

BEFORE THE KANSAS STATE BOARD OF NURSING

IN THE MATTER OF  
Michael Thomas Wagner

License No. 13-103831-021  
Case No. 17-089-8

OAH no. 18BN0020

FILED  
APR 04 2018  
KSBN

CONSENT AGREEMENT

The Kansas State Board of Nursing, represented by Assistant Attorney General Bryce D. Benedict, and the Respondent, Michael Wagner, represented by Michael Riling, hereby enter into this agreement and proffer evidence and the hearing officer adopts those recommendations and makes the following findings of fact and orders:

1. Respondent is licensed to practice nursing in the State of Kansas. The Kansas State Board of Nursing (KSBN) has jurisdiction over the Respondent and the subject matter of this action.
2. Respondent understands that he may be represented at respondent's expense by an attorney during these proceedings.
3. 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.
4. The respondent desires to surrender his nursing license.
5. By accepting the surrender of respondent's license, the Kansas State Board of Nursing is not waiving its right, should respondent ever file for reinstatement, to contest said application upon any of the allegations made in the above captioned cases.
6. 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. By entering into this Consent Agreement and consenting to the entry of a 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.

7. This agreement is a discipline and must be reported on any future renewal or reinstatement applications. 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.

8. 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.

9. It is therefore ordered that respondent's license to practice nursing in Kansas is revoked.

10. The effective date of this Consent Agreement is the date shown on the certificate of service.

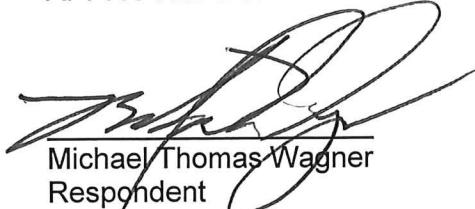
11. Disciplinary counsel shall serve a copy of this order upon respondent counsel.

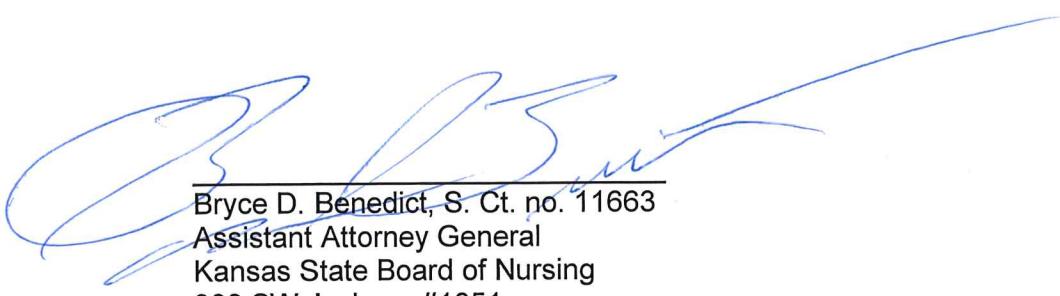
**IT IS SO ORDERED.**

Dated: 4.3.18

  
\_\_\_\_\_  
Sandra L. Sharon  
Administrative Law Judge

APPROVED BY:

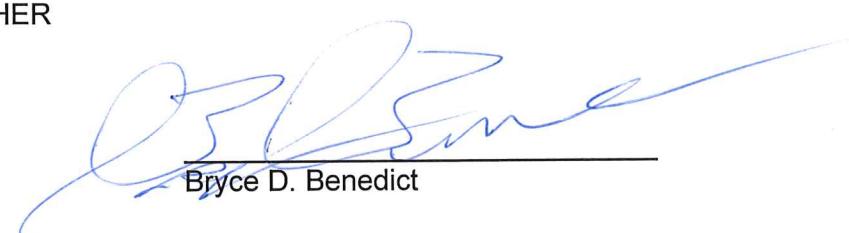
  
\_\_\_\_\_  
Michael Thomas Wagner  
Respondent  
  
  
\_\_\_\_\_  
Michael Riling  
Attorney for Respondent

  
Bryce D. Benedict, S. Ct. no. 11663  
Assistant Attorney General  
Kansas State Board of Nursing  
900 SW Jackson #1051  
Topeka, KS 66612

CERTIFICATE OF SERVICE

On the 4th day of April, 2018, I mailed a copy of this CONSENT  
AGREEMENT to:

Michael Riling  
RILING, BURKHEAD & NITCHER  
PO Box B  
Lawrence KS 66044-8996

  
Bryce D. Benedict

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PETITION

COMES NOW the petitioner, the Kansas State Board of Nursing, by and through Assistant Attorney General assigned to the Board, Bryce D. Benedict, and for its cause of action states that:

1. Respondent, Michael Wagner, is licensed to practice nursing in Kansas. The Board has jurisdiction over the respondent and the subject matter of this action.
2. Respondent address of record is 12550 246<sup>th</sup> Street, Lawrence KS 66044.
3. 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 et seq., and referred this matter for further proceedings.
4. 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(a) is established.

FACTS COMMON TO ALL COUNTS

5. The facts below are common to all counts:

(a) On November 8, 2016 while employed at Lawrence Memorial Hospital, the licensee's co-worker reported that he smelled of alcohol.

(b) Per the hospital's policy the licensee was then tested for the presence of alcohol. Two tests were both positive for alcohol in excess of .04%, and the licensee was terminated from employment.

(c) Licensee was subsequently evaluated upon a referral from KNAP, the impaired provider program of the Board. That evaluation recommended the KNAP one year monitoring program, abstention from alcohol, etc.

(d) Licensee has refused to enter the KNAP program.

### **VIOLATIONS**

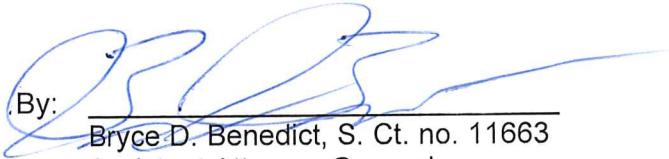
6. The above fact findings establish evidence that the Licensee violated the following provisions of the Kansas Nurse Practice Act:

K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110, to be guilty of unprofessional conduct as defined by rules and regulations of the board; to wit: failing to complete the requirements of the impaired provider program of the Board.

WHEREFORE, petitioner requests a finding that the respondent has violated the Nurse Practice Act, that respondent's license to practice nursing in Kansas be suspended indefinitely, and that costs of this action be assessed to the respondent.

Respectfully submitted,

Derek Schmidt  
Kansas Attorney General

By: 

Bryce D. Benedict, S. Ct. no. 11663  
Assistant Attorney General  
Kansas State Board of Nursing  
Landon State Office Building  
900 SW Jackson #1051  
Topeka, KS 66612  
785 296-4325  
[bryce.benedict@ksbn.state.ks.us](mailto:bryce.benedict@ksbn.state.ks.us)

### **CERTIFICATE OF SERVICE**

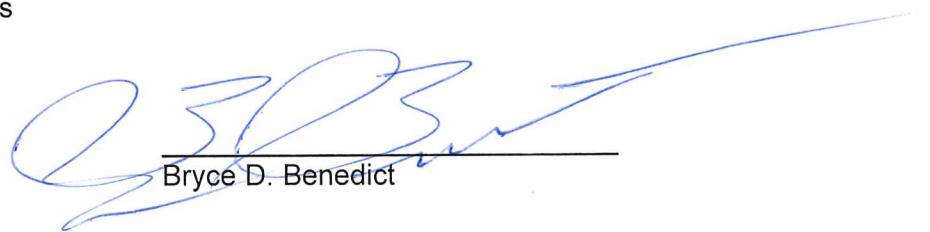
The undersigned certifies that he caused a copy of the above to be placed in the United States Mail, postage prepaid, on the 20th day of September, 2017, addressed to:

Michael Wagner  
12550 246<sup>th</sup> Street  
Lawrence KS 66044

Michael Riling  
RILING, BURKHEAD  
PO Box B  
Lawrence KS 66044-8996

and by building mail to:

Sandra L. Sharon  
Office of Administrative Hearings  
1020 S. Kansas Avenue  
Topeka, Kansas 66612



Bryce D. Benedict