

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF )  
NURSING, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 01-0677PL  
 )  
SHEREE ENGLISH, R.N., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was held in this case on April 23, 2001, by videoconference to Tampa, Florida, before Daniel M. Kilbride, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Elizabeth Hathaway, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 3  
Tallahassee, Florida 32308

For Respondent: Suzanne Hope Suarez, Esquire  
150 Second Avenue, North  
Suite 1500  
St. Petersburg, Florida 33701

STATEMENT OF THE ISSUE

Whether Respondent was convicted of or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates

to the practice of nursing or the ability to practice nursing, in violation of Subsection 464.018(1)(c), Florida Statutes.

PRELIMINARY STATEMENT

On October 2, 2000, the Agency for Health Care Administration filed a one-count Administrative Complaint against Respondent's license on behalf of the Department of Health to practice nursing. On January 23, 2001, Petitioner filed an Amended Administrative Complaint. On February 7, 2001, Respondent filed an Election of Rights form indicating that she disputed material facts asserted in the Amended Administrative Complaint and requested a formal evidentiary hearing before the Division of Administrative Hearings pursuant to Subsection 120.57(1) and Section 120.569, Florida Statutes. This matter was referred to the Division Administrative Hearings on February 16, 2001, and discovery ensued.

Following several pre-hearing motion hearings, a formal hearing was held on April 23, 2001, via videoconference to Tampa, Florida. At the hearing, Petitioner called six witnesses and offered into evidence 12 exhibits; all 12 exhibits were admitted. Respondent called five witnesses and offered into evidence eight exhibits; seven of Respondent's exhibits were admitted.

The Transcript was filed on May 23, 2001. Subsequently, it was determined that a portion of the Transcript relating to

three witnesses was destroyed. Following hearings on various motions, a summary of testimony relating to three witness was prepared by the undersigned Administrative Law Judge and added to the record on July 2 and July 13, 2001, respectively.

Petitioner submitted its Proposed Recommended Order on July 6, 2001. Respondent submitted its proposals on May 7, 2001. Both post-hearing submittals have been given careful consideration in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Respondent, Sheree English, is, and has been at all time material hereto, a licensed registered nurse in the State of Florida since 1992, having been issued license number RN 2789282.

2. Respondent resides at 1215 East North Street, Tampa, Florida 33604.

3. In October 1998, Respondent was employed by Tampa General Healthcare as a registered nurse in the emergency room.

4. During October 1998, while employed by Tampa General Healthcare, Amy Fogelman Dean's credit card was stolen from the Tampa General Healthcare employee restroom by Respondent. At no time did Dean live with Respondent, loan money to Respondent, or give her permission to take or use her credit card.

5. Respondent proceeded to Best Buy store in the Tampa area on October 22, 1998, and purchased a computer and other items.

6. On October 25, 1998, Respondent was arrested for stealing Dean's credit card and fraudulent use of a credit card. Respondent admitted to stealing and using the credit card. The property purchased was returned to the store.

7. In November 1998, Respondent was terminated from her position at Tampa General Healthcare.

8. On February 9, 1999, Respondent was charged by information with grand theft and fraudulent use of a credit card, both third-degree felonies.

9. On May 6, 1999, Respondent pled nolo contendere in the Circuit Court of Hillsborough County, Florida, to one count of grand theft and one count of fraudulent use of a credit card. Grand theft and fraudulent use of a credit card are felonies as defined by Chapters 812 and 817, Florida Statutes.

10. Grand theft and fraudulent use of a credit care are crimes of moral turpitude that involve honesty. The scope of practicing nursing encompasses more than just the aspect of patient care. Honesty, integrity, and good moral character are integral components of a nurse's ability to practice nursing.

11. Stealing a credit card by a nurse from a co-nurse at their place of employment is related to the practice of nursing

or the ability to practice nursing. Grand theft and fraudulent use of a credit card are crimes related to the practice of nursing or the ability to practice nursing.

12. On or about October 27, 1997, Respondent plead nolo contendere to the misdemeanor of possession of marijuana. She failed to report the plea to the Board of Nursing. Respondent is credible in her explanation that she does not use illegal drugs of any kind and that, in 1997, someone who had the use of her vehicle had left some "roaches" in her ash tray. She admitted she did not report this crime to the Board in the mistaken belief that only felonies had to be reported.

13. On or about September 8, 1998, Respondent was issued a disciplinary action by her employer, Tampa General Healthcare for falsification of hospital records.

14. Respondent demonstrated that her state-of-mind during the relevant time period was extremely depressed and distraught due to the occurrence of several traumatic incidents in her life. In November 1997, her house was robbed and later it flooded. In January 1998, a long-term relationship ended when she discovered she was pregnant. On February 3, 1998, she was abducted in the Tampa area, her wallet and check book stolen, repeatedly raped and left the following day in Lakeland. This incident adversely affected her emotional well-being, as well as, her credit. Respondent also underwent an abortion, shortly

thereafter. The cumulative effect of these incidents left her feeling angry and powerless, and she didn't use rational thought before she took and used the credit card in October 1998. The incident has left her humiliated and ashamed and determined not to repeat this type of behavior in the future.

15. Respondent has demonstrated that during the relevant time period, and presently, she is a highly skilled registered nurse with special training in emergency medicine, critical care and cardiac care. Petitioner is well regarded by her past and present employers and, except for Tampa General, is eligible for re-hire.

16. Following her sentencing by the circuit court, Respondent successfully completed probation. In addition, Petitioner voluntarily sought counseling therapy which has been very helpful.

17. Respondent has shown by clear and convincing evidence that she is rehabilitated and is no longer a threat to harm patients, co-workers or the public.

#### CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes.

19. Petitioner is the state agency charged with regulating the practice of nursing pursuant to Section 20.43 and Chapters

456 and 464, Florida Statutes, and is authorized to discipline those licensed thereunder who violate the law. Subsection 464.018(1), Florida Statutes.

20. Pursuant to the authority of Section 20.34, Florida Statutes, Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

21. Petitioner has the burden to prove the material allegations in the Amended Administrative Complaint by clear and convincing evidence. Department of Banking Finance v. Osborne, Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

22. Subsection 464.018(1)(c), Florida Statutes (1999), as it pertains to the facts alleged in this matter reads, in pertinent part:

(1) The following acts shall be grounds for disciplinary action set forth in this section:

\* \* \*

(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.

23. The facts surrounding a nolo contendere plea may not be used as direct evidence; however, the facts may be used as underlying evidence of Respondent's misconduct and disposition of the court. Kelly v. Department of Health, 610 So. 2d 1375 (Fla. 2nd DCA 1992). In Kelly supra, the court held that the Department of Health could not conclusively prove that the appellant was guilty of child abuse in spite of Respondent's plea of no contest to child abuse charges and that the appellant's name should be expunged from the registry of confirmed perpetrators of child abuse. However, the court did specifically state that its ruling was "not [to] suggest that Kelly's criminal conviction is meaningless." Kelly at 1378. The Court went on to state, "Pursuant to Chapter 402[.305(1)(a)(19)], Florida Statutes, . . . Kelly is indeed disqualified from licensure or employment as a care taker by virtue of his no contest plea to criminal charges of child abuse." Kelly at 1378. Pursuant to Subsection 402.305(1)(a)(19), Florida Statutes, a person who pleads nolo contendere to the criminal offense of child abuse . . . is disqualified from licensure or employment as a caretaker in a child care facility. Kelly at 1378. The statutory construction of Subsection 402.305(1)(a)(19), Florida Statutes, is similar to Subsection 464.018(1)(c), Florida Statutes, with which Respondent, Sheree English, is charged. Thus, Respondent's nolo



contendere plea to grand theft and fraudulent use of a credit card is sufficient to charge the Respondent with a violation of Subsection 464.018(1)(c), Florida Statutes.

24. Pursuant to Subsection 464.018(1)(c), Florida Statutes, a nurse shall be disciplined if he or she enters 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. Subsection 464.018(1)(c), Florida Statutes, is distinctly different from the statutes at issue in Ayala v. Department of Professional Regulation, 478 So. 2d 1116 (Fla. 1st DCA 1985); Molinari v. Department of Business and Professional Regulation, 688 So. 2d 388 (Fla. 4th DCA 1997); and Holland v. Florida Real Estate Commission, 352 So. 2d 914 (Fla. 2nd DCA 1977). In all three cases listed above, the statute at issue did not specifically state that disciplinary action shall be taken against a nurse who enters 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.

25. The courts of Florida have held that there is no constitutional violation of double jeopardy when a licensee's license is disciplined by the Board or Department who grants the license even though the discipline is based on the same

underlying facts of the licensee's criminal plea. Borrego v. Agency for Health Care Administration, So. 2d 666 (Fla. 1st DCA 1996). In Borrego, the court based this ruling on the fact that the discipline of one's license is penal in nature, but the goal of the discipline is remedial. The court went on to state that license revocation and suspension serves the purpose of protecting the public rather than punishment of the individual licensee. Borrego at p.668. Thus, that discipline sought against Sheree English is to protect the public and is not a violation of double jeopardy.

26. Petitioner has proven by clear and convincing evidence that during October 1998, while employed by Tampa General Healthcare, Respondent stole a credit card from her co-worker, Amy Fogelman Dean, from the Tampa General Healthcare restroom and then used it to purchase merchandise. On May 6, 1999, Respondent pled nolo contendere to one count of grand theft and on count of fraudulent use of a credit card. Grand theft and fraudulent use of a credit card are felonies as defined by Chapters 812 and 817, Florida Statutes, respectively.

27. Petitioner has proven by clear and convincing evidence that honesty, integrity, and good moral character are important components of a nurse's ability to practice nursing. Grand theft and fraudulent use of a credit card are crimes of moral

turpitude and are related to the practice of nursing or the ability to practice nursing.

28. In Zemour, Inc., v. Division of Beverage, 347 So. 2d 1102 (Fla. 1st DCA 1977), an application for a beverage license was denied after an administrative finding that the owner was not of good moral character. Although the facts leading to this conclusion are entirely dissimilar to the instant case, the court's definition of moral character is significant.

Moral Character as used in this statute means not only the ability to distinguish between right and wrong, but the character to observe the difference; the observance of the rules of right conduct; and conduct which indicates and establishes the qualities generally acceptable to the populace for positions of trust and confidence.

Such definition should be used in the case before this tribunal. In Florida Board of Bar Examiners Re: G.W.L., 364 So. 2d 454 (Fla. 1978), the Florida Supreme Court stated that a finding of a lack of "good moral character," in a case involving admission to the bar,

requires an inclusion of acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and nation.

See also White v. Beary, 237 So. 2d 263 (Fla. 1st DCA 1970).

29. Petitioner has proven by clear and convincing evidence that Respondent has violated Subsection 464.018(1)(c), Florida Statutes, by pleading nolo contendere to grand theft and fraudulent use of a credit card regardless of adjudication.

30. Rule 64B9-8.005(3)(f), Florida Administrative Code, provides a penalty range for violations of Subsection 464.018(1)(c), Florida Statutes:

"From fine of \$500.00 referral to IPN, two years suspension and probation for duration of court ordered probation to revocation and \$1000.00 fine."

31. Rule 64B9-8.005(4)(a), Florida Administrative Code, provides that the Board of Nursing may deviate from the disciplinary guidelines set forth in Rule 64B9-8.005(4)(b), Florida Administrative Code, upon a showing of aggravating or mitigating circumstances, by clear and convincing evidence.

32. Rule 64B9-8.005(4)(b), Florida Administrative Code, provides that several factors may be considered in aggravation of penalty, including but not limited to, the danger to the public.

33. The following aggravating factors are relevant to this matter:

a. On or about October 27, 1997, Respondent pled nolo contendere to one count of possession of Marijuana and failed to report the plea to the Board of Nursing.

b. On or about September 8, 1998, Respondent was issued a disciplinary action

by her employer Tampa General Hospital for falsification of hospital records.

c. Respondent did not attempt to report her nolo plea to grand theft and fraudulent use of a credit card to the Board of Nursing until prompted by the investigation of a complaint.

d. Respondent works in a capacity where honesty, integrity, and being of good moral character are requirements to be an effective nurse. Respondent is placed in situations where she could harm the public by having access to patient's and co-worker's belongings and violating the trust that is required for nurses to work with one another.

34. The following mitigating factors are relevant to the matter:

a. Respondent successfully completed Court ordered probation.

b. Respondent has presented clear and convincing testimony and collaborating and documented evidence that she is rehabilitated and no longer poses a danger to patients or co-workers.

c. Respondent is highly skilled in her profession, with special training in several areas.

#### RECOMMENDATION

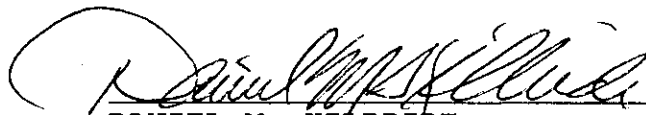
Based on the Forgoing, it is

RECOMMENDED that the Board of Nursing enter a Final Order as follows:

1. Finding Respondent guilty of violation of Subsection 464.018(1)(c), Florida Statutes; and
2. Imposing the following discipline:

- a. Respondent's License to practice in Nursing in the State of Florida be reprimanded;
- b. Respondent pay a fine of \$500.00 to the Board of Nursing;
- c. Respondent pay costs of \$2315.28 to the Board of Nursing, prior to the completion of her period of probation.
- d. Respondent's license be suspended; this suspension shall be stayed as long as Respondent stays compliant with the terms of her probation;
- e. Respondent be placed on unsupervised probation for one year; and
- f. Respondent complete courses in Legal Aspects of Nursing and Legal Ethics of Nursing; these courses must be done in addition to the required continuing education courses and completed prior to the termination of probation.

DONE AND ENTERED this 18th day of July, 2001, in Tallahassee, Leon County, Florida.

  
DANIEL M. KILBRIDE  
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 18~~th~~ day of July, 2001.

COPIES FURNISHED:

Elizabeth Hathaway  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop 34  
Tallahassee, Florida 32308

Suzanne Hope Suarez, Esquire  
150 Second Avenue, North  
Suite 1500  
St. Petersburg, Florida 33701

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  
Department of Health  
4080 Woodcock Drive, Suite 202  
Jacksonville, Florida 32207-2714

William W. Large, General Counsel  
Department of Health  
4052 Bald Cypress Way  
Bin A02  
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.