

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)	
NURSING,)	
)	
Petitioner,)	
)	
vs.)	Case No. 00-2755PL
)	
MICHELE JACKSON, a/k/a/ DRAPER)	
and JACKSON-DRAPER,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

A hearing was held in this case in Sarasota, Florida, on December 19, 2000, before Arnold H. Pollock, an Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner	Diane K. Kiesling, Esquire Agency for Health Care Administration 2727 Mahan Drive Fort Knox Building Three Room 3231A Tallahassee, Florida 32308
For Respondent	Ometrias Deon Long, Esquire Long & Perkins, P.A. 390 North Orange Avenue Suite 2180 Orlando, Florida 32801

STATEMENT OF THE ISSUE

The issue for consideration in this case is whether Respondent's license as a registered nurse in Florida should

be disciplined because of the matters alleged in the Administrative Complaint filed herein.

PRELIMINARY MATTERS

By Amended Administrative Complaint dated December 18, 2000, Nancy M. Snurkowski, Chief Attorney for the Agency for Health Care Administration, on behalf of Robert G. Brooks, M.D., Secretary of the Department of Health, charged Respondent with procuring a license to practice nursing by misrepresentation; with being found guilty of a violation of Chapter 817, Florida Statutes, relating to fraudulent practice; and with unprofessional conduct by falsifying an employment application, in violation of Section 464.018(1)(a), (d), and (h), Florida Statutes. Thereafter, through counsel, Respondent denied each of the material allegations of misconduct contained in the complaint and requested formal hearing. This hearing ensued.

At the hearing Petitioner presented the testimony of Deborah J. Sutton, Personnel Director of Hospice of Southwest Florida (Hospice); Tammy Alice Dawson, Human Resources Manager and Vice-President of Hospice; Rhonda Campbell, Business Office Manager and Human Resources Director for Integrated Health Services (IHS); and Barbel A. Lawson, a Medical Malpractice Investigator with the Agency for Health Care Administration (AHCA). Petitioner's Exhibits 1 through 5 are

the depositions of Diana Burnside, a Registered Nurse and former co-worker of Respondent; Robert Kempiak, Registrar at Lewis University in Romeoville, Illinois; Suzanne Anderson, Registrar at Northwestern University in Illinois; Alfreda Jablonski, formerly registrar at the School of Nursing at Little Company of Mary Hospital in Illinois; and Judith Goddard, Vice-President of Human Resources at LifePath in Tampa. The parties also stipulated to the expected testimony of Kathy Butler, an employee of Metro Nursing, that Respondent at no time ever worked for Metro Nursing. Petitioner also introduced Petitioner's Exhibits 1 through 23 and 25 through 27. Petitioner's Exhibit 24 for Identification was not received into evidence.

Respondent did not present any evidence at hearing.

The hearing in this matter was noticed for 9:30 a.m. on December 19, 2000. Due to the failure of Respondent's counsel to appear timely, the undersigned delayed the commencement of the hearing until 10:15 a.m. to allow Respondent time to attempt to locate her counsel. When she was unable to do so, Respondent agreed to the commencement of the hearing without her counsel being present. He appeared at the hearing at 11:15 a.m., and was permitted to participate thereafter.

A Transcript of the proceedings was furnished on January 8, 2001. Subsequent to the receipt thereof, counsel for

Petitioner submitted a Proposed Recommended Order which was considered in the preparation of this Recommended Order. Respondent submitted an unsigned, unsworn letter to the undersigned, a copy of which did not appear to have been sent to Petitioner's counsel. The undersigned read the communication to determine its nature, but rejected it as incompetent and an ex-parte communication.

FINDINGS OF FACT

1. At all times pertinent to the issues herein, the Department of Health, Board of Nursing, was the state agency in Florida responsible for the licensing of nurses and the regulation of the nursing profession in this state. Respondent was a registered nurse licensed in Florida with license number RN 2561322, which she obtained by endorsement in 1991.

2. Respondent, using the name Michele Draper, applied for licensure as a registered nurse by endorsement by application filed on October 7, 1991. On that application, she listed 340-22-0150 as her social security number and June 22, 1954, as her date of birth. Attached to the licensure application was a copy of Respondent's Illinois driver's license which reflected her date of birth as June 22, 1951. The application form reflects that at some point, the name "Draper" was struck through and the name "Jackson" written in,

but Respondent's signature on the application form reflects Michele Draper Jackson.

3. This same application form reflects that Respondent answered "No" to the question, "Have you ever been convicted or have you a no-contest or guilty plea-regardless of adjudication-for any offense other than a minor traffic violation."

4. Respondent had been arrested and, on June 8, 1988, convicted of a felony charge of "Deceptive Practices over \$150" in McLean County, Illinois, and on July 1, 1988, was convicted of three misdemeanor charges of "Deceptive Practices under \$150" in the same county. On the felony charge she was sentenced to serve 10 days in the McLean County Jail, to pay a fine of \$300 plus court costs, and to serve 30 months' probation. On the misdemeanor charges, she was sentenced to 12 months' conditional discharge and to pay court costs. She was ordered to make restitution in both cases. No reference was made to this conviction by Respondent on her application for a Florida nurse's license.

5. In 1993, Respondent was again arrested and indicted, tried, and convicted in Sarasota County on a third-degree felony charge of grand theft. She was sentenced to imprisonment for that offense, but the sentence was suspended and she was placed on probation for four years. The evidence

reflects that as a part of the offense with which Respondent was charged was her use of three different social security numbers, to-wit: 344-33-4188; 360-22-0150; and 310-22-0150; and a date of birth of June 22, 1951.

6. Respondent has a Florida driver's license number D616-540-57-722, bearing a Social Security Number 310-22-0150. She also has a Florida driver's license which bears the Social Security Number 360-40-8146. Both driver's licenses reflect Respondent's date of birth as June 22, 1957, yet the records of the Florida Division of Motor Vehicles reflect Respondent's date of birth as June 22, 1951. Respondent at one time also used an Illinois driver's license which bore the Social Security Number 360-42-4186, and a date of birth of June 24, 1954.

7. In 1995, Respondent was charged in Sarasota County with a second-degree felony of scheme to defraud by using false pretenses, representations, or promises with a credit card to defraud a credit union, several banks, and an individual, of between \$20,000 and \$50,000 in July of that year. The court records relative to that incident indicate that Respondent stole the identity and social security number of her employer and used that number to secure a credit card and loans used to purchase two vehicles on which she failed to make the appropriate payments.

8. Respondent was found guilty of this charge and of violation of her previously imposed probation and was, in March 1996, sentenced to five years in prison, which she served at the North Florida Reception Center beginning on March 8, 1996. Both felony convictions and the misdemeanor conviction were violations of Chapter 817, Florida Statutes, which deals with fraudulent practices.

9. Before going to prison, between August 21, 1995, and February 28, 1996, Respondent was employed as a registered nurse at Hospice. When asked on her application for employment if she had ever been convicted of a felony, Respondent answered "No" when, in fact, she had been so convicted in 1988 and in 1993. On the application for employment, Respondent listed Social Security Number 306-44-4186 and a driver's license bearing number D616-540-57-177. She also indicated on her résumé which she had submitted with the application that she held a bachelor of science degree from Northwestern University from which she had allegedly graduated with a 3.1 grade point average. Respondent did not hold a degree of any sort from Northwestern, having attended that institution's school of journalism for only a short period in 1972-1974.

10. Respondent's résumé also reflected she had received a nursing diploma from Lewis University through the On Site

Little Company of Mary Hospital in 1980, earning a grade point average of 3.0. In fact, Respondent did not earn a degree of any sort from that institution, having attended for only one year. Her grade point average when she left was 1.77. Her résumé also reflects she was employed in increasingly responsible nursing positions at Cook County Hospital in Illinois from 1980 to 1987. In fact, she did not receive her nursing license until 1984 and was never employed by Cook County Hospital.

11. Respondent was sentenced to prison on March 1, 1996. That day she was scheduled to work at Hospice, but she did not appear for work as scheduled. Later that day she called in to advise she had been called away on a family emergency. Thereafter, she resigned her position with Hospice with no advance notice, and gave false reasons for leaving.

12. Once Respondent was released from prison, on June 1, 1998, she filed an application for employment with Hospice on which she again denied ever having been convicted of a felony, and reiterated her false educational claims. In addition, she gave a false driver's license number and date of birth.

13. There are several other inconsistencies running throughout Respondent's employment history. On her Florida nursing license application she was asked to list the names she has used during her lifetime and the name under which she

received her nursing education. Respondent did not list the name Shepard in either response. The records of the Little Company of Mary Hospital Nursing School reflect that at no time was there a student at that school with the name Michele Nash, Michele Jackson or Michele Draper. At one point there was a student with the name Michele Shepard, but no social security number is on file for her. The former registrar of the nursing school testified that she received a telephone call from someone purporting to be Ms. Michele Shepard who requested a certification of graduation be issued in the name of Michele Jackson, which was supposed to be her new name. The registrar at no time saw any documentation to indicate Ms. Draper and Ms. Jackson were one and the same person, and she cannot say with any certainty that Respondent is a graduate of Little Company of Mary Hospital Nursing School. Nonetheless, she issued the letter of certification in June 1984, and that letter was forward to the Florida Board of Nursing in support of Respondent's application for licensure.

14. Respondent submitted an Illinois nursing license as support for her application for licensure by endorsement in Florida. The application for the Illinois license is in the name of Michele Nash, and bears the Social Security Number 366-42-4116 as well as a birth date of June 22, 1954. The

application also shows a date of graduation from the Little Company of Mary Nursing School of June 16, 1984.

15. In her application for licensure by endorsement to Florida, Respondent used the Social Security Number 340-22-0152, a birth date of June 22, 1954, a high school graduation date of 1965, a nursing school graduation date of May 1984, and a date of May 1982 as the date she took the nursing licensure examination in Illinois. She also used the names Draper, Jackson, and Nash, and she provided a copy of her Illinois driver's license showing a birth date of June 22, 1951. Because of the myriad contradictions in her application history, it is impossible to tell whether Respondent is the individual who graduated from Little Company of Mary Nursing School in June 1984.

16. Respondent filed an application for employment with LifePath Hospice in Tampa on June 25, 1998, using the name Michele R. Draper, a Social Security Number of 261-40-6814, and a Florida Driver's license number D616-5154-671772. Neither that social security number nor a driver's license bearing that number was issued to Respondent. She also indicated she had not been convicted of a crime within the past seven years. That answer was false.

17. Respondent also indicated in her employment application that she held a bachelor of science degree in

education from Northwestern University with an earned grade point average of 3.5, and a degree in nursing from Lewis University/Little Company of Mary Hospital with an earned grade point average of 3.0. Both representations are false.

18. Ms. Draper also outlined an employment history in this application which was false in many respects. She did not work for Nurse, Inc. from May 1993 to January 1996, as claimed; she did not work for Cook County Hospital from February 1980 to August 1983, as claimed; and she did not even hold a nursing license until 1984.

19. When LifePath attempted to verify the information submitted by Respondent, it determined that the social security number she had given was incorrect; a second social security card presented in place thereof was false; and she provided a Florida driver's license which, though the number is correct, bears an incorrect and altered date of birth. Nonetheless, Respondent was hired by LifePath.

20. Sometime after being hired by LifePath, Respondent presented them with a new social security card bearing the name Michele Ann Draper, and the number 570-83-2297. She said that she had married and the Social Security Administration had given her a new number. This is untrue. Respondent has been married to Al Draper since before 1978, and the Social

Security Administration ordinarily does not issue a new social security number to a woman when she marries.

21. When LifePath learned of Respondent's concealed criminal record, the numerous misrepresentations as to her education, experiences, and references, and of the numerous different social security numbers, they terminated her employment on July 2, 1999. This was approximately one year after she had been hired and placed in patient's homes by the company.

22. Commencing in the Fall of 1980, while a student at Lewis University, until 1998, Respondent used fourteen different social security numbers and six different birth dates in her dealings with educational institutions, licensing officials, and employers. Records of the Social Security Administration indicate that only two Social Security Numbers, 360-42-4186, used at Lewis University in 1980, and 590-83-2297, used in the last LifePath application in 1998, were issued to Respondent. None of the other numbers she used was ever issued to her under any of the names she used.

23. By the same token, Respondent has used various dates of birth in her educational career, on driver's licenses, and on applications for licensure and employment. Birth records of the state of Illinois indicate that Michele Ann Jackson, Respondent herein, was born in Illinois on June 22, 1951.

24. Until just recently, Respondent appears to have continued to show evidence of dishonesty and misrepresentation in her dealing with authorities. Significant among these are, for example, in her response to a complaint against her license filed in Illinois, she falsely asserted she had been cleared of any wrongdoing in Florida, and that the allegations of criminal convictions are incorrect. Further, during the Florida investigation into the instant allegations, Respondent advised the investigator she had resigned from Hospice in 1996 with proper notice and that she had not had any legal problems prior to her employment by Hospice in 1995.

25. No evidence was presented that Respondent has ever physically harmed or neglected a patient in her care or stolen from a patient.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case. Section 120.57(1), Florida Statutes.

27. Petitioner seeks to discipline Respondent's license as a registered nurse in Florida alleging that, having been convicted of multiple felonies and misdemeanors, she falsified her application for licensure in Florida by asserting she had not; she falsified several employment applications; and she was guilty of unprofessional conduct, in violation of

Section 464.018(1)(a), (d), and (h), Florida Statutes, and of Rule 64B9-8.005(1), Florida Administrative Code. Petitioner has the burden of proving Respondent's guilt of the matters alleged by clear and convincing evidence. Department of Banking and Finance vs. Osborne-Stern, 670 So. 2d 935 (Fla. 1996).

28. Section 464.018(1), Florida Statutes, makes it a violation of the Nurse Practices Act to:

- (a) procure a license to practice nursing by knowing misrepresentations . . . ;
- (d) be found guilty, regardless of adjudication, of a violation of Chapter 817 relating to fraudulent practices;
- (h) engage in "unprofessional 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.

29. Rule 64B9-8.005(1), Florida Administrative Code, defines unprofessional conduct to include:

- (1) Inaccurate recording, falsifying or altering of patient records or nursing progress records, employment applications or time records.

30. The evidence of record in this matter is both clear and convincing that Respondent procured her license to practice nursing in this state by making knowingly false representations regarding her past criminal record, her social security number, her driver's license number, and her date of

birth, in violation of Section 464.018(1)(a), Florida Statutes.

31. The evidence of record is equally both clear and convincing that Respondent's convictions are violations of subsections of Chapter 817, Florida Statutes, and as such, constitute violations of Section 464.018(1)(d), Florida Statutes.

32. The evidence of record also clearly and convincingly shows that Respondent claimed unearned education credentials and employment experience in her applications for employment submitted both to Hospice of Southwest Florida and to LifePath Hospice. These were misrepresentations on employment applications and constitute unprofessional conduct as defined in Rule 64B9-8.005(1), Florida Administrative Code, and, as well, are in violation of Section 464.018(1)(h), Florida Statutes.

33. Petitioner seeks to revoke Respondent's license as a registered nurse in Florida and to impose an administrative fine of \$5,000 in addition to the administrative costs of the investigation into her alleged misconduct. Rule 64B9-8.006, Florida Administrative Code, details the disciplinary guidelines of the Board of Nursing together with the range of penalties and those factors which may be considered aggravating or mitigating circumstances.

34. Rule 64B9-8.006(3)(b), Florida Administrative Code, provides a penalty of a fine of from \$500 to \$1,000 and revocation of the license for making misleading statements or knowing misrepresentations to obtain a license, as prohibited in Section 464.018(1)(a), Florida Statutes. Rule 64B9-8.006(3)(n), Florida Administrative Code, provides for a fine of from \$200 to suspension of a license for having a single criminal conviction, but this penalty can be aggravated to revocation if there are multiple convictions. Proven unprofessional conduct carries a fine of from \$250 to \$1,000 per violation plus probation or suspension of the license. It should be noted that each of the above-listed penalties is for a single violation.

35. In this case, Petitioner has proven that Respondent obtained her license through misrepresentation and has renewed it by continuing misrepresentations. She has attempted to conceal her criminal record from not only those charged with the regulation of her profession, but also from prospective employers. What is more significant in the determination of whether she should be allowed to continue working with patients is the fact that she has been convicted several times for misconduct involving theft or deceptive practices. Clearly, one who commits repeated misconduct of that nature must not be working with patients. To be sure, there has been

no evidence that Respondent poses a physical threat to those patients or that she has stolen from anyone in her care. However, she poses a definite potential threat to their financial welfare and must not be afforded any opportunity to take advantage of those patients.

AS TO PETITIONER'S REQUEST FOR
ATTORNEY'S FEES AND COSTS

36. Petitioner also seeks an award of attorney's fees and costs incurred as a result of Respondent's failure to timely respond to its request for admissions. Rule 1.380(c), Florida Rules Civil Procedure, authorizes this tribunal to require the opposing party to pay the requesting party the reasonable expenses incurred in making the proof of the matters sought to be admitted. Here, Petitioner seeks attorney's fees in the amount of \$7,590 and costs of \$3,336.44.

37. The evidence shows that Petitioner served its Request for Admissions on Respondent's counsel who, pursuant to the rule, was obligated to respond by December 5, 2000. No response was forthcoming until 24 hours prior to hearing when some responses, not given under oath, were telefaxed by Respondent's counsel to Petitioner. At the hearing, counsel for Respondent sought to stipulate to all the matters relating to the charges. These matters, if admitted, should have been admitted on or before December 5, 2000.

38. Because of Respondent's failure to respond, Petitioner was forced to depose witnesses residing in Illinois and Florida and to secure certified copies of relevant public records. Petitioner retained independent counsel to represent its interests and present its evidence, though it is clear that Petitioner has a staff of counsel qualified to do so.

39. Petitioner advised Respondent's counsel of its intent to request attorney's fees and costs on December 6, 2000, by a motion to deem matters admitted. No response was received from Respondent or her counsel, and at hearing, Respondent failed to dispute the amounts claimed as fees and costs in Petitioner's affidavit. Subsequent to the hearing, Respondent submitted an unsigned, unsworn letter to the undersigned a copy of which does not appear to have been sent to opposing counsel. In her letter, Respondent admits her convictions and that she concealed them from both the regulatory agency and prospective employers. However, she denies not having the proper education for licensure, and cites this as the basis for her challenge to the complaint. Under the circumstances, the letter is rejected as being irrelevant and an unsworn, untimely, ex parte communication.

40. It is, therefore, found that Respondent's license to practice nursing in Florida should be revoked. Imposition of an administrative fine would serve no legitimate

rehabilitative purpose. It is noted that by the terms of her affidavit, counsel for Petitioner indicates that almost exclusively, her contacts with Respondent regarding the Request for Admissions and discovery were with Respondent's counsel. From the fact that Respondent's counsel was over an hour late for the hearing, participated to a minimum degree, and appears to have done little to represent Respondent in this matter, it would appear to be unfair to assess costs against Respondent based on her representative's lack of responses. Therefore, Petitioner's request for attorney's fees and costs, while appropriate in amount, should not be assessed against this Respondent, and is denied.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Board of Nursing enter a final order finding Respondent guilty of the matters alleged in the Administrative Complaint and revoking her license to practice nursing in Florida.

DONE AND ENTERED this 25th day of January, 2001, in
Tallahassee, Leon County, Florida.

ARNOLD H. POLLOCK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 25th day of January, 2001.

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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.