondent has completed 60 hours of Continuing Nurse Education (CNE). The respondent also had character witnesses testify on her behalf. However, if asked, these witnesses were unaware of the fact that the respondent was guilty of felony theft.

7. When asked why the respondent failed to report her pending criminal charges on her September 24, 2014 application, she responded that she had not thought about it. However, the respondent had court appearances on September 16, 2014 and September 25, 2014.
8. The respondent testified that she believes she is rehabilitated, has good nursing skills, and should be able to practice nursing. She believes her criminal charges have no bearing on her ability to be a nurse.
9. The respondent surrendered her license to practice nursing in the State of Texas. This was considered an action of discipline by the Texas Board of Nursing.

Applicable Law

1. The Kansas State Board of Nursing is authorized to issue license, limit or deny a license to practice nursing in the State of Kansas. K.S.A. 74-1106(c).
2. When disciplinary measures have been taken against an individual's license, the degree to which the individual is rehabilitated is taken into consideration. Factors to be considered are found in *Vakas v. Kansas State Board of Healing Arts*, 248 Kan. 589 (1991). The factors are as follows:
 - The present moral fitness of the petitioner;
 - Demonstration of consciousness of the wrongful conduct and disrepute which the conduct has brought to the profession;
 - The extent of the petitioner's rehabilitation;
 - The nature and seriousness of the original misconduct;
 - The conduct subsequent to discipline;
 - The time elapsed since the original discipline;
 - The petitioner's character, maturity, and experience at the time of the original revocation;
 - The petitioner's present competence in medical skills.
3. Grounds for action against a license or an application for an nursing license include:
 - being guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing, K.S.A. 65-1120(a)(1); and
 - to have a license to practice nursing denied, revoked, limited, or suspended by another state. K.S.A. 65-1120(a)(8).

Discussion

1. On the respondent's September 24, 2014 reinstatement application at Question 12, where she was asked, "Are criminal proceedings pending in any Federal or State Court?" the respondent indicated "no". However, it is clear the respondent had been charged with two felonies in the District Court of Johnson County, Kansas in August 2014. She had court dates on September 16, 2014 and September 25, 2014. When questioned why she failed to report her pending criminal charges, the respondent answered that she did not think of it. This is conspicuously insincere. The respondent's criminal proceedings occurred so close to the date of her reinstatement application that for her to claim to "not think" of her pending criminal issues, when directly asked on the application, is not believable. If she truly did not think of them, even when directly asked, serious concerns are raised about the respondent's mental competency. The respondent's failure to answer honestly and correctly makes her guilty of fraud or deceit in attempting to procure a license to practice nursing. This is a violation of K.S.A. 65-1120(a)(1).
2. When the respondent was asked, "Has any license, certification or registration (nursing or other) ever been denied, revoked, suspended, limited, or disciplinary action taken by a licensing authority of any State, agency of the U.S. government, territory of the U.S. or Country?" the respondent failed to report her license to practice nursing in the State of Texas had been disciplined. The respondent is once again guilty of fraud or deceit in attempting to procure a license to practice nursing in the State of Kansas, a violation of K.S.A. 65-1120(a)(1).
3. As to the respondent's rehabilitation pursuant to *Vakas*, she has demonstrated drug and alcohol rehabilitation and that she has maintained nursing education.
4. However, the respondent is guilty of theft from an employer in excess of \$7,500.00. This draws serious question to two of the *Vakas* factors; the respondent's moral fitness; and her conduct subsequent to her license revocation. The respondent has failed to address her behavior of felony theft from her employer since her license revocation. Even though the respondent believes she has shown rehabilitation regarding her drug or alcohol issues and has maintained her nursing education, moral fitness is an area of concern when dealing with vulnerable people and the public trust.
5. Moral fitness deals with an individual's consciousness and general principles of what is right and of proper conduct. It is a standard of behavior of knowing and doing what is right. The Board is charged with applying this concept to individuals it licenses to serve the public. It seems moral fitness is a concept the respondent cannot apply to herself and her behavior. When performing as a nurse, an individual is continually called upon to serve people in vulnerable situations. In every encounter, a nurse must be trusted to employ the highest moral standards. The respondent has failed to meet the *Vakas* requirements of addressing her present moral fitness and evaluating her conduct subsequent to her original discipline.

Conclusion

1. The respondent has failed to show she is adequately rehabilitated pursuant to *Vakas*. The Board's petition to deny the respondent's reinstatement application is granted.
2. Cost of this action shall be assessed against the respondent in the amount of \$70.00 pursuant to K.S.A. 65-1120(d).

Appeal Rights and Other Administrative Relief

Pursuant to K.S.A. 77-527, either party may request a review of this initial order by filing a petition for review with the Kansas State Board of Nursing. A petition for review must be filed within 15 days from the date this initial order was served. Failure to timely request a review by the Kansas State Board of Nursing may preclude further judicial review. The petition for review shall be mailed or personally delivered to: Mary Blubaugh, Executive Director, Board of Nursing, Landon State Office Building, 900 SW Jackson, Suite 1051, Topeka, KS 66612-1230.

Pursuant to K.S.A. 77-531, if the initial order is served by mail, three days are added to the time limits set out above.

Pursuant to K.S.A. 77-530, if a request for review is not made in the time and manner stated above, this initial order shall become effective as a final order 30 days after service.



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 April 2, 2015, I mailed this original document through State Building
Mail to:

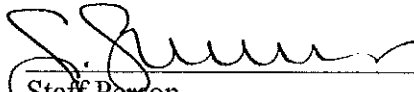
Mary Blubaugh
Executive Administrator
Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612
Telephone: 785-296-4325

and a copy of this document through State Building Mail to:

Michael R. Fitzgibbons
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:

Angelia Davis
19015 W. 159th Terrace
Olathe, KS 66062



Staff Person

Office of Administrative Hearings