

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF
NURSING,

Petitioner,

vs.

Case No. 14-1972PL

ZAUHER KARIM, C.N.A.,

Respondent.

RECOMMENDED ORDER

A final hearing was held in this matter before Robert S. Cohen, Administrative Law Judge with the Division of Administrative Hearings, on August 27, 2014, in St. Petersburg, Florida.

APPEARANCES

For Petitioner: Yolonda Y. Green, Esquire
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Lauren A. Leikam, Esquire
Prosecution Services Unit
Department of Health
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For Respondent: Thomas W. Kaufman, Esquire
David M. Greene, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether the allegations set forth in the Administrative Complaint filed by Petitioner, Department of Health, Board of Nursing, against Respondent, Zauher Karim, C.N.A., are correct, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

Petitioner filed a two-count Administrative Complaint against Respondent on April 1, 2013. Respondent timely filed a request for a hearing involving disputed issues of material fact on April 22, 2013. The matter was referred to the Division of Administrative Hearings on April 29, 2014. The undersigned was assigned as the administrative law judge to preside over this matter. After one continuance at the request of the parties, the final hearing took place on August 27, 2014, with both parties represented by legal counsel. On August 25, 2014, two days prior to the final hearing, Respondent filed a Motion in Limine to Exclude Respondent's Uncounseled Request for Admissions Filed (Motion in Limine). At the beginning of the hearing on August 27, the undersigned denied the Motion in Limine.

At the hearing, Petitioner presented the testimony of three witnesses, Michael Smith, Department Investigator; John Daidone, R.N.; and Respondent Zauher Karim, C.N.A., all of whom appeared in person. Petitioner also offered into evidence the deposition transcripts in lieu of live testimony of Victor Mendez, C.N.A.,

and Philip N. Styne, M.D., A.G.A.F., and offered 17 exhibits, all of which were admitted into evidence. Respondent testified on his own behalf and offered 10 exhibits, all of which were admitted into evidence.

A one-volume Transcript was filed on September 29, 2014. Petitioner and Respondent filed their proposed findings of fact and conclusions of law on November 10, 2014.

References to statutes are to Florida Statutes (2012) unless otherwise noted.

FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating the practice of nursing assistance, pursuant to chapters 20, 456, and 464, Florida Statutes.

2. At all times material to the Administrative Complaint, Respondent was a certified nursing assistant (C.N.A.) in the State of Florida, having been issued Certificate No. CNA 191405. The certificate was issued on June 27, 2009.

3. At all times material to the Administrative Complaint, Respondent did not hold any other medical licenses or certificates issued by the Florida Department of Health.

4. On October 17, 2010, Respondent submitted a Health Care Clinic Establishment (HCCE) application to the Department of Health for Chantilly Health Research (Chantilly Health) located

at 12800 Indian Rocks Road, Indian Rocks, Florida 33774.

Chantilly Health was also known as Chantilly Health and Wellness.

5. At all times material to the Administrative Complaint, the address of record listed on Respondent's C.N.A. certificate was the same location as Chantilly Health. Respondent's current address of record is 12199 Indian Rocks Road, Largo, Florida 33774.

6. In his application for HCCE license, Respondent listed Dr. Dunja Boljesic as the Designated Qualifying Practitioner. Respondent signed the application as the clinic manager. Dr. Boljesic had retired and was no longer physically present at Chantilly Health at the time of the investigation giving rise to the Administrative Complaint. It is unknown whether Dr. Boljesic currently maintains any ownership or financial interest in Chantilly Health.

7. On November 30, 2010, the Florida Department of Health, Division of Medical Quality Assurance, issued the HCCE license to Chantilly Health, License No. 604026.

8. Chantilly Health was also licensed with the City of Largo as a "Clinic of Doctors," a health food store, and a dietary supplement store.

9. Respondent had three different filings with the Florida Secretary of State, Division of Corporations (Sunbiz): one for a

research company, one for "vitamin," and one for a health and nutrition clinic.

10. On January 27, 2012, Department investigator Michael Smith approached Respondent at Chantilly Health and told him he had been diagnosed with multiple myeloma.

11. In response to Mr. Smith's questions regarding his feigned illness, Mr. Smith testified that Mr. Karim informed him that he could draw blood from him and utilize an independent laboratory to obtain additional information about a specific type of cancer. The laboratory testing would neither be done by Respondent nor Chantilly Health, and would cost \$195. Mr. Karim denies having offered to draw blood from Mr. Smith, but testified he could draw a small sample to send to an independent laboratory for testing.

12. Respondent had a glucose and hemoglobin meter at Chantilly Health which he used to draw small samples of blood to determine iron and glucose levels. He did not perform these tests on Mr. Smith, primarily since Mr. Smith refused to have any actual tests performed upon him by Respondent.

13. Had he drawn blood from Mr. Smith, Respondent would not have received any direct or indirect financial benefit or remuneration from the third-party laboratory.

14. Respondent advised Mr. Smith that multiple myeloma, a form of cancer, is related to an inflammation in the gastro-

intestinal tract as well as suffering from "toxicity." He offered to help Mr. Smith strengthen his immune system, which would have included a liver detoxification.

15. Respondent offered to have a blood test performed, after which he would devise a holistic plan of detoxification for Mr. Smith. Mr. Smith chose not to have any of these services performed or ordered by Respondent since he was acting as an investigator and not an actual potential customer of Chantilly Health.

16. Mr. Smith asked Respondent if he was a doctor. Respondent stated he was a doctor "in nutrition medicine and no pharmaceuticals." He handed Mr. Smith two business cards. The cards contained the following language:

Card one:

Chantilly Natural Health Research, Functional Blood Nutrition & Lipid-profile, Cardio Risk APW IN-Ratio, centres of enzyme research, Functional Medicine and Orthomolecular Medicine research, Board Certified Fellow of American Association of Integrative Medicine, Board Certified Am Anti-Aging & Regenerative Med, Board Certified American Alternative Medicine, Reg/Lic: Washington, D.C., West Virginia, DC . . .; WV . . . dr. karim, www.chantillyhealth.com

Card two:

Chantilly Natural Health Research, Functional Blood Nutrition & Lipid-profile, Cardio Risk APW IN-Ratio, z.karim, centres of enzyme research, Functional Medicine & Orthomolecular Medicine Research, Board Certified & Fellow of American Association of Integrative Medicine, Board Certified, Am Anti-Aging & Regenerative Med, Board certified American Alternative Medicine, Reg/Lic: Washington, D.C., West Virginia, Florida . . . www.chantillyhealth.com www.chantillyhealth.us

17. The cards also displayed a logo that read "American Association of Integrative Medicine, The Medical Society for the 21st Century," and contained a logo of a staff with two snakes entwined, commonly known as a "caduceus."

18. Respondent testified he applied for all the board certifications listed on his business cards and that he provided these credentialing associations with documentation of his credentials and transcripts. None of these board certifications are related to a Florida license held by Respondent.

19. In January 2013, Mr. Smith returned to Chantilly Health and observed a certificate on the wall with Respondent's name and the initials "M.D." following his name. The initials "M.D." commonly refer to "medical doctor."

20. Respondent is not licensed as a medical doctor in Florida.

21. Respondent is not licensed as a naturopathic physician in Florida.

22. Respondent admitted to Mr. Smith that he refers to himself as a doctor on his business cards and on the internet. He says he uses the term "doctor" to mean a doctor of oriental medicine.

23. Respondent is not licensed as an acupuncturist in Florida.

24. Respondent admitted giving information about Vitamin E supplements to Mr. Smith.

25. Respondent admitted having a glucose meter and a hemoglobin meter at Chantilly Health.

26. Respondent admitted performing blood glucose level screenings at Chantilly Health.

27. Respondent testified that he performed hemoglobin tests at Chantilly Health to look at hematocrit iron levels and cholesterol levels.

28. Respondent testified that he advised individuals on whom he performed blood glucose level screenings to "cut down" on their sugar intake.

29. Respondent admitted telling individuals on whom he performed hemoglobin tests to increase their liver intake by once a week.

30. Respondent admitted he should not use the term "doctor" in Florida.

31. Respondent testified that he had never been licensed as a medical doctor in any state.

32. Petitioner submitted into evidence in lieu of live testimony, the deposition transcript of Victor Mendez, C.N.A., who is accepted as an expert in nursing assistance based upon his credentials and experience. He testified as to the standard of care and scope of practice for C.N.A.s.

33. A C.N.A. is restricted to working under the direct supervision of a licensed practical nurse or registered nurse. The job of a C.N.A. is to observe and assist patients. A C.N.A. is not permitted to prescribe any type of supplement or medication when performing his or her duties. A C.N.A. is not permitted to recommend vitamins or supplements even if they are available without a prescription, and may not recommend changes in dietary intake.

34. According to Mr. Mendez, C.N.A.s are not permitted to run diagnostic tests, diagnose patients, evaluate diagnoses, or recommend treatments.

35. Mr. Mendez observed that Chantilly Health was set up much like a medical office with a seating or waiting area, the credentials displayed, Respondent's attire (personalized surgical scrubs), and the products displayed.

36. Mr. Mendez noted that the type of surgical scrubs worn by Respondent were more akin to those worn by physicians in a health care setting than those worn by non-medical health care staff.

37. Mr. Mendez opined that Respondent telling Mr. Smith he was suffering from "leaky gut" was a diagnosis of an individual's condition which is clearly outside the scope of practice of a C.N.A. Likewise, Respondent's offer both to conduct blood tests

and create a treatment plan was outside the scope of a C.N.A.'s license.

38. Petitioner also presented the expert testimony of Philip N. Styne, M.D., through a transcript of his deposition taken in lieu of live testimony at the final hearing. Dr. Styne was presented as an expert in the fields of internal medicine and gastroenterology. Dr. Styne has been licensed as a medical doctor in Florida since 1979, and is board certified in internal medicine and gastroenterology. He is also the medical director of Digestive Health Clinical Informatics and Liver Services for Florida Hospital. Based upon Dr. Styne's credentials and experience, the undersigned accepts him as an expert for purpose of offering opinion testimony in this matter.

39. Dr. Styne provided a description of what characterizes multiple myeloma, the disease feigned by Mr. Smith during his investigation of Respondent. Dr. Styne testified that multiple myeloma is treated by chemotherapy, an allogeneic or autologous blood or bone marrow transplant, or a combination of these. Detoxifying the liver is not an accepted form of medical treatment in his opinion. If a patient presented himself to Dr. Styne suffering from multiple myeloma, he would seek a referral to a board-certified oncologist, an internist who specializes in the treatment of cancer. He would make the

referral since multiple myeloma is not particular to his specialty, and because it is usually a lethal disease.

40. On December 30, 2013, Respondent submitted a copy of John Daidone's registered nursing license to Petitioner along with his request for a hearing before the Board of Nursing. Respondent wrote on the copy of the license that Mr. Daidone had supervised him since February 2003. Respondent has only held a C.N.A. license since June 26, 2009.

41. Mr. Daidone testified on behalf of Petitioner at the hearing. He has been licensed as a registered nurse in Florida since around 1990. After presenting a detailed description of his work experience, Mr. Daidone testified he had never supervised Respondent.

42. Mr. Daidone was originally referred to Respondent when he needed a blood test performed. Respondent pricked Mr. Daidone's finger to draw blood which he examined under a microscope. Respondent advised Mr. Daidone that he was suffering from mycoplasma pneumonia and gave him some supplements to treat his condition. Mycoplasma pneumonia is an infection of the lungs caused by bacteria of a similar name. Respondent gave Mr. Daidone a signed document stating he had the disease and signing it "Z. Karim, N.D." The abbreviation N.D. stands for naturopathic doctor. Respondent also attached a Chantilly Health business card to the document listing him as an M.D.

43. Mr. Daidone last spoke with Respondent about two months prior to the final hearing, at which time Respondent asked him to say he had supervised Respondent.

44. When testifying, Respondent claimed that Mr. Daidone had signed Respondent's name on the document with the initials "M.D." after it. Respondent stated he may have signed a blank piece of paper that Mr. Daidone completed at a later time. Respondent further testified that Mr. Daidone must have picked up a business card from Chantilly Health and photocopied it to the document he created at a later time. Respondent admitted he kept his business cards in the lobby of Chantilly Health in an area accessible to the public.

45. Mr. Daidone could not recall whether he or Respondent typed the letter, or whether it was his handwriting or that of another person appearing on the letter. Mr. Daidone candidly admitted he has problems with his recall and memory.

46. In January 2013, Respondent was issued a Uniform Unlicensed Activity Citation by the Florida Department of Health for practicing medicine in violation of chapters 456 and 458, Florida Statutes. Respondent entered into a Settlement Agreement in that matter in which he neither admitted nor denied the facts alleged in the citation, and paid \$4,754.11 (representing a fine of \$1,000.00 and costs of \$3,754.11) to resolve the citation. Respondent also agreed not to violate any provision of

chapter 456 or any Florida statute or rule related to the practice of any health care profession.

CONCLUSIONS OF LAW

47. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

48. 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). Since administrative penalties and fines are penal in nature, Petitioner has the burden of proving by clear and convincing evidence the allegations of the Administrative Complaint. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 933-34 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292, 294-95 (Fla. 1987).

49. The "clear and convincing" standard requires:

[T]hat 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 in 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.

In re: Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

50. Statutes that authorize the imposition of penal sanctions are strictly construed. Any ambiguity in the law is construed in favor of the licensee. Elmariah v. Dep't of Prof'l Reg., Bd. of Med., 574 So. 2d 164, 165 (Fla. 1st DCA 1990).

51. The grounds proven in support of Petitioner's assertion that Respondent's license should be disciplined must be those specifically alleged in the administrative complaint. See, e.g., Trevisani v. Dep't of Health, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005); Kinney v. Dep't of State, 501 So. 2d 129, 133 (Fla. 5th DCA 1987); and Delk v. Dep't of Prof'l Reg., 595 So. 2d 966, 967 (Fla. 2nd DCA 1984). Due process prohibits Petitioner from taking disciplinary action against a licensee based on matters not specifically alleged in the charging instrument, unless those matters have been tried by consent. See Shore Vill. Prop. Owners' Ass'n, Inc. v. Dep't of Env'tl. Prot., 824 So. 2d 208, 210 (Fla. 4th DCA 2002).

52. Petitioner brought a two-count Administrative Complaint against Respondent. Each of the counts will be examined, in turn, to determine whether violations occurred and what, if any, discipline should be imposed.

COUNT I

53. In Count I of the Administrative Complaint, Petitioner charged Respondent under section 464.204(1)(b), which provides that discipline may be imposed for "intentionally violating any

provision of this chapter [464], chapter 456, or the rules adopted by the board [of nursing]." Further, this count charged Respondent with violating section 456.072(1)(o), which provides for the imposition of discipline for "[p]racticing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform."

54. Section 464.201 provides, in relevant part, the following definitions:

(3) "Certified nursing assistant" means a person who meets the qualifications specified in this part and who is certified by the board as a certified nursing assistant.

* * *

(5) "Practice of a certified nursing assistant" means providing care and assisting persons with tasks relating to the activities of daily living. Such tasks are those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents' or patients' rights, documentation of nursing-assistant services, and other tasks that a certified nurse assistant may perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse. This subsection does not restrict the ability of any person who is otherwise trained and educated from performing such tasks.

55. Florida Administrative Code Rule 64B9-15.002 further delineates what the C.N.A. authorized duties are:

(1) A certified nursing assistant shall provide care and assist residents with the following tasks related to the activities of daily living only under the general supervision of a registered nurse or licensed practical nurse:

(a) Tasks associated with personal care:

1. Bathing;
2. Dressing;
3. Grooming;
4. Shaving;
5. Shampooing and caring for hair;
6. Providing and assisting with oral hygiene and denture care;
7. Caring for the skin;
8. Caring for the feet;
9. Caring for the nails;
10. Providing pericare;
11. Bed making and handling linen;
12. Maintaining a clean environment.

(b) Tasks associated with maintaining mobility:

1. Ambulating;
2. Transferring;
3. Transporting;
4. Positioning;
5. Turning;
6. Lifting;
7. Performing range of motion exercises;
8. Maintaining body alignment.

(c) Tasks associated with nutrition and hydration:

1. Feeding and assisting the resident with eating;
2. Assisting the resident with drinking.

* * *

(3) A certified nursing assistant shall not perform any task which requires specialized nursing knowledge, judgment, or skills.

* * *

(5) A certified nursing assistant shall not work independently without the supervision of a registered nurse or a licensed practical nurse.

Rule 64B9-15.001(6) provides, in relevant part, that:

"General Supervision" means a registered nurse or a licensed practical nurse currently licensed under Chapter 464, F.S., to the extent allowed under Section 400.23(3), F.S., authorizing procedures being carried out by a certified nursing assistant but who need not be present when such procedures are performed. The certified nursing assistant must be able to contact the registered nurse or licensed practical nurse acting in accordance with Section 400.23(3), F.S., when needed for consultation and advice either in person or by communication devices.

Section 464.003(20), Florida Statutes, provides, in relevant part, that:

"Practice of professional nursing" means the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skill based upon applied principles of psychological, biological, physical, and social sciences which shall include, but not be limited to:

(a) The observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; health teaching and counseling of the ill, injured, or infirm; and the promotion of wellness, maintenance of health, and prevention of illness of others.

(b) The administration of medications and treatments as prescribed or authorized by a duly licensed practitioner authorized by the laws of this state to prescribe such medications and treatments.

56. Certified nursing assistants, pursuant to section 464.204(1)(b), are subject to discipline for intentional violations of chapters 456 and 464. Sections 456 and 464 and the rules promulgated pursuant to these chapters clearly delineate the duties of a certified nursing assistant, and limit those duties by stating that a certified nursing assistant shall not perform any task which requires specialized nursing knowledge, judgment, or skills. In this matter, the clear and convincing evidence supports a finding that Respondent intentionally practiced, offered to practice, or attempted to practice, under the auspices of Chantilly Health, beyond the scope permitted by law for the only Florida health care license he possessed, that of a certified nursing assistant. While Respondent believed that his training in naturopathic medicine, acupuncture, and any of the other holistic or alternative medical disciplines he has engaged in (and received licensure for) outside the State of Florida qualified him to perform the health care services he provided, he possesses no Florida license to perform these services beyond those authorized to be performed by a certified nursing assistant. Holding a valid C.N.A. license does not authorize Respondent to perform a blood test, analyze the test

results, provide a diagnosis, and create a treatment plan for Michael Smith, all of which the evidence demonstrates were offered by Respondent in this case.

57. Respondent's C.N.A. license in effect at the time he saw Mr. Smith at Chantilly Health (CNA 191405) was issued on June 27, 2009. While certified by the State of Florida, on January 27, 2012, Respondent offered to perform a blood test; provided an alternative diagnosis to the serious disease process represented by multiple myeloma (that it was an inflammation of the gastro-intestinal tract and toxicity); offered to detoxify Mr. Smith's liver; and offered to create a holistic treatment plan. Chapter 464, Florida Statutes, and Florida Administrative Code Rules 64B9-15.001 and 64B9-15.002 make it clear the limitations imposed on a C.N.A., and what tasks must be performed under the supervision of a registered nurse or licensed practical nurse. Rule 64B9-15.002 specifically states what tasks a C.N.A. is not to perform. Tasks that require specialized nursing knowledge, judgment, or skills such as performing blood tests, analyzing test results, providing diagnosis, and creating treatment plans are tasks that C.N.A.s cannot perform. The expert testimony of Victor Mendez, C.N.A., adds to this that nursing assistants are not even allowed to recommend treatments to patients that include over-the-counter products or supplements. Respondent's testimony, the expert testimony of

Mr. Mendez, and Petitioner's exhibits and non-expert testimony, taken collectively, provide clear and convincing evidence to support the allegations of the Administrative Complaint giving rise to this action. Without question, Respondent intentionally practiced or offered to practice beyond the scope of his license as a C.N.A.

58. Respondent provided documentation to demonstrate he was working as a C.N.A. under the supervision of a registered nurse during the time alleged in the Administrative Complaint. On December 30, 2013, when submitting his request for an administrative hearing, Respondent provided Petitioner a copy of John Daidone's nursing license, and handwrote on the copy that Mr. Daidone had been his supervisor from 2003 to the present. At hearing, Mr. Daidone denied he had ever supervised Respondent. Respondent even admitted, while testifying at hearing, that "I don't think he really supervised me." However, this does not negate the fact that Respondent held himself out as a C.N.A. under the supervision of Mr. Daidone, a Florida registered nurse.

59. In one defense to the charges, Respondent claims Chantilly Health was not meant to be a health care clinic. However, as noted previously, Chantilly Health, with Dr. Dunja Boljesic listed as the clinical director and Respondent listed as the clinic manager, submitted a HCCE application and was awarded License No. 604026, which was valid from November 30, 2010, until

November 30, 2012. Also, license applications filed with the City of Largo and the Florida Division of Corporations identified Chantilly as a health care clinic. Dr. Boljesic had retired and was no longer affiliated with Chantilly Health at the time of the visit by Mr. Smith which formed the basis for Count I of the Administrative Complaint. Under no reasonable reading of chapter 464 does a C.N.A. have the authority to run, unsupervised by medical personnel with a higher degree of licensure (e.g., an M.D. or R.N.), a health care clinic.

60. Even if, as Respondent alternatively argues, he was merely working in a retail, non-clinical facility, he can still be disciplined by the Board of Nursing for intentionally violating any provision of chapter 464, 456, or any of the rules promulgated pursuant to those regulatory statutes.

§ 464.204(1)(b), Fla. Stat. Statutes that govern the Regulation of Professionals and Occupations, chapters 454-493, and all applicable rules adopted pursuant to these statutes, do not limit the authority of the licensing board to discipline a licensee's license or certification, based upon the location of where a licensee performs duties related to, or beyond the scope of, the license. See Dep't of Health, Bd. of Med. v. Coker, P.A., Case No. 03-2690PL (Fla. DOAH Oct. 31, 2003; Fla. DOH Dec. 15, 2003) (finding Respondent violated practice act while seeing

patients at adult entertainment clubs). See also rule 64B16-27.100(5) (stating that a pharmacist performing . . . any of the acts defined as "the practice of the profession of pharmacy" . . . shall be actively licensed as a pharmacist in this state, regardless of whether the practice occurs in a permitted location (facility) or other location).

61. Respondent argues that he did not hold himself out as a C.N.A. while working at Chantilly Health. Section 456.072(1)(t), subjects a health care professional to discipline for failing to identify himself or herself through the wearing of a badge (or other written means like a name tag, or, presumably, a lab coat or scrubs with name embroidered), or orally. However, if a facility is licensed under chapter 394, 395, 400, or 429, such identification is not required. Respondent testified, and Petitioner confirmed, that Chantilly Health had applied for and held a license as a HCCE, licensed under chapter 400. Therefore, Respondent was not required to identify himself through written notice, which included the wearing of a name tag, or to orally state the type of license under which he was practicing.

62. In order to justify performing services beyond those authorized to be performed by a C.N.A., Respondent testified that he is a licensed phlebotomist and therefore authorized to draw blood for testing purposes. However, he neither produced a license nor could identify when he became licensed.

Additionally, Respondent failed to produce any evidence that he received additional training that would permit him to analyze test results, provide diagnoses, and create treatment plans. Therefore, Respondent failed to prove that he is authorized to perform any health care related services in Florida beyond those enumerated in section 464.201(5) and rule 64B9-15.002.

63. Petitioner has proved, by clear and convincing evidence, that Respondent committed the violations contained in Count I of the Administrative Complaint. Respondent intentionally practiced or offered to practice beyond the scope permitted by law or accepted and performed professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform in violation of section 464.204(1)(b), by intentionally violating section 456.072(1)(o). The evidence established that Respondent was a certified nursing assistant, and that the scope of practice for his profession was limited by section 464.201, and rules 64B9-15.001 and .002. Offering to perform glucose and hemoglobin tests, giving medical advice based upon the test results, providing a diagnosis of an individual's condition, and developing a treatment plan are beyond the scope permitted by Respondent's nursing assistant certification. Therefore, Petitioner has proven, by clear and convincing evidence, that Respondent has violated section 464.204(1)(b), by intentionally violating section 456.072(1)(o).

COUNT II

64. Count II of the Administrative Complaint charged Respondent under section 464.204(1)(b), which provides that, "Intentionally violating any provision of this chapter, chapter 456, or the rules adopted by the board" through an intentional violation of section 456.072(1)(m), which provides that, "Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession" constitutes grounds for which the disciplinary actions may be taken. In Count I, Petitioner established that Respondent was engaged in activities, while licensed as a C.N.A., beyond the scope of his certification. Under section 456.072(1)(m), a respondent is not required to have committed the violation in or related to the practice of the licensee's profession, as is specifically required by section 456.072(1)(a) of that same statute. Here, based upon clear and convincing evidence, Respondent has held himself out as a medical doctor while only being certified as a C.N.A. in Florida. As a health care licensee in Florida, Respondent is subject to the applicable statutes and rules related to his area of practice. He is therefore responsible for any violations of section 464.204(1)(b), whether committed in or related to his profession or a profession. § 456.072(1)(m), Fla. Stat.; Sanfiel v. Dep't of Health, 749 So. 2d 525, 526 (Fla. 5th

DCA 1999). Accordingly, it is not required that Respondent act within the scope of his license to have violated section 456.072(1)(m).

65. Even where a relationship is required, Florida courts have construed the statutory language "relating to" the practice of a licensee's profession under section 456.072(1)(c), broadly to encompass conduct that constitutes danger to the public health or welfare. For example, in Rush v. Department of Professional Regulation, Board of Podiatry, 448 So. 2d 26, 27-28 (Fla. 1st DCA 1984), the court found that the crime of importation of marijuana need not be directly related to the technical practice of podiatry, but can relate to crimes arising out of misconduct in the office setting. Similarly, other Florida courts have made findings that crimes other than those specifically proscribed by a licensee's practice act may nonetheless be related to the practice of the profession. See Ashe v. Dep't of Prof'l Reg., Bd. of Accountancy, 467 So. 2d 814, 815 (Fla. 5th DCA 1985) (accountant convicted of wire fraud and interstate transportation of false and forged securities found to have committed a crime related to the practice of accountancy); Greenwald v. Dep't of Prof'l Reg., 501 So. 2d 740 (Fla. 3d DCA 1987) (physician solicits an individual to murder his wife related to the practice of medicine); and Doll v. Dep't of Health, 969 So. 2d 1103, 1106 (Fla. 1st DCA 2007) (chiropractor's guilty plea

to conspiracy to defraud a health beneficiary program was related to the practice of chiropractic medicine).

66. The language "relating to the practice of a profession" found in section 456.072(1)(m), regarding making deceptive, untrue, or fraudulent representations and/or employing a trick or scheme in or related to the practice of a profession should also be construed broadly to encompass behavior that poses a danger to the public welfare. In this case, the misrepresentations Respondent made despite only possessing a C.N.A. license in Florida constitute a level of fraud and deception that clearly pose a danger to the public. Contrary to Respondent's assertion that Chantilly Health was merely a retail store, the record at hearing clearly proves that Respondent held out his facility to the public as some sort of medical clinic and held himself out as a doctor licensed in Florida. Chantilly Health was licensed as a HCCE by the Department of Health and classified as a "Clinic of Doctors" with the City of Largo. Dr. Dunja Boljesic was listed as Chantilly Health's designated physician. No evidence was produced at hearing that any other physician licensed in Florida was affiliated in any manner with this "Clinic of Doctors" or that Dr. Boljesic had been involved with the clinic since shortly after the license was obtained. Within the facility itself, Respondent sold products that had been privately labeled to make them appear to be specially formulated for sale at Chantilly

Health. Respondent displayed a diploma, in an area viewable by the public, indicating the credentials of M.D., a designation not given him by the State of Florida. Respondent wore medical scrubs and dispensed business cards referring to himself as "dr. karim," and listing several medical board certifications, none of which confer upon him any Florida licensure or certification. His method of listing the certifications, followed by telephone numbers in three different states (including Florida) give the misleading impression that he is licensed in Florida in more than just his C.N.A. designation. Respondent also displayed a large caduceus, a symbol depicting a staff with two snakes entwined, which many take as a symbol for a physician.

67. As explained above, Petitioner's investigator, Michael Smith, posing as a sufferer of multiple myeloma was provided a diagnosis by Respondent, offered diagnostic tests to be run, and was offered the option of having a holistic treatment plan for an initial fee of \$195. Further, Respondent specifically told Mr. Smith that he was a doctor (although he said "doctor without pharmaceuticals"). Later, after complaints arose from Petitioner, Respondent said he meant a doctor of oriental medicine.

68. John Daidone, a Florida registered nurse, had his blood analyzed by Respondent under a microscope. Respondent determined

he suffered from mycoplasma pneumonia, and created a medical record of Mr. Daidone's visit. That document was signed "Dr. Karim, N.D." and a business card was attached displaying the credentials M.D. after his name. Respondent admitted under oath that he administered glucose and hemoglobin blood tests to customers, provided the customers with the test results, and advised them to adjust their dietary intake.

69. To summarize, the only valid Florida license held by Respondent is as a C.N.A. Respondent has never held a license as a medical doctor in any state in the United States. Further, naturopathic physicians and acupuncturists in Florida do not advertise board certifications, yet medical doctors are allowed to advertise board certifications from accrediting agencies that have been approved by the Board of Medicine. Respondent's business cards were clearly an attempt to defraud or mislead the public into believing he has medical credentials in Florida far greater than those of a C.N.A. As a C.N.A., Respondent was permitted to act, under direct supervision of a registered or licensed practical nurse, within the limited scope of practice which was specifically defined in the Florida Administrative Code. In addition to the limitations imposed, Respondent as a C.N.A. is prohibited from performing any task which requires "specialized nursing knowledge, judgment, or skills." Fla. Admin. Code R. 64B-15.002(6). Additionally, Victor Mendez,

C.N.A., Petitioner's expert, noted that C.N.A.s are not permitted to run diagnostic tests, diagnose patients, or recommend treatments to patients including over-the-counter products or supplements.

70. Given the entire picture painted by the testimony and evidence at the hearing, the only reasonable conclusion to reach in this matter is that Respondent's behavior and actions owning and operating Chantilly Health is that he was operating a health clinic as a licensed Florida physician, whether it be a medical doctor, naturopathic physician, nutritionist, and/or acupuncturist regulated by the Florida Department of Health. His business cards, which were available to the public and handed out to at least two witnesses who testified at the hearing, Michael Smith and John Daidone, would lead anyone to conclude, albeit wrongly, that Respondent is some sort of licensed Florida physician. Respondent is not a Florida licensed, qualified medical provider, and by holding himself out as one, he has subjected himself to penalties and sanctions. Based upon clear and convincing evidence, Respondent had held himself out as a Florida physician and has provided services that only a physician (or perhaps a registered nurse in specific circumstances) may provide. His representations were deceptive, untrue, and fraudulent, and he had reason to know, based upon his licensure as a C.N.A. in Florida, as well as those licenses he held in

other disciplines in states outside Florida, that he was performing tasks in Florida for which he was neither licensed, certified, nor formally trained according to the requirements of the licensing authority in this state.

71. The appropriate discipline to be imposed in this case is listed in rule 64B9-15.009, which provides for penalties ranging from fines and probation to denial of certification or revocation for a first offense; and slightly higher fines with the same option of probation, denial of certification or revocation for a second offense. The clear and convincing evidence in this matter support findings that Respondent violated section 464.204(1)(b), by knowingly violating section 456.072(1)(o) and (m), as described above. Rule 64B9-15.009(5)(a), allows Petitioner to deviate from the foregoing guidelines upon a showing of aggravating or mitigating circumstances by clear and convincing evidence:

(b) 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 registrant in this or any other jurisdiction.
3. The length of time the registrant 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 registrant to correct or stop violations, or refusal by the registrant to correct or stop violations.
8. Cost of treatment.
9. Financial hardship.
10. Cost of disciplinary proceedings.

Rule 64B9-15.009(6) adds the following:

In instances when a registrant or applicant is found guilty of any of the above offenses involving fraud or making a false or fraudulent representation, the Board shall impose a fine on \$10,000.00 per count or offense.

In this case there are several aggravating factors. Petitioner has shown by clear and convincing evidence that Respondent made numerous fraudulent or false representations, thereby subjecting him to the \$10,000 fine. In addition to performing services far exceeding the scope of his C.N.A. license, Respondent endangered the public, as evidenced by the testimony of John Daidone, upon whom Respondent not only performed a blood test, but who also followed Respondent's recommendation to take certain supplements which did not improve his serious health condition. Respondent also admitted he knew he should not refer to himself as a doctor in Florida since he did not possess any type of doctor license or certificate in Florida and he was not licensed as a medical doctor in any other state. However, he chose to hold himself out as a doctor in Florida and handed out misleading business cards that would lead the public to believe he was either an M.D. or some other Florida licensed physician. Additionally, in a

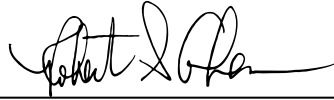
further attempt to deceive or mislead Petitioner, Respondent provided documentation to Petitioner that indicated John Daidone, R.N., supervised him as a C.N.A. since 2003 with his request for an informal hearing before the Board of Nursing. Moreover, Respondent entered into a consent agreement in January 2013 with the Department of Health, under which he made no admission of guilt to the charges of practicing medicine in Florida without a license, but paid a fine and investigative costs totaling \$4,754.11. Finally, Respondent's interference with Petitioner's investigation demonstrates that he is willing to go to great lengths to deceive both the public and the Department. Such behavior is unlikely to be deterred with simple fines or probation.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Nursing enter a final order:

1. Adopting the Findings of Fact and Conclusions of Law;
2. Finding that Respondent violated section 464.204(1)(b), Florida Statutes, by intentionally violating section 456.072(1)(o) and (m), Florida Statutes, as alleged in the Administrative Complaint; and
3. Revoking Respondent's certificate to practice as a certified nursing assistant.

DONE AND ENTERED this 5th day of December, 2014, in
Tallahassee, Leon County, Florida.



ROBERT S. COHEN
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 December, 2014.

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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.