

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TARA DANIELLE WALKER,

Petitioner,

vs.

Case No. 15-7255

BOARD OF NURSING,

Respondent.

_____ /

RECOMMENDED ORDER

Administrative Law Judge Lisa Shearer Nelson of the Florida Division of Administrative Hearings conducted a duly-noticed disputed fact hearing on February 8, 2016, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Tara Danielle Walker, pro se
146 Smoky Crossing Way
Seymour, Tennessee 37865

For Respondent: Lynette Norr, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue to be determined is whether Petitioner's application for licensure by endorsement as a licensed practical nurse in the State of Florida should be granted or denied.

PRELIMINARY STATEMENT

Petitioner, Tara Danielle Walker, applied for a Florida license as a practical nurse. On July 1, 2015, Respondent, the Florida Board of Nursing, issued a Notice of Intent to Deny based upon Petitioner's negative answer to the question, "Have you ever had disciplinary action taken against your license to practice any healthcare-related profession by the licensing authority in Florida, or in any other state, jurisdiction or country?" The Board's Notice indicates that Petitioner's answer to this question was false inasmuch as her license was reprimanded by Consent Order in the State of Virginia.

Petitioner requested a hearing and the case was forwarded to the Division of Administrative Hearings for the assignment of an administrative law judge on December 18, 2015. By notice issued December 3, 2015, the hearing was scheduled for February 8, 2016, and commenced as scheduled. At hearing, in order to provide structure to the proceedings without changing the burden of proof, Respondent presented its case first, and presented the testimony of Petitioner and William E. Spooner. Respondent's Composite Exhibit A, consisting of Petitioner's application file, was admitted into evidence. Petitioner presented the testimony of Jill Smith and Petitioner's Exhibits 1 and 2 were admitted into evidence.

The Transcript of the proceedings was filed with the Division on February 18, 2016. Respondent submitted its Proposed Recommended Order on February 26, 2016, and Petitioner submitted her Proposed Recommended Order on February 29, 2016. Both submissions have been carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner was licensed as a practical nurse by examination in the State of Ohio, having received her license in Ohio in August of 1994. She practiced in Ohio, generally in long-term care settings, from 1994 to approximately 2009. She was subsequently licensed by endorsement in Virginia on March 17, 2009, and in North Carolina on May 18, 2011.

2. On February 23, 2011, Petitioner received a reprimand against her license in the State of Virginia. The reprimand was issued as a result of a Consent Order in which Petitioner neither admitted nor denied the findings of fact in the Virginia Board of Nursing's Final Order.

3. Petitioner applied for licensure in North Carolina a few months after the entry of the Virginia Final Order. Her testimony that she disclosed the reprimand in her application for licensure in North Carolina is undisputed and accepted. The application submitted in North Carolina was a paper application.

4. On or about April 27, 2015, Petitioner submitted an electronic application for licensure by endorsement in Florida. The application contains the following question, which Petitioner answered "no":

Have you ever had disciplinary action taken against your license to practice a health care-related profession by the licensing authority in Florida, or any other state, jurisdiction or country?

5. In submitting her application, Petitioner also checked an Affirmation Statement, which includes the following statement:

I, the undersigned, state that I am the person referred to in this application for licensure in the State of Florida. I affirm these statements are true and correct and 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, and I declare under penalty of perjury that my answers and all statements made by me herein are true and correct. 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 a Licensed Practical Nurse in the State of Florida.

6. Petitioner did not complete her on-line application in one sitting. She filled it out over several sessions on the

computer, because she had to complete the continuing education required for Florida and had to wait for funds to pay the application fee. Because of the way she completed the application, she did not check her application as carefully as she should have and did not realize that she had answered the question regarding discipline in another state incorrectly.

7. Petitioner had notified North Carolina of her previous discipline when applying in that state. There was no basis presented to indicate that she was affirmatively attempting to conceal her prior discipline, as opposed to being negligent in the completion of her application.

8. Petitioner did not realize the error on her application until she inquired about the status of her application after the Board considered it at its June 2015 meeting. After her inquiry, but before receiving the Notice of Intent to Deny, Ms. Walker wrote to the Executive Director of the Board to inquire what she needed to do to correct her error, stating, "it was an honest mistake of marking the wrong box on the question. I had started and stopped the application several times while gathering all of the information needed." She provided information regarding the Virginia discipline, and a printout of the documents on file with the Virginia Board of Nursing with respect to the reprimand.

9. Petitioner has been a nurse for over 22 years. She loves her job. She was candid and forthright in acknowledging that it was her error and no one else's with respect to the answers given on the application. While Petitioner clearly needed to be more careful in preparing her application, no deliberate attempt to deceive was demonstrated.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015).

11. Ms. Walker is an applicant for licensure as a licensed practical nurse in the State of Florida. As an applicant for licensure, she bears the burden of proof by a preponderance of the evidence to demonstrate that her application should be approved. Dep't of Banking & Fin. v. Osborne Stern and Co., 760 So. 2d 932 (Fla. 1996); Espinoza v. Dep't of Bus. and Prof'l Reg., 739 So. 2d 1250, 1251 (Fla. 3d DCA 1999); Balino v. Dep't of Health & Rehab. Servs., 348 So. 2d 349 (Fla. 1st DCA 1977) (burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal).

12. The burden of proof that Petitioner must meet is the preponderance of the evidence. § 120.57(1)(j), Fla. Stat. This standard requires proof by the greater weight of the evidence,

or evidence that more likely than not tends to prove the premise at issue. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

13. The Notice of Intent to Deny stated that the Board voted to deny Petitioner's application based upon alleged violations of sections 464.018(1)(a) and (b), and section 456.072(1)(f) and (h), Florida Statutes.

14. Section 464.018(1) 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.

(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.

15. Similarly, section 456.072(1)(f) and (h) provide:

456.072 Grounds for discipline; penalties; enforcement.—

(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.

16. It is clear that, should the Board so choose, it has a basis to deny Petitioner's license based on the action in Virginia. A reprimand issued by the Virginia Board of Nursing, even where the licensee neither admits nor denies the basis for the action, constitutes action against Petitioner's license by another licensing jurisdiction in violation of sections 456.072(1)(f) and 464.018(1)(b). The action taken, however, was a reprimand, with no restriction on her practice.

17. The more difficult question is whether Petitioner's failure to disclose the Virginia reprimand constitutes an attempt to obtain a license by fraudulent misrepresentation. The undersigned concludes that it does not.

18. An allegation of fraudulent misrepresentation requires proof that the misrepresentation is intentional. Walker v. Dep't of Bus. & Prof'l Reg., 705 So. 2d 652 (Fla. 5th DCA 1998); Godwin v. Dep't of Prof'l Reg., 461 So. 2d 226, 228 (Fla. 1st DCA 1984). Here, the more compelling evidence is that

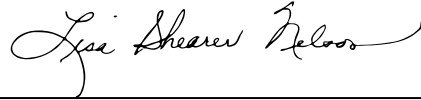
Petitioner did not carefully check her application before sending it, and was negligent in doing so. Respondent did not establish that her actions were intentional as opposed to a negligent mistake. When she discovered the error, she immediately sent copies of the Virginia Order to the Board, albeit after the Board had considered her application.

Petitioner was candid at hearing in stating that she should have answered the question about disciplinary history differently, and took responsibility for her error. While Petitioner should have been more careful, neither the discipline imposed by Virginia nor her admitted mistake here should result in the denial of her license as a licensed practical nurse.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Board of Nursing enter a final order granting Petitioner's application for licensure by endorsement as a licensed practical nurse.

DONE AND ENTERED this 8th day of March, 2016, in
Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of March, 2016.

COPIES FURNISHED:

Tara Danielle Walker
146 Smoky Crossing Way
Seymour, Tennessee 37865
(eServed)

Lynette Norr, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050
(eServed)

Joe Baker, Jr., Executive Director
Board of Nursing
Department of Health
4052 Bald Cypress Way, Bin C02
Tallahassee, Florida 32399-3252
(eServed)

Ann-Lynn Denker, PhD, ARNP Chair
Board of Nursing
Department of Health
4052 Bald Cypress Way, Bin C02
Tallahassee, Florida 32399-3252

Nichole C. Geary, General Counsel
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399-1701
(eServed)

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.