

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

STEPHANEY CHRISTIE,

Petitioner,

vs.

Case No. 15-7256

BOARD OF NURSING,

Respondent.

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RECOMMENDED ORDER

This case came before Administrative Law Judge Mary Li Creasy for final hearing by video teleconference on March 1, 2016, at sites in Tallahassee and West Palm Beach, Florida.

APPEARANCES

For Petitioner: Stephaney Christie, pro se  
Apartment No. 301  
4759 Via Palm Lakes  
West Palm Beach, Florida 33417

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

STATEMENT OF THE ISSUE

Whether Petitioner should be denied certification as a certified nursing assistant for failure to disclose prior criminal history on her application, as alleged in the Notice of Intent to Deny.

PRELIMINARY STATEMENT

By Notice of Intent to Deny dated June 30, 2015, Respondent Board of Nursing notified Petitioner Steponey Christie that it intended to deny her application for licensure as a certified nursing assistant. Respondent's decision was based on Ms. Christie's negative answer to a question on the application inquiring whether the applicant had ever been convicted of a crime, which Ms. Christie in fact had been. Respondent accused Ms. Christie of attempting to obtain a license by bribery, misrepresentation, or deceit.

Ms. Christie timely requested a formal hearing, and on December 18, 2015, Respondent referred the matter to the Division of Administrative Hearings, where an Administrative Law Judge was assigned to conduct a formal hearing.

The hearing took place as scheduled on March 1, 2016, with both parties present. Ms. Christie was the only witness. Respondent's Exhibit 1 was received in evidence without objection.

The final hearing transcript was filed on March 22, 2016. Respondent timely filed a proposed recommended order, which was considered in the preparation of this Recommended Order.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2015 Florida Statutes.

## FINDINGS OF FACT

1. Petitioner Stephaney Christie ("Christie") wants to become a certified nursing assistant ("CNA"). Because she is not currently certified in another state, to accomplish this goal, Christie must submit an application for certification by examination to Respondent Board of Nursing (the "Board"). The Board is responsible for reviewing such applications and determining whether 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.

2. On October 31, 2014, Petitioner filed an application, again seeking to be certified as a CNA by examination.

3. The application included a question which sought information about the applicant's criminal convictions, if any. It provided as follows:

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? . . . \*If you answered YES, please be prepared to create a typed or printed letter with arrest dates, city, state, charges and final dispositions and be prepared to send it to the Board Office upon request. (Do not send this information with your application for examination.)

4. Christie's application erroneously indicated "No" in response to this question.

5. In 1999, Christie was involved in a neighborhood altercation to which law enforcement was called. Christie pulled away when an officer attempted to touch her arm. She was found guilty of a misdemeanor charge of obstructing an officer without violence. She received and completed a sentence of community service.

6. In 2000, Christie left her young child in the care of a neighbor. When Christie returned home, she found her child had a black eye. She became involved in a heated discussion with the caregiver and as the argument escalated, threw a glass at the caregiver, which cut the caregiver's face. As a result of this altercation, Christie was charged with aggravated battery with a deadly weapon causing great bodily harm to which she pled guilty, and adjudication was withheld. Christie successfully completed a three-year probationary sentence and paid restitution to cover the victim's medical costs.

7. On January 27, 2015, Respondent notified Christie 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.

8. On February 23, 2015, Christie provided the requested information, including a lengthy explanation of the circumstances surrounding each of her criminal offenses. At that time, Christie also provided character letters, including one from Assisting Hands home health care entity attesting to Christie's diligence and compassion in performing her job-related duties with its clients.

9. On June 30, 2015, Respondent issued the Notice of Intent to Deny ("Notice") Petitioner's application for certification as a CNA by examination. The Notice explained Christie's application was being denied due to her "attempting to obtain a nursing license by bribery, misrepresentation, or deceit," by having incorrectly answered "No" to an application question.

10. At the hearing, Christie testified that the incorrect answer regarding previous misdemeanors and felonies was a mistake. She explained that her application was prepared by personnel running the CNA training program from which she had taken classes to prepare for the CNA certification examination. Training personnel filled out and submitted the computerized application form on Christie's behalf without verifying with Christie the accuracy of the information or showing the application to Christie. In fact, Christie did not see the application until she was provided a copy by Respondent when notified her application was incomplete.

11. Christie credibly testified that she had no intention of hiding her past criminal record. She was aware that any background check required to obtain a professional license would reveal her prior charges and disposition.

12. No evidence was presented by Respondent correlating the crimes committed by Christie more than 15 years ago to the practice or ability to practice the profession of a CNA.

Determinations of Ultimate Fact

13. Christie is not guilty of attempting to procure a CNA license by misrepresentation or deceit, which is a disciplinable offense and grounds for denial of licensure under section 464.204(1)(a), Florida Statutes.

14. Christie was not previously found guilty of a crime related to the practice, or ability to practice, the profession of a CNA.

CONCLUSIONS OF LAW

15. 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.

16. As the applicant for licensure, Christie 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.

17. The Board, however, was required to state with particularity the reasons for denying Christie's application, section 120.60(3), which it did in the Notice. The Board bears the burden of proving these allegations of wrongdoing on Christie'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).

18. Section 464.204 provides in pertinent part as follows:

- (1) The following acts constitute grounds for which the board may impose disciplinary sanctions as specified in subsection (2):
  - (a) Obtaining or attempting to obtain certification or an exemption, or possessing or attempting to possess certification or a letter of exemption, by bribery, misrepresentation, deceit, or through an error of the board.

\* \* \*

- (2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:
  - (a) Denial, suspension, or revocation of certification.

See also § 456.072(1)(h), Fla. Stat.

19. As 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'l 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. Bd. 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).

20. The Notice also charged Christie with violating sections 464.018(1)(a), (c), and (o) of the "Nurse Practice Act," the statutory provision regulating the "practice of nursing." However, noticeably absent from the Notice was any reference to section 464.204(1)(b), the statutory provision governing CNAs that would make the Nurse Practice Act provisions also applicable. Accordingly, no violation of 464.018 is demonstrated.

21. Even assuming arguendo that section 464.018 was properly charged, Respondent presented no evidence and cited no authority correlating Christie's prior criminal record to the practice of nursing or the ability to practice nursing.



Similarly, Respondent failed to demonstrate by a preponderance of the evidence that Christie violated the general provision regulating professions contained in section 456.072(a)(c) prohibiting being convicted or found guilty or entering a plea of guilty to the practice of or ability to practice the "licensee's profession."

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 CNA by examination.

DONE AND ENTERED this 3rd day of May, 2016, in Tallahassee, Leon County, Florida.



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MARY LI CREASY  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 3rd day of May, 2016.

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.