

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH)
BOARD OF NURSING,)
)
Petitioner,)
)
vs.) Case No. 00-1637
)
MARION MORRIS MORROW,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on August 11, 2000, by telephonic conference at Miami and Tallahassee, Florida, before Susan B. Kirkland, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Diane K. Kiesling, Esquire
Agency for Health Care Administration
2727 Mahan Drive
Building 3, Room 3231A
Tallahassee, Florida 32308

For Respondent: Marion Morris Morrow, pro se
27920 SW 130th Avenue
Homestead, Florida 33032

STATEMENT OF THE ISSUES

Whether Respondent violated Subsections 464.018(1)(c), (h), and (i), Florida Statutes, and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On February 18, 2000, Petitioner, Department of Health, Board of Nursing (Department), filed a three-count administrative complaint against Respondent, Marion Morris Morrow (Morrow), alleging that she violated Subsections 464.018(1)(c), (h), and (i), Florida Statutes. Morrow requested an administrative hearing, and on April 18, 2000, the Department forwarded the case to the Division of Administrative Hearings for assignment to an administrative law judge.

The final hearing was scheduled to take place on August 11, 2000, by video teleconference. All parties appeared for the video teleconference, but due to technical difficulties the final hearing was unable to be conducted by video teleconference. The parties agreed to have the final hearing heard by telephone conference call.

At the final hearing, the Department called the following witnesses: Dahna Jane Schaublim, Donald E. Gerlock, Kathleen Williams, Terry Lee Drinkut, and Steve Allen Windover. Petitioner's Exhibits 1, 2, and 4-7 were admitted in evidence at the final hearing. Petitioner was given leave to file Petitioner's Exhibit 8 as a late-filed exhibit, subject to objection by Respondent. By order dated August 29, 2000, Petitioner's Exhibit 8 was admitted in evidence.

At the final hearing, Morrow testified on her own behalf and presented George A. Davison as her witness. Respondent presented

no exhibits at the final hearing. On September 6, 2000, Morrow filed a letter enclosing a copy of Respondent's answers to Petitioner's First Set of Interrogatories, questions 1 through 3, and a copy of a record of her community service hours. To the extent that Morrow desires to have the two documents admitted in evidence, the answers to interrogatories are included in Respondent's Exhibit 6, which has been admitted in evidence; however, the record of community services hours is not admitted as being untimely submitted.

The Transcript was filed on September 5, 2000. Morrow's letter of September 6, 2000, is considered as Morrow's proposed recommended order. Petitioner filed its proposed recommended order on September 15, 2000. The parties' proposed recommended orders have been considered in rendering this recommended order.

FINDINGS OF FACT

1. Petitioner, Department of Health, Board of Nursing (Department), is the agency charged with the regulation of the practice of nursing pursuant to Chapters 20, 456 and 464, Florida Statutes.

2. Respondent, Marion Morris Morrow (Morrow), is a licensed practical nurse in the State of Florida, having been issued license number PN 0801791.

3. Morrow met George Davison (Davison) when his wife was a patient at Green Briar Nursing Home, where Morrow was the charge nurse.

4. In 1997, Davison was involved in an automobile accident, resulting in the loss of his driver's license. After Davison was no longer able to drive, Morrow took Davison to the grocery store to buy groceries. She also took him to the bank to cash checks. Morrow came to Davison's house on a regular basis to see him. If he was not feeling well, she checked on him, and if he needed anything she went and got it for him.

5. Davison sold his automobile to Morrow for \$2,500. She was to pay a little on the car as she had the money, but the total \$2,500 has not been paid. At least two times after he sold the car to Morrow, he gave her money to pay the insurance on the car. He gave Morrow a few hundred dollars to pay her eldest son's college tuition. Davison gave Morrow money from time to time as she needed it. Morrow spent some of the money to support her cocaine habit. Davison was unaware that Morrow used any of the money to buy crack cocaine.

6. On March 28, 1999, the Coral Gables Police Department received a 911 call from Davison, who was having delusions about people being in his house. Responding to the call, the police went to Davison's home. Morrow was at the home when the police arrived.

7. On March 28, 1999, the Department of Children and Family Services' Adult Protective Services Unit received a complaint from the Coral Gables Police Department, alleging that possibly Davison, who was born in 1913, was being abused by his caregiver.

Protective Services Investigator John Steinhilber was assigned the case and went to Davison's residence on March 29, 1999, to investigate. When Mr. Steinhilber arrived at Davison's home, he spoke with Morrow but was not admitted into the residence.

8. On March 29, 1999, Davison was admitted to the South Miami Hospital. Morrow took Davison to the hospital at his request.

9. Mr. Steinhilber contacted the Coral Gables Police Department for assistance in gaining admittance to Davison's home. On March 30, 1999, Mr. Steinhilber returned to Davison's residence with two police detectives, Kathleen Williams and Terry Drinkut. Morrow answered the door and let them in the house. Morrow had been on the telephone with Davison when the police arrived. She gave the telephone to Ms. Williams to talk to Davison, who gave the police permission to look around his home.

10. Ms. Williams asked for Morrow's identification. Morrow proceeded to the back bedroom with the detectives following her. Morrow ran to the bed and grabbed something off of the bed. Thinking that Morrow may have a weapon, the detectives subdued her and found a crack pipe in one of her hands. There was debris on the bed, which appeared to be crack cocaine. Morrow was advised of her rights and taken to the police station.

11. While the detectives were at Davison's residence, they inspected the interior of the house. There was rotting food on

the kitchen counter, in the oven, and in the refrigerator, which was not working. One of the bathrooms had worms living in the toilet. There was feces in a lavatory, on Davison's bedroom floor, and in Davison's sheets. Dirty clothes with feces were piled in a corner of the bedroom. Empty medication bottles, dating back to 1998, were in the kitchen. There were piles of garbage throughout the house.

12. Morrow was advised of her constitutional rights again at the police station. She told the police officers that she had begun taking care of Davison after he had an automobile accident in 1997, checking on him almost daily and occasionally staying overnight. She admitted that she was addicted to crack cocaine, and that since she had been a caregiver to Davison that she had received between \$100,000 and \$180,000 from Davison. She stated that she would go to the bank with Davison, who would negotiate checks made out to cash and turn the money over to Morrow. Additionally, she confessed that the majority of the money had been spent by Morrow for crack cocaine.

13. From November 21, 1998, to February 18, 1999, Davison had written 62 checks for cash, totaling \$16,114. At times more than one check would be cashed on the same day. Two of the checks for cash had been endorsed by Morrow. During the same time period, two checks were made payable to Morrow for a total of \$323. Davison does not know what happened to the cash. He does not believe that he gave the cash to Morrow, but he has no

explanation for where the cash went or what he bought with the money.

14. Davison admits giving some money to Morrow over the course of their friendship, but he denies that he gave her between \$100,000 and \$180,000.

15. On April 23, 1999, a two-count information was filed, alleging that Morrow abused an elderly person by neglecting to adequately provide care, supervision, and services for Davison and/or allowing the living conditions to deteriorate to a point which could reasonably result in physical or psychological injury and alleging that Morrow, while standing in a position of trust and confidence, knowingly obtained funds by deception or intimidation from Davison in an amount more than \$20,000 but less than \$100,000.

16. On November 5, 1999, Morrow pled guilty to Count I of the information, alleging abuse of an elderly person by neglecting to provide adequate care. Count II of the information was nolle prossed. Adjudication was withheld, and Morrow was placed on probation for 12 months.

17. Morrow attended a substance abuse program as a condition of her probation and was clean from the use of drugs or alcohol for fifteen months at the time of the final hearing.

18. Morrow has not been employed since November 1989.

CONCLUSIONS OF LAW

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

20. Petitioner has the burden to prove by clear and convincing evidence that Respondent is guilty of the violations set forth in the Administrative Complaint. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

21. In Count I of the Administrative Complaint, Petitioner alleges that Respondent violated Subsection 464.018(1)(i), Florida Statutes, which provides that a licensee is subject to disciplinary action for "[e]ngaging or attempting to engage in the possession, sale or distribution of controlled substances as set forth in chapter 893, for any other than legitimate purposes authorized by this chapter."

22. The evidence did not establish that Morrow was in possession of crack cocaine at the time that she was taken into custody on March 30, 1999. There was evidence that there was some debris on the bed which appeared to be crack cocaine, but there was no clear and convincing evidence that the debris was indeed crack cocaine. Petitioner has failed to establish that Morrow violated Subsection 464.018(1)(i), Florida Statutes.

23. In Count II of the Administrative Complaint, Petitioner alleges that Respondent violated Subsection 464.018(1)(h), Florida Statutes, which provides that a licensee is subject to

discipline for "[u]nprofessional conduct, which shall include, but not be limited to, any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing nursing practice, in which case actual injury need not be established."

24. Rule 64B9-8.005(14), Florida Administrative Code, defines "unprofessional conduct" to include:

(14) Exercising influence on a patient in such a manner as to exploit the patient for financial gain of the licensee or a third party . . .

25. Petitioner has failed to establish that Davison was Morrow's patient. Chapter 464, Florida Statutes, does not define the term "patient." However a reading of Chapter 464, Florida Statutes, does indicate that for Morrow to have been engaged in the practice of practical nursing, she would have had to perform selected acts under the direction of a nurse or doctor, which was not established in the instant case. Section 464.022, Florida Statutes, does not include the care of the sick by friends without compensation within the practice of nursing in Chapter 464, Florida Statutes. The evidence does not establish a professional relationship between Davison and Morrow, in which Davison had retained Morrow to provide nursing services to him. Morrow was a caregiver to Davison as that term is defined in Chapters 415 and 825, Florida Statutes, but it was in the capacity of a friend rather than a licensed practical nurse.

26. Petitioner has failed to establish by clear and convincing evidence that Respondent violated Subsection 464.018(1)(h), Florida Statutes, and Rule 64B9-8.005(14), Florida Administrative Code.

27. In Count III of the Administrative Complaint, Respondent alleges that Petitioner violated Subsection 464.018(1)(c), Florida Statutes, which subjects a licensee to discipline for the following:

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of nursing or to the ability to practice nursing.

28. Morrow pled guilty to a violation of Section 825.102(1), Florida Statutes, which states:

(1) 'Abuse of an elderly person or disabled adult' means:

(a) Intentional infliction of physical or psychological injury to an elderly person or disabled adult;

(b) An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or

(c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult.

A person who knowingly or willfully abuses and elderly person or disabled adult without causing great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

29. Abuse of an elderly adult is clearly a crime which relates to the ability of Morrow to practice nursing. As a nurse, Morrow would be entrusted with the care of patients. Morrow pled guilty to neglecting to adequately provide care, supervision, and services to Davison and/or allowing Davison's living conditions to deteriorate to a point which could reasonably result in physical or psychological injury. Petitioner has established by clear and convincing evidence that Respondent violated Subsection 464.018(1)(c), Florida Statutes.

30. Rule 64B9-8.006(3)(f), Florida Administrative Code, provides that the penalty range for a violation of Section 464.018(1)(c), Florida Statutes, involving the conviction of a felony is from a fine of \$500, referral to the Intervention Project for Nurses, two years' suspension and probation during the court-ordered probation to revocation and a \$1,000 fine.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a Final Order be entered finding that Marion Morris Morrow did not violate Subsections 464.018(1)(h) and (i), Florida Statutes, finding that Marion Morris Morrow did violate Subsection 464.018(1)(c), Florida Statutes, imposing a fine of \$500, and suspending her license for one year, to be followed by an appearance before the Board of Nursing to determine if she is safe to return to practice. If the Board of Nursing so determines, it may reinstate Marion Morris Morrow's

license upon such conditions as it deems appropriate to protect the public health, safety, and welfare.

DONE AND ENTERED this 5th day of October, 2000, in Tallahassee, Leon County, Florida.

Susan B. Kirkland
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of October, 2000.

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.