

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF )  
NURSING, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 13-0495PL  
 )  
RENEA J. CHAFE, R.N., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

This case came before Administrative Law Judge Todd P. Resavage for final hearing by video teleconference on April 15, 2013, at sites in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Matthew G. Witters, Esquire  
John J. Truitt, Esquire  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265

For Respondent: Renea J. Chafe, pro se  
665 Southeast 20th Avenue, A1A  
Deerfield Beach, Florida 33441

STATEMENT OF THE ISSUES

Whether Respondent, a registered nurse, violated section 456.072(1)(x), Florida Statutes, as Petitioner alleges; if so, whether (and what) disciplinary measures should be taken against Respondent's license.

PRELIMINARY STATEMENT

On December 11, 2012, Petitioner, the Department of Health, issued an Administrative Complaint ("Complaint") against Respondent, Renea J. Chafe. Respondent timely filed an election of rights disputing the material facts alleged in the Complaint and requesting an administrative hearing. On February 11, 2013, Petitioner referred the matter to the Division of Administrative Hearings.

Administrative Law Judge John G. Van Laningham was assigned to the matter and the final hearing was scheduled for April 15, 2013. On April 10, 2013, this case was transferred to the undersigned for all further proceedings.

Petitioner was represented by counsel and Respondent appeared pro se at the final hearing, which went forward as planned. Petitioner presented the testimony of two witnesses, Joe Baker, Jr. and Amie Rice, and Petitioner's Exhibits 1 through 4 were admitted. Respondent testified on her own behalf. Petitioner's Rebuttal Exhibit 1 was also admitted.

Post-hearing, on April 22, 2013, Respondent filed a document styled Submission of Evidence. On April 23, 2013, Petitioner filed its Response to Respondent's Submission of Evidence ("Petitioner's Response") requesting an order denying the admission of Respondent's Submission of Evidence. On April 26, 2013, Respondent filed her Objection to Petitioner's Response.

Petitioner's Response is granted and Respondent's Submission of Evidence is rejected as untimely and irrelevant to the issues in the instant proceeding.

On April 24, 2013, Respondent filed a document styled Finding Orders After Hearing.<sup>1/</sup> The final hearing transcript was filed on May 1, 2013. Petitioner timely filed a Proposed Recommended Order. Petitioner's Proposed Recommended Order and Respondent's Finding Orders After Hearing have been considered.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the alleged violations.

#### FINDINGS OF FACT

1. At all times relevant to this case, Respondent was licensed as a registered nurse in the state of Florida.

2. Petitioner has regulatory jurisdiction over licensed registered nurses such as Respondent. In particular, Petitioner is authorized to file and prosecute an administrative complaint against a registered nurse, as it has done in this instance, when a panel of the Board of Nursing ("Board") has found that probable cause exists to suspect that the nurse has committed a disciplinable offense.

3. Here, Petitioner alleges that Respondent committed one such offense. In the Complaint, Petitioner charged Respondent with the offense defined in section 456.072(1)(x), alleging that

she failed to report in writing to the Board within thirty days a plea of nolo contendere in one case, and guilty verdicts in another case.

4. On October 28, 2008, in a case styled State of Florida v. Chafe, No. 08-024936MM10A, the County Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, accepted Respondent's plea of nolo contendere to the single count of trespass (a misdemeanor) with which she had been charged.

5. On September 20, 2011, in a case styled State of Florida v. Chafe, No. 09-21502CF10A, in the Circuit Court for the Seventeenth Judicial Circuit, in and for Broward County, Florida, Respondent was found guilty by a jury of one count of violation of an injunction (a misdemeanor), and one count of resisting an officer without violence (a misdemeanor).

6. Respondent did not report to the Board the fact that she had entered a plea of nolo contendere to trespass in Case No. 08-024936MM10A or that she had been found guilty of violation of an injunction and resisting an officer without violence in Case No. 09-21502CF10A, as she was legally required to do within 30 days after the respective events.

7. As set forth below, Respondent's failure to report was established by Petitioner through the absence of reports, records, or data compilations. Amy Carraway, as custodian of records for the Division of Medical Quality Assurance, Florida

Department of Health, certified that, having conducted a thorough search of the Division's official records, there is no information contained within the official file of Respondent relating to either of the above-referenced cases.

8. Joe Baker, Jr., the Executive Director for the Board, testified that a licensure file contains any and all information concerning a licensee, including correspondence to and from a licensee. Mr. Baker credibly testified that, based upon his review of Respondent's file, there is no evidence contained within the file that Respondent reported the plea of nolo contendere or guilty verdicts in writing to the Board or Petitioner within thirty days of the plea or verdict, respectively.

9. When the Board receives information that a licensee desires to self-report a plea or conviction in a criminal case, the Board forwards that information to the Consumer Services Unit ("CSU") within the Florida Department of Health.

10. Amie Rice, Investigation Manager for the Consumer Services Unit, explained that when the CSU receives the information, it is entered into a database, an investigator is assigned, and the information is tracked by the licensee's name, license number, and other identifying factors. The CSU does not accept or process self-reporting via telephone.

11. Ms. Rice credibly testified that upon review of all sources of information available to CSU, there was no indication that Respondent had, at any time, self-reported the above-referenced plea or guilty verdicts.

12. During the cross-examination by Respondent of Ms. Rice, Respondent stated that she reported the nolo contendere plea in writing and via the telephone. Respondent also testified that, after being released from incarceration, she attempted to report her conviction by telephone. Respondent's testimony is not credited.

#### CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569, and 120.57(1), Florida Statutes.

14. A proceeding, such as this one, to suspend, revoke, or impose other discipline upon a license is penal in nature. State ex rel. Vining v. Fla. Real Estate Comm'n, 281 So. 2d 487, 491 (Fla. 1973). Accordingly, to impose discipline, Petitioner must prove the charges against Respondent by clear and convincing evidence. Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 933-34 (Fla. 1996) (citing Ferris v. Turlington, 510 So. 2d 292, 294-95 (Fla. 1987)); Nair v. Dep't of Bus. & Prof'l Reg., Bd. of Med., 654 So. 2d 205, 207 (Fla. 1st DCA 1995).

15. Regarding the standard of proof, in Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983), the Court developed a "workable definition of clear and convincing evidence" and found that of necessity such a definition would need to contain "both qualitative and quantitative standards." The Court held that:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Id. The Florida Supreme Court later adopted the Slomowitz court's description of clear and convincing evidence. See In re Davey, 645 So. 2d 398, 404 (Fla. 1994). The First District Court of Appeal also has followed the Slomowitz test, adding the interpretive comment that "[a]lthough this standard of proof may be met where the evidence is in conflict . . . it seems to preclude evidence that is ambiguous." Westinghouse Elec. Corp. v. Shuler Bros., Inc., 590 So. 2d 986, 988 (Fla. 1st DCA 1991); rev. denied, 599 So. 2d 1279 (Fla. 1992) (citations omitted).

16. In the Administrative Complaint, Petitioner charged Respondent under section 456.072 (1)(x), Florida Statutes, which states as follows:

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

\* \* \*

(x) Failing to report to the board, or the department if there is no board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction.

17. Respondent failed to report her plea of nolo contendere and her guilty verdicts to the Board as required. She is therefore guilty of the offense described in section 456.072(1)(x).

18. The Board of Nursing imposes penalties upon licensees in accordance with the disciplinary guidelines prescribed in Florida Administrative Code Rule 64B9-8.006. The range of penalties for a first offense involving section 456.072(1)(x) is from a minimum of a \$250 fine and probation to a maximum of revocation. Fla. Admin. Code R. 64B9-8.006(3)(11).

19. Rule 64B9-8.006(4)(b) provides that circumstances which may be considered for purposes of mitigation or aggravation of penalty shall include, but are not limited to, the following:

1. The danger to the public.
2. Previous disciplinary action against the licensee in this or any other jurisdiction.
3. The length of time the licensee has practiced.



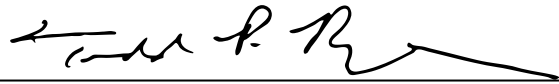
4. The actual damage, physical or otherwise, caused by the violation.
5. The deterrent effect of the penalty imposed.
6. Any efforts at rehabilitation.
7. Attempts by the licensee to correct or stop violations, or refusal by the licensee to correct or stop violations.
8. Cost of treatment.
9. Financial hardship.
10. Cost of disciplinary proceedings.

20. Having considered the potential aggravating and mitigating factors, the undersigned does not find compelling reasons to deviate from the guidelines and, therefore, recommends that the Board of Nursing impose a penalty that falls within the recommended range.

#### 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 violating section 456.072(1)(x); and imposing the following penalties: a \$250 fine and one year of probation with terms and conditions deemed appropriate by the Board.<sup>2/</sup>

DONE AND ENTERED this 22nd day of May, 2013, in Tallahassee,  
Leon County, Florida.



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TODD P. RESAVAGE  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of May, 2013.

ENDNOTES

<sup>1/</sup> The undersigned interprets this document as Respondent's  
Proposed Recommended Order.

<sup>2/</sup> Respondent's demeanor at the final hearing raises significant  
concerns with the undersigned as to whether Respondent would be  
able to practice with reasonable skill and safety to patients by  
reason of mental incompetency; however, Respondent's competency is  
not at issue in the instant case. Accordingly, the undersigned  
has not recommended a penalty to address this concern. Similarly,  
Petitioner did not charge Respondent in this case with a  
disciplinary matter involving impairment, and, therefore,  
Petitioner's recommendation that Respondent submit to an  
evaluation coordinated by the Intervention Project for Nurses  
("IPN") is rejected. See Fla. Admin. Code R. 64B9-9.006(4).

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.