

**BEFORE THE OREGON  
STATE BOARD OF NURSING**

**In the Matter of** ) **STIPULATED ORDER FOR**  
**Nicole Kelley, CNA** ) **PROBATION**  
)  
**Certificate No. 201112450CNA** ) **Reference No. 12-01358**

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The Oregon State Board of Nursing is the agency responsible for licensing and regulating certified nursing assistants in the State of Oregon. Nicole Kelley, hereinafter referred to as "Certificate Holder" was certified as a certified nursing assistant in the state of Oregon on September 22, 2011.

Certificate Holder was reported by her employer, for patient abandonment, when she failed to show up at work for an in-home care client on two separate occasions. On December 8, 2011, Certificate Holder was scheduled to take care of SB, who was dependent with all activities of daily living (ADL). SB needed care 24 hours a day. On December 10, 2011, Certificate Holder was a no call, no show for her assignment for a dependent client.

On March 14, 2012, Certificate Holder was charged with two counts of Child Neglect, when she was intoxicated while taking care of her children. Certificate Holder entered an inpatient treatment center on February 29, 2012 and successfully completed inpatient treatment on May 29, 2012. She has continued intensive outpatient treatment and is actively involved with her recovery. She is diagnosed with Alcohol Dependence.

By the above actions, Certificate Holder is subject to discipline pursuant to violations of ORS 678.442 (2) (c) and (f); and OAR 851-063-0090 (7) (a).

**678.442 Certification of nursing assistants; rules.**

- (2) In the manner prescribed in ORS chapter 183, the board may revoke or suspend a certificate issued under this section or may reprimand a nursing assistant for the following reasons:
- (c) Impairment as defined in ORS 676.303.
- (f) Conduct unbecoming a nursing assistant in the performance of duties.

**Causes for Denial, Reprimand, Suspension, Probation or Revocation of CNA Certificate 851-063-0080**

Under the contested case procedure in ORS 183.310 to 183.550 the Board may deny, reprimand, suspend, place on probation or revoke the certificate to perform duties as a CNA for the following causes:

- (3) Use of any controlled substance or intoxicating liquor to an extent or in a manner injurious to the certificate holder or others or to an extent that such use impairs the ability to conduct safely the duties of a nursing assistant; ORS 678.442 (2) (c).
- (6) Conduct unbecoming a nursing assistant in the performance of duties. ORS 678.442 (2)

**Conduct Unbecoming a Nursing Assistant  
851-063-0090**

A CNA, regardless of job location, responsibilities, or use of the title "CNA," who, in the performance of nursing related duties, may adversely affect the health, safety or welfare of the public, may be found guilty of conduct unbecoming a nursing assistant. Conduct unbecoming a nursing assistant includes, but is not limited to:

- (7) Conduct related to impaired function:
  - (a) Using intoxicants, prescription, over the counter or controlled drugs to an extent or in a manner injurious to the nursing assistant or others or to the extent that such use impairs the ability to conduct safely the duties of a nursing assistant.

Certificate Holder admits that the above allegations occurred and constitute violations of the Nurse Practice Act. She wishes to cooperate with the Board in resolving the present disciplinary problems. The following will be proposed to the Oregon State Board of Nursing and is agreed to by Certificate Holder.

IT IS SO AGREED:

**That the Certified Nursing Assistant certificate of 201112450CNA be placed on Probation. The Certificate Holder's compliance with this agreement will be monitored by the Oregon State Board of Nursing from date of signature on the Final Order. Certificate Holder must complete a twenty-four (24) month period of probation to begin upon her return to performing the duties at the level of a Certified Nursing Assistant. Certificate Holder must work a minimum of sixteen (16) hours per week and no more than one (1.0) FTE in a setting where she is able to exercise the full extent of scope of duties in order to demonstrate whether or not she is competent. Limited overtime may be approved on occasion. Any period in which Certificate Holder does not work in the State of Oregon will not count toward the probationary period.**

**Certificate Holder must comply with the following terms and conditions of probation:**

- 1) Certificate Holder shall not violate the Nurse Practice Act (ORS 678) or the rules adopted thereunder.
- 2) Certificate Holder shall have thirty-six (36) months from Board acceptance of this Stipulation to complete twenty- four (24) months of monitored practice.
- 3) Certificate Holder shall notify the Board, in writing, prior to any change of address or employment setting, during the probation period.
- 4) Certificate Holder shall maintain an active certificate.
- 5) Certificate Holder shall inform the Board in advance of any absences from Oregon and/or move from Oregon to another licensing jurisdiction. If Certificate Holder leaves the State and is unable to work in the State of Oregon, her

probationary status will be re-evaluated.

- 6) Certificate Holder shall present herself, in person or by phone, to designated Board staff for interviews on a monthly basis during the probationary period. Frequency of contact may be reviewed and revised periodically at the discretion of Board staff.
- 7) Certificate Holder shall notify the Board of any citations, arrests, or convictions for any offense, whether a felony, misdemeanor, violation, or citation within seven (7) days of the occurrence.
- 8) Certificate Holder will not look for, accept, or begin a new nursing assistant position without the approval of the Board. This includes changes of the employer itself or changes within the facility or institution.
- 9) Certificate Holder shall inform current and prospective employers of the probationary status of her certificate, the reasons for her probation, and terms and conditions of probation. If there is a Nurse Executive, that person is to be informed of Certificate Holder's probationary status. The Nurse Executive will receive copies of the Stipulation for Probation and Board Order when Applicant is employed.
- 10) Certificate Holder shall work under the direct supervision of another licensed healthcare professional, functioning at a higher level of licensure, who is working in the same physical location and readily available to observe practice and provide assistance. Certificate Holder shall be employed in a setting where her nursing supervisor agrees to submit written evaluations of work performance (on forms provided by the Board) every three (3) months during the probationary period. The nursing supervisor must submit the quarterly evaluation within 10 days of the due date. If the evaluation is not received at such time, Board staff will contact the employer to remind them. If the Board does not receive the report within 5 business days from the time the employer is contacted, the probationer will be restricted from performing the duties of a nursing assistant.
- 11) Between regular reporting periods, the Nurse Executive or comparable person, shall inform the Board of any instance of the probationer's non-compliance with the terms and conditions of this Stipulation for Probation, or of any other concern there may be regarding her work-related conduct or personal behavior that may affect her ability to perform the duties of a nursing assistant.
- 12) Certificate Holder shall notify the Board when there is a change in status of employment including resignations or terminations.
- 13) Certificate Holder shall not work in any work setting in which on-site supervision is not available. This generally includes home health agencies, traveling agencies, float pools, temporary agencies, assisted living facilities, adult

foster care, independent consulting contracts, home hospice, and night shifts outside of acute care settings.

- 14) Certificate Holder shall not be allowed to participate in the CNA2 training per Division 62.
- 15) Certificate Holder shall participate and comply with any treatment recommendations as set forth by a third party evaluator. Within fourteen (14) days of treatment completion, Certificate Holder shall submit to the Board a copy of her completion certificate or discharge summary. Certificate Holder shall attend NA, AA (or a similar 12-step program) on a weekly basis and provide proof of attendance to Board staff.
- 16) Certificate Holder shall participate in the Board's random urine program. Failure to comply with the random urine program will result in an immediate removal from the performance of nursing assistant duties. Certificate Holder shall submit to tests to determine the presence of unauthorized substances immediately upon request by Board staff or the employer. Certificate Holder shall sign any release of information necessary to ensure the Board will receive the results of such testing. The presence of unauthorized substances may be considered a violation of the terms and conditions of this Stipulation. Certificate Holder will obtain an evaluation by a Board approved chemical dependence evaluator upon request of the probation coordinator. Certificate Holder understands that she will be financially responsible for any costs related to testing and evaluation. Failure to keep the account with the Board's lab vendor in good standing will be considered a violation of this agreement.
- 17) Certificate Holder shall abstain from the use of intoxicating, mind altering, or potentially addictive drugs, both over-the-counter and prescription drugs, and alcohol during the period of probation. Certificate Holder shall avoid any over the counter products and food items containing alcohol and poppy seeds.
- 18) Certificate Holder may take medication for a documented medical condition, provided that she obtains such medication only by a legal prescription written by a person authorized by law to write such a prescription. Certificate Holder will notify the Board within 72 hours in the event she/he is prescribed such medication, and shall authorize the prescribing person to communicate with the Board about her medical condition. Certificate Holder shall produce the medical records pertaining to the medical condition and medication use. Certificate Holder will discard any unused prescription medications when it is no longer needed or expired.
- 19) Certificate Holder shall cease the performance of duties as a nursing assistant upon the occurrence of a relapse or at the request of the probation coordinator because of relapse or relapse behavior. Performance of duties may resume when approved by Board staff, in consultation with the employer.

- 20) Certificate Holder will notify any health care providers of the nature of her chemical dependence diagnosis to ensure that her health history is complete before receiving any treatment, including medical and dental treatment. Certificate Holder will provide a copy of this Stipulation to the provider. Certificate Holder further agrees to provide the Board with the names of any health care providers, sign releases of information with the providers, and provide the Board with documentation of the health care provided (medical records). Certificate Holder is financially responsible for any costs incurred as a result of compliance with the terms and conditions of this stipulation.
- 21) Certificate Holder shall notify the Board at least three (3) business days prior to leaving town or going on vacation with the exception of a family emergency.
- 22) Certificate Holder shall cooperate fully with the Board in the supervision and investigation of her compliance with the terms and conditions of this Stipulation.

Certificate Holder understands that the conduct resulting in the violations of law, described in this Stipulation are considered by the Board to be of a grave nature and if continued, constitutes a serious danger to public health and safety.

Certificate Holder also understands that in the event she engages in future conduct resulting in violations of the law or terms of probation the Board may take further disciplinary action against her certificate, up to and including revocation of her certificate to perform duties as a certified nursing assistant.

Certificate Holder understands that this Stipulation will be submitted to the Board of Nursing for approval and is subject to the Board's confirmation.

Certificate Holder understands that by entering into this stipulated agreement, she waives the right to an administrative hearing.

Certificate Holder states no promises, representation, duress, or coercion has been used to induce her to sign this Stipulation.

Certificate Holder understands that this Stipulation is a public record.

Certificate Holder has read this Stipulation, understands the Stipulation completely, and freely signs the Stipulation.

IT IS SO AGREED:

\_\_\_\_\_  
Nicole Kelley, CNA

\_\_\_\_\_  
Date

**ORDER**

IT IS SO ORDERED:

**BOARD OF NURSING FOR THE STATE OF OREGON**

\_\_\_\_\_  
Kay Carnegie, RN, MS  
Board President

\_\_\_\_\_  
Date