

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,  
BOARD OF NURSING,

Petitioner,

vs.

Case No. 19-1929PL

KATIE ELIZABETH, R.N.,

Respondent.

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RECOMMENDED ORDER

On June 5, 2019, a final hearing was held by video teleconference at locations in Tallahassee and Jacksonville, Florida, before E. Gary Early, an Administrative Law Judge assigned by the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Cynthia Arnold Shaw, Esquire  
Christopher A. Jurich, Esquire  
Department of Health  
Bin C-65  
4052 Bald Cypress Way  
Tallahassee, Florida 32399-3265

For Respondent: No appearance.

STATEMENT OF THE ISSUES

The issues to be determined are whether Respondent violated section 456.072(1)(q), Florida Statutes (2016), as alleged in the Administrative Complaint, by failing to undergo an evaluation coordinated by the Intervention Project for Nurses

(IPN) as required by the Final Order in Case No. 2014-18443; and, if so, the appropriate penalty.

PRELIMINARY STATEMENT

On February 23, 2018, Petitioner, Department of Health (Department or Petitioner), issued an Administrative Complaint against Respondent, Katie Elizabeth, a registered nurse. The complaint charged Respondent with violating a lawful Order of the Board of Nursing in case number 2014-18443 by failing to undergo an evaluation coordinated by the IPN within 60 days of the date the Final Order in that case was filed, in violation of section 456.072(1)(q).

On April 17, 2018, Respondent filed a Second Election of Rights in which she disputed material facts alleged in the Administrative Complaint and requested an administrative hearing. Timeliness of the filing of the Second Election of Rights was not an issue.

On April 15, 2019, the petition was referred to DOAH. The reason for the delay in referring the matter was not explained. There was no objection to the delay filed by Respondent, and the issue is otherwise not relevant.

The final hearing was set for June 5, 2019, and was convened at 9:00 a.m. as scheduled. Respondent was not in attendance. After having convened the hearing, it was recessed until 9:25 a.m. to give Respondent an opportunity to appear or

call in to explain her absence. The hearing was reconvened at 9:25 a.m. Counsel for Petitioner indicated that she tried to call Respondent without success. Thus, the hearing proceeded.

At hearing, the Department offered the testimony of Jeanne King, intake manager for the IPN. The Department offered Petitioner's Exhibits 1 through 3 in evidence. Each was accompanied by affidavits sufficient to allow the exhibits to be self-authenticating pursuant to section 90.902, Florida Statutes.

The one-volume final hearing Transcript was filed on June 12, 2019. The Department timely filed a Proposed Recommended Order that was considered in preparation of this Recommended Order. Respondent did not file a post-hearing submission.

This proceeding is governed by the law in effect at the time of the commission of the acts alleged to warrant discipline. See McCloskey v. Dep't of Fin. Servs., 115 So. 3d 441 (Fla. 5th DCA 2013). Thus, references to statutes are to Florida Statutes (2016), unless otherwise noted.

#### FINDINGS OF FACT

1. The Department of Health, Board of Nursing, is the state agency charged with regulating the practice of nursing in the state of Florida, pursuant to section 20.43, and chapters 456 and 464, Florida Statutes.

2. At all times material to this proceeding, Katie Elizabeth was a licensed registered nurse in the state of Florida, holding license number RN 9278405.

3. Respondent's current address of record is 1311 Pullen Road, Jacksonville, Florida 32216.

4. The IPN is the impaired practitioner program for the Board of Nursing, pursuant to section 456.076.

5. On April 12, 2016, Respondent and the Department executed a Settlement Agreement in Department Case No. 2014-18443. In the Settlement Agreement, Respondent agreed to the following:

Respondent must contact the [IPN] . . . within THIRTY (30) DAYS of the issuance of the Final Order. Respondent must, within SIXTY (60) DAYS of the issuance of the Final Order, undergo an evaluation coordinated by IPN, and comply with any and all terms and conditions imposed by IPN as a result of said evaluation. If the Respondent is not in need of monitoring or treatment and IPN is not suitable, no further action will be required.

6. The Settlement Agreement included the Administrative Complaint in Department Case No. 2014-18443, which indicated that Respondent was terminated from an IPN contract in October 2014 for failing to comply with the terms of her monitoring contract.

7. The Settlement Agreement was adopted and incorporated in the Department's Final Order on December 21, 2016.

8. Ms. King testified that Respondent initially contacted IPN within 30 days of the issuance of the Final Order. Ms. King's contemporaneous notes of her communications with Respondent, which were affirmed by Ms. King in her testimony, demonstrate that Respondent was provided with information regarding multiple doctors with whom the evaluation could be scheduled. However, Respondent never presented for an evaluation.

#### CONCLUSIONS OF LAW

##### A. Jurisdiction

9. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 456.073(5), 120.569, and 120.57(1), Fla. Stat. (2018).

10. The Department has authority to investigate and file administrative complaints charging violations of the laws governing registered nurses. § 456.073, Fla. Stat.

##### B. Standards

11. Section 456.072(1)(q) provides that:

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

\* \* \*

(q) Violating a lawful order of the department or the board, or failing to

comply with a lawfully issued subpoena of the department.

C. Burden and Standard of Proof

12. The Department bears the burden of proving the specific allegations that support the charges alleged in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Fox v. Dep't of Health, 994 So. 2d 416 (Fla. 1st DCA 2008); Pou v. Dep't of Ins. & Treas., 707 So. 2d 941 (Fla. 3d DCA 1998).

13. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). The clear and convincing evidence level of proof:

[E]ntails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.

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 explicit and the witnesses must be lacking in confusion as to the facts in issue.

The evidence must be of such 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 Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting, with approval, Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)); see also In re Henson, 913 So. 2d 579, 590 (Fla. 2005). "Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous." Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 989 (Fla. 1st DCA 1991).

14. A proceeding to suspend, revoke, or impose other discipline upon a license is penal in nature. State ex rel. Vining v. Fla. Real Estate Comm'n, 281 So. 2d 487, 491 (Fla. 1973). Penal statutes must be construed in terms of their literal meaning and words used by the Legislature may not be expanded to broaden the application of such statutes. Thus, the provisions of law upon which this disciplinary action has been brought must be strictly construed, with any ambiguity construed against Petitioner. Elmariah v. Dep't of Bus. & Prof'l Reg., 574 So. 2d 164, 165 (Fla. 1st DCA 1990); see also Griffis v. Fish & Wildlife Conserv. Comm'n, 57 So. 3d 929, 931 (Fla. 1st DCA 2011); Beckett v. Dep't of Fin. Servs., 982 So. 2d 94, 100 (Fla. 1st DCA 2008); Whitaker v. Dep't of Ins., 680 So. 2d 528,

531 (Fla. 1st DCA 1996); Dyer v. Dep't of Ins. & Treas., 585 So. 2d 1009, 1013 (Fla. 1st DCA 1991).

15. The allegations of fact set forth in the Administrative Complaint are the grounds upon which this proceeding is predicated. Trevisani v. Dep't of Health, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005); see also Cottrill v. Dep't of Ins., 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996). Thus, the scope of this proceeding is properly restricted to those matters as framed by Petitioner. M. H. v. Dep't of Child. & Fam. Servs., 977 So. 2d 755, 763 (Fla. 2d DCA 2008).

D. Analysis

16. The Department presented clear and convincing evidence to establish that Respondent was subject to a lawful Final Order of the Board of Nursing in case number 2014-18443.

17. The Department presented clear and convincing evidence to establish that the Final Order was entered as a result of a Settlement Agreement by which Respondent agreed to undergo an evaluation coordinated by the IPN, and to comply with requirements imposed by the IPN as a result of the evaluation.

18. The Department presented clear and convincing evidence to establish that Respondent failed to comply with the Final Order. As such, the Department proved that Respondent violated section 456.072(1)(q), as alleged in the Administrative Complaint.



E. Penalty

19. Pursuant to section 456.072(2), the Board of Nursing may impose one or more of 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 remedial education.

20. Florida Administrative Code Rule 64B9-8.006(3)(i) establishes the range of penalties for a first offense of section 456.072(1)(q) as being from a \$250 fine and compliance with the terms of prior order, to a \$500 fine and suspension until compliance with the terms of the prior order.

21. Rule 64B9-8.006(5)(b) establishes aggravating and mitigating circumstances to warrant deviation from the established penalty range. Under the circumstances, deviation is not warranted. Thus, an evaluation of aggravating and mitigating circumstances is not necessary.

RECOMMENDATION

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

a) determining that Respondent violated sections 456.072(1)(q);

b) imposing a fine of \$500;

c) imposing a suspension of license number RN 9278405 until Respondent is compliant with the terms of the Final Order in Case No. 2014-18443, including compliance with IPN recommendations and contract conditions, as required; and

d) awarding costs incurred in the prosecution of this case to the Department.

DONE AND ENTERED this 26th day of June, 2019, in Tallahassee, Leon County, Florida.



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E. GARY EARLY  
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 June, 2019.

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.