

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BEN MASTERS,

Petitioner,

vs.

Case No. 19-3203

BOARD OF NURSING,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted before Administrative Law Judge Mary Li Creasy by video teleconference with locations in Lauderdale Lakes and Tallahassee, Florida, on September 4, 2019.

APPEARANCES

For Petitioner: Ben Masters, pro se  
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For Respondent: Deborah B. Loucks, Esquire  
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STATEMENT OF THE ISSUE

Whether Respondent properly denied Petitioner's application for a multi-state nursing license based upon his criminal and disciplinary history.

PRELIMINARY STATEMENT

Petitioner submitted an application for a multi-state registered nursing license that was received by Respondent, Board of Nursing ("the Board"), on December 31, 2018. On March 15, 2019, the Board issued a Notice of Intent to Deny ("NOID") Petitioner's application. Petitioner timely filed a request for formal hearing, which was transmitted to the Division of Administrative Hearings ("DOAH") on June 12, 2019.

The final hearing was conducted as scheduled on September 4, 2019. Petitioner testified on his own behalf and presented the testimony of two witnesses, Larry Hinton and Jamey Hawkins. Petitioner's Exhibits 1, 2, 2A, 3 through 5, 6A through E, 8 through 10, 10A, 11 through 21, and 28 were admitted into evidence. Respondent presented the testimony of Barbara Thomason, MSN, APRN, FNP-BD, who was accepted as an expert witness in the practice of professional nursing. Respondent's Exhibits 1 and 2 were admitted.

The one-volume Transcript was filed with DOAH on September 20, 2019. Petitioner filed a Summary Statement and Respondent filed a proposed recommended order, both of which were considered in the preparation of this Recommended Order. All references to the Florida Statutes are to the 2019 version unless otherwise stated.

## FINDINGS OF FACT

1. The Department is the state agency charged with regulating the practice of nursing on behalf of the State of Florida, pursuant to section 20.43 and chapters 456 and 464, Florida Statutes. The Board is charged with final agency action with respect to nurses licensed pursuant to chapter 464.

2. Petitioner was previously licensed in South Carolina and Maryland as a Registered Nurse ("RN").<sup>1/</sup> Petitioner also previously held a conditional license as an RN in Florida.

3. Petitioner applied for a multi-state RN license with the Board on December 31, 2018. Section 464.0095, Article III (3)(g), prohibits a state from issuing a multi-state license to a person who has been convicted or found guilty, or has entered into an agreed disposition other than a nolle prosequi, of a felony offense. In his application, Petitioner disclosed a variety of crimes including: exploitation of a vulnerable adult; credit card fraud; assault/battery of high and aggravated nature (misdemeanor), concurrent with a second credit card theft/probation violation; attempted identity theft; and petty theft.

4. All applicants are required to submit fingerprints with the application and the Board receives criminal history background reports. In addition to the crimes disclosed by Petitioner, his background screen revealed additional charges

of: driving under the influence; defrauding hotel, inn, cafe, etc.; obtaining property by false pretenses; reckless driving; driving under suspension; and receiving stolen goods.

5. Petitioner also disclosed that his South Carolina RN license was suspended in 2004 and then voluntarily surrendered in 2011. His Maryland RN license was revoked in 2009.

6. Petitioner applied for an RN license in Florida in 2012 and was approved for a license conditioned upon entering into a five-year contract with the Intervention Project for Nurses ("IPN"), meeting the terms of the program, including frequent drug-testing, and completing a board approved remedial course. Petitioner voluntarily relinquished his conditional license in September 2013 due to his inability to participate in the IPN due to financial reasons.

7. Petitioner applied for reinstatement of his conditional license in 2015 and his application was rejected by the Board based on prior discipline and his criminal history.

8. Petitioner contends that his criminal history is unrelated to the practice of nursing. He argues that his crimes are directly related to his previous crack cocaine addiction. Petitioner has maintained long periods of sobriety and believes that his crimes, committed prior to his 2012 grant of a conditional license by the Board, should not be considered in weighing his current application.

### Petitioner's Prior Crimes and Licensing History

9. On May 21, 2003, the South Carolina State Board of Nursing entered an Order of Temporary Suspension of Petitioner's license to practice as a registered nurse. The Order was based on Petitioner's: criminal charges of exploitation of a vulnerable adult and swindling; denial that he had been charged with a crime on his renewal application for reinstatement of a lapsed license; administering an antibiotic four hours late and falsely entered the time of administration in the medical record; and being arrested for Financial Transaction Card Theft.

10. This Order of Temporary Suspension was superseded by a Final Order rendered by the Board on August 12, 2004. By this Final Order, the South Carolina Board of Nursing indefinitely suspended Petitioner's license.

11. On March 9, 2009, the South Carolina Board of Nursing entered another Final Order against Petitioner that indefinitely suspended his license to practice nursing. This Final Order cited as grounds that: his prior license had been suspended and lapsed; he failed to disclose a criminal conviction on his August 2004 license application; he entered a South Carolina hospital, impersonated a plastic surgeon, asked a technician for \$60, and manipulated her breast with his hand after a discussion of breast augmentation, which resulted in an arrest for Assault and Battery of a High and Aggravated Nature for which he was incarcerated for

three years; after this release from prison, he was incarcerated in North Carolina for obtaining money by false pretenses; and he was then convicted of Attempted Identity Theft.

12. The March 2009 South Carolina Final Order incorporated a Memorandum of Agreement between Petitioner and the State of South Carolina and outlined conditions precedent for license reinstatement and probationary terms to be imposed upon reinstatement. Petitioner never met the reinstatement conditions imposed by the March 2009 Final Order and the South Carolina Board of Nursing accepted Petitioner's Agreement of Voluntary Surrender of his nursing license on July 5, 2011.

13. Petitioner contends these crimes were not related to the practice of nursing. He did not divert drugs from patients or medical facilities. However, he entered hospital staff lounges and stole scrubs and lab coats to impersonate medical personnel. He then pretended to be a doctor who lost or forgot his wallet. He would ask other medical professionals for cab fare which he then used to buy crack. While pretending to be a plastic surgeon, Petitioner claims that a young woman from whom he solicited money, asked him to examine her newly augmented breast because she was concerned that something was not right with the implant.

14. Regarding the conviction for exploitation of a vulnerable adult, Petitioner claims that he was arrested while in

a car borrowed from a woman with whom he regularly got high. When she was questioned, she told the police that Petitioner stole her car. Petitioner claims he was charged with exploiting a "vulnerable adult" only because the woman was bipolar and on antipsychotic medications. According to Petitioner, "It had nothing to do with nursing. She was basically my accomplice."<sup>2/</sup>

15. Petitioner also admitted that while he was on probation, he stole credit cards from hospitals (presumably patients and co-workers) to buy merchandise to give to his drug dealers, and that he pretended to be a doctor by dressing in scrubs to scam restaurants into giving him cash back from fraudulent transactions.

16. By Final Order dated October 27, 2009, the Maryland Board of Nursing revoked Petitioner's license to practice as an RN.

17. The Maryland Board cited as grounds for the revocation that Petitioner: was disciplined by a licensing, military, or disciplinary authority in this State or any other state for an act that would be grounds for disciplinary action in Maryland; knowingly performed an act that exceeds the authorized scope of practice; commits an act that is inconsistent with generally accepted professional standards of practice; is addicted to, or habitually abuses, any narcotic or controlled dangerous substance; and engaged in conduct that violates the professional

code of ethics, specifically, knowingly participating in or condoning dishonesty, fraud, deceit or misrepresentation and patient abandonment.

18. The Board's expert, Barbara Thomason, MSN, APRN, FNP-BD, credibly testified that these crimes all constitute unprofessional conduct that relate directly to the practice of nursing. Nurses are required to adhere to a strict standard of professionalism and honesty so that their vulnerable patients are not victims of opportunity. Nurses are also required to ensure the safety and well-being of their patients. Impersonating medical professionals, committing battery, fraud, theft, and failing to timely disclose these crimes to the licensing board, all relate to one's ability to practice nursing professionally.

19. Petitioner's testimony regarding his crimes was, "I didn't do anything major. So it was wrong."<sup>3/</sup> Regarding the young woman whose breast he manipulated, Petitioner speculated that she was coming on to him and claimed that the investigating police officer described the victim as "stupid," "an idiot" and "an airhead."

20. It does not take expert testimony to understand that Petitioner lacks remorse, has no concept of the seriousness of his myriad offenses, and that these directly call into question his ability to practice as a nurse.



## Petitioner's Florida Licensing History

21. On April 18, 2012, a Notice of Intent to Approve with Conditions was filed with the Department of Health Clerk. Petitioner was approved for licensure as an RN conditioned upon his signing an advocacy contract with the IPN and complying with any and all terms and conditions imposed by the IPN. IPN is the impaired practitioners program of the Board, designated pursuant to section 456.076. IPN monitors the evaluation, care, and treatment of impaired nurses. IPN also provides for the exchange of information between treatment providers and the Department for the protection of the public. Petitioner was also required to complete a remedial course within 12 months.

22. Approximately one year into the IPN program, and after completing the remedial course, Petitioner had two urinalysis drug screens in a month that were suspicious due to excessive temperatures. As a result, he was requested by IPN to undergo a psychiatric evaluation.

23. Petitioner checked prices for such an evaluation in his area and found that the least expensive evaluation would cost \$600.00. Petitioner was only working part time earning \$400.00 a month and could not afford the evaluation. Petitioner called the Board and was advised by administrator William Spooner to write a letter to the Board asking to voluntarily relinquish his license due to financial reasons. Mr. Spooner allegedly told Petitioner

that when Petitioner was able to resume the program, he could ask for reinstatement. Petitioner was under the assumption that his reinstatement would be automatic.<sup>4/</sup>

24. Petitioner applied for reinstatement of his license in 2014. On October 8, 2014, a NOID for Petitioner's application for endorsement as an RN was filed with the Department of Health Clerk. The Board based this denial on the grounds that Petitioner: entered a guilty plea to a charge of assault and battery; was convicted of identity theft by impersonating a physician; had his South Carolina RN license suspended; and had his Maryland license revoked. After conducting a hearing not involving disputed issues of material fact in accordance with sections 120.569 and 120.57(2), Florida Statutes, on the allegations contained in the NOID, the Board voted to deny the licensure application. The Final Order was filed on January 14, 2015.

#### Petitioner's Criminal History since 2015 and Rehabilitation

25. After the license denial, Petitioner relapsed and began using drugs again. Between 2015 and June 2017, he pled no contest and was convicted of three more misdemeanor thefts.

26. Prior to this relapse, Petitioner was sober for 9 years and 11 months. Petitioner testified that during 2015 through 2017, he stole to feed himself. Petitioner has been sober again since December 16, 2017.

27. Petitioner has made significant efforts to maintain his sobriety. Petitioner moved into a halfway house, rejoined AA, has a sponsor, serves as clergy and a lay minister to inmates at the Broward County jail and detention center, and is involved in his church. Petitioner works as a telemarketer and his vocational rehabilitation job counselor, Larry Hinton, testified that Petitioner is a reliable worker who is also working hard on his recovery.

28. Petitioner received no fines or orders of restitution related to his crimes. He served his prison time and successfully completed probation and has a full restoration of his voting rights.

29. Petitioner waited for a year of sobriety and after his most recent conviction of theft before reapplying for licensure. On March 15, 2019, the Board issued a NOID on Petitioner's application.

#### CONCLUSIONS OF LAW

30. DOAH has jurisdiction over the subject matter of this proceeding and the parties thereto, pursuant to section 120.57(1). Pursuant to section 120.57(1)(k), this proceeding is conducted de novo.

31. An applicant for licensure carries the ultimate burden of persuasion of entitlement, by a preponderance of the evidence pursuant to section 120.57(1)(j), at each and every step of the

licensure proceedings, until final action has been taken by the agency. Espinoza v. Dep't of Bus. & Prof'l Reg., 739 So. 2d 1250 (Fla. 3d DCA 1999); Dep't of Banking & Fin., Div. of Sec. and Investor Prot. v. Osborne Sterne & Co., 670 So. 2d 932 (Fla. 1996); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981). See also, Astral Liquors, Inc. v. Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco, 432 So. 2d 93 (Fla. 3d DCA 1983); Balino v. Dep't of Health & Rehab. Servs., 348 So. 2d 349 (Fla. 1st DCA 1977).

32. The Board must apply the licensing statute in effect at the time that the Board makes its decision on the application. Bruner v. Dep't of Bus. & Prof'l Reg., 399 So. 2d 4 (Fla. 5th DCA 1981); Lavernia v. Dep't of Bus. & Prof'l Reg., 616 So. 2d 53 (Fla. 1st DCA 1993).

33. Chapters 456 and 464 regulate the licensure and practice of nursing in Florida, along with the rules promulgated by the Board which are found in Florida Administrative Code Chapter 64B-9.

34. Section 464.002 sets out the purpose of the nurse practice act and states:

The sole legislative purpose in enacting this part is to ensure that every nurse practicing in this state meets minimum requirements for safe practice. It is the legislative intent that nurses who fall below minimum competency or who otherwise present a danger to the

public shall be prohibited from practicing in this state.

35. Section 464.018(1)(c) states:

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2) and 464.0095:

(c) Being convicted or found guilty of or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of nursing or the ability to practice nursing.

36. Section 456.072(2)(a) states:

(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.

#### Crimes Directly Related to Nursing

37. The first issue to be decided is whether the crimes to which Petitioner pled guilty are directly related to the practice of or the ability to practice nursing. The practice of nursing is defined in section 464.003(18) as follows:

[T]he performance of those acts requiring substantial specialized knowledge, judgment, and nursing skill based upon applied principles of psychological, biological,

physical, and social sciences which shall include, but not be limited to:

(a) The observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; health teaching and counseling of the ill, injured, or infirm; and the promotion of wellness, maintenance of health, and prevention of illness of others.

(b) The administration of medications and treatments as prescribed or authorized by a duly licensed practitioner authorized by the laws of this state to prescribe such medications and treatments.

(c) The supervision and teaching of other personnel in the theory and performance of any of the acts described in this subsection.

A professional nurse is responsible and accountable for making decisions that are based upon the individual's educational preparation and experience in nursing.

38. The analysis of whether a crime is directly related to the practice of or the ability to practice a profession is not limited to acts specifically listed in the statutory definition of nursing. Nor it is necessary to evaluate Petitioner's "technical ability" to practice nursing. Case law has held that the Board does not have to demonstrate that the criminal acts committed are referenced in the definition of the practice of the profession.

39. In Doll v. Dep't of Health, 969 So. 2d 1103, 1106 (Fla. 1st DCA 2007), the court held:

Several cases demonstrate that, although the statutory definition of a particular profession does not specifically refer to acts involved in the crime committed, the crime may nevertheless relate to the profession. In Greenwald v. Department of Professional Regulation, the court affirmed the revocation of a medical doctors license after the doctor was convicted of solicitation to commit first-degree murder. 501 So. 2d 740 (Fla. 3d DCA 1987). The Fifth District Court of Appeal has held that although an accountants fraudulent acts involving gambling did not relate to his technical ability to practice public accounting, the acts did justify revocation of the accountants license for being convicted of a crime that directly relates to the practice of public accounting. Ashe v. Dep't of Prof'l Reg., Bd. of Accountancy, 467 So. 2d 814 (Fla. 5th DCA 1985). We held in Rush v. Department of Professional Regulation, Board of Podiatry, that a conviction for conspiracy to import marijuana is directly related to the practice or ability to practice podiatry. 448 So. 2d 26 (Fla. 1st DCA 1984). These cases demonstrate, in our view, that appellee did not err by concluding Doll's conviction was "related to" the practice of chiropractic medicine or the ability to practice chiropractic medicine. We therefore affirm appellee's actions finding appellant in violation of section 456.072(1)(c) and revoking appellant's license.

40. Section 464.018(1)(d) identifies specific categories of offenses under Florida law that could result in disciplinary action or denial of a nursing license. The criminal offenses that Petitioner committed before 2012 occurred in South Carolina. If the offenses had occurred in Florida, the offenses listed in:

(d)2. violations related to theft, robbery and related crimes;

(d)3. violations related to fraudulent practices;  
(d)5. violations related to assault, battery, and culpable negligence; and (d)7. violations related to protection from abuse, neglect and exploitation, could have constituted grounds for denial. It can be inferred that the Legislature finds that these types of crimes are related to the practice of or the ability to practice nursing, otherwise, they would not be specifically and separately listed as a basis for disciplinary action.

41. It is axiomatic that a nurse must be truthful and honest and not take advantage of the patient as a potential victim of opportunity.

42. Respondent's expert testified that the fraud-related crimes which Petitioner committed are related to the practice or the ability to practice nursing as they are listed as unprofessional conduct violations in rule 64B9-8.005.

43. Petitioner has a long history of criminal activity and acknowledgment of a long-term substance abuse problem. Though Petitioner had periods of sobriety, Petitioner experienced a recent relapse and had to re-commit to a sober lifestyle. In addition to the relapse, Petitioner was found guilty of three separate misdemeanor petit theft crimes. Theft is especially egregious for a nurse who has access to patient's personal



belongings, and in some nursing settings, patient's bank accounts.

44. While Petitioner's technical ability to care for patients was never questioned or played any role in the NOID, his crimes go to the heart of whether he can be trusted in a medical setting with a vulnerable population.

Prior Discipline Against Petitioner's RN Licenses

45. The second issue to be decided is whether Petitioner had "a license or the authority to practice nursing revoked, suspended, otherwise acted against (including denial), by the licensing authority of any jurisdiction . . . for a violation that would constitute a violation under Florida law."

§ 456.072(1)(f), Fla. Stat.

46. Petitioner's South Carolina nursing license was suspended for: crimes that related to the practice of nursing; and acts that would constitute unprofessional conduct in Florida, specifically, inaccurate recording and impersonating another licensed professional. Inaccurate recording and impersonating a physician constitute unprofessional conduct under Florida law.

47. Petitioner's Maryland nursing license was revoked on the grounds that: South Carolina acted against his nursing license; he was addicted to, or habitually abused any narcotic or controlled dangerous drug (which would be a violation of section 464.018(1)(j)); and he committed unprofessional conduct,

specifically, practicing beyond the scope of his license and patient abandonment.

48. The record also includes a Final Order of denial of Petitioner's licensure issued by the Florida Board of Nursing in 2014.

#### Conclusion

49. By his application, Petitioner seeks to obtain a license with the same conditions imposed in 2012--that he undergo an evaluation coordinated through IPN and comply with any and all recommendations, and complete a board approved remedial course (which is required pursuant to rule 64B9-3.0025 because he had not practiced nursing within the five years prior to his application). Petitioner argues that because he was approved for a conditional license in 2012, the Board cannot review his criminal conduct which occurred prior to that time.

50. Every application is subject to a de novo review. Even assuming the Board was willing to overlook Petitioner's lengthy pattern of nursing-related crimes, and license revocation and relinquishment prior to 2012, it cannot ignore the fact that Petitioner failed to comply with the conditions of his conditional licensure. Petitioner withdrew from his IPN contract and relinquished his license, had a drug use relapse, and committed three more misdemeanor thefts. Nothing in Petitioner's past or recent history shows a likelihood of successfully


completing an IPN conditional license contract. Although Petitioner expressed regret regarding his past history, he paints himself as a victim of bad circumstances and his drug addiction.

51. Petitioner is to be commended for his recently renewed dedication to sobriety and his ongoing commitment to his community and church. Certainly he has much to offer in counseling and mentoring others who face similar challenges. However, Petitioner failed to demonstrate by a preponderance of the evidence his entitlement to a multi-state nursing license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Florida Board of Nursing enter a Final Order denying Petitioner's application for a multi-state RN license.

DONE AND ENTERED this 16th day of October, 2019, 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 16th day of October, 2019.

ENDNOTES

<sup>1/</sup> At final hearing, Petitioner testified that at one time, he held 15 out-of-state licenses, however these were not identified with any specificity. No information was provided by Petitioner regarding in which states Petitioner was previously licensed as an RN or the status of those licenses. Respondent's Exhibit 1 shows that Petitioner previously held RN licenses in a total of 8 states.

<sup>2/</sup> Transcript ("Tr.") p.25, lines 23-24.

<sup>3/</sup> Tr. 97/22-22.

<sup>4/</sup> Neither the letter submitted to the Board nor testimony of Mr. Spooner was presented at the final hearing.

<sup>5/</sup> At the final hearing, Petitioner indicated that he never sought a multi-state license. A review of Petitioner's application shows that the application is a default application for a multi-state license which requires the applicant to check a box to affirmatively select a single-state license. Petitioner did not check this box. Further, in conjunction with his application, Petitioner submitted a "Declaration of Primary State of Residence Form," which states that it is "For Multi-State Licensure Only."

It should be noted that the February 2019 report of the Credentials Committee states, "Mr. Masters applied for a multi-state licensure, however, he does not qualify due to felony offenses. He could be considered for single state licensure." The issue of Petitioner's eligibility for a single-state license is not before the undersigned in this case.

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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.