

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

YOLETTE TEMA,

Petitioner,

vs.

Case No. 14-2096

BOARD OF NURSING,

Respondent.

_____ /

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on July 11 and August 13, 2014, at sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: Yolette Tema, pro se
115 Northeast 133rd Street
Miami, Florida 33161

For Respondent: Lee Ann Gustafson, Esquire
Department of Legal Affairs
The Capitol, Plaza Level 01
Tallahassee, Florida 32399

STATEMENT OF THE ISSUES

The issues in this case are whether, before applying for licensure as a registered nurse in Florida, Petitioner had suffered the denial of an application for licensure as a practical nurse in the state of Virginia, and, if so, whether

Petitioner's failure to disclose that fact in her Florida application was a knowing misrepresentation; finally, if either or both of the forgoing questions are answered in the affirmative, whether Respondent has grounds to deny Petitioner's pending application for a nursing license.

PRELIMINARY STATEMENT

By Notice of Intent to Deny dated February 11, 2014, Respondent Board of Nursing notified Petitioner Yolette Tema that it intended to deny her application for licensure as a registered nurse. Respondent's decision was based on Ms. Tema's disciplinary history, which included a denial of licensure in the state of Virginia; and on Ms. Tema's failure to disclose that previous denial in her Florida application despite an unambiguous request for such information. Ms. Tema timely requested a formal hearing, and on May 9, 2014, Respondent referred the matter to the Division of Administrative Hearings, where an Administrative Law Judge was assigned to conduct a formal hearing.

The hearing began on July 11, 2014, as scheduled, but at Ms. Tema's request was continued until August 13, 2014, on which date the hearing was completed with both parties present. Ms. Tema was the only witness. Respondent's Exhibits 1 and 2 were received in evidence without objection.

The final hearing transcript was filed on August 25, 2014. Proposed recommended orders were due on September 4, 2014, and Respondent filed one on time.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2014 Florida Statutes.

FINDINGS OF FACT

1. On October 15, 2012, Petitioner Yolette Tema ("Tema") signed an application for licensure as a registered nurse, which she mailed to the Department of Health for review by Respondent Board of Nursing (the "Board").

2. Item No. 9 of the application sought information about the applicant's disciplinary history. Four subparts (lettered A through D) asked questions that called for a "yes" or "no" answer, which the applicant was to give by marking the applicable check box. The first question ("9A") was:

Have you ever been denied or is there now any proceeding to deny your application for any healthcare license to practice in Florida or any other state, jurisdiction or country?

Tema answered, "No."

3. In Item No. 10 of the application, there appeared above the signature line the following declarations:

I recognize that providing false information may result in disciplinary action against my license or criminal penalties pursuant to Sections 456.067, 775.083, and 775.084, Florida Statutes.

I have carefully read the questions in the foregoing application and have answered them completely, without reservations of any kind. Should I furnish any false information in this application, I hereby agree that such act shall constitute cause for denial, suspension or revocation of my license to practice as a Registered Nurse or Licensed Practical Nurse in the State of Florida.

Tema's signature manifested her agreement with the foregoing declarations.

4. Despite having acknowledged the hard consequences of deceit, Tema's negative answer to the question of whether she ever had suffered the denial of an application for licensure was false. In fact, in June 2011, the Virginia Board of Nursing had denied Tema's application for licensure as a practical nurse, on the ground that she had provided false information in an effort to obtain a license by fraud, deceit, or material omission. Tema had received timely, contemporaneous notice of the Virginia Board of Nursing's final decision, and she was fully aware of that disposition at all times relevant to this case.

5. When she completed the Florida application in October 2012, therefore, Tema knew that her response to question 9A was false. Because the information Tema failed to disclose obviously would have hurt her chances of obtaining a license in Florida, the undersigned disbelieves Tema's explanation for the material omission, which was that she simply

made a mistake.^{1/} Instead, the undersigned infers that Tema intentionally omitted the damaging fact of the Virginia denial in hopes that the Board would not discover it.^{2/}

6. The Board did, however, discover the Virginia decision while reviewing Tema's application. Based on that past denial and Tema's present failure to disclose it, the Board determined that Tema's Florida application should be denied. The Board's preliminary decision was communicated to Tema through a Notice of Intent to Deny dated February 11, 2014.

Determinations of Ultimate Fact

7. Tema is guilty of having an application for a license to practice nursing denied by the licensing authority of another state, which is a disciplinable offense under section 464.018(1)(b), Florida Statutes.^{3/}

8. Tema is guilty of attempting to procure a license to practice nursing by knowing misrepresentation, which is a disciplinable offense under section 464.018(1)(a).

CONCLUSIONS OF LAW

9. 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 (2014).

10. As the applicant for licensure, Tema bears the ultimate burden of proving by a preponderance of the evidence that her application should be approved. Fla. Dep't of Transp.

v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981);
§ 120.57(1)(j), Fla. Stat.

11. The Board, however, was required to state with particularity the reasons for denying Tema's application, § 120.60(3), which it did in the Notice of Intent to Deny. There, the Board gave two grounds for its intended action: one, that Tema's application for licensure as a practical nurse had been denied in the state of Virginia; and, two, that Tema had falsely supplied a negative answer to a question on the application asking whether her disciplinary history included any previous denials of licensure. The Board bears the burden of proving these allegations of wrongdoing on Tema's part. See M.H. v. Dep't of Child. & Fam. Servs., 977 So. 2d 755, 761 (Fla. 2d DCA 2008) ("[I]f the licensing agency proposes to deny the requested license based on specific acts of misconduct, then the agency assumes the burden of proving the specific acts of misconduct that it claims demonstrate the applicant's lack of fitness to be licensed."); Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co., 670 So. 2d 932, 934-935 (Fla. 1996).

12. Section 464.018 provides in pertinent part as follows:

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(a) Procuring, attempting to procure, or renewing a license to practice nursing by bribery, by knowing misrepresentations, or through an error of the department or the board.

(b) Having a license to practice nursing revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

* * *

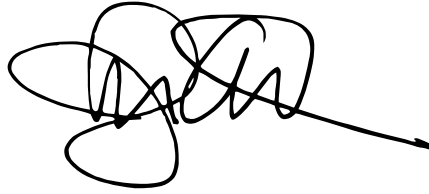
(2) The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

13. As discussed above, the undersigned determined, based upon a preponderance of the evidence, that Tema committed the offenses defined in section 464.018(1)(a) and (b), as charged in the Notice of Intent to Deny. These violations justify the Board's preliminary decision to deny Tema's application for licensure as a registered nurse. § 464.018(2), Fla. Stat.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Nursing enter a final order denying Tema's application for licensure as a registered nurse.

DONE AND ENTERED this 10th day of September, 2014, in
Tallahassee, Leon County, Florida.



JOHN G. VAN LANINGHAM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of September, 2014.

ENDNOTES

^{1/} Tema also testified, somewhat inconsistently, that she did not reveal the Virginia disposition because she considers herself innocent of any wrongdoing in that state and regards the decision taken there to be erroneous. This is likely true as far as it goes—but is in no way exculpatory.

^{2/} See Jean-Noel v. Bd. of Nursing, Case No. 13-0838, 2013 Fla. Div. Adm. Hear. LEXIS 348, 15 n.7 (Fla. DOAH June 11, 2013; Fla. Bd. of Nursing Aug. 28, 2013) (collecting cases on permissibility of inferring intent to deceive from basic fact of withholding damaging information when under duty to disclose).

^{3/} The relevant provisions of section 464.018 remained the same throughout the entire period during which the events giving rise to this proceeding unfolded. Compare § 464.018, Fla. Stat. (2010), with § 464.018, Fla. Stat. (2014).

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.