I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

****

In the Matter of	§	AGREED ORDER
Registered Nurse License Number 1015016	§	
issued to ASHLEIGH RENE REES	§	
	§	

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of ASHLEIGH RENE REES, Registered Nurse License Number 1015016, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may be subject to discipline pursuant to Section 301.452(b)(8)&(10), Texas Occupations Code.

Respondent waived notice and hearing and agreed to the entry of this Agreed Order approved by Katherine A. Thomas, MN, RN, FAAN, Executive Director, on January 28, 2021.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license(s).

2. Respondent waived notice and hearing, and agreed to the entry of this Agreed Order.

3. Respondent's license to practice as a professional nurse in the State of Texas is in current status.

4. Respondent received an Associate Degree in Nursing from Butler Community College, El Dorado, Kansas, on December 1, 2002. Respondent was licensed to practice professional nursing in the State of Texas on September 25, 2020.

5. Respondent's nursing employment history is unknown

6. On or about August 20, 2020, Respondent submitted an electronic RN Endorsement Application for Graduates of U.S. Programs to the Texas Board of Nursing in which Respondent inappropriately answered "No" to the question:

"Have you ever had any disciplinary action on a nursing license or a privilege to practice in any state, country, or province?"

Respondent failed to disclose that, on or about December 26, 2013, Respondent's license to practice professional nursing in the State of Kansas was revoked through a Summary Order by the Kansas State Board of Nursing. A copy of the Summary Order dated December 26, 2013, is attached and incorporated, by reference, as part of this Order.

Respondent failed to disclose that, or about December 10, 2014, Respondent 's license to practice professional nursing in the State of Kansas was reinstated and suspended through an Initial Agreed Order by the Kansas State Board of Nursing. A copy of the Initial Agreed Order dated December 10, 2014, is attached and incorporated, by reference, as part of this Order.

Respondent failed to disclose that, or about July 11, 2019, Respondent's license to practice professional nursing in the State of Kansas was suspended through an Order by the Kansas State Board of Nursing. A copy of the Order dated July 11, 2019, is attached and incorporated, by reference, as part of this Order.

Respondent failed to disclose that, on or about November 6, 2019, Respondent 's license to practice professional nursing in the State of Kansas was suspended through a Summary Order by the Kansas State Board of Nursing. A copy of the Summary Order dated November 6, 2019, is attached and incorporated, by reference, as part of this Order.

7. On or about April 17, 2020, Respondent satisfied all terms and conditions as set forth by the Kansas Board of Nursing.

8. In response to Findings of Fact Numbers Six (6) through Seven (7), Respondent states that when she filed for her Texas license she had read the question wrong. Respondent was not trying to be deceitful. Respondent failed to disclose her prior disciplinary action on her Kansas nursing license. Respondent's Kansas nursing license is clean, active, and in good standing with no restrictions.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.

2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove violation(s) of 22 TEX. ADMIN. CODE §217.12(6)(I).

4. The evidence received is sufficient cause pursuant to Section 301.452(b)(8)&(10), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 1015016, heretofore issued to ASHLEIGH RENE REES.

5. Pursuant to Section 301.463(d), Texas Occupations Code, this Agreed Order is a settlement agreement under Rule 408, Texas Rules of Evidence, in civil or criminal litigation.

TERMS OF ORDER

I. SANCTION AND APPLICABILITY

IT IS THEREFORE AGREED and ORDERED that RESPONDENT SHALL receive the sanction of **REMEDIAL EDUCATION** in accordance with the terms of this Order.

A. This Order SHALL apply to any and all future licenses issued to RESPONDENT to practice nursing in the State of Texas.

B. This Order SHALL be applicable to RESPONDENT'S nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

C. As a result of this Order, RESPONDENT'S license(s) will be designated "single state" as applicable and RESPONDENT may not work outside the State of Texas in another nurse licensure compact party state using a Texas compact license.

II. COMPLIANCE WITH LAW

While under the terms of this Order, RESPONDENT agrees to comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nursing Education, Licensure and Practice, 22 TEX. ADMIN. CODE §§211.1 *et seq.*, and this Agreed Order.

III. UNDERSTANDING BOARD ORDERS

Within thirty (30) days of entry of this Order, RESPONDENT must successfully complete the Board's online course, "Understanding Board Orders", which can be accessed

on the Board's website from the "Discipline & Complaints" drop-down menu or directly at: *http://www.bon.texas.gov/UnderstandingBoardOrders/index.asp*. Upon successful completion, RESPONDENT must submit the course verification at the conclusion of the course, which automatically transmits the verification to the Board.

IV. REMEDIAL EDUCATION COURSE(S)

In addition to any continuing education requirements the Board may require for licensure renewal, RESPONDENT SHALL successfully complete the following remedial education course(s) **within one (1) year of the effective date of this Order, unless otherwise specifically indicated**:

A. **A Board-approved course in Texas nursing jurisprudence and ethics** that shall be a minimum of six (6) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft, and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. Home study and video programs will not be approved.

B. **The course "Sharpening Critical Thinking Skills,"** a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension.

In order to receive credit for completion of this/these course(s), RESPONDENT SHALL CAUSE the instructor to submit a Verification of Course Completion form or SHALL submit the continuing education certificate, as applicable, to the attention of Monitoring at the Board's office. RESPONDENT SHALL first obtain Board approval of any course prior to enrollment if the course is not being offered by a pre-approved provider. *Information about Board-approved courses and Verification of Course Completion forms are available from the Board at www.bon.texas.gov/compliance.*

V. RESTORATION OF UNENCUMBERED LICENSE(S)

Upon full compliance with the terms of this Agreed Order, all encumbrances will be removed from RESPONDENT'S license(s) and/or privilege(s) to practice nursing in the

State of Texas and, subject to meeting all existing eligibility requirements in Texas Occupations Code Chapter 304, Article III, RESPONDENT may be eligible for nurse licensure compact privileges, if any.

BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK.

CONTINUED ON NEXT PAGE.

RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violation(s) alleged herein. By my signature on this Order, I agree to the entry of this Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order becomes effective upon acceptance by the Executive Director on behalf of the Texas Board of Nursing and a copy will be mailed to me. I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including possible revocation of my license(s) and/or privileges to practice nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 4 day of April, 2021.

Ashleigh Rees

ASHLEIGH RENE REES, RESPONDENT

Sworn to and subscribed before me this 4 day of April, 2021.

SEAL

MANDI M. ROWLEY
My Notary ID # 126242831
Expires September 8, 2023

Mandi M. Rowley

Notary Public in and for the State of Texas

WHEREFORE, PREMISES CONSIDERED, the Executive Director, on behalf of the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 4th day of April, 2021, by ASHLEIGH RENE REES, Registered Nurse License Number 1015016, and said Agreed Order is final.

Effective this 11th day of October, 2021.

Katherine A. Thomas, MN, RN, FAAN
Executive Director on behalf
of said Board

FILED

DEC 26 2013

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BEFORE THE KANSAS STATE BOARD OF NURSING
Landon State Office Building, 900 S.W. Jackson #1051
Topeka, Kansas 66612-1230

IN THE MATTER OF ASHLEIGH RENE REES

License No. 13-93303-082

Case No.13-1486-6

SUMMARY ORDER

NOW ON THIS 26th day of December, 2013, THE ABOVE MATTER COMES BEFORE THE Kansas State Board of Nursing (Board) pursuant to authority granted to the Board by K.S.A. 65-1120. The Board hereby proposed to find facts and take disciplinary action against the licensee's license by way of Summary Order as provided by K.S.A. 77-537.

FINDINGS OF FACT

1. This Licensee is licensed to practice nursing in the state of Kansas. The Board has jurisdiction over the Licensee and the subject matter of this action.

2. Licensee's address of record is 2002 n. Harvest Ridge Street Andover, Kansas 67002.

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. Review of the information gathered by the Board revealed the following upon which this action is based.

(a) According to a report, it is alleged that while you were employed by Pro Active Home Care, Wichita, Kansas, licensee financially exploited a patient.

(b) Licensee admitted to taking over $6,000 (Six thousand Dollars) from a patient.

(c) Licensee was terminated from her employment.

(d) This incident occurred on or about the 22nd day of May, 2013.

(e) Licensee was terminated from employment on the 13th day of October, 2013.

(f) Investigator contacted licensee regarding this incident and licensee failed to respond.

5. This Licensee violate the Nurse Practice Act by unprofessional conduct by exploitation of a patient for financial gain, fruad and deceit in practicing nursing and failing to cooperate with the investigation.

CONCLUSIONS OF LAW

a K.S.A. 65-1120(a)(6), unprofessional conduct, exploitation, which shall be defined as misappropriatating a patients proeprty or taking unfair advantage of a patient's phycisal or financial resources for the licensee's or another individual's personal or financial advanatage by use of undue influence, coercion, harassment, duress, deception, false pretense or false representation; KAR 60-3-110 (o).

b. K.S.A. 65 1120(a)(1) unprofessional conduct by fraud or deceit in practicing nursing.

c. K.S.A. 65-1120 (3) to be guilty of unprofessional conduct failing to furnish the board, its investigators, or its representative with any information legally requested by the board KAR 60-3-110 (t).

6. Pursuant to K.S.A. 65-1120(a), the Kansas State Board of Nursing may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse , as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under authorization, if the Licensee, Licensee or holder of a certificate of qualifications or authorization is found to have violated the Nurse Practice Act.

7. The above fact findings established evidence that the Licensee violated the following provisions of the Nurse Practice Act:

Count 1: K.S.A. 65-1120(a)(6), unprofessional conduct, exploitation, which shall be defined as misappropriatating a patients property or taking unfair advantage of a patient's physical or financial resources for the licensee's or another individual's personal or

financial advanatage by use of undue influence, coercion, harassment, duress, deception, false pretense or false representation; KAR 60-3-110 (o).

Count 2: K.S.A. 65 1120(a)(1) unprofessional conduct by fraud or deceit in practicing nursing.

Count 3: K.S.A. 65-1120 (3) to be guilty of unprofessional conduct failing to furnish the board, its investigators, or its representative with any information legally requested by the board KAR 60-3-110 (t).

K.S.A. 77-511(a)(2)(A) of the Kansas Administrative Procedure Act authorized by use of the summary proceedings do not violated any provision of law and the protection of the public interest does not require the state agency to give notice and opportunity to participate to persons other than the parties.

8. The role of the Kansas State Board of Nursing is to protect citizens of Kansas.

POLICY STATEMENT

1. Dishonesty and exploitation of patients for financial gains violation the fundamental public trust that is place on the nursing professional.
2. Failure to respond to investigators efforts in a violation of the nurse's duty to the Kansas State Board of Nursing.

IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF NURSING THAT

1. **Licensee's license to practice nursing in the state of Kansas is revoked.**
2. **Licensee shall pay $70.00 costs of this action to the Board within thirty (30) days of the effective day of this Order.**

Pursuant to K.S.A. 77-537, the decision, which is called a Summary Order, is subject to your request for hearing. If you desire a hearing, you must submit or direct a **written** request for hearing to: Kansas State Board of Nursing, Legal Division, 900 SW Jackson, Suite 1051, Topeka, Kansas 66612-1230, (785) 296-4325. THIS REQUEST MUST BE SUBMITTED WITHIN FIFTEEN (15) DAYS FROM THE DATE OF THIS ORDER. If a hearing is not

requested in the time and manner stated, this Summary Order becomes effective as a final order, without further notice, upon the expiration of the time for requesting a hearing. Pursuant to K.S.A. 77-531, if the Summary Order is served by mail, three days are added to the time limits set out above.

Judith Hiner RN, BSN
Investigative Committee, Chair
Kansas State Board of Nursing

CERTIFICATE OF SERVICE

On the 26th day of December, 2013, I deposited a copy of this SUMMARY ORDER with the United States Postal Service, postage pre-paid, addressed to:

Ashleigh Rene Rees
2002 N. Harvest Ridge Street
Andover, Kansas 67002

Michael R. Fitzgibbons #12287
Assistant Attorney General

14BN0172
Default 10/20

BEFORE THE KANSAS STATE BOARD OF NURSING
Landon State Office Building, 900 S.W. Jackson #1051
Topeka, Kansas 66612-1230

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IN THE MATTER OF ASHLEIGH RENE REES

License No. 13-93303-082 Reinstatement Application

Case No.13-1486-6

INITIAL AGREED ORDER

NOW ON THIS 10th day of December, 2014, THE ABOVE MATTER COMES BEFORE THE Kansas State Board of Nursing (Board) pursuant to authority granted to the Board by K.S.A. 65-1120. The Board hereby proposed to find facts and take disciplinary action against the Licensee by way of Initial Agreed Order as provided by K.S.A. 77-537.

FINDINGS OF FACT

1. Respondent, Ashleigh Rene Rees, has an application for reinstatement to practice nursing in Kansas. The Board has jurisdiction over the Applicant and the subject matter of the action.

2. Applicant's address of record is 9832 N. Harvest Ct Wichita, Kansas 67212.

3. This case was submitted to the Investigative Committee on the 24th of March, 2014.

4. Review of the investigation and other information gathered by the Board revealed the following information upon which this action is based.

5. 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.

6. 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 is established.

7. A petition was filed April 22nd, 2014 to deny licensee application for reinstatement alleging violations of the nurse practice act.

8. Without admitting the allegations in whole, the Respondent stipulates that she does not contest the Petition and that the Board may impose discipline on her license for those violations.

9. Therefore, the Board finds that the Respondent violated the Kansas Nurse Practice Act as alleged in the Petition:

Count 1: K.S.A. 65-1120(a)(6), and KAR 60-3-110 (o) unprofessional conduct;

Count 2: K.S.A. 65 1120(a)(1) unprofessional conduct;

Count 3: K.S.A. 65-1120 (3) unprofessional conduct;

Count 4: K.S.A. 65-1120(a)(6), and KAR 60-3-110(v) unprofessional conduct.

10. 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.

CONCLUSIONS OF LAW

11. 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 is established.

12. Respondent admits that the Board has sufficient evidence that licensee violated the Kansas Nurse Practice Act as set forth in the Petition and in paragraph 9 of this Order.

POLICY STATEMENT

12. The role of the Kansas State Board of Nursing is to protect citizens of Kansas.

DISPOSITION

13. By entering into the Initial Agreed Order and consenting to the entry of the Initial 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.

14. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that the Initial Agreed Order will continue through any renewal periods of respondent's nursing license until respondent completes each of the conditions and requirements of this agreement. Further, the parties agree that in the event of a lapse of Respondent's nursing license, reinstatement of Respondent's nursing license shall be contingent upon this Initial Agreed Order remaining in effect until Respondent completes each of the conditions and requirements of this agreement.

15. Based upon this agreement, and pursuant to the disciplinary remedies available in K.S.A. 65-1120, the parties agree that the Respondent will able to practice nursing in the State of Kansas. The license to practice nursing in Kansas is reinstated and suspended for a period of six (6) months from the date of the agreement. This suspension will be stayed providing the Respondent is in compliance with the terms and conditions of the agreement.

16. The Kansas State Board of Nursing will not take additional disciplinary action against respondent's nursing license for the violations stated above as long as respondent completes each of the following conditions and requirements:

(a) Respondent will pay a fine of $200 as a sanction for four (4) months of unlicensed practice while her license was revoked.

(b) Respondent's license will be limited to no unsupervised positions without the supervision of a DON.

(c) The respondent shall immediately inform all medical or health related employers and prospective employers of this Initial Agreed Order.

(d) Respondent will Submit Reports from the respondent's employer to the attention of the Legal Division, Kansas State Board of Nursing, Landon State Office Building, 900 S.W.

Jackson, Suite 1051, Topeka, Kansas 66612-1230 on the following schedule: First report will be due on Decemberr 10th, 2014 and the 10th of every third month until four (4) reports have been submitted. These reports are performance reports while in a position that requires a nursing license.

(e) Respondent shall send a money order for $70 to the Board upon entering into this agreement to pay the cost of this action.

(f) Respondent shall not violate the Kansas Nurse Practice Act during the duration of the agreement.

(g) Respondent shall not violate the laws of the United States, of State, or of any political subdivision of any State during the term of this agreement. Traffic infractions shall not be considered violations of the law.

(h) The respondent will complete two (2) hours of Continuing Nurses Education (CNE) on the topic of "Kansas Nurse Practices Act" 3-6 hours on Nursing Ethics, 3-6 hours on Legal Aspects of Nursing, 3-6 hours of Professional Boundaries and 3-6 hours on Professional Accountability. Respondent is to submit the original certificates for proof of the completion of the hours within 180 days of this agreement.

(i) Respondent agrees to notify the Legal Division of any changes in address and phone number as well as all employment terminations or employer changes or additions. All such notifications shall be made in writing within fourteen (14) days of such a change.

17. Respondent acknowledges and agrees that Respondent is responsible for the costs related to satisfying the conditions and requirements of this Initial Agreed Order. Respondent further acknowledges and agrees that to provide the Board with false information regarding compliance with this Initial Agreed Order is a violation of this Initial Agreed Order.

18. If Respondent does not meet these conditions and requirements, the Kansas State Board of Nursing may request additional sanctions against Respondent's license or application for a license. Respondent would be sent notice of such action and would be entitled to a

hearing as to whether Respondent had complied with this Initial Agreed Order, but Respondent could not contest the violations listed in this agreement.

19. All parties understand that if an action based on failure to meet the conditions and requirements of this Initial Agreed Order is filed, K.S.A. 77-531 requires the Notice of Hearing to be served upon the Respondent and the Respondent's attorney of record, if any. All parties agree that only serving the Notice of Hearing upon the Respondent will be proper service and it is the Respondent's responsibility to contact his or her attorney, if any, in reference to the action.

20. Respondent acknowledges and agrees that if any action based on failure to meet the conditions and requirements of this Initial Agreed Order is filed during the term of this Initial Agreed Order, or within 30 days after the expiration date, the conditions of this Initial Agreed Order shall continue in effect until the Board or a hearing/presiding officer designated pursuant to K.S.A. 77-514 and K.S.A. 77-526, rules on the action.

21. Respondent acknowledges and agrees that upon a finding of Respondent not complying with any of the conditions or requirements of this Initial Agreed Order the stay on the Suspension of Respondent's license to practice nursing in the State of Kansas will be removed from the date of said finding. Respondent will not be allowed to practice nursing in the state of Kansas during the period of suspension. Respondent acknowledges and agrees that all conditions and requirements of this Initial Agreed Order remain in effect during the period of suspension.

22. Respondent acknowledges and agrees that the Suspension will be extended due to a finding of non-compliance with any of the conditions or requirements of this Initial Agreed Order, the Suspension will not be Stayed until the Respondent has, following the prescribed time period of suspension, provided written verification to the Board that Respondent is in compliance and has remained in compliance during the period of suspension, with all conditions

and requirements of this Initial Agreed Order. Upon the Respondent providing said written verification the suspension will be stayed.

23. The Board will inactivate the case file once respondent satisfies this agreement. The agreement does not prohibit the agency from taking disciplinary action against Respondent's license for any additional or cumulative violation of the Kansas Nurse Practice Act committed by the Respondent before or after this agreement is entered into.

24. This agreement is a discipline and must be reported on any future renewal or reinstatement applications. This agreement is a contract entered into by the parties to resolve an investigative case. 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.

25. After successful completion of all of the conditions and requirements of this Initial Agreed Order by the respondent, the Initial Agreed Order will be satisfied and the case will be inactivated.

26. By signing this Initial Agreed Order, Respondent acknowledges that Respondent has read and understands the entire document, and agrees to be bound by its terms. The Initial Agreed Order constitute the entire agreement of the parties and may not be modified except in writing and approved by all parties. The effective date of the Initial Agreed Order is the date shown on the certificate of service.

27. 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 eithis initial orders or final orders, if by agreement of both parties, in those discipline cases.

IN WITNESS WHEREOF, the parties hereto execute the INITIAL AGREED ORDER.

IT IS SO ORDERED.

Ashleigh Rene Rees
Respondent
Ashleigh Rene Rees
9832N Harvest Ct
Wichita, Ks 67212

Beck Law Office
Terry E. Beck #7845
434 SW Topeka, Blvd
Topeka, Kansas 66603-3152
Attorney for Respondent

Michael R. Fitzgibbons #12287
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612

_____ must sign before a Notary Public.

State of Kansas
DIANA L. SMITH
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 8/27/2015

Wichita, Sedgwick County

Sandra Sharon, Presiding Officer

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

Pursuant to K.S.A. 77-531, if the final 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 reconsideration is not requested in the time and manner stated above, the initial order shall become effective as a final order 30 days after service.

CERTIFICATE OF SERVICE

On the 10th day of December, 2014, I mailed a copy of the INITIAL AGREED ORDER:

Ashleigh Rene Rees
9832 N Harvest Ct
Wichita, Ks 67212

Beck Law Office
Terry E. Beck
434 SW Topeka, Blvd
Topeka, Kansas 66603-3152
Attorney for Respondent

Michael R. Fitzgibbons, #12287
Assistant Attorney General

KANSAS STATE BOARD OF NURSING
Landon State Office Building
900 SW Jackson, Suite 1051
Topeka, Kansas 66612-1230

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IN THE MATTER OF)
)
)
)
Ashleigh Rene Rees, R.N,)
License No. 13-93303-082)

KSBN Case No. 13-1486-6
OAH Case No. 17BN00036
District Court Case 2017-CV-717

ORDER

The above-captioned matter comes for consideration by the Kansas State Board of Nursing (Board) as directed in the remand order by the Shawnee County District Court. The parties have filed briefs in this matter. Pursuant to K.S.A. 2018 Supp. 77-527(a)(2), the Kansas State Board of Nursing (Board) has delegated to Carol Bragdon, a member of the Board, its authority to serve as agency head under the Kansas Administrative Procedure Act.

Based on the agency record, the Board makes the following findings of fact, conclusions of law, and orders.

Findings of Fact

1. The Board granted a nursing license to Ashleigh R. Rees (Rees). However, her license was revoked by the Board in December 2013.

2. On April 28, 2014, Rees filed an application for reinstatement of her nursing license. On May 7, 2014, the Board filed a petition with the Office of Administrative Hearings requesting her application be denied.

3. On June 8 and 9, 2014, Rees completed the following CNE courses.

Title	Credit Hours
Advocating for Yourself and Your Patients: Part I	5
Advocating for Yourself and Your Patients: Part II	4
Focused Physical Examination for the Acute Care Setting	1
A Nurse's Guide to Child Abuse	2
Caring for Patients with Mental Health Disorders	2
Elder Abuse	2
High-Alert Medications: Safe Practices	5
Age-Specific Considerations in Patient Care	2

Managing Assaultive Behavior for Healthcare Professionals	3
Intimate Partner Violence	3
Hope Against Suicide: A Care Guide for Healthcare Providers	5

4. On October 3, 2014, Rees failed to appear for a hearing on the Board's petition. Four days later, the Presiding Officer served a Proposed Default Order granting the Board's petition and denying Rees' application for reinstatement of her nursing license.

5. On October 17, 2014, Terry Beck of Beck Law Office, LLC, entered his appearance for Rees and filed a motion to vacate the Proposed Default Order.

6. On November 5, 2014, Beck sent an e-mail to the Board's attorney, Mike Fitzgibbons, requesting amendments to a proposed agreed order. Regarding the CNE credit hours, Beck requested several changes to the order. His requested changes included "[t]he additional CNE hours in ¶ 18(h) would be completed within 180 days, with extensions if needed so long as satisfactory progress toward completion was being demonstrated;" Rees would pay the $200 administrative fine and $70 costs set forth in ¶¶ 18 (a) and (e) within 90 days; and Rees "would submit four quarterly reports, rather than 8 as set forth in ¶ 17(d)." Fitzgibbons responded he would get authority to make changes and send a revised order.

7. On December 10, 2014, the Presiding Officer at the Office of Administrative Hearings issued an Initial Agreed Order that was signed by Rees and Beck. In that order, Rees agreed she had violated the following four provisions in the Kansas Nurse Practice Act (KNPA): K.S.A. 65-1120(a)(6) (unprofessional conduct by exploitation of a patient's finances); K.S.A. 65-1120(a)(1) (procuring or attempting to procure a nursing license by fraud or deceit); K.S.A. 65-1120(a)(3) (professional incompetence); and K.S.A. 65-1120(a)(7) (unprofessional conduct by practicing as a nurse after expiration of her nursing license). Rees stipulated that the Board could impose discipline on her for those violations. Rees also agreed her nursing license would be reinstated and suspended for six months. However, the suspension would be stayed if Rees complied with certain terms and conditions enumerated in paragraph 16. Those terms and conditions included:

> (a) [Rees] will pay a fine of $200 as a sanction for four (4) months of unlicensed practice while her license was revoked.
>
> . . .
>
> (d) [Rees] will submit reports from [her] employer to the attention of the Legal Division, Kansas State Board of Nursing . . . on the following schedule: First report will be due on December 10th, 2014 and the 10th of every third month until four (4) reports have been submitted. These reports are performance reports while in a position that requires a nursing license.
>
> (e) [Rees] shall send a money order for $70 to the Board upon entering into this agreement to pay the cost of this action. .
>
> . . .

(h) [Rees] will complete two (2) hours of Continuing Nurses Education (CNE) on the topic[s] of "Kansas Nurse Practice Act," 3-6 hours on Nursing Ethics, 3-6 hours on Legal Aspects of Nursing, 3-6 hours of Professional Boundaries and 3-6 hours on Professional Accountability. [Rees] is to submit the original certificates for proof of the completion of the hours within 180 days of this agreement.

8. On July 1, 2016, Beck sent to the Board a copy of the certificates showing the CNE courses that Rees had completed on June 8 and 9, 2014.

9. On July 15, 2016, the Board received Rees' payment for the $200.00 fine that was imposed in the Initial Agreed Order.

10. On August 12, 2016, Beck sent to the Board copies of certificates for the following CNE credit hours Rees completed on January 6, 2015, and June 17, 2015, respectively:

Title	Credit Hours
Ethical Choices	3
Nurse Practice Act: An Overview for Nurses	2

11. On August 19, 2016, Beck sent to the Board copies of certificates of completion for CNE courses Rees completed on August 18, 2016:

Title	Credit Hours
Medication Safety: Assuring Safe Outcomes	6
Intimate Partner Violence	3

12. On December 29, 2016, the Board filed a motion stating the "Initial Agreed Order imposed certain requirements on [Rees] and stayed the suspension of [her nursing] license. Among those requirements was that [Rees] complete within 180 days CNE hours in Ethics, Leal Aspects of Nursing, Professional Boundaries, and Professional Accountability. [Rees] has not completed this requirement." The motion requested the stay be lifted and Rees' nursing license be suspended for six months. A hearing on the motion was conducted on July 27, 2017.

13. Kim Balzer testified at the hearing. She is a registered nurse who was employed by the Board as investigator. Balzer was assigned to this matter approximately 3 to 4 weeks prior to the hearing. After reviewing the Board's investigation file, she determined Rees had not provided any CNE certifications within the 180 days of the December 2014 Initial Agreed Order. Balzer acknowledged that Rees completed the 2015 CNE courses for ethics and the KNPA within 180 days of the 2014 Initial Agreed Order, but failed to provide the certifications for those CNE courses until August 2016.

The Board rested after Balzer testified; the Presiding Officer concurred with Rees that the content of the CNE courses was not at issue as no evidence of content was produced.

14. Rees testified on her behalf. After she submitted her application for reinstatement of her nursing license and prior to being represented by Beck, Rees talked with Michael Fitzgibbons who was the Board's litigation counsel at that time. Rees thought she talked with Fitzgibbons in March, April, or May of 2014. Rees testified Fitzgibbons stated her nursing license could be reinstated if she completed CNE courses and she could start taking the CNE courses even though no agreement had been signed at that time.

15. Rees testified she also talked with Fitzgibbons' legal assistant, Trish Waters, on a daily basis from March 2014 until March 2016 to check on her compliance with the agreement. Rees believed she had completed all of the CNE courses that were required by the 2014 Initial Agreed Order. Rees claimed she sent the CNE certifications for the CNE courses that she completed in a fax to Trish Waters in June 2014.

16. In August 2016, Rees was renewing her nursing license and saw an alert had been placed on her license. When she inquired about the alert, Rees spoke to an unknown person who advised she was unable to find Rees' file and would call Rees after her file had been located.

17. Rees testified Beck told her to complete additional CNE courses because the Board had lost her file. As a result, she took the following CNE courses on August 25 and 26, 2016, respectively:

Title	Credit Hours
Child Abuse, Neglect, and Maltreatment	3
Righting a Wrong: Ethics & Professionalism in Nursing	3

Rees produced certificates of completion for the above two CNE courses at the hearing. Rees believed she had completed the requirements of the 2014 Initial Agreed Order prior to the expiration of the 180-day period, but when the Board disagreed, Rees thought she had corrected any potential error by taking the additional CNE courses.

18. On cross-examination, Rees acknowledged she had to complete 30 CNE credit hours to renew her nursing license every two years and her renewal period ended on August 31. Rees' renewal period prior to the hearing ended on August 31, 2016. Rees denied that the CNE courses she took in June 2014 and August 2016 were the required CNE credit hours to renew her nursing license. However, Rees admitted she had contacted Fitzgibbons in January 2015—about one month after she had signed the 2014 Initial Agreed Order—advising she was having difficulty finding CNE courses to comply with the order. Fitzgibbons responded by sending an e-mail to Rees suggesting she access websites that he had included in his e-mail.

19. Rees testified she sent her payment of the $200 fine to the Board but was later told it was not recorded in her file. Rees gave Beck a second payment for the $200 fine and he delivered it to the Board.

20. Rees also called Patricia Waters as a witness. Waters worked for the Board as a senior administrative assistant from October 2012 through March 2016. Her duties included being a legal assistant to Fitzgibbons and monitoring nurses for compliance on disciplinary cases. She recorded the requirements for each case on a spreadsheet and marked off a requirement when a nurse provided proof of completing it. She had numerous contacts with Rees.

21. Waters explained a "hold" on a license meant a suspension had been stayed and a nurse was allowed to work. A hold was removed upon completion of all requirements in the order. To explain a hold to an employer, Waters wrote a letter stating a nurse with a hold on his or her nursing license could work. She prepared such a letter for Rees. It was undated and addressed "To whom it may concern." The letter stated: "As of 2/6/2015, Ms. Rees is in compliance with her agreement and no further disciplinary action will take place against this licensee unless she violates the agreement."

22. The questions to Waters about whether Rees had completed the requirements of the Initial Agreed Order were inaudible as shown below.

Q. Was she required to do some things to satisfy the Board?

A. Yes, some CNE.

Q. Then (inaudible) months and years, do you recall what the continuing education requirement was?

A. Not—not detailed information. Probably the Nurse Practice Act and a few—a handful of other CNEs.

Q. Do you recall that she also (inaudible)?

A. Oh yeah.

Q. Were you ever asked by anybody whether Ms. Rees had completed the (inaudible)?

A. Other than herself, I don't believe so.

Q. Let me show you what's been marked as Exhibit 16 (inaudible). Do you recognize that document?

A. Yes, I do.

Q. Will you please tell the Presiding Officer what this is?

A. This is a letter to—I believe to Ms. Rees or maybe her employer that she is allowed to work on a stay because she is in compliance with her agreement and there's no further disciplinary action will be taking place against her license unless she violates the agreement.

Q. The letter is not dated at the top. Correct?

A. Correct.

Q. (Inaudible)?

A. Yes, February 6, 2015.

Q. Would that have been about the time you wrote that letter?

A. Yes.

Q. Is that the kind of letter (inaudible)?

A. Typically, yes.

Q. The kind you would send to counsel for the Board?

A. Yes. First I would actually check with them make sure that I'd done everything that I needed to do and that they have completed their-- or the order.

Q. So in this particular (inaudible)?

A. Correct.

Q. For this one there may have been a (inaudible)?

A. With it titled, "To whom it may concern," it seems like it was for an employer because of the confusion on the stay. In that respect, I would have gone—I would have written a letter like this. Since she had quarterly reports to do, I think she only had one left when I left, she was still in compliance, so . . .

Q. (Inaudible) as of February the 6th, 2015, if she had not completed the continuing education (inaudible)?

A. Yes.

Q: (Inaudible) as of February the 6th, 2015, if she had not completed the continuing education (inaudible)?

A: Yes

Q: Because she at this point (inaudible)?

A: Yes. The next one would have been due in April, I believe.

Q: Do you know if Ms. Rees ever submitted certificates of completing (inaudible)?

A: She must have if I have written this letter and she's in compliance, yes.

Q: Even if she had. not completed any continuing education (inaudible)?

A. No, because in the agreement I'm pretty sure the standard was 60 days, she would have gotten a noncompliance and/or a notice for hearing.

Q: And in this case, do you recall if she might have (inaudible) 60 days (inaudible)?

A. It's possible. The attorney handling the case did a lot of over-the-phone, not necessarily put it to paper.

Q. And, of course, the agreements speak for themselves.

A. Yes.

23. On cross-examination, Waters explained her procedure to record completion of CNE courses and payment of a fine. When she received a certificate of completing a CNE course, she file-stamped the certificate, punched two holes at the top of the certificate, placed the holes in the certificate over the two metal clips in folder, and bent the clips down. The file was then placed in her monitoring cabinet. Waters testified Rees began providing CNE certificates after the Initial Agreed Order was issued in December 2014, but she did not recall if she received CNE certificates prior to the issuance of the Initial Agreed Order. Waters had no recollection of the dates Rees provided certificates of completing the CNE courses.

24. Upon receiving a payment for a fine, Waters recorded the payment, marked the spreadsheet that the fine had been paid, and gave the check to another staff member.

If the fine had not been paid, Waters would have written a letter reminding Rees to pay the fine. If she had not written to Rees, it probably meant that Rees had until the end of the agreement to pay the fine.

25. The Presiding Officer issued an Initial Order with the following findings. Rees did not pay the $200.00 fine until July 16, 2016. The certificates of completion for the required CNE courses were to be submitted to the Board within 180 days of the date of the agreement, or by June 10, 2015. Rees submitted the certificates of the CNE courses to the Board on July 1, 2016.

26. The Presiding Officer also found that of the certificates of completion Rees had submitted to the Board, six were dated on June 8 or 9, 2014, and four were dated August 18, 25, or 26, 2016. In paragraph 9 under Findings of Fact, the Presiding Officer further addressed the submission of those certificates and the payment of the fine as follows:

> [Rees] asserts she submitted the June 2014 certificates of completion to the Board in June 2014. She also asserts she submitted the $200.00 payment of the fine to the Board prior to the July 2016 submission but the Board lost it along with her certificates of completion of CNE. [Rees] was not able to produce proof of the payment of the fine by any means prior to July 2016, such as a cancelled check, receipt of a teller check, or receipt of purchase of a money order.

27. In paragraph number 3 under Discussion, the Presiding Officer rejected Rees' "position" that Fitzgibbons told her she could complete the CNE courses prior to the Initial Agreed Order and determined the e-mail between Fitzgibbons and Beck failed to support Rees' position. The Presiding Officer concluded that, if Fitzgibbons had authorized Rees to complete the CNE courses prior to the 2014 Initial Agreed Order, it could have been addressed in the negotiation e-mail between the attorneys or included in the 2014 Initial Agreed Order; rather, the Initial Order stated Rees *will* complete the CNE courses. Similarly, the Presiding Officer determined there was no evidence supporting Rees' claim that she submitted the payment of the $200.00 fine prior to July 15, 2016.

28. The Presiding Officer concluded that the Board had shown Rees violated the terms of the Initial Agreed Order and granted the Board's motion to lift the stay and suspend Rees' license to practice nursing for six months. Rees filed a petition for review of the Initial Order, which was denied by the Board.

29. Rees next filed a petition for judicial review with the district court. The district court concluded that the Board incorrectly interpreted its independent responsibility for reviewing the findings of fact in the Initial Order. The district court remanded the matter to the Board to review the findings of fact in the Initial Order "*de novo*, albeit with giving due regard to the credibility determinations of the Presiding Officer."

30. Both parties have submitted their briefs in support of their claims. Rees challenges the Presiding Officer's findings of facts and makes the following claims: (1) Rees was not given notice that the payment of the $200 fine was at issue because the Board's motion to lift the stay did not allege it; (2) Rees completed the CNE courses before the Initial Agreed Order was finalized as authorized by Fitzgibbons and she submitted the certificates to the Board as she completed the courses; (3) the Presiding Officer ignored the unrebutted testimony of Waters and Rees that Rees had completed the requirements of the Initial Agreed Order; (4) the Presiding Officer erroneously interpreted the Initial Agreed Order by determining the CNE courses taken in 2014 did not satisfy the requirements of the Initial Agreed Order; and (5) the imposition of a six-month suspension of Rees' nursing license was based upon the erroneous conclusion that Rees failed to comply with the requirements in the Initial Agreed Order.

Conclusions of Law

31. K.S.A. 65-1120(a) authorizes the Board to suspend any nursing license if an applicant or licensee has committed any of the acts enumerated in paragraphs (1) through (9). The Initial Agreed Order issued in December 2014 concluded that Rees had violated four provisions in the Kansas Nurse Practice Act (KNPA) Rees' nursing license was reinstated and then suspended for six months; however, the suspension was stayed while she completed certain terms and conditions in the Initial Agreed Order. This proceeding is to determine whether Rees complied with those terms and if not, whether her nursing license should be suspend as stated in the Initial Agreed Order.

32. Proceedings to suspend a nursing license are conducted pursuant to the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501 *et seq.* K.S.A. 2018 Supp. 65-1120(b). Under the KAPA, the provision governing review of an initial order states:

> Subject to K.S.A. 77-621, and amendments thereto, in reviewing an initial order, the agency head or designee shall exercise all the decision-making power that the agency head or designee would have had to render a final order had the agency head or designee presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the agency head or designee upon notice to all parties. In reviewing findings of fact in initial orders by presiding officers, the agency head shall give due regard to the presiding officer's opportunity to observe the witnesses and to determine the credibility of witnesses. The agency head shall consider the agency record or such portions of it as have been designated by the parties. K.S.A. 2018 Supp. 77-527(d).

Notice regarding the payment of the $200 fine

33. One condition for staying the suspension in the Initial Agreed Order was Rees had to pay a fine of $200. The Board's motion to lift the stay of suspension did not expressly refer to the $200 fine. Rather, it referred to Rees' failure to provide certificates

of completion for the required CNE courses within 180 days of the Initial Agreed Order. Rees claims the Board's motion was insufficient to notify her that the payment of the $200 fine was at issue, and as a result, the Presiding Officer should not have used it as a basis for finding Rees had not complied with the Initial Agreed Order.

34. As Rees points out in her brief, she was asked during cross-examination if she had paid the $200 that was required in the Initial Agreed Order. However, she answered without any objection being made during this cross-examination about the fine. When Rees was asked if the Initial Agreed Order was negotiated to resolve the default order that was pending, an objection was made on the basis the question called for a conclusion regarding the pleadings. After a recess, the Board's litigation counsel indicated he had more questions about the second check, to which Rees' litigation counsel responded: "Yeah, sure." Rees admitted she paid the $200 fine with a money order delivered on July 15, 2016. Without objection, a copy of the payment was admitted into evidence. Similarly, Rees later admitted on cross-examination without objection that she had agreed in the Initial Agreed Order to pay a $200 fine for the unlicensed practice of nursing.

35. The payment of the $200 fine was also addressed during cross-examination of Waters. She testified she was given the fine payment, and she then file stamped the payment and gave it to another staff member. There was no objection to this questioning. When Waters was asked if she had any concern that someone may have intercepted Rees' first payment so that Waters never received it, Rees' counsel objected as to relevance and stated, "It's nothing that has ever been discussed before today." In response, the Board claimed it was relevant because Rees had testified she sent two money orders and the Board lost the first one. The Presiding Officer did not rule on Rees' objection nor was the Presiding Officer asked to do so. There also was no objection made when Waters was asked on cross-examination if she would have sent a letter to Rees reminding her she had not paid the $200 fine.

36. In her brief, Rees claimed an objection to the above cross-examination questions was not necessary because the questions provided context for understanding the timeline of events. However, there was no claim made by either party that these questions were limited to understanding the timeline of the events. The questions clearly focused on whether she paid the fine and if so, when she paid the fine. Rees' characterization of the cross-examination questions is rejected.

37. The basic elements of due process are notice and an opportunity to be heard and to defend at an appropriate proceeding. *Wertz v. Southern Cloud Unified School District*, 218 Kan. 25, 30 (1975). "The constitutional right to due process may be waived by a party the same as other constitutional rights." 218 Kan. at 30. If a party was entitled to due process, the determination of whether it has been waived is a malleable concept. 218 Kan. at 31. As discussed above, Rees and Waters were questioned multiple times regarding the payment of the fine and at no time did Rees object on the basis of notice.

38. Based upon the above, the Board concludes that any notice deficiency in the Board's motion regarding the payment of the $200 fine was waived by Rees when she participated in the due process hearing and failed to timely object during cross-examination about notice of the payment of the $200 fine. The Board further concludes that the Presiding Officer did not err by including the payment of the $200 fine as a basis in determining Rees did not comply with the terms of the Initial Agreed Order.

Completion of the CNE courses

39. Rees makes several arguments regarding the completion of the CNE courses. First, Rees argues Fitzgibbons agreed she could complete the CNE courses before the Initial Agreed Order was final and she submitted the certificates to the Board as she completed the courses. She also argues the Presiding Officer ignored the unrebutted testimony of Waters and Rees that Rees had completed the requirements of the Initial Agreed Order and that the Board never notified Rees about her noncompliance with the Initial Agreed Order. Finally, Rees argues the Presiding Officer erroneously interpreted the Initial Agreed Order by determining the CNE courses taken in 2014 did not satisfy the requirements of the Initial Agreed Order.

Conversation with Fitzgibbons

40. Rees contends Fitzgibbons authorized her to complete the CNE courses prior to the Initial Agreed Order being finalized and to submit the certificates to the Board as soon as she completed the courses, but the Board lost her certificates. This argument is based on her testimony at the hearing. By contrast, Balzer testified the only CNE courses that complied with the Agreed Initial Order were the two courses Rees had taken in 2015. The Board contends Rees took the 2014 CNE courses to renew her license. Rees argues this theory is flawed because she could not renew her nursing license as it was still revoked in June 2014.

41. On cross-examination, Rees testified she had to complete 30 CNE credit hours to renew her nursing license every two years. *See* K.S.A. 65-1117(a); K.A.R. 60-3-108; and K.A.R. 60-9-106(a) (nursing licenses shall expire every two years and licensee must complete 30 CNE hours for renewal). Rees also testified her renewal period ended on August 31; and her renewal period prior to the hearing ended on August 31, 2016. Rees' testimony shows the prior two-year licensing period expired on August 31, 2014. Rees filed her reinstatement application on April 28, 2014. Although she filed her reinstatement application prior to expiration date of her nursing license, it was revoked at that time and could not be renewed without an order from the Board.

42. Rees claimed she talked with Fitzgibbons after she had submitted her reinstatement application—or in late April or May 2014. Rees completed the CNE courses in June 2014. Thus, it is more likely that Fitzgibbons explained to Rees that her revoked nursing license would not be reinstated until she had completed the 30 CNE hours for renewal required by K.S.A. 65-1117(a); K.A.R. 60-3-108; and K.A.R. 60-9-106(a) and that she should submit her certificates of completion to the Board as soon as

the courses were completed. However, because Rees failed to appear for the hearing on October 3, 2014, a default order denied Rees' application for reinstatement of her nursing license. Because Rees' nursing license was not reinstated, it was deemed lapsed after August 31, 2014. *See* K.S.A. 65-1117(b) and K.A.R. 60-3-105(a) (a nursing license has lapsed if the licensee failed to renew the license prior to the expiration date; 30 hours of CNE are required to *reinstate a lapsed license* within five years of the expiration date). Additionally, Rees never produced any independent evidence—such as testimony from Fitzgibbons or Beck—to support her claim about Fitzgibbon's authorization of the 2014 CNE courses.

43. Based upon the above, the Board makes the following conclusions. Under K.S.A. 65-1117(b) and K.A.R. 60-3-105(a), the Board lacked statutory authority to issue an order reinstating Rees' revoked nursing license because she had not completed the 30 CNE hours required to renew a license when Rees filed her reinstatement application in April 2014. The comments Fitzgibbons made to Rees in May 2014 concerned the 30 hours of CNE courses required by K.S.A. 65-1117(b) and K.A.R. 60-3-105(a). After April 28, 2014, the Board lacked authority under K.S.A. 65-1117(a), K.A.R. 60-3-108, and K.A.R. 60-9-106(a), to issue an order reinstating Rees' revoked license until she had completed the 30 CNE hours required to reinstate a lapsed license. Based upon these statutory and regulatory provisions, Rees' claim that Fitzgibbons authorized the CNE hours that she completed in 2014 to comply with the Initial Agreed Order that was not yet final is rejected. The 2014 CNE courses were to comply with the above statutory and regulatory provisions, not the Initial Agreed Order.

Unrebutted Testimony

44. Rees next argues the Presiding Officer ignored the unrebutted testimony of Waters and Rees that Rees had completed the requirements of the Initial Agreed Order prior to the deadline and that Waters did not send a letter to Rees stating she was not in compliance with the 2014 Initial Agreed Order.

45. The Board's evidence was straight forward. Balzer testified the only CNE courses that complied with the Agreed Initial Order were the two courses Rees had taken in 2015 and Rees' payment of the $200 fine was received on July 15, 2016. The e-mails between Fitzgibbons and Beck also referred to "additional CNE hours" being required in the Initial Agreed Order and an extension to complete those additional CNE hours.

46. However, Rees testified Fitzgibbons authorized the CNE courses that she completed in 2014 to comply with those required in the Initial Agreed Order even though it had not been finalized and she sent the CNE certificates of completion to Waters upon receiving the certificate. When she inquired later about the status of her case, Rees testified she was told her file had been lost; thus, the Board had no record of her CNE certificates of completion or the payment of the fine prior to the deadline date. Rees also relies upon Waters' letter and her testimony about the CNE certificates, payment of the fine, and the lack of a letter advising Rees she was not in compliance.

47. In the Initial Order, the Presiding Officer stated Rees "asserts she submitted the June 2014 certificates of completion to the Board in June 2014. She also asserts she submitted the $200.00 payment of the fine to the Board prior to the July 2016 submission." Similarly, the Presiding Officer referred to Rees' "position" that she was told she could complete the specified CNE prior to the actual Initial Agreed Order." The Presiding Officer then discussed the e-mails exchanged between the parties' attorneys negotiating the terms of the agreement. The Presiding Officer noted that those e-mails made no mention of any CNE courses that Rees had already completed. These references by the Presiding Officer did not expressly refer to Rees' testimony, but they are a clear acknowledgement and consideration of her testimony.

48. Regarding Rees' testimony about the authorization from Fitzgibbons, the analysis above concluded that Fitzgibbons did not authorize the 2014 CNE hours to comply with the requirements in the Initial Agreed Order. Rather, those 2014 CNE hours were required to renew a nursing license before it had expired or to reinstate a nursing license after it had lapsed. Accordingly, the CNE hours specified in the Initial Agreed Order were additional CNE hours that were required to avoid the suspension of her nursing license. Additionally, Rees never produced any independent evidence—such as documents or testimony from Fitzgibbons or Beck—to support her claim about Fitzgibbon's authorization of the 2014 CNE courses or the Board losing her file.

49. Regarding the letter Waters had written, it does not expressly state that Rees had completed all of her CNE courses and paid the $200 fine. Additionally, Waters testified the typical time for a licensee to complete CNE courses was 60 days. However, the e-mails between the parties' attorneys show an agreement that Rees had 180 days to complete the CNE courses and an extension if necessary. As such, the time Rees had to complete the requirements of the Initial Agreed Order issued in December 2014 had not yet expired when Waters wrote the letter in February 2015. Thus, Waters had no reason to send Rees a letter stating she was not in compliance with the Initial Agreed Order. Waters' letter does not support Rees' claim that she had completed the CNE courses and paid the $200 fine before the deadline.

50. Regarding Waters' testimony about whether Rees completed the requirements of the Initial Agreed Order, the questions or answers during direct examination were inaudible in part or in whole. Even if the inaudible portions in direct examination were in favor of Rees, Waters' testified in cross-examination Rees began providing the CNE certificates *after* the Initial Agreed Order was issued in December 2014, she had no recollection if Rees submitted the CNE certificates prior to the issuance of the Initial Agreed Order, she had no recollection of the dates Rees submitted the CNE certificates, and she had no documentation to show Rees had complied with the requirements of the Initial Agreed Order. Waters' testimony is suspect because no evidence showed Rees submitted CNE certificates between December 2014 (when the Initial Agreed Order was issued) and March 2015 (when Waters stopped working at the Board). Additionally, Waters' cross-examination testimony contradicted any direct examination testimony that supported Rees' claim. Thus, Waters' testimony lacked any

specificity about Rees' compliance with the terms and conditions in the Initial Agreed Order.

51. In short, the evidence was disputed on the issue of whether the lack of documentation in the Board's file meant Rees did not provide the certificates for the CNE courses and pay the $200 fine as required by the Initial Agreed Order or meant the Board lost the documentation showing Rees had complied with the requirements of the Initial Agreed Order. The former option was chosen by the Presiding Officer; in other words, the Presiding Officer rejected the testimony presented by Rees and Waters as well as the letter written by Waters. The rejection of this evidence means the Presiding Officer determined it was not credible. The evidence supports this determination. Pursuant to K.S.A. 2018 Supp. 77-527(d), when reviewing an initial order, due regard must be given to the Presiding Officer's observation of the witnesses and determinations the credibility of witnesses.

52. Based upon the above, the Board concludes that the Presiding Officer did not ignore testimony of Rees or Waters concerning the submission of the certificates of completion for the CNE courses or the payment of the $200 fine. Rather, the Presiding Officer made a credibility determination that rejected this evidence and due regard is given to that determination.

Interpretation of the terms in the Initial Agreed Order

53. Rees contests the Presiding Officer's interpretation of the Initial Agreed Order. Rees does not contest the Presiding Officer's computation that the 180 days ended on June 10, 2015. Rather, she claims the phrase "within 180 days of this agreement" did not limit her to completing the CNE courses after the Initial Agreed Order had been signed and filed. She argues the Initial Agreed Order stated "within 180 days of this agreement" rather than "after 180 days of this agreement." She claims her reliance upon this interpretation was reasonable based upon her conversation with Fitzgibbons.

54. One error with Rees' argument is she ignores the language that precedes the phrase "within 180 days of this agreement." The pertinent language states: "[Rees] is to *submit the original certificates* for proof of the completion of the hours *within 180 days of this agreement.*" (Emphasis added.) Although Rees completed the CNE hours on June 8 and 9, 2014, the certificates for completion of those CNE hours were sent to the Board on July 1, 2016—or twenty days after the deadline had expired. As discussed above, the Presiding Officer implicitly found Rees' credibility to be lacking by rejecting her testimony that Fitzgibbons authorized her to complete the CNE prior the Initial Agreed Order becoming final and that she had sent the CNE certificates to the Board as soon as she completed the CNE courses but the Board had lost the certificates.

55. Moreover, the evidence supports the Presiding Officer's interpretation of the Initial Agreed Order. The e-mail dated November 5, 2014, that Beck sent to Fitzgibbons negotiating the terms and conditions for the proposed addressed the time for Rees to complete the CNE hours. Specifically, Beck requested that the proposed order be

changed so that the "additional CNE hours in ¶ 18 (h) would be completed within 180 days, with extensions if needed so long as satisfactory progress toward completion was being demonstrated." This evidence shows the Initial Agreed Order required Rees to complete the CNE courses and submit the certificates of completion within 180 days after it had been signed and filed.

56. If Rees had submitted the CNE certificates to the Board as soon as she completed the courses in June 2014 because Fitzgibbons had agreed she could do so prior the Initial Agreed Order being signed and filed, then this provision was not necessary. As such, Beck would have requested in his November 2014 e-mail that the proposed order not include the requirement about the CNE courses or an extension to complete the CNE courses. Additionally, if Rees believed she had completed the CNE courses required by the proposed order in June 2014, she would not have contacted Fitzgibbons in January 2015 advising she was having difficulty finding CNE courses to comply with the Initial Agreed Order.

57. Based upon the above, the Board concludes that the Presiding Officer did not error in interpreting the Initial Agreed Order. Thus, Rees' argument fails.

Imposition of a six-month suspension

58. Lastly, Rees contends Presiding Officer's imposition of a six-month suspension was unreasonable. Her arguments are premised upon her claims above that she completed the CNE courses in 2014 and 2015, but when she learned the Board had no record of the 2014 CNE courses, she completed the additional CNE courses in 2016. Rees argues she should not be punished for the error of the Board. Rees' arguments rely upon her factual challenges that were considered and rejected as discussed above. Thus, further discussion regarding the facts about her compliance with the requirements of the Initial Agreed Order is not necessary.

59. Rees signed the Initial Agreed Order with knowledge that her license would be suspended if she failed to comply its terms and conditions. Having determined that Rees did not comply with the terms and conditions of the Initial Agreed Order, the Board concludes that Rees' argument fails and her nursing license should be suspended for six months as set forth in the Initial Agreed Order.

60. After consideration of the above findings and conclusions, the Board determines that Rees' Petition for Review of the Initial Order should be denied and Rees' nursing should be suspended for six-months.

Order

WHEREFORE, it is the decision and order of the Board that the Petition for Review of the Initial Order filed by Ashleigh Rees be denied and that Rees' nursing license be suspended for six months beginning 30 days after the date stated in the Certificate of Service below.

IT IS SO ORDERED.

Kansas State Board of Nursing

Carol Bragdon

Carol Bragdon, Board Member and
Agency Head

NOTICE OF ADMINISTRATIVE RELIEF

The above Order is a Final Order. Pursuant to K.S.A. 77-529, a party may file with the Board a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. The agency designee who may receive service of a petition for reconsideration on behalf of the Board is Carol Moreland, Executive Administrator, Kansas State Board of Nursing, Landon State Office Building, 900 S.W. Jackson, Ste. #1051, Topeka, Kansas 66612-1230.

NOTICE OF JUDICIAL RELIEF

Pursuant to K.S.A. 77-613, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The agency designee who may receive service of a petition for judicial review on behalf of the Board is Carol Moreland, Executive Administrator, Kansas State Board of Nursing, Landon State Office Building, 900 S.W. Jackson, Ste. #1051, Topeka, Kansas 66612-1230.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June 2019, a copy of the above Order was deposited in the United States mail, first-class postage prepaid, and addressed to:

Ashleigh Rene Rees
100 West 9th
Caney, KS 67333

Mark W. Stafford
Sheryl A. Feutz-Harter
Forbes Law Group
6900 College Blvd., Suite 840
Overland Park, KS 66211

I further certify that on the same date a copy of the above Order was hand delivered to:

Bryce Benedict
Assistant Attorney General
Disciplinary Counsel for the
Kansas State Board of Nursing
900 SW Jackson, Ste. 1051
Topeka, KS 66612-1365

Staff, Kansas State Board of Nursing

FILED
NOV 24 2020
KSBN

BEFORE THE KANSAS STATE BOARD OF NURSING
Landon State Office Building, 900 S.W. Jackson #1051
Topeka, Kansas 66612-1230

IN THE MATTER OF
Ashleigh Rene Rees

License No. 13-93303-082
KSBN Case No. 17-1401-6

SUMMARY ORDER

The above matter comes before the Kansas State Board of Nursing (Board) pursuant to authority granted to the Board by K.S.A. 65-1120. The Board hereby proposes to find facts and take disciplinary action against the nurse license of Ashleigh Rees, (Licensee) by way of Summary Order as provided by K.S.A. 77-537.

1. a. Licensee is licensed to practice nursing in the state of Kansas. The Board has jurisdiction over the Licensee and the subject matter of this action.

b. Licensee's address of record is 100 West 9th, Caney KS 67333.

2. The role of the Kansas State Board of Nursing is to protect citizens of Kansas.

3. Pursuant to K.S.A. 65-1120(a), the Kansas State Board of Nursing may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure such person if certain enumerated grounds for disciplinary action are found. These grounds include various specific charges enumerated in K.S.A. 65-1120(a)(1) to (9), to include unprofessional conduct as defined by the ruled and regulations of the Board.

Pursuant to K.S.A. 74-1110 the Kansas State Board of Nursing may also assess a civil fine not to exceed $1,000.00 for the first violation of a law or rule and regulation applicable to the practice for which such person has been granted a license.

4. After an investigation, the Board's investigative committee found reasonable grounds to believe that the licensee violated the Kansas Nurse Practice Act, K.S.A. 65-1120, and referred this matter for further proceedings.

5. K.S.A. 77-511(a)(2)(A) of the Kansas Administrative Procedure Act authorizes the use of summary proceedings by a state agency if the use of summary proceedings does not violate any provision of law, the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties, and the state agency believes in good faith, after investigation of the facts, that the allegations will be supported to the applicable standard of proof.

FINDINGS OF FACT

6. Licensee was employed by Lakepoint Augusta from May 1, 2017 to June 15, 2017. The first ten days of her employment were training; she did not work as a nurse until May 11. In her short time at Lakepoint Augusta the licensee committed multiple errors, including incidents of failure to document skilled services, failure to provide treatments, incidents where insulin was either not given or given but not documented, and other charting/documenting errors.

Licensee was suspended by Lakepoint on June 1 and fired on June 15.

Licensee's nursing license was suspended by the Board on July 11, 2019 in disciplinary case no. 13-1486-6. Licensee and her attorney had been notified in writing by the Board on or about June 12 that the suspension would be effective 30 days from June 11. Licensee was employed at that time as a nurse at Coffeyville Regional Medical Center, and continued so employed until July 31 at which time her employer learned of her suspension and removed her from the workplace.

VIOLATIONS

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

Count 1: 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 take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient.

Count 2: 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: inaccurately recording, falsifying, or altering any record of a patient or agency or of the board.

Count 3: 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 practicing without a license or while the license has lapsed.

IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF NURSING THAT

1. **Licensee's license is suspended for one year following her current suspension, i.e. to remain suspended through January 11, 2021.**
2. **At the end of licensee's suspension she may only practice supervised. Supervised practice requires that she be supervised by a licensed RN, who is on-site with the ability to spot check the licensee's work.**

NOTICE OF ADMINISTRATIVE RELIEF

Pursuant to K.S.A. 77-537, this decision, which is called a Summary Order, is subject to your request for a hearing. If you desire a hearing, you must submit or direct a written request for hearing to: Kansas State Board of Nursing, Legal Division, 900 SW Jackson, Suite 1051, Topeka, Kansas 66612-1230, (785) 296-4325. THIS REQUEST MUST BE SUBMITTED WITHIN FIFTEEN (15) DAYS FROM THE DATE OF THIS ORDER. Pursuant to K.S.A. 77-531, if the Summary Order is served by mail, three days are added to the time limits set out above.

If a hearing is not requested in the time and manner stated, this Summary Order becomes effective as a final order, without further notice, upon the expiration of the time for requesting a hearing. If a hearing is requested, the prior issuance of a summary order shall not affect the burden of proof.

NOTICE OF JUDICIAL RELIEF

If a request for hearing is not filed as stated above, then pursuant to K.S.A. 77-613 a party may file, within 30 days from the date of the Certificate of Service below, a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 601 *et seq.* The designee who may receive service of a petition for judicial review is:

Carol Moreland, Executive Administrator
Kansas State Board of Nursing
900 SW Jackson, Room 1051
Topeka KS 66612

JoAnn Klaassen, RN, MN, JD
Investigative Committee, Vice Chair
Kansas State Board of Nursing

CERTIFICATE OF SERVICE

I certify that on the 6th day of November 2019, the foregoing copy of the Summary Order was served by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Ashleigh Rees
100 West 9th
Caney KS 67333

Bryce D. Benedict, S. Ct. No. 11663
Assistant Attorney General