

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

Chantavia Cooper,

Petitioner,

vs.

Case No. 14-5242

Board of Nursing,

Respondent.

_____ /

RECOMMENDED ORDER

A hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2014),^{1/} before Cathy M. Sellers, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"), on March 9, 2015, by video teleconference at sites in Port St. Lucie and Tallahassee, Florida.

APPEARANCES

For Petitioner: Chantavia Cooper, pro se
2401 North 42nd Street
Fort Pierce, Florida 34946

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

STATEMENT OF THE ISSUE

The issue for resolution in this case is whether Petitioner, on her application for certification as a certified nursing assistant ("CNA") by examination, intentionally denied

the fact that she previously had disciplinary action taken against her license, such that her application should be denied on the basis of attempting to obtain a CNA license by bribery, knowing or fraudulent misrepresentation,^{2/} or deceit.

PRELIMINARY STATEMENT

On August 14, 2014, Respondent, Board of Nursing, issued a Notice of Intent to Deny the application for licensure as a certified nursing assistant by examination filed by Petitioner, Chantavia Cooper. Respondent's decision was based, in part, on Petitioner's negative answer on the application inquiring whether Petitioner had ever had disciplinary action taken against her license to practice any healthcare-related profession by the licensing authority. Petitioner had, in fact, previously had her CNA license revoked. Respondent accused Petitioner of attempting to obtain a CNA license by bribery, misrepresentation, or deceit. Respondent's proposed action to deny Petitioner's application also was based, in part, on the previous revocation of her CNA license.

Petitioner timely requested an administrative hearing challenging Respondent's proposed denial of her application, and the matter was referred to DOAH to conduct a hearing pursuant to sections 120.569 and 120.57(1). The hearing initially was scheduled for December 23, 2014, but pursuant to Respondent's motion, was continued and rescheduled for March 9, 2015.

The final hearing was conducted on March 9, 2015. Petitioner testified on her own behalf and did not offer any exhibits for admission into evidence. Respondent did not present any witnesses. Respondent's Exhibit 1, consisting of the license application, was admitted into evidence without objection, and the undersigned took official recognition of the Final Order issued by the Department of Health, Board of Nursing in Case No. 2009-08241.

The one-volume Transcript was filed with DOAH on April 8, 2015. Pursuant to Florida Administrative Code Rules 28-106.215 and 28-106.103, the parties were given until April 20, 2015, to file proposed recommended orders. Respondent's timely filed Proposed Recommended Order was duly considered in preparing this Recommended Order. Petitioner did not file a proposed recommended order.

FINDINGS OF FACT

1. Petitioner has applied to become a CNA pursuant to chapter 464, Florida Statutes.
2. Respondent is the state agency responsible for reviewing applications for licensure as a CNA and determining whether such applicants are eligible to take the nursing assistant competency examination, which consists of a written test and a skills-demonstration test. Successful completion of

both portions is necessary to obtain a CNA license by examination.

3. On May 7, 2010, Respondent issued a final order permanently revoking Petitioner's CNA license, in Department of Health, Board of Nursing Case No. 2009-08241, on the basis of her commission of various criminal offenses.^{3/}

4. On April 20, 2014, Petitioner filed an application again seeking to be certified as a CNA by examination.

5. On the application form, Petitioner truthfully answered "yes" to the item asking whether she had 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. She inaccurately answered "no" to the item asking if she had ever had disciplinary action taken against her certificate to practice any healthcare-related profession by the licensing authority in Florida or in any other state, jurisdiction, or country.

6. On May 7, 2014, Respondent notified Petitioner that her application was incomplete pending Respondent's receipt of information regarding judicial disposition of her arrests, sentence completion status for each offense, and a typewritten explanation addressing each offense. Petitioner provided the requested information, including a lengthy explanation of the circumstances surrounding each of her criminal offenses. At

that time, Petitioner also provided character letters, including one from the manager of Fort Pierce Health Care attesting to Petitioner's trustworthiness and diligence in performing her job-related duties at that facility.

7. On August 8, 2014, Respondent issued the Notice of Intent to Deny ("Notice") Petitioner's application for certification as a CNA by examination. The Notice cited two grounds for denial: (1) having a license to practice nursing or any healthcare-related profession acted against by a licensing authority; and (2) attempting to obtain a nursing license by bribery, misrepresentation, or deceit, by having incorrectly answered "no" to the application question regarding the previous revocation of her CNA license.

8. At the hearing, Petitioner testified that her incorrect answer regarding previous disciplinary action against her license was a mistake. She explained that she had received assistance in preparing her application from personnel in the CNA training program from which she had taken classes to prepare for the CNA certification examination. Training personnel filled out the application form and Petitioner provided the accompanying written information. Petitioner quickly reviewed the application form before signing it and in doing so, inadvertently overlooked the incorrect response to the item inquiring about previous licensure disciplinary action.

9. When Respondent issued its Notice denying her application on that basis, Petitioner filed a revised application, dated August 30, 2014, correcting the response to that item to reflect the previous disciplinary action against her CNA license. She provided an accompanying written explanation regarding the mistaken response and the previous action revoking her CNA license due to her criminal history.^{4/}

10. The undersigned finds credible and persuasive Petitioner's explanation that her incorrect response to the item regarding previous licensure disciplinary action was a mistake. This determination is bolstered by Petitioner's truthful correct answer on the application regarding her criminal history, which was the basis for the previous discipline against her license. Indeed, had Petitioner intended to conceal the previous disciplinary action against her license, it is likely she also would have answered "no" to the questions regarding her criminal history, which gave rise to the discipline.

11. The undersigned rejects Respondent's position that Petitioner was intentionally untruthful—i.e., lied—on her April 20, 2014, license application about the previous disciplinary action against her license. For the reasons discussed above, it is determined that Petitioner has shown, by a preponderance of the evidence, that she did not attempt to obtain a CNA license by bribery, knowing or fraudulent

misrepresentation, or deceit, in violation of sections 464.018(1)(a) or 456.072(1)(h).

12. At the final hearing, Petitioner expressed sincere contrition and remorse for her criminal offenses, noted that she already had paid the price for such conduct by having her license previously revoked, and expressed hope and desire that she could be relicensed to practice a profession that she loves.

CONCLUSIONS OF LAW

13. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

14. As the applicant for licensure, Petitioner bears the ultimate burden of proving, by a preponderance of the evidence, that her application for licensure as a CNA by certification by examination should be granted. 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. However, pursuant to section 120.60(3), Florida Statutes, Respondent was required to state with particularity the reasons for denying Petitioner's application for licensure, and it did this in the Notice. Respondent bears the burden of proving the allegations of wrongdoing on Petitioner's part that constitute the basis for its proposed denial of her license application. 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, 934-35 (Fla. 1996).

15. Section 464.018 states in pertinent part: "(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."

16. For the reasons discussed above, it is concluded that Petitioner did not attempt to obtain a CNA license by bribery, knowing misrepresentations, or deceit. See Walker v. Dep't of Bus. & Prof. Reg., 705 So. 2d 652 (Fla. 5th DCA 1998) (intent to misrepresent is required for showing of violation of statute on basis of "misrepresentation," which, in turn, requires a showing of knowledge). See also Miller v. Board of Nursing, Case No. 14-0877 (Fla. DOAH June 30, 2014; Fla. Bd. of Nursing Sept. 5, 2014); Pratt v. Bd. of Nursing, Case No. 13-2417 (Fla. DOAH Oct. 22, 2013; Fla. Bd. of Nursing Dec. 19, 2013); Fenelon v. Bd. of Nursing, Case No. 12-3553 (Fla. DOAH Mar. 25, 2013; Fla. Bd. of Nursing Oct. 22, 2013).

Accordingly, section 464.018(1)(a) does not provide a basis for denying Petitioner's license application.

17. Section 456.072, also cited as a basis for denial of Petitioner's application, states in pertinent part:

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

* * *

(f) Having a license or the authority to practice any regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

* * *

(h) Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the department or the board.

* * *

(2) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the

applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify, or to certify with restrictions, an application for a license.

§ 456.072, Fla. Stat. (emphasis added).

18. For the reasons discussed above, it is concluded that Petitioner did not attempt to obtain a CNA license by bribery, fraudulent misrepresentation, or deceit. See Gandy v. Transworld Computer Tech. Group, 787 So. 2d 116 (Fla. 2d DCA 2001) (proving fraud requires a showing that the person making a statement knows, at the time the statement is made, that it is false.) Accordingly, section 456.072(1)(h) does not constitute a basis for denying Petitioner's application for a CNA license by examination.

19. It is undisputed that Petitioner's CNA license was permanently revoked by Respondent in 2010 for various criminal offenses.^{5/} Section 456.072(2) grants Respondent the authority and discretion to refuse to certify an application for a license when the applicant previously has had a license acted against by the licensing authority. Pursuant to this statute, as a matter of law, Respondent may—but, within its sole discretion, is not required to—deny Petitioner's application on that basis.^{6/}

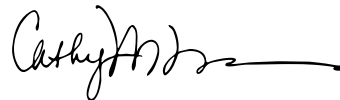
20. Based on the foregoing, it is concluded that Petitioner has demonstrated, by the preponderance of the

evidence, that she did not attempt to obtain certification as a certified nursing assistant by examination by bribery, knowing or fraudulent misrepresentation, or deceit. Accordingly, sections 464.018(1)(a) and 456.072(1)(f) and (h) do not constitute bases for denying her application for certification by examination.^{7/}

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent, Department of Health, Board of Nursing, enter a final order granting Petitioner's application for certification as a certified nursing assistant by examination.

DONE AND ENTERED this 8th day of May, 2015, in Tallahassee, Leon County, Florida.



CATHY M. SELLERS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of May, 2015.

ENDNOTES

^{1/} All references are to 2014 Florida Statutes.

^{2/} The Notice of Intent to Deny Petitioner's license application states, in pertinent part, that Respondent's proposed denial is based on a determination that Petitioner violated sections 464.018(1)(a) and 456.072(1)(f), Florida Statutes, "by attempting to obtain a nursing license by bribery, misrepresentation, or deceit." Section 464.018(1)(a) states that denial of a license may be grounded in "procuring, attempting to procure, or renewing a license to practice nursing by bribery, knowing misrepresentations, or through an error of the department or the board." § 464.018(1)(a), Fla. Stat. (emphasis added). Section 464.072(1)(a) states that disciplinary actions may be taken for "making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession." § 456.072(1)(a), Fla. Stat. (emphasis added). The undersigned has applied the stated standard in these statutes—which require a showing of intent—in determining whether Petitioner has violated them such that her license application should be denied. See paragraphs 15 and 17, *infra*.

^{3/} The Final Order entered by Respondent in Case No. 2009-08241 indicates that, in addition to her license revocation, Petitioner also suffered criminal sanctions as a result of her previous actions.

^{4/} Respondent apparently did not take any proposed action on the application form Petitioner submitted on August 30, 2014. The proposed agency action at issue in this proceeding is only the Notice to deny the application submitted on April 20, 2014.

^{5/} See *infra*. note 7.

^{6/} The undersigned further notes that section 464.018(3) authorizes Respondent to reinstate a license or cause a license to be issued to a person it previously determined unqualified provided certain conditions are met.

^{7/} Because it is undisputed that Petitioner's license previously was subject to discipline and because Respondent possesses the sole discretion under section 456.072(2) to deny or decide to grant Petitioner's application for violations of section 456.072(1), the undersigned makes no recommendation as to

whether Petitioner's license should be granted or denied under that statute.

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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.