

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DENISE STRALKA,

Petitioner,

vs.

Case No. 14-3095

BOARD OF NURSING,

Respondent.

_____ /

RECOMMENDED ORDER

An administrative hearing was conducted in this case on August 27, 2014, in Leesburg, Florida, before W. David Watkins, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No Appearance

For Respondent: Lee Ann Gustafson, Esquire
Assistant Attorney General
Department of Legal Affairs
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Whether Petitioner's application for licensure as a Certified Nursing Assistant should be approved or denied.

PRELIMINARY STATEMENT

On or about March 12, 2014, Petitioner submitted an application to the Florida Board of Nursing (the Board) for

licensure as a Certified Nursing Assistant (CNA). On April 21, 2014, the Board issued a Notice of Intent to Deny Petitioner's application. Thereafter, Petitioner timely filed a request for an administrative hearing, which the Board forwarded on July 2, 2014, to the Division of Administrative Hearings (DOAH).

By Notice dated July 21, 2014, the final hearing was scheduled for August 27, 2014, at 9:30 a.m. in Leesburg, Florida. The cause came on for hearing as noticed. The Petitioner failed to appear at the hearing, and no evidence was adduced in proof of the Petitioner's claims.

Respondent was represented at the hearing by counsel, who offered in evidence one exhibit, consisting of a certified copy of Petitioner's CNA application file. Respondent did not call any witnesses to testify.

At the conclusion of the presentation of Respondent's case, Respondent advised that the Board would not be ordering a copy of the transcript of the final hearing. Board counsel requested that proposed recommended orders be filed within ten days of the date of hearing. That request was granted.

As of 10:10 a.m. Petitioner had still not appeared at the hearing. Petitioner having been given ample opportunity to appear, the hearing was adjourned at that time.

Respondent timely filed its Proposed Recommended Order on September 2, 2014. Petitioner did not file a proposed recommended order.

FINDINGS OF FACT

1. This cause was scheduled for hearing for August 27, 2014, at the City Hall, 2nd Floor Conference Room, 501 West Meadow Street, Leesburg, Florida, at 9:30 a.m. Eastern Time. The Notice of Hearing was sent to the Petitioner's last known address of record at 3423 Southwinds Cove Way, Leesburg, Florida 34748, notifying the Petitioner of the hearing on the above date, time, and place. There was no communication from the Petitioner by motion, letter, telephonically, or otherwise indicating that the Petitioner had any difficulty which might prevent her attending the hearing at the noticed date, time, and place.

2. Upon convening the hearing, the Petitioner failed to appear. A substantial period of time was allowed to elapse, (forty minutes) in which the undersigned and the Respondent's counsel waited for the Petitioner to appear to put on her case. Additionally, the undersigned and Respondent's counsel did observe within the building at the hearing site and in the immediate environs of the building to see if the Petitioner was observed in the vicinity of the hearing site. The Petitioner was not observed in the environs of the hearing site and never

appeared at the hearing during the additional time allowed for her appearance.

3. More than three weeks have elapsed since the hearing date, and there has been no communication from the Petitioner with the undersigned, and no indication from the Respondent that any communication from the Petitioner has been received by the Respondent, which might explain the Petitioner's absence from the noticed hearing.

4. Petitioner applied for a license as a CNA. A Notice of Intent to Deny was issued by the Board on April 21, 2014.

5. Petitioner was convicted of misdemeanor theft and attempted child endangerment in 2002.

6. In her request for hearing, Petitioner did not dispute the convictions.

7. The application for CNA licensure contained the following question:

Have you EVER been convicted of, or entered a plea of guilty, nolo contendere, or no contest to, a crime in any jurisdiction other than a minor traffic offense? **You must include all misdemeanors** and felonies even if adjudication was withheld. [emphasis added].

8. Petitioner answered the above question "No".

9. Petitioner's negative answer to the above question was untruthful.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction of this action pursuant to sections 120.569, 120.57 and 120.60, Florida Statutes (2013).

11. Section 456.072(1)(h), Florida Statutes, provides that grounds for denial of an application include attempting to obtain or obtaining a license to practice a profession by fraudulent misrepresentation.

12. Section 456.018(1)(a) provides that grounds for denial of an application include procuring or attempting to procure a license to practice nursing by knowing misrepresentations.

13. Respondent made a prima facie case that Petitioner made a misrepresentation on her application.

14. Petitioner failed to appear and demonstrate that she did not intend to deceive the Board or that the question was confusing or ambiguous.

15. As an applicant for licensure, Petitioner bears the burden of proof in this proceeding. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Dep't of HRS, 348 So. 2d 349 (Fla. 1st DCA 1977). Petitioner failed to appear and has failed to communicate with the undersigned, and no indication from the Respondent has been received by the undersigned which would indicate any effort by the Petitioner to

communicate with the Respondent on the day of or since the day of the noticed hearing.

16. Petitioner failed to rebut Respondent's prima facie showing that Petitioner made an intentional misrepresentation on her application for licensure. As such, Respondent is justified, pursuant to sections 456.072(1)(h) and 456.018(1)(a), in denying Petitioner's application.

RECOMMENDATION

Upon consideration of the facts found and the conclusions of law reached, it is RECOMMENDED that the application of DENISE STRALKA for licensure as a certified nursing assistant be denied.

DONE AND ENTERED this 26th day of September, 2014, in Tallahassee, Leon County, Florida.



W. DAVID WATKINS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of September, 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.