

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,
BOARD OF NURSING,

Petitioner,

vs.

Case No. 15-2494PL

TONYA L. SHRADER, R.N.,

Respondent.

_____ /

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (DOAH) heard this case by video teleconference on June 30, 2015, at sites in Fort Myers and Tallahassee, Florida.

APPEARANCES

For Petitioner: Kristen M. Summers, Esquire
Francis A. Carbone II, Esquire
Louise Wilhite-St Laurent, Esquire
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-1701

For Respondent: No Appearance

STATEMENT OF THE ISSUES

A. Did Respondent, Tonya Shrader, R.N. (Ms. Shrader), violate section 464.018(1)(j), Florida Statutes (2015),^{1/} by being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs,

narcotics, or chemicals or any other type of material, or as a result of any mental or physical condition?

B. If Ms. Shrader violated section 464.018(1)(j), what penalty should be imposed?

PRELIMINARY STATEMENT

Petitioner, Department of Health (Department), Board of Nursing, filed its Administrative Complaint against Ms. Shrader on February 25, 2015. The Complaint alleged that Ms. Shrader violated section 464.018(1)(j) by being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics or chemicals or any other type of material, or as a result of any mental or physical condition. Ms. Shrader requested a formal administrative hearing. The Department referred the matter to the Division of Administrative Hearings for conduct of the hearing.

During this proceeding, Ms. Shrader did not respond to discovery demands from the Department. She also did not respond to or comply with Orders entered.

The undersigned conducted the hearing, as noticed, on June 30, 2015. Ms. Shrader did not attend the hearing. The Department's Exhibits 1 through 3, 4a, and 5 were admitted in evidence. These exhibits include the deposition testimony of Patricia Falke and Dr. Mark Sylvester submitted in lieu of live testimony.

A Transcript of the hearing was filed on July 6, 2015. The Department timely filed a proposed recommended order. Ms. Shrader did not file a proposed recommended order.

FINDINGS OF FACT

1. Section 20.43 and chapters 456 and 464, Florida Statutes, charge the Department of Health, Board of Nursing, with the licensing and regulation of nurses.

2. At all times material to the allegations in the Administrative Complaint, Ms. Shrader was a licensed registered nurse in the State of Florida. She holds license RN 9180605.

3. Ms. Shrader has a complicated history of psychiatric and medical problems that affect her ability to practice nursing with the level of skill and safety to patients required in the State of Florida.

4. Ms. Shrader has suffered from depression since childhood. Ms. Shrader treated her depression with a variety of medications, including: Lithium, Depakote, Pamelor, Elavil, Topamax, Lamictal, and Prozac. In the past five years, Ms. Shrader has not received treatment for her depression.

5. Ms. Shrader also suffers from anxiety. Ms. Shrader is not receiving treatment for her anxiety.

6. In addition to depression and anxiety, Ms. Shrader suffers from chronic severe migraines. The cause has not been determined despite extensive neurological evaluations.

Ms. Shrader has been prescribed Tramadol, Fiorcet, and Clonazepam to treat her migraines. At all times material to the Department's complaint, Ms. Shrader was prescribed Fiorcet for her migraine symptoms.

7. Between March 24, 2012, and July 22, 2013, Ms. Shrader complained of multiple neurological symptoms, including double vision, balance and gait instability, and tingling and numbness in her hands. Ms. Shrader elected to undergo extensive neurological testing to rule out demyelinating disease, multiple sclerosis, and palsy. The tests provided no indication that Ms. Shrader's symptoms resulted from a neurological disorder.

8. At all times material to this proceeding, Ms. Shrader worked as a registered nurse in the Neurological and Psychiatric Unit at Gulf Coast Medical Center (Gulf Coast).

9. On December 20, 2013, Ms. Shrader took an excessive dose of four Fiorcet pills. She told her family that she "plans to keep overdosing until she dies," and that she "predicts that [she] will be dead by the end of the year."

10. Ms. Shrader's family contacted the Emergency Medical Services. Ms. Shrader was transported to Lehigh Regional Medical Center, where she was treated for an overdose.

11. Ms. Shrader was involuntarily admitted to SalusCare, Inc. (SalusCare), for inpatient psychiatric observation and treatment.

12. On December 20, 2013, the Crisis Stabilization Unit (CSU) at SalusCare conducted an in-patient psychiatric evaluation of Ms. Shrader.

13. During the evaluation, Ms. Shrader denied past psychiatric treatments or psychiatric medication. Ms. Shrader also denied that her Fiorcet overdose was an attempted suicide. Her statements during her SalusCare evaluation contradict her medical charting and statements she has made, which indicate that she has an extensive history of psychiatric illnesses. SalusCare discharged Ms. Shrader on December 23, 2013.

14. The director of nursing at Gulf Coast contacted the Intervention Project for Nurses (IPN) about Ms. Shrader. IPN is an impaired practitioner consultant to the Department's Board of Nursing. IPN works with nurses and monitors them for safety to practice issues.

15. IPN contacted Ms. Shrader on January 2, 2014, to discuss her entering the program. Ms. Shrader denied that she was impaired or abused any substances. She admitted that she was depressed. But she said that she stopped her depression treatment approximately five years earlier.

16. IPN asked Ms. Shrader to undergo an evaluation to determine her fitness to practice nursing. Ms. Shrader scheduled an evaluation with Theodore Treese, M.D., an expert in the

psychiatric treatment, monitoring, and care of health care practitioners. He conducted the evaluation on January 28, 2014.

17. Dr. Treese diagnosed Ms. Shrader with severe major depressive disorder; alcohol abuse; opioid abuse; sedative, anxiolytic abuse; relational problems, not otherwise specified; and rule-out polysubstance abuse.

18. During the evaluation, Ms. Shrader attempted to hide her in-patient psychiatric treatment at SalusCare.

19. Based on Ms. Shrader's diagnoses, Dr. Treese determined that Ms. Shrader was not capable of practicing as a registered nurse with reasonable skill and safety to patients.

20. Dr. Treese recommended that Ms. Shrader seek treatment at a substance abuse treatment center at a level of at least partial hospitalization.

21. Ms. Shrader did not agree with Dr. Treese's recommendation. IPN gave Ms. Shrader the opportunity to seek a second opinion from another IPN-approved evaluator. IPN informed Ms. Shrader that she needed to either obtain a second opinion or enter the recommended treatment before April 14, 2014; otherwise, IPN would close her intake case file.

22. Ms. Shrader refused to obtain a second opinion or enter into the recommended treatment. IPN closed Ms. Shrader's file on April 14, 2014.

23. On December 2, 2014, Mark Sylvester, M.D., a physician specializing in psychiatry and addiction medicine, evaluated Ms. Shrader pursuant to Department Order.

24. Dr. Sylvester reviewed Ms. Shrader's medical records, the IPN intake case file, and the Department's investigative report. Dr. Sylvester also asked Ms. Shrader to undergo a urine and hair drug screen. Ms. Shrader did not participate in the screens.

25. Dr. Sylvester diagnosed Ms. Shrader with recurrent major depressive disorder, opioid abuse, alcohol abuse, benzodiazepine abuse, nicotine dependence, factitious disorder versus malingering, rule-out hypochondriasis, and rule-out conversion disorder.

26. During the evaluation, Ms. Shrader attempted to conceal her psychiatric history, substance abuse, and symptoms of depression. Ms. Shrader's unwillingness to be forthcoming during her evaluation demonstrated denial of her symptoms and presented a significant barrier to her treatment and recovery.

27. Dr. Sylvester concluded that Ms. Shrader's poor judgment and decision-making detrimentally affected her ability to practice nursing. Specifically, Ms. Shrader's judgment in attempting to practice nursing while impaired, her lack of insight into her illnesses, her inability to follow treatment recommendations, and her disagreement with medical professionals

showed poor judgment. Poor judgment can affect decision-making while practicing nursing, especially in a crisis situation.

28. Dr. Sylvester concluded that Ms. Shrader was unable to practice nursing with reasonable skill and safety by reason of her depression, use of alcohol, opioids, and benzodiazepines, lack of insight into her symptoms, and poor judgment.

29. In order for Ms. Shrader to be able to practice nursing with reasonable skill and safety to patients, she must: undergo treatment at a residential treatment center; enter into an IPN monitoring agreement; and submit to a hair analysis drug screening test.

30. These steps are essential to Ms. Shrader's recovery and to regaining the ability to practice nursing with reasonable skill and safety to patients. There is no evidence that Ms. Shrader has taken any of these steps.

31. Ms. Shrader is unable to practice nursing with reasonable skill and safety to patients.

CONCLUSIONS OF LAW

32. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes.

33. This is a proceeding to take disciplinary action against Ms. Shrader's nursing license. Because of the penal

nature of these proceedings, the Department bears the burden of proving the allegations in the Administrative Complaint by clear and convincing evidence. Nair v. Dep't of Bus. & Prof'l Reg., Bd. of Med., 654 So. 2d 205 (Fla. 1st DCA 1995). As the Supreme Court of Florida stated:

Clear 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 lacking in confusion as to the facts in issue. The evidence must be of such a 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 Henson, 913 So. 2d 579, 590 (Fla. 2005), quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

34. In disciplinary proceedings, the statutes and rules for which a violation is alleged must be strictly construed in favor of the licensee. Elmariah v. Dep't of Prof'l Reg., 574 So. 2d 164 (Fla. 1st DCA 1990); Taylor v. Dep't of Prof'l Reg., 534 So. 2d 782, 784 (Fla. 1st DCA 1988).

35. The clear and convincing evidence proved that Ms. Shrader suffered and continues to suffer from recurrent major depressive disorder, opioid abuse, alcohol abuse, benzodiazepine abuse, nicotine dependence, factitious disorder versus malingering, rule-out hypochondriasis, and rule-out conversion disorder.

36. Clear and convincing evidence also established that, based on Ms. Shrader's diagnoses and medical history, she is unable to practice nursing with reasonable skill and safety to patients.

37. Clear and convincing evidence proved that Ms. Shrader will not be able to practice nursing with reasonable skill and safety to patients until she undergoes treatment at a residential treatment center, enters into an IPN monitoring agreement, and submits to a hair analysis drug screening test.

38. Based on the foregoing, the clear and convincing evidence proved that Ms. Shrader is in violation of section 464.018(1)(j).

39. Section 456.072(2) permits the Board of Nursing to impose the following penalties: suspension or permanent revocation of a license; restriction of practice of license; imposition of an administrative fine; issuance of a reprimand or letter of concern; placement of the licensee on probation for a period of time; corrective action; and/or requirement that the practitioner undergo remedial education.

40. Florida Administrative Code Rule 64B9-8.006(3)(g) provides that the Board of Nursing shall, when it finds a licensee has violated section 464.018(1)(j), impose penalties ranging from a \$250 fine, suspension, and an IPN evaluation to a \$500 fine and suspension.

41. Rule 64B9-8.006(5)(b) requires considering the following aggravating and mitigating circumstances when imposing a penalty:

- a. The danger to the public;
- b. Previous disciplinary action against the licensee in this or any other jurisdiction;
- c. The length of time the licensee has practiced;
- d. The actual damage, physical or otherwise, caused by the violation;
- e. The deterrent effect of the penalty imposed;
- f. Any efforts at rehabilitation;
- g. Attempts by the licensee to correct or stop violations, or refusal by the licensee to correct or stop violations;
- h. Cost of treatment;
- i. Financial hardship; and/or
- j. Cost of disciplinary proceedings.

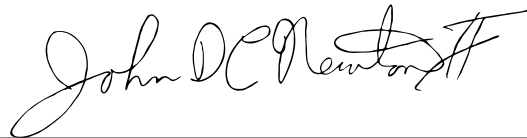
42. Factors (a), (e), and (g) are relevant in this case. They weigh as aggravating factors because they emphasize the danger to the public and the unlikelihood that Ms. Shrader will change her conduct.

RECOMMENDATION

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

Tonya L. Shrader, R.N., violated section 464.018(1)(j); requiring her to undergo an IPN evaluation; imposing a suspension of her license until such time as she undergoes an IPN evaluation; requiring compliance with IPN recommendations, if any; requiring the payment of an administrative fine in the amount of \$250.00; and awarding costs for the investigation and prosecution of this case, as provided in section 456.072(4) to the Department.

DONE AND ENTERED this 29th day of July, 2015, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of July, 2015.

ENDNOTE

^{1/} All citations to the Florida Statutes are to the 2015 edition.

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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.