

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)
NURSING,)
)
Petitioner,)
)
vs.) Case No. 05-2282PL
)
PENNY T. STOCKFORD, R.N.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on August 24, 2005, in Orlando, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ellen M. Simon, Esquire
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265

For Respondent: No appearance.

STATEMENT OF THE ISSUES

Whether Respondent violated Subsection 456.072(1)(c), Florida Statutes (2002),¹ and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On May 3, 2004, Petitioner, Department of Health, Board of Medicine (Department), filed a one-count Amended Administrative Complaint against Respondent, Penny T. Stockford, R.N. (Ms. Stockford), alleging that she violated Subsection 464.018(1)(c), Florida Statutes, by being convicted of or found guilty of, or entering a plea of guilty or nolo contendere, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, nursing. Ms. Stockford requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on May 28, 2004.

The case was assigned DOAH Case No. 04-1897PL. Based on a Motion to Relinquish Jurisdiction filed by the Department, an order closing the file was entered on August 13, 2004.

On June 22, 2005, the Department filed a Motion to Re-open Case. The case was assigned a new case number, DOAH Case No. 05-2282. On August 15, 2005, the Department filed a Motion to Amend the Administrative Complaint, requesting that the violation alleged in the Amended Administrative Complaint be amended to reflect a violation of Subsection 456.072(1)(c), Florida Statutes, based on the entering of a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to

practice, a licensee's profession. The motion was granted by order entered on August 17, 2005.

On August 18, 2005, Respondent's counsel filed a Statement of Mitigating Factors on behalf of Respondent. The Department filed a Motion to Strike the Statement of Mitigating Factors, and Respondent filed a response. At the final hearing, the motion to strike was granted.

On August 18, 2005, Respondent's counsel filed a Motion to Withdraw as counsel and requested a continuance. The Motion to Withdraw was granted, and the request for a continuance was denied.

The final hearing was scheduled to commence at 9 a.m. on August 24, 2005. At the appointed time for the final hearing, Ms. Stockford had not appeared, and the final hearing was delayed for 15 minutes in order to give her an opportunity to appear. Ms. Stockford did not appear, and no representative appeared on her behalf.

At the final hearing, the Department called Linda Catherine Brown and Lori B. Kaplan, R.N., as its witnesses. Petitioner's Exhibits 1 through 4 were admitted in evidence. No witnesses appeared on behalf of Ms. Stockford, and no exhibits were submitted on her behalf.

The Transcript of the final hearing was filed on September 7, 2005. The proposed recommended orders were to be

filed within ten days of the filing of the Transcript. The Department filed its Proposed Recommended Order on September 19, 2005.

FINDINGS OF FACT

1. The Department is the state agency charged with the responsibility of regulating the practice of nursing pursuant to Section 20.43 and Chapters 456 and 464, Florida Statutes.

2. Ms. Stockford is a registered nurse, licensed by the Department. Her license number is 2164512.

3. From 2000 to 2001, Ms. Stockford was employed by Pediatric Services of America (Pediatric Services), in their Visit Home Care Department. Her responsibilities included providing medical care to children in their homes. She was paid according to the number of visits she made to the patients. Ms. Stockford was required by her employer to submit timesheets and clinical notes, detailing each time she made a house call and the services provided to each patient. Pediatric Services would bill Medicaid for Ms. Stockford's visits based on the notes and timesheets submitted by Ms. Stockford.

4. In March 2001, a case manager employed by Pediatric Services determined that information that Ms. Stockford had submitted on a patient was incorrect. This led to further investigation by Pediatric Services into the timesheets and clinical notes that Ms. Stockford had submitted. The

investigation revealed that Ms. Stockford had submitted timesheets and clinical notes on several patients for visits that she did not make.

5. On August 8, 2002, an Information was filed by the State Attorney for the Ninth Judicial District of Florida, charging Ms. Stockford with one count of grand theft third degree for knowingly obtaining by scheme or course of conduct over \$5,000 from Pediatric Services and with 13 counts of Medicaid fraud by knowingly making or causing to be made or aiding and abetting in the making of false statements or false representations of a material fact, by commission or omission, in any claim for payment submitted to the Agency for Health Care Administration or its fiscal agent.

6. On March 26, 2003, Ms. Stockford entered a plea of guilty to the count of grand theft and to three counts of Medicaid fraud. Adjudication was withheld. She was placed on supervised probation for five years, ordered to serve 200 hours of community service, ordered to pay restitution to Pediatric Services, and fined.

7. The crimes to which Ms. Stockford pled guilty related to the practice of nursing. The theft of money from Pediatric Services was done through the falsification of timesheets for nursing services and through fabricated clinical notes.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2005).

9. The Department has the burden to establish the allegations in the Amended Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996).

10. The Department alleged that Ms. Stockford violated Subsection 456.072(1)(c), Florida Statutes, which provides that disciplinary action may be taken if the licensee has been "convicted or found guilty of, or [has entered] a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession."

11. The Department has established by clear and convincing evidence that Ms. Stockford pled guilty to grand theft and three counts of Medicaid fraud based on to the falsification of timesheets and fabrication of clinical notes related to her profession, the practice of nursing. Thus, the Department has established a violation of Subsection 456.072(1)(c), Florida Statutes.

12. Florida Administrative Code Rule 64B9-8.006(3)(d) provides that the range of disciplinary action for a violation


of Subsection 456.072(1)(c), Florida Statutes, is from a minimum penalty of a \$250 fine to a maximum penalty of a \$500 fine and suspension followed by a term of probation.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered finding Penny T. Stockford guilty of a violation of Subsection 456.072(1)(c), Florida Statutes, imposing an administrative fine of \$500, suspending her license for five years, and placing her on probation for three years after the suspension of her license.

DONE AND ENTERED this 5th day of October, 2005, in Tallahassee, Leon County, Florida.



SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of October, 2005.

ENDNOTE

1/ Unless otherwise indicated, all references to Florida Statutes are to the 2002 version.

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.