IN THE MATTER OF	§	BEFORE THE ELIGIBILITY
	§	
PERMANENT CERTIFICATE	§	AND DISCIPLINARY
	§	
NUMBER 137944	§	COMMITTEE
	§	
ISSUED TO	§	OF THE TEXAS
	§	
BRIAN CHARLES BARRAGER	§	BOARD OF NURSING

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

ORDER OF THE BOARD

TO: Brian Charles Barrager
405 N. 18th Street
Independence, KS 67301

During open meeting held in Austin, Texas, on Tuesday, June 14, 2011, the Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case, based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee of the Texas Board of Nursing finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, Chapter 301 of the Texas Occupations Code, for retention of Respondent's license to practice vocational nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

The Eligibility and Disciplinary Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN.CODE § 213.16(j)]. All parties have a right to judicial review of this Order.

All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Certificate Number 137944, previously issued to BRiAN CHARLES BARRAGER, to practice vocational nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice vocational nursing in the State of Texas.

Entered this 14th day of June, 2011.

TEXAS BOARD OF NURSING

BY: _____
KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

Attachment: Formal Charge filed May 13, 2011.

Re: Permanent Certificate Number 137944
Issued to BRIAN CHARLES BARRAGER
DEFAULT ORDER -REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of June, 2011, a true and correct copy of the foregoing DEFAULT ORDER was served by placement in the U.S. Mail via certified mail, and addressed to the following person(s):

Brian Charles Barrager
405 N. 18th
Independence, KS 67301

BY: Katherine A. Thomas

KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

Texas Board of Nursing

333 Guadalupe Street, Ste. 3-460, Austin, Texas 78701
Phone: (512) 305-7400 Fax: (512) 305-7401 www.bon.state.tx.us

Katherine A. Thomas, MN, RN
Executive Director

May 16, 2011

Certified Mail No. 91 7108 2133 3934 1903 0816
Return Receipt Requested

Brian Charles Barrager
405 N. 18th
Independence, KS 67301

Dear Ms. Barrager:

Enclosed are Formal Charges which have been filed against you alleging one or more violations of Section 301.452(b) of the Nursing Practice Act, Texas Occupations Code. Within three weeks of the date of this letter, you must file a written answer to each charge admitting or denying each allegation. If you intend to deny only part of an allegation, you must specify so much of it as is true and deny only the remainder. Your answer shall also include any other matter, whether of law or fact, upon which you intend to rely for your defense. Please send your written answer to the attention of Kevin G. Freemyer, Investigator. You may obtain legal counsel at your own expense.

FAILURE TO FILE A WRITTEN ANSWER TO THE FORMAL CHARGES, EITHER PERSONALLY OR BY LEGAL REPRESENTATIVE, WILL RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF WILL BE GRANTED BY DEFAULT.

Please be advised that should you fail to file a written answer, the case will proceed on a default basis and it will be staff's recommendation that a default order be entered revoking your license(s) and/or nurse licensure compact privilege(s) to practice nursing in the State of Texas.

The results of any default order or formal disposition (Board Order) are public information. Results of informal and formal dispositions will appear in the Board's newsletter under the heading of "Disciplinary Action."

Should you desire to discuss this matter, you may contact Kevin G. Freemyer, Investigator, Enforcement Division, at the above address, or at (512) 305-8314.

Sincerely,

Katherine A. Thomas

Katherine A. Thomas, MN, RN
Executive Director

KAT/kgf

Enclosure: Formal Charges

09/99-DA

Members of the Board

Linda Rounds, PhD, FNP, RN
Galveston, *President*

Deborah Bell, CLU, ChFC Abilene
Kristin Benton, MSN, RN Austin
Patricia Clapp, BA Dallas
Tamara Cowen, MN, RN Harlingen
Sheri Crosby, JD, SPHR Dallas
Marilyn Davis, BSN, RN, MPA Sugar Land
Bianca Rosa Garcia, PhD, RN Corpus Christi
Richard Gibbs, LVN Mesquite
Kathy Leader-Horn, LVN Granbury
Josefina Lujan, PhD, RN El Paso
Beverley Jean Nutall, LVN Bryan
Mary Jane Salgado, MEd Eagle Pass

In the Matter of Permanent License	§	**BEFORE THE TEXAS**
Number 137944, Issued to	§	
BRIAN CHARLES BARRAGER, Respondent	§	**BOARD OF NURSING**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, BRIAN CHARLES BARRAGER, is a Registered Nurse holding license number 137944, which is in Delinquent status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

CHARGE I.

On or about September 27, 2010, Respondent's license to practice vocational nursing in the State of Kansas was Revoked by the Kansas State Board of Nursing, Topeka, Kansas.

A copy of the Initial Order, including the Findings of Fact, Conclusions of Law, and Conclusion, dated September 27, 2010, is attached and incorporated, by reference, as part of this pleading.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(8), Texas Occupations Code.

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CONTINUED ON NEXT PAGE

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to revocation of Respondent's license to practice nursing in the State of Texas pursuant to the Nursing Practice Act, Chapter 301, Texas Occupations Code and the Board's rules, 22 Tex. Admin. Code §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to Section 301.461, Texas Occupations Code. The cost of proceedings shall include, but is not limited to, the cost paid by the Board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, Board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars ($1,200.00).

NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.state.tx.us.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, which can be found at www.bon.state.tx.us/disciplinaryaction/discp-matrix.html.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order which is attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Kansas Initial Order, dated September 27, 2010.

Filed this 13th day of May, 2011.

TEXAS BOARD OF NURSING

James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300
Jena Abel, Assistant General Counsel
State Bar No. 24036103
Lance Robert Brenton, Assistant General Counsel
State Bar No. 24066924
Robert Kyle Hensley, Assistant General Counsel
State Bar No. 50511847
Nikki Hopkins, Assistant General Counsel
State Bar No. 24052269
John F. Legris, Assistant General Counsel
State Bar No. 00785533
TEXAS BOARD OF NURSING
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6824
F: (512) 305-8101 or (512)305-7401

Attachments: Initial Order of the Kansas State Board, dated September 27, 2010

D/2010.12.28

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

FILED
MAY 28 2010
KSBN

IN THE MATTER OF
BRIAN C. BARRAGER
License No. 23-21291-031

Case No. 09-138-6, 10-059-6

FILED - DRH
1 JUN '10 AM9:56

PETITION

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

1. Respondent, Brian C. Barrager, is licensed to practice nursing in Kansas through 3/31/2011. The Board has jurisdiction over the respondent and the subject matter of this action.

2. Respondent's address of record is 405 N. 18th, Independence, KS 67301.

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 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) In Case No. 09-136-6 the Board received certified documents that showed Respondent had been convicted of domestic battery, a misdemeanor, in Case No. 2008-CR-163 in the District Court of Wilson County, Kansas and he had entered into diversion on a

charge of driving while under the influence of alcohol. The Board referred Respondent to the Kansas Nurse Assistance Program (KNAP) for evaluation and monitoring for at least one year.

(b) Respondent submitted to a substance abuse evaluation and diagnosed the Respondent with alcohol abuse but not alcohol dependence. The Respondent reported to the evaluator that he has Hepatitis C.

(c) On or about August 6, 2009, Respondent signed a contract with KNAP agreeing to be monitored for at least twelve months. The contract required Respondent to submit to random urine drug screens (UDS), inform his employer of participation in KNAP, and supply KNAP with copies of any prescriptions.

(d) By letter dated August 26, 2009, KNAP informed Respondent that his UDS collected on August 18, 2009, had a creatinine level of 12.0 while a valid test requires a level of 20.0 or greater. The letter advised Respondent that he would be retested and to limit his fluid intake before providing a specimen or, if he had a medical condition affecting the test, to provide a doctor's letter. The letter further advised that the next three UDSs would have to have an acceptable level of creatinine for him to be considered in compliance.

(e) Respondent's UDS collected on October 1 and 13, 2009, were both dilute and positive for benzodiazepine (Alprazolam). Respondent's UDS collected on October 22, 2009, was dilute and positive for Alprazolam as well as amphetamine and methamphetamine. Respondent's UDS on November 23, 2009, was positive for marijuana.

(f) By letter of December 3, 2009, KNAP advised Respondent that the positive drug screen, pursuant to the contract, would require a three-year program. The letter directed Respondent to contact KNAP, inform his employer of the positive UDS, and contact the person who conducted his initial drug and alcohol evaluation to evaluate his safety to return to work.

(g) Respondent did not return the three-year contract and stopped submitting to random drug screens on and after December 8, 2009. By letter of January 18, 2010, KNAP informed

Respondent that his case had been closed for non-compliance, and reported the outcome to the Board.

(h) The Board received notice of Respondent's failure to complete KNAP and opened another investigative file, Case No. 10-059-6 and by letter of February 15, 2010, the Board's investigator requested Respondent contact her to discuss the case. To date, Respondent has not responded, and the letter has not been returned.

VIOLATIONS

6. Respondent has violated the Kansas Nurse Practice Act as follows:

Count 1: K.S.A. 65-1120(a)(4), to be unable to practice with skill and safety due to current abuse of drugs or alcohol;

Count 2: K.S.A. 65–1120(a)(6), unprofessional conduct as defined by K.A.R. 60-3-110(t), failing to furnish the board, its investigators, or its representatives with any information legally requested by the board.

Count 3: K.S.A. 65–1120(a)(6), unprofessional conduct as defined by K.A.R. 60-3-110(s), failing to complete the requirements of the impaired provider program of the board; and

Count 4: K.S.A. 65-1120(a)(2) "to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust..."

Count 5: K.S.A. 65-1120(a)(3), Professional Incompetency by K.S.A. 65-1120(e)(3) and K.S.A. 65-4921 through K.S.A. 65-4930, a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing. Respondent has reported he has been diagnosed with Hepatitis C and may not be safe to practice.

WHEREFORE, petitioner requests a finding that the respondent has violated the Nurse Practice Act, that respondent's license to practice nursing in Kansas be revoked, and that costs of this action be assessed to the respondent in the amount of $70.00.

Respectfully submitted,

Stephen N. Six
Kansas Attorney General

By: _____
Alma A. Heckler, #11555
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson #1051
Topeka, KS 66612

I do hereby certify the
foregoing to be a true copy
of the document which
is on file or is of record
in my office

FILED

OCT 21 2010

KSBN

BEFORE THE KANSAS STATE BOARD OF NURSING

IN THE MATTER OF
BRIAN C. BARRAGER
License No. 23 21291 031

Case No. 09 138 6; 10 059 6
OAH No. 10BN0085

INITIAL ORDER

Now on this 27th day of September 2010, the above-captioned matter comes on for hearing before the Kansas State Board of Nursing. Sandra L. Sharon was duly appointed as Presiding Officer pursuant to K.S.A. 77-514. The Petitioner, the Kansas State Board of Nursing (Board), appears through Assistant Attorney General, Alma A. Heckler, Disciplinary Counsel for the Board. The Respondent, Brian C. Barrager, appears in person.

Findings of Fact

1. The respondent was convicted of Domestic Battery in the District Court of Wilson County in November 2008.

2. The respondent was also placed on diversion for a Driving While Under the Influence of Alcohol charge in the Municipal Court of the City of Independence, Kansas in June 2008.

3. The Board referred the respondent to the Kansas Nurse Assistance Program (KNAP) in June 2009.

4. The respondent submitted to an evaluation and was diagnosed with alcohol abuse, but not alcohol dependence.

5. The respondent signed a contract with KNAP agreeing to be monitored by KNAP for 12 months.

6. The results of a Urinary Drug Screen (UDS) collected on August 18, 2009 indicated increased fluid intake which rendered the test results invalid. The respondent was advised that for his next three UDSs would have to have an acceptable level of creatinine for him to be considered in compliance.

7. On October 1 and 13, 2009, UDSs collected from the respondent were both diluted and positive for Benzodiazepine (Alprazolam).

8. A UDS collected from the respondent on October 22, 2009 was also diluted and positive for Alprazolam as well as amphetamine and methamphetamine.

9. A UDS collected on November 23, 2009 by the respondent was positive for marijuana.

10. On December 3, 2009, the respondent was advised by KNAP that, pursuant to their agreement, the respondent would be placed in a three year program with KNAP.

11. KNAP also advised the respondent to inform his employer of his positive UDSs and to have another drug and alcohol evaluation to determine his safety to practice.

12. The respondent did not return his three year contract to KNAP. He stopped submitting to random drug screens after December 8, 2009. By letter dated January 18, 2010, KNAP closed the respondent's case for non-compliance.

13. The respondent reported to the individual conducting his drug and alcohol evaluation that he is positive for Hepatitis C. This was not reported to the Board by the respondent.

Applicable Law

1. The Kansas State Board of Nursing has the authority to examine, license, and renew licenses of qualified applicants and conduct hearings upon charges for limitation, suspension, or revocation of a license to practice nursing. Kansas Statutes Annotated (K.S.A.) 74-1106(4).

2. K.S.A. 65-1120 outlines grounds for disciplinary action. The Board may deny, revoke, limit, or suspend any license to practice nursing if violations listed in K.S.A. 65-1120 are deemed to have taken place.

3. It is a violation of the Kansas Nurse Practice Act if any of the following occur:

   - The individual is deemed to be unable to practice nursing with skill and safety due to current abuse of drugs or alcohol. K.S.A. 65-1120(a)(4);

   - The individual has demonstrated unprofessional conduct by failing to furnish the Board, its investigators, or representatives with any information legally requested by the Board, K.S.A. 65-1120(a)(6). Kansas Administrative Regulation (K.A.R.) 60-3-110(t);

   - The individual has demonstrated unprofessional conduct by failing to complete the requirements of the Impaired Provider Program of the Board. K.S.A. 65-1120(a)(6), K.A.R. 60-3-110(s);

- The individual demonstrates a pattern of practice or other behavior which demonstrates a manifest and capacity or incompetence to practice nursing. K.S.A. 65-1120(a)(3) and K.S.A. 65-1120(e)(3).

Conclusions of Law

1. The respondent's failure to participate in KNAP is a violation of K.S.A. 65-1120(a)(4), failure to demonstrate the ability to practice with skill and safety.

2. The respondent failed to provide information requested by the Board regarding his conviction of Domestic Battery and DUI Diversion. This is a violation of K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(t).

3. The respondent's failure to comply with his KNAP agreement and to complete the requirements of the KNAP program is a violation of K.S.A. 65-1120(a)(6) and K.A.R. 60-3-110(s).

4. The respondent's failure to report to the Board that he has Hepatitis indicates a practice which could cause him to be unsafe to practice. This is a violation of K.S.A. 65-1120(a)(3) and K.S.A. 65-1120(e)(3).

Conclusion

The respondent has repeatedly violated the Nurse Practice Act. The Board's Petition to Revoke the respondent's license to practice nursing is granted.

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, Suite 1051, 900 SW Jackson, 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.

OFFICE OF ADMINISTRATIVE HEARINGS

Sandra L. Sharon
Presiding Officer
Office of Administrative Hearings

CERTIFICATE OF SERVICE

On Oct 20, 2010, I mailed a copy of this document to:

Brian C. Barrager
405 N. 18th
Independence, KS 67301

Mary Blubaugh, Executive Director
Alma A. Heckler, Assistant Attorney General
Kansas State Board of Nursing
900 SW Jackson, LSOB, Ste. 1051
Topeka, KS 66612

Staff Person
Office of Administrative Hearings

KANSAS STATE BOARD OF NURSING
SEAL

I do hereby certify the
foregoing to be a true copy
of the document which
is on file or is of record
in my office