

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LAW ENFORCEMENT,)
CRIMINAL JUSTICE STANDARDS AND)
TRAINING COMMISSION,)
)
Petitioner,)
)
vs.) Case No. 99-4951
)
PEDRO ALVAREZ,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on February 25, 2000, by video teleconference at sites in Tallahassee and Key West, Florida, before Administrative Law Judge Michael M. Parrish, of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Karen D. Simmons, Esquire
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489

For Respondent: Manuel E. Garcia, Esquire
515 Whitehead Street
Key West, Florida 33040

STATEMENT OF THE ISSUE

This is a license discipline case in which the Petitioner seeks to take disciplinary action against the Respondent on the

basis of alleged misconduct set forth in an Administrative Complaint.

PRELIMINARY STATEMENT

At the final hearing the Petitioner presented the testimony of four witnesses and also offered six exhibits, all of which were received in evidence. The Respondent presented the testimony of one witness. 1/ The Respondent also had two exhibits marked for identification, but ultimately withdrew both exhibits as unnecessary.

At the request of the Respondent, the parties were allowed 20 days from the filing of the transcript within which to file their proposed recommended orders. The transcript was filed on March 8, 2000. Thereafter, both parties filed proposed recommended orders containing proposed findings of fact and conclusions of law. The parties' proposals have been carefully considered during the preparation of this Recommended Order. 2/

FINDINGS OF FACT

1. The Respondent, Pedro Alvarez, was certified by the Criminal Justice Standards and Training Commission on August 23, 1991, and was issued Corrections Certificate number 73083. The Respondent is currently certified by the Criminal Justice Standards and Training Commission as a Corrections Officer.

2. At all times material to this case, the Respondent was

employed by the Monroe County Sheriff's Office as a Corrections Officer. 3/

3. During the latter part of 1998, the Respondent was having recurring migraine headaches. The Respondent sought medical treatment for the migraine headaches by going to the Southern Medical Group. He was seen by a physician or by a physician's assistant at the Southern Medical Group on November 11, 1998, and on November 20, 1998. The Respondent did not go to the Southern Medical Group on November 16, 1998.

4. During the course of the Respondent's visit to the Southern Medical Group on November 20, 1998, the physician's assistant who saw him that date wrote a note on a prescription pad and gave the note to the Respondent. The note was correctly dated "11/20/98," and correctly stated: "Seen today for migraine headaches." The note written by the physician's assistant also correctly stated: "Also seen 11/11/98."

5. After receiving the above-described note from the physician's assistant, the Respondent intentionally altered the text of the note by changing the date "11/11/98" to read "11/16/98." As altered by the Respondent, the note read "Also seen 11/16/98," where it had originally read "Also seen 11/11/98."

6. Later in the day on November 20, 1998, the Respondent took the altered note to a notary public and had the notary

public make a photocopy of the altered original note. The Respondent then had the notary public prepare a certification statement on the photocopy reading: "This document is a true copy of a doctor's notice from Lorraine M. Pelletier to Pedro Alvarez." The notary public placed her signature and seal following the certification statement. At that time, the Respondent knew that the original note had been altered, but the notary public was unaware of the alteration.

7. Due to the number of days on which the Respondent had been absent from work because of illness, he was required to provide his supervisors with written doctor's notes when he was absent due to illness. In fulfillment of that requirement, later in the day on November 20, 1998, the Respondent delivered to his immediate supervisor a notarized copy of the altered note, which falsely stated that the Respondent had been seen at the Southern Medical Group on November 16, 1998.

8. The immediate supervisor suspected that the notarized copy of the note had been altered. He reported his suspicion to his supervisor and to internal affairs. He also asked the Respondent to provide the original of the note written by the physician's assistant. The Respondent never provided the original note to his supervisor.

9. On December 7, 1998, the Respondent was advised by an officer in internal affairs that they were investigating the

Respondent for what appeared to be an act of providing false information to his employer. Later on December 7, 1998, the Respondent resigned from his employment as a Corrections Officer with the Monroe County Sheriff's Office. The Respondent also admitted that he had altered the date on the note from the physician's assistant.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

11. In a case of this nature, the Petitioner bears the burden of proving the facts alleged in the Administrative Complaint by clear and convincing evidence. It has met that burden in this case. 4/

12. Subsections (7) and (8) of Section 943.1395, Florida Statutes, read as follows, in pertinent part:

(7) Upon a finding by the commission that a certified officer has not maintained good moral character, the definition of which has been adopted by rule and is established as a statewide standard, as required by s. 943.13(7), the commission may enter an order imposing one or more of the following penalties:

- (a) Revocation of certification.
- (b) Suspension of certification for a period not to exceed 2 years.
- (c) Placement on a probationary status for a period not to exceed 2 years, subject to terms and conditions imposed by the commission. Upon the violation of such

terms and conditions, the commission may revoke certification or impose additional penalties as enumerated in this subsection.

(d) Successful completion by the officer of any basic recruit, advanced, or career development training or such retraining deemed appropriate by the commission.

(e) Issuance of a reprimand.

(8)(a) The commission shall, by rule, adopt disciplinary guidelines and procedures to administer the penalties provided in subsections (6) and (7). The commission may, by rule, prescribe penalties for certain offenses. The commission shall, by rule, set forth aggravating and mitigating circumstances to be considered when imposing the penalties provided in subsection (7).

(b) The disciplinary guidelines and prescribed penalties must be based upon the severity of specific offenses. The guidelines must provide reasonable and meaningful notice to officers and to the public of penalties that may be imposed for prohibited conduct. The penalties must be consistently applied by the commission.

13. The Commission has by rule defined the acts which constitute "a certified officer's failure to maintain good moral character" as required by Section 943.13(7), Florida Statutes.

5/ The definition includes: "The perpetration by an officer of an act that would constitute any of the following misdemeanor or criminal offenses whether criminally prosecuted or not." The offenses itemized in the rule include Section 837.06, Florida Statutes. The Respondent's actions described in the foregoing findings of fact constitute the offense described in Section 837.06, Florida Statutes.

14. As required by Section 943.1395(8), Florida Statutes, the Commission has, by rule, adopted disciplinary guidelines and procedures to administer the penalties authorized by statute.

6/ Those rules provide that, absent aggravating or mitigating circumstances, the penalty for a false report or statement in violation of Section 837.06, Florida Statutes, is revocation of the officer's certificate. 7/ There is no persuasive evidence in the record of this case sufficient to provide a basis for mitigation of the guideline penalty. 8/

RECOMMENDATION

On the basis of the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Commission issue a final order revoking the Respondent's certificate.

DONE AND ENTERED this 2nd day of May, 2000, in Tallahassee, Leon County, Florida.

MICHAEL M. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of May, 2000.

ENDNOTES

- 1/ The Respondent recalled one of the witnesses who had previously been called by the Petitioner.
- 2/ The proposed findings and proposed conclusions set forth in the Petitioner's Proposed Recommended Order are, for the most part, consistent with the findings and conclusions reached in this Recommended Order. Substantial portions of the proposals submitted by the Petitioner have been incorporated into this Recommended Order.
- 3/ For some unexplained reason, paragraph 2 of the proposed findings of fact in the Petitioner's Proposed Recommended Order reads: "The Respondent was employed with the Miami-Dade Police Department on July 17, 1972." There is no evidence of such employment in the record of this case, and, in any event, any employment at such time and place would be irrelevant to the issues in this case.
- 4/ In his Proposed Recommended Order, the Respondent does not dispute the sufficiency of the Petitioner's evidence. Rather, the principal argument in the Respondent's Proposed Recommended Order is that there are mitigating factors to be considered in determining the appropriate penalty in this case.
- 5/ Rule 11B-27.0011(4), Florida Administrative Code.
- 6/ Rule 11B-27.005, Florida Administrative Code.
- 7/ Rule 11B-27.005(5)(b)4, Florida Administrative Code.
- 8/ In his Proposed Recommended Order, the Respondent argues that there are several mitigating factors that should be applied to reduce the penalty in this case. Those arguments all fail for the following reasons. A number of the mitigating factors asserted by the Respondent are not identified as mitigating factors in Rule 11B-27.005(6)(b), Florida Administrative Code. The other mitigating factors asserted by the Respondent lack a factual predicate in the record of this case.

COPIES FURNISHED:

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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.