

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAULA M. BOYLE,)
)
 Petitioner,)
)
 vs.) Case No. 09-3400
)
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held before Daniel M. Kilbride, Administrative Law Judge of the Division of Administrative Hearings (DOAH), on August 18, 2009, by video teleconference between St. Petersburg, Florida, and Tallahassee, Florida.

APPEARANCES

For Petitioner: Paula M. Boyle, pro se
2533 Victarra Circle
Lutz, Florida 33559

For Respondent: David Perry, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street, Suite 40
Tallahassee, Florida 32399-2202

STATEMENT OF THE ISSUE

Whether Petitioner has presented, by a preponderance of evidence, that she is of good moral character and has shown

sufficient evidence of rehabilitation, so as to receive a waiver from disqualification from receiving a professional occupational license in order to obtain access to the backside of a racetrack, pursuant to Subsection 550.105(5), Florida Statutes (2009).¹

PRELIMINARY STATEMENT

Petitioner filed an application for a pari-mutuel wagering occupational license and request for waiver on December 5, 2008. Her application and waiver request was denied by Respondent by letter dated February 12, 2009. Thereafter, Petitioner timely requested a formal hearing, and this matter was referred to DOAH on June 22, 2009. This matter was set for hearing, and an exchange of documents was conducted.

At the hearing, Petitioner represented herself and testified in her own behalf. Petitioner offered six exhibits, which were received into evidence without objection. Respondent offered the testimony of Investigator Supervisor James A. Decker and offered three exhibits, which were received into evidence without objection. The hearing was recorded, and a Transcript was filed on September 15, 2009.

Although both parties were given the opportunity to file proposed findings of fact and conclusions of law, neither party has filed its proposals as of the date of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is seeking a waiver from disqualification from obtaining a professional occupation license as an owner of thoroughbred horses, in order to gain admission to the backside of a racetrack. The license is necessary before a professional person is permitted to go in the stable area, jockey's room, or other limited access areas of a racetrack.

2. The denial of Petitioner's application for an occupational license is the result of Petitioner's entry of a plea of guilty to the federal charge of Obtaining Morphine by Deception, a felony, in the United States District Court, Middle District of Florida, Tampa Division, on August 1, 2003. The court adjudicated Petitioner guilty of the charge and placed her on supervised probation for one year with significant conditions.

3. Petitioner is a registered nurse in the State of Florida, and her license has not been subject to suspension or revocation. Petitioner has worked for the U.S. Department of Veteran's Affairs at the James A. Haley Veterans' Hospital in Tampa, Florida, for more than 33 years. She is still employed at that facility and works in the Nursing Home Care Unit for elderly and disabled veterans.

4. Sometime in 2000 or 2001, Petitioner became addicted to morphine (a controlled substance), due to the stresses on the

job and in her family life. She obtained the morphine surreptitiously at work, until her use of the drug was discovered in the summer of 2002.

5. Petitioner voluntarily joined the Intervention Program for Nurses (IPN) and entered a residential treatment program, operated by the Health Care Connection of Tampa, Inc., where she successfully completed the primary treatment program from July 22, 2002, to September 22, 2002, for her chemical dependency. She then successfully completed outpatient therapy on December 22, 2002, and attended aftercare for an additional 12 months.

6. On August 1, 2003, at her sentencing hearing, Petitioner was placed on supervised probation for a term of one year. During her term of probation, Petitioner continued to participate in the IPN, attended Narcotics Anonymous (NA), and was tested for the detection of substance use or abuse. On July 31, 2004, Petitioner was released from supervised probation, after successfully completing all the terms of her probation.

7. Petitioner remained in the IPN program for five years, until September 17, 2007, when it was determined that she had successfully completed the program. During that period, in addition to her other obligations, she attended weekly meetings and was subject to work performance evaluations and random drug

tests. At the time of the completion of the program, the chief nurse, her immediate supervisor, rated Petitioner as excellent in 11 areas in her final IPN Work Performance Evaluation. She stated that Petitioner was dedicated to her work and her patients and that it was safe for her to continue to practice nursing. There are no restrictions placed on her access to or dispensing of controlled substances while at work.

8. Since that time, Petitioner has enhanced her nursing skills by adding two certifications to her credentials. She continues to teach skin care, wound management, and personal hygiene to nursing assistants and gerontology to licensed practical nurses.

9. Petitioner has been evaluated as having outstanding nursing skills and is a valued member of the Veterans' Administration facility's staff. Petitioner continues to be part of management, serving as the assistant to the nurse manager in the center, where she works full-time.

10. Petitioner has been open and forthright concerning her addiction, and the steps she has taken to control it, and recognizes that she cannot be "cured." Her testimony is credible that she has been sober for more than seven years and continues to regularly attend NA meetings and communicate with her sponsor. She is subject to random drug testing at her work

place, if there are any indicators that she has not remained sober.

11. No evidence has been offered, or even suggested, that Petitioner, at any time in the past, trafficked in, distributed, sold, or gave away to another person a controlled substance.

12. Petitioner seeks an occupational license from Respondent in order to participate at a racetrack in Florida, as an owner of thoroughbred horses, and to have free access to the backside of the track.

13. Petitioner, in partnership with her husband, sister, and brother-in-law, own and operate a 55-acre farm, near Gainesville, Florida, where they breed and raise thoroughbred horses for the racetrack. After work on Fridays, and every weekend, Petitioner works at the farm and actively participates in the care of the animals, currently standing at 23.

14. Petitioner has met her burden, and the evidence is persuasive that Petitioner has been rehabilitated and is of good moral character. It is persuasive that Petitioner will not present a danger to the community, if she is granted the occupational license.

CONCLUSION OF LAW

15. DOAH has jurisdiction over the subject matter of and the parties to this proceeding, pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2009).

16. Respondent's Division of Pari-Mutuel Wagering is charged with the duty of regulating and issuing occupational licenses to persons or entities with access to the backside, racing animals or other restricted locations at racetracks or other facilities where pari-mutuel wagering is permitted. § 550.105, Fla. Stat.

17. Persons who require heightened state scrutiny are required to obtain an occupational license from Respondent. This includes owners of race horses. § 550.105(2)(b), Fla. Stat. Respondent may deny a license if the applicant for such license has been convicted in the state, in any other state, or under the laws of the United States, of a felony involving ". . . trafficking in, conspiracy to traffic in, smuggling, importing, conspiracy to smuggle or import, or delivery, sale, or distribution of a controlled substance; or a crime involving a lack of good moral character. . . ." § 550.105(5)(b), Fla. Stat.

18. It is undisputed that Petitioner was convicted of a felony under the laws of the United States in 2003. The disqualifying felony, which Petitioner fully disclosed, was not for trafficking in or otherwise distributing a controlled substance, but was rather "a crime involving a lack of good moral character . . . ," since the charge was "Obtaining Morphine by Deception." § 505.105(5)(b), Fla. Stat.

19. Subsection 550.105(5)(c), Florida Statutes, states, in pertinent part:

If the applicant establishes that she or he is of good moral character, that she or he has been rehabilitated, and that the crime she or he has been convicted of is not related to pari-mutuel wagering and is not a capital offense, the restrictions excluding offenders may be waived by the director of the division.

20. Therefore, Petitioner has the burden of proof in this proceeding. Petitioner must show by a preponderance of the evidence that she is of good moral character and that she has been rehabilitated. § 120.57(1)(j), Fla. Stat. See generally Haines v. Department of Children and Family Services, 983 So. 2d 602 (Fla. 5th DCA 2008).

21. There is no dispute that the crime for which she was convicted is not related to pari-mutuel wagering and is not a capital offense.

22. In granting waivers to the disqualifying criteria set out in the statute, the statute gives discretion to the Division director to grant the individual a waiver, if the person demonstrates sufficient evidence of rehabilitation and is of good moral character. Although the Division has been delegated broad discretion to grant or deny the waiver, the Division's discretion must be reasonable. Cf. B.J. v. Department of Children and Family Services, 983 So. 2d 11 (Fla. 1st DCA 2008).

See K.J.S. v. Department of Children and Family Services, 974 So. 2d 1106 (Fla. 1st DCA 2007)

23. In this case, Petitioner has met her burden by more than a preponderance of evidence. Petitioner has convincingly demonstrated that she has been sober for more than seven years; recognizes her dependency; is currently and actively participating in a program that will prevent a recurrence of her addiction; is maintaining her employment in a professional manner; and is therefore rehabilitated. Petitioner has also shown she is again a person of good moral character.

24. Respondent has a legitimate concern for the prevention of the introduction of illegal drugs into the backside of a racetrack. However, in this case, Petitioner has demonstrated that she is rehabilitated and of good moral character, will not pose a risk to state security, and should be granted a waiver pursuant to Florida Administrative Code Rule 61D-5.006.

RECOMMENDATION

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

RECOMMENDED that the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, enter a final order, granting Petitioner's request for a waiver of her criminal conviction, and issue a professional occupational license to her as an owner of thoroughbred horses.

DONE AND ENTERED this 8th day of February, 2010, in
Tallahassee, Leon County, Florida.



DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of February, 2010.

ENDNOTE

^{1/} All statutory references are to Florida Statutes (2009),
unless otherwise noted.

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.