

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

HEATHER ANN NEVILLE,

Petitioner,

vs.

Case No. 21-0346

BOARD OF NURSING,

Respondent.

RECOMMENDED ORDER

The final hearing in this matter was conducted by Zoom Conference before Administrative Law Judge Jodi-Ann V. Livingstone of the Division of Administrative Hearings (DOAH), on March 18, 2021.

APPEARANCES

For Petitioner: Heather Ann Neville, pro se
15735 Villa Drive
Hudson, Florida 34667

For Respondent: Deborah B. Loucks, Esquire
Marlene Katherine Stern, Esquire
Office of the Attorney General
The Capitol, Plaza Level-01
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner's application for licensure as a registered nurse should be granted.

PRELIMINARY STATEMENT

In a Notice of Intent to Deny (Notice) dated January 4, 2021, the Board of Nursing (Board or Respondent) notified Heather Ann Neville (Ms. Neville or

Petitioner) that it voted to deny her single state registered nurse by endorsement application, pursuant to sections 464.018(1) and 456.072(2), Florida Statutes.

Petitioner timely requested an administrative hearing challenging Respondent's proposed action, and the matter was referred to DOAH for the assignment of an administrative law judge to conduct a chapter 120 hearing.

The final hearing was held on March 18, 2021, with both parties present and appearing from different locations in Florida via Zoom. Petitioner testified on her own behalf and presented the testimony of Kathleen Selby, Burjis Shroff, Marisa Cook, Yvonne Osgood, and Kim Roneree. Petitioner's Exhibit D (pages A31 and A33 through A36 only), Exhibit F, Exhibit I through K, and Exhibit M were admitted into evidence. Respondent presented the testimony of Lisa Johnson. Respondent's Exhibits 1 and 2 were admitted, without objection. The parties were reminded that, even though their exhibits were admitted into evidence, hearsay evidence contained in the exhibits would not be relied on as the sole basis for findings of fact unless the hearsay evidence would be admissible over objection in a civil action in Florida. *See* § 120.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 28-106.213(3).

At the close of the hearing, the parties requested an extended deadline of 20 days following DOAH's receipt of the hearing transcript to file post-hearing submittals.¹ On April 20, 2021, the court reporter filed a one-volume Transcript of the final hearing with DOAH. Both parties timely filed Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

¹ By agreeing to an extended deadline for post-hearing submissions beyond ten days after the filing of the transcript, the parties waived the 30-day timeframe for issuance of the Recommended Order. *See* Fla. Admin. Code R. 28-106.216.

All references to the Florida Statutes are to the 2020 version, unless otherwise indicated.

FINDINGS OF FACT

1. Petitioner is a recovering alcoholic who, as of the date of the hearing, has been sober for almost six years. She has had several run-ins with law enforcement, all tied to her past alcohol abuse. Petitioner is not shy to admit this and is quite open about her past.

2. In May 2003, Petitioner entered a plea of nolo contendere to the crime of driving under the influence. In January 2007, Petitioner entered another plea of nolo contendere to the crime of driving under the influence.

3. In June 2016, Petitioner entered a plea of nolo contendere to the crimes of aggravated assault with a firearm, a felony; battery, a misdemeanor; and using a firearm while intoxicated, a misdemeanor. These charges stemmed from an alcohol-fueled argument with her ex-husband.

4. In June 2017, the Board—the licensing authority for the state of Florida—issued a Final Order revoking Petitioner's license to practice as a registered nurse. The Board cited Petitioner's 2016 pleas as grounds for the revocation.

5. For the 2016 criminal pleas, Petitioner was sentenced to three years in prison. Petitioner served the three years and was released in 2019.

6. In April 2020, Petitioner submitted a nursing licensure by endorsement application to the Board, requesting a new license to practice as a registered nurse.

7. Petitioner was forthcoming in her application for licensure. She disclosed her criminal history and her prior licensure revocation.

8. Petitioner has sought out and completed treatment programs to address her alcoholism. Prior to entering prison, she completed a 90-day treatment program.

9. While in prison, Petitioner completed an additional six-month intensive outpatient treatment program.

10. Petitioner also completed two faith-based programs and a third substance abuse program associated with a work release program.

11. Petitioner remains an active participant in Alcoholics Anonymous.

12. Several of Petitioner's colleagues and friends appeared at the hearing to testify on her behalf, including Kathleen Selby, BSN, RN (Nurse Selby), and Burjis Shroff, MD (Dr. Shroff).

13. Nurse Selby is the Nursing Director of Emergency Services at Raulerson Hospital. Petitioner worked under Nurse Selby's direct supervision for approximately two years. Petitioner was working with Nurse Selby when she was arrested in 2015 for the crimes she ultimately pleaded to in July 2016. Petitioner resigned from Raulerson Hospital in November 2015, because of her arrest/prosecution.

14. In a letter of recommendation, Nurse Selby stated that Petitioner "had great compassion, and always went above and beyond for her patients." Nurse Selby also wrote that she "never questioned [Petitioner's] knowledge or skills. She was a very good ER nurse."

15. At the hearing, Nurse Selby testified that Petitioner's ability to practice nursing was not affected by the events that occurred in her private life. She stated as follows:

I never saw anything but the best patient care. That's one of the reasons why I'm here supporting you. You had a special connection with your elderly patients that I have always admired, and never ever saw you out of line with a patient. You were always one of my most dependable nurses.

16. Nurse Selby further testified that she desired to have Petitioner return to work with her, but that it may be difficult, considering Raulerson Hospital's policies. Raulerson Hospital does not hire nurses with felony convictions. Nurse Selby, however, vowed to "fight the fight" to have

Petitioner join her staff. She has reached out to Raulerson Hospital's chief executive officer to petition for Petitioner's rehire. Nurse Selby's willingness to fight to provide a second chance to Petitioner is a testament to how strongly she supports Petitioner, and to her belief that Petitioner is a good nurse.

17. For the period of 2008 through 2010, Petitioner worked as an emergency room nurse at the Delray Medical Center's ER/Trauma Center. While there, she worked directly with Dr. Shroff, who at that time was the Assistant Medical Director.

18. In a letter of recommendation, Dr. Shroff wrote that Petitioner was a "very competent and compassionate nurse who was always eager to learn and be of assistance to anyone whenever called upon."

19. At the hearing, Dr. Shroff testified that Petitioner was one of the top nurses at the medical center. Dr. Shroff testified that Petitioner was compassionate, always willing to learn, and a pleasure to be around. He stated that "as an ER physician, a good nurse has you well covered, and I have never felt uncomfortable with [Petitioner] as one of my nurses."

20. After losing her license and being released from prison, Petitioner sought employment outside of the nursing profession. She currently works for Marketopia as a prospect engagement consultant. Kim Roneree (Ms. Roneree) serves as the director of human resources for Marketopia. Ms. Roneree testified that she hired Petitioner despite Marketopia's policy against hiring convicted felons. Ms. Roneree testified that she hired Petitioner after having a long conversation with her about her criminal history, and that she made the decision to hire Petitioner based on Petitioner's character. Ms. Roneree further testified as follows:

Heather is one of our top agents, I'll be completely honest. I actually was the one that hired Heather, knowing what her background was and knowing what she had been through. We had a very real conversation, and she has blown me away at every

corner. Not knowing how to do the job or, you know, really what the job was going to entail, she took it on with a -- with an ease like no other. She is one that we trust 110 percent, implicitly, with training other team members. ... I support her 110 percent. I also believe all people deserve second chances. So if there was anybody that I would support in that, it would be her.

21. Although Petitioner has found success outside of nursing, she hopes to be able to practice nursing again, as it is her passion.

22. The Department presented the testimony of Lisa Johnson, who was accepted as an expert in the practice of nursing. Nurse Johnson testified that the crimes of aggravated assault and battery relate to the practice of nursing. Nurse Johnson's un rebutted testimony is credited.

CONCLUSIONS OF LAW

23. DOAH has jurisdiction over the parties and the subject matter of this cause pursuant to sections 120.569 and 120.57(1), Florida Statutes.

24. Petitioner challenges the Board's notice of its intent to deny her application for a license to practice as a registered nurse. As an applicant, Petitioner bears the burden of demonstrating that she is entitled to licensure. *Dep't of Child. & Fams. v. Davis Fam. Day Care Home*, 160 So. 3d 854, 857 (Fla. 2015); *Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co.*, 670 So. 2d 932, 934 (Fla. 1996)("The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue.").

25. In an application denial proceeding, while the ultimate burden remains with Petitioner, it is the Board's burden to prove the specific acts or violations which it alleges are grounds for denial and to produce competent, substantial evidence to support those reasons. *See M.H. v. Dep't of Child. & Fams.*, 977 So. 2d 755, 761 (Fla. 2d DCA 2008)("Without question, an

applicant for a license has the initial burden of demonstrating his or her fitness to be licensed. ... But if 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.").

26. The burden of proof in a license application proceeding is governed by the preponderance of the evidence standard. *Osborne* at 934-35; *see also* § 120.57(1)(j), Fla. Stat.

27. As the basis for its denial of Petitioner's application for a registered nurse license, the Department alleged the following, as set forth in its Notice of Intent to Deny:

Pursuant to Sections 464.018(1) and 456.072(2), Florida Statutes (2020), the Board may refuse to certify an applicant for licensure, restrict the practice of the licensee, or impose a penalty. Ms. Neville answered affirmatively to criminal and disciplinary history questions. The background screening revealed that Ms. Neville entered a plea of nolo contendere to a felony aggravated assault with firearm against a law enforcement officer in 2015. In addition, from 2003 to 2015, Ms. Neville entered pleas of nolo contendere to two separate misdemeanor driving under influence charges and misdemeanor battery and using a firearm while under the influence charges.

Section 464.018(1)(c), Florida Statutes, provides that being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime related to the practice or the ability to practice nursing constitutes grounds for denial of a license. Section 456.072(1)(c), Florida Statutes, provides that entering a plea of guilty to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of or the ability to practice a licensee's profession constitutes grounds for denial of a license. The Board found that the crimes committed by the Applicant are

crimes related to the practice or the ability to practice as a registered nurse.

Section 456.072(1)(f), Florida Statutes, provides that having a license to practice nursing revoked, suspended, or otherwise acted against, including the denial of licensure, constitutes grounds for denial of a license. In 2017, Ms. Neville's registered nurse license was revoked.

28. The Department has proved that Petitioner entered a plea of nolo contendere to crimes related to the practice or the ability to practice nursing, in violation of sections 484.018(1)(c) and 456.072(1)(c), Florida Statutes.

29. The Department also proved that Petitioner had her previous license to practice nursing revoked by the Board in 2017, in violation of section 456.072(1)(f).

30. Florida Administrative Code Rule 64B9-8.006 provides a range of penalties that may be imposed on applicants for licensure who are found to have violated chapters 456 and 464. For a violation of sections 484.018(1)(c) and 456.072(1)(c), the rule provides a penalty range of a reprimand up to revocation. For a violation of section 456.072(1)(f), the rule allows for a letter of concern up to the same penalty imposed in the other jurisdiction.

31. Rule 64B9-8.006(5) provides that the Board may deviate from the guidelines upon a showing of aggravating or mitigating circumstances. The rule provides in pertinent part:

(b) Circumstances which may be considered for purposes of mitigation or aggravation of penalty shall include, but are not limited to, the following:

1. The danger to the public.
2. Previous disciplinary action against the licensee in this or any other jurisdiction.
3. The length of time the licensee has practiced.

4. The actual damage, physical or otherwise, caused by the violation.
5. The deterrent effect of the penalty imposed.
6. Any efforts at rehabilitation.
7. Attempts by the licensee to correct or stop violations, or refusal by the licensee to correct or stop violations.
8. Cost of treatment.
9. Financial hardship.
10. Cost of disciplinary proceedings.

32. Under the facts found herein, the penalty to be imposed on Petitioner is mitigated by the factors set forth in the rule.

Danger to the Public and Damage Caused by the Violations

33. Petitioner is a recovering alcoholic who made poor decisions that have left her with a criminal history. She has been prosecuted for driving under the influence and, most notably, the crimes of battery, aggravated assault, and discharging a firearm while intoxicated. For the latter crimes, Petitioner served a three-year prison sentence.

34. Petitioner has completed several drug treatment courses in an effort to address her alcoholism. It must be noted that although Petitioner had evident problems in her personal life, these problems did not spill over into her work life. In fact, former colleagues testified that Petitioner was, at all times, an excellent caregiver and remarkable nurse.

Previous Disciplinary Action

35. Petitioner has previously been disciplined by the Board; however, the discipline was tied to the criminal violations that are the subject of this action. As such, this prior discipline should not serve to further aggravate any penalty imposed.

Efforts at Rehabilitation and Attempts by the Licensee to Correct or Stop Violations

36. As set forth above, Petitioner has completed three drug rehabilitation programs and has completed two other faith-based, self-improvement programs. She continues to attend Alcoholics Anonymous meetings. Petitioner excels at her current non-nursing position. Her current supervisor has nothing but positive things to say about her work ethic. There is no evidence that Petitioner has been in any trouble—legal or otherwise—since being released from prison.

37. Consideration of the mitigating and aggravating factors above weigh in favor of granting Petitioner's application.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Nursing enter a final order: (1) granting Petitioner's license to practice as a registered nurse; (2) immediately suspending such license for an indefinite period pending satisfactory completion of an Intervention Project for Nurses evaluation and any recommended treatment; and (3) requiring the completion of continuing education as the Board deems appropriate.

DONE AND ENTERED this 3rd day of June, 2021, in Tallahassee, Leon County, Florida.



JODI-ANN V. LIVINGSTONE
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of June, 2021.

COPIES FURNISHED:

Deborah B. Loucks, Esquire
Office of the Attorney General
The Capitol, Plaza Level-01
Tallahassee, Florida 32399

Heather Ann Neville
15735 Villa Drive
Hudson, Florida 34667

Marlene Katherine Stern, Esquire
Office of the Attorney General
The Capitol, Plaza Level-01
Tallahassee, Florida 32399

Louise St. Laurent, General Counsel
Department of Health
4052 Bald Cypress Way, Bin C65
Tallahassee, Florida 32399

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

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.