

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VERGELLA JOSEPH ANICET,)
)
 Petitioner,)
)
 vs.) Case No. 99-4161
)
 DEPARTMENT OF HEALTH,)
 BOARD OF NURSING,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Mary Clark, held a formal hearing in the above-styled case on August 18 and August 25, 2000. The hearings were conducted by videoconference on August 18 and telephone on August 25. The Administrative Law Judge presided on both days from Tallahassee, Florida.

APPEARANCES

For Petitioner: Juan C. Gautier, Esquire
Bank of Central Florida Building
Suite 300
105 East Robinson Street
Orlando, Florida 32801

For Respondent: Edward A. Tellechea, Esquire
Department of Legal Affairs
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Petitioner seeks licensure by examination as a registered nurse in the State of Florida. The issue for disposition here is whether her application should be granted.

PRELIMINARY MATTERS

On July 19, 1999, after its public meeting on June 11, 1999, the Board of Nursing issued a Notice of Intent to deny Ms. Anicet's application for licensure as a registered nurse based on her failure to demonstrate that she completed an appropriate educational program or program equivalent and because it appeared that a signature on a form in her application had been forged.

Ms. Anicet timely requested a formal evidentiary hearing and the case was referred to the Division of Administrative Hearings.

Upon assignment to the Administrative Law Judge the hearing was set for February 11, 2000, but was continued several times upon the request of both parties. Counsel for Ms. Anicet was given more time to gather documentation and counsel for the agency had a schedule conflict.

When the hearing proceeded as described above, Ms. Anicet testified in her own behalf and offered three exhibits in evidence. Petitioner's Exhibit Two was rejected as it could not

be authenticated; Petitioner's Exhibits One and Three were received in evidence.

Respondent, the agency, presented the testimony of Carrie M. Harris, nursing education consultant for the Board of Nursing. Respondent's three Exhibits were received in evidence as Respondent's Exhibits One through Three.

The Transcripts of hearing were filed on September 15 and 20, 2000. Respondent filed its Proposed Recommended Order on October 2, 2000.

FINDINGS OF FACT

1. Vergella Joseph Anicet was born in Haiti on July 26, 1957. After high school and university studies she attended the National School of Nursing in Port-Au-Prince, Haiti, from 1982-1985, and graduated in 1985.

2. Ms. Anicet emigrated to Miami, Florida, in November 1985. After approximately a year she moved to Central Florida and now is residing in Orlando.

3. In 1990, Ms. Anicet applied for licensure as a registered nurse in Florida. Upon her request, the nursing school in Haiti sent a transcript directly to the Board of Nursing. The Board approved her to work as a graduate nurse until she could take the licensing examination.

4. After she failed the examination Ms. Anicet lost her graduate nurse permit but qualified for licensure as a certified

nursing assistant. In 1993, she passed the licensed practical nurse (LPN) examination and has been employed as an LPN since then.

5. Ms. Anicet applied again for licensure as a registered nurse by examination in February 1999. As part of the process of that application she requested the nursing school in Haiti to send her transcript to the Board of Nursing.

6. The nursing school sent Ms. Anicet's transcript directly to the Board. However, the transcript sent in 1999 varied in many material aspects from the version that the Board received from the school in 1990. The discrepancies are in the described courses, numbers of hours completed, and in the clinical practice experiences described in the two transcripts.

7. From the record it is impossible to determine which is the correct transcript. In response to a request by Ms. Anicet's attorney, the National School of Nursing in Port-Au-Prince sent a letter to the Board of Nursing in October 1999, in an attempt to explain the two transcripts. As best as can be determined, the school revised its curriculum in November 1997 and somehow readjusted the official transcript to conform to the revisions. However, there is no key to how the adjustments were made. The differences are not attributable to different translations, French to English, of the two documents.¹

8. There is no evidence of any fraud by Ms. Anicet. The peculiar documents came directly to the Board from the school in Haiti. The Board has had problems verifying the coursework of other applicants who are graduates from this same school.

9. The evidence establishes that Ms. Anicet graduated from nursing school but does not establish the courses or program which she completed.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction in this proceeding pursuant to Sections 120.569 and .57(1), Florida Statutes.

11. As an applicant for a professional license Ms. Anicet must prove her entitlement to that licensure. Espinoza v. Department of Business and Professional Regulation, 739 So. 2d. 1250 (Fla. 3rd DCA 1999); Harac v. Dept. of Professional Regulation, 484 So. 2d. 1333, (Fla. 3rd DCA 1986). When an agency's basis for denying licensure is the applicant's alleged violation of the regulatory statute, the agency must prove the violation by a preponderance of evidence. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d. 932 (Fla. 1996).

12. In this case both parties have failed to meet their respective burdens of proof.

13. There is no evidence whatsoever of fraud or fraudulent misrepresentation by Ms. Anicent, which if proven would have been a violation of Section 464.018(1)(a), Florida Statutes, and a valid basis for license denial.

14. However, through no apparent fault of her own Ms. Anicet has been unable to provide reliable documentation of the program she completed in Haiti. Section 464.008(1)(c) and (2), Florida Statutes provide:

464.008 Licensure by examination.-

(1) Any person desiring to be licensed as a registered nurse or licensed practical nurse shall apply to the department to take the licensure examination. The department shall examine each applicant who:

* * *

(c) Is in good mental and physical health, is a recipient of a high school diploma or the equivalent, and has completed the requirements for graduation from an approved program for the preparation of registered nurses or licensed practical nurses, whichever is applicable. Courses successfully completed in a professional nursing program which are at least equivalent to a practical nursing program may be used to satisfy the education requirements for licensure as a licensed practical nurse.

(2) Each applicant who passes the examination and provides proof of graduation from an approved nursing program shall, unless denied pursuant to S. 464.018, be entitled to licensure as a registered professional nurse or a licensed practical nurse, whichever is applicable.

15. In 1999, when the Board of Nursing acted to deny Ms. Anicet's application, the Board's Rule 64B9-3.002(1)(c), Florida Administrative Code, required that a graduate of a foreign nursing program provide an official transcript and describe all courses successfully completed or evidence that the required course content in the foreign graduate's country was substantially equivalent to that required in Florida at the time of the applicant's original licensure. The information provided in the record of this proceeding does not meet this requirement.

16. Since 1999, Rule 64B9-3.002, Florida Administrative Code, has been amended to provide:

64B9-3.002 Qualifications for Examination.
(1) An applicant seeking certification to take the licensure examination shall submit, on forms provided by the Department, evidence that he or she meets the qualifications prescribed by the Nurse Practice Act, Chapter 464, F.S. Such evidence shall consist of:

* * *

(c) If graduated from an approved program in Florida, a notice of graduation or of completion of the requirements for graduation; if not, an official certified transcript from the applicant's program or equivalent documentation which specifically sets forth all courses successfully completed, the date of the applicant's graduation, and the degree, certificate or diploma awarded. If the applicant is seeking to qualify to write the examination on the basis of education received in country [sic] other than the United States, the applicant must obtain a report by a

credentialing agency that meets the requirements of Rule 64B9-3.014, F.A.C.
(emphasis added)

17. It may be possible for Ms. Anicet to obtain the required report, particularly if, as revealed by the Board's staff person, she is only one of several applicants with problems verifying the Haiti school's program. For now, however, the requirements of the statute and rule have not been met.

RECOMMENDATION

Based on the foregoing, it is hereby

RECOMMENDED:

That the Board of Nursing enter its final order denying Ms. Anicet's application without prejudice to her right to reapply when she is able to obtain an appropriate credentialing report.

DONE AND ENTERED this 18th day of October, 2000, in Tallahassee, Leon County, Florida.

MARY CLARK
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of October, 2000.

ENDNOTE

1/ Even if Petitioner had been able to authenticate her offered Exhibit 2, another letter from the nursing school purporting to explain the differences, that letter would still have been insufficient to establish what courses Ms. Anicet completed from 1982-1985.

COPIES FURNISHED:

Juan C. Gautier, Esquire
Bank of Central Florida Building
Suite 300
105 East Robinson Street
Orlando, Florida 32801

Edward A. Tellechea, Esquire
Department of Legal Affairs
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

Theodore M. Henderson, Agency Clerk
Department of Health
4052 Bald Cypress Way
Bin A02
Tallahassee, Florida 32399-1701

Ruth R. Stiehl, Ph.D., R.N., Executive Director
Board of Nursing
4080 Woodcock Drive, Suite 202
Jacksonville, Florida 32207-2714

William W. Large, General counsel
Department of Health
4052 Bald Cypress Way
Bin A00
Tallahassee, Florida 32399-1701

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.