**STATE OF FLORIDA**
**DIVISION OF ADMINISTRATIVE HEARINGS**

MANUEL FERNANDEZ,

Petitioner,

vs. Case No. 21-0384

BOARD OF NURSING,

Respondent.
_____/

RECOMMENDED ORDER

A disputed-fact evidentiary hearing was held by Zoom video conference on May 4, 2021, before Administrative Law Judge Elizabeth W. McArthur of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Lawrence E. Besser, Esquire
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Miami, Florida 33131

For Respondent: Deborah B. Loucks, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner's application for multistate registered nurse licensure by endorsement should be denied for the reasons given by Respondent in its Notice of Intent to Deny, or whether Petitioner met his ultimate burden of persuasion that his application should be approved.

## PRELIMINARY STATEMENT

By Notice of Intent to Deny issued January 4, 2021, the Board of Nursing (Respondent or Board) informed Manuel Fernandez (Petitioner or Mr. Fernandez) of its intent to deny the application by Mr. Fernandez for multistate registered nurse (RN) licensure by endorsement.

The Board gave two reasons for refusing to certify the applicant for licensure pursuant to sections 456.072(2) and 464.018(2), Florida Statutes (2020).[1] The Board found that in 2014, Mr. Fernandez's RN license was revoked by the licensing authority, providing grounds to deny the license pursuant to section 456.072(1)(f). The Board also found that Mr. Fernandez pled nolo contendere to felony aggravated assault with a deadly weapon in 2001. The Board found that the 2001 crime is related to the practice or the ability to practice as a registered nurse, providing grounds to deny the license pursuant to sections 456.072(1)(c) and 464.018(1)(c).

Mr. Fernandez timely petitioned for a formal disputed-fact administrative hearing. The Board transmitted the case to DOAH for assignment of an administrative law judge to conduct the requested hearing.

Prior to the hearing, the parties jointly filed a Pre-hearing Statement in which they stipulated to two facts. Their stipulations are adopted and set forth in the Findings of Fact below.

Also prior to the hearing, Respondent filed an unopposed Motion for Official Recognition of Documents, which was granted. Official recognition

[1] Unless otherwise indicated, all citations to the Florida Statutes are to the 2020 codification.

was taken of two related documents: a Final Order in *Department of Health v. Manuel Fernandez*, Case No. 2009-07521 (Fla. Dep't of Health Jan. 16, 2014) (2014 Final Order); and the Administrative Complaint attached to and incorporated in the 2014 Final Order. These documents were marked Respondent's OR-1A and OR-1B, respectively, and are made a part of the record. *See* § 120.57(1)(f)3. and (j), Fla. Stat.

The hearing was initially set for April 6, 2021. However, neither Petitioner nor his counsel appeared. Counsel for Petitioner was contacted and he represented that he had encountered an emergency, requesting that the hearing be rescheduled. Counsel for Respondent did not object to rescheduling the hearing and the undersigned agreed to the cancellation provided that Petitioner's counsel file a motion explaining the emergency circumstances. This was accomplished in an Emergency Motion for Continuance filed on April 7, 2021. The motion was granted and the hearing was rescheduled for May 4, 2021, via Zoom, when it went forward.

On May 3, 2021, the Board filed its Motion to Deem Board's Requests for Admissions as Admitted. The Motion was taken up as a preliminary matter at the outset of the hearing convened on May 4, 2021, and was granted upon the representation by Petitioner's counsel that the matters were admitted and Petitioner did not object to the motion. The Requests for Admissions, bearing the undersigned's notation that the matters are deemed admitted, are included in the record.

Before testimony was taken, the undersigned reminded counsel of the evidentiary standard for this proceeding, highlighting the limitations on hearsay, pursuant to section 120.57(1)(c) and Florida Administrative Code Rule 28-106.213.

Mr. Fernandez testified on his own behalf. He did not call other witnesses or offer any exhibits into evidence. The Board presented testimony of Lisa Johnson, who was accepted as an expert in the practice of professional nursing. Respondent's composite Exhibit 1 (represented to be Petitioner's application file) and Exhibit 2 (Ms. Johnson's resume) were admitted into evidence without objection.

The one-volume final hearing Transcript was filed on May 25, 2021. Respondent timely filed its PRO. Petitioner did not file a PRO or other post-hearing filing. Respondent's PRO and the evidentiary record have been considered in the preparation of this Recommended Order.

## FINDINGS OF FACT

Stipulated Facts

1. Mr. Fernandez pled nolo contendere to and was convicted of assault with a deadly weapon on June 26, 2001, in Dade County, Florida.

2. Mr. Fernandez's nursing license was revoked by Final Order issued on January 16, 2014, for violating sections 464.018(1)(n) and 464.018(1)(h), Florida Statutes, and Florida Administrative Code Rules 64B9-8.005(2)(c) and 64B9-8.005(1)(e).

Additional Facts

Based upon the credibility of the witnesses and evidence presented at the final hearing, matters deemed admitted, and matters officially recognized, the following additional facts are found:

3. Petitioner was licensed in Florida as an RN by the Board on April 11, 2001.

4. The matters giving rise to the stipulated facts above occurred at the beginning and near the end of the span of time during which Petitioner held an RN license in Florida. No evidence was presented regarding Petitioner's professional employment or activities during that time span, with the

exception of very limited facts surrounding the matters addressed in the two stipulated facts above.

Permanent Revocation of Petitioner's RN License by the Board

5. In November 2009, an Administrative Complaint was issued against Mr. Fernandez, charging him in three counts with violations of section 464.018(1)(n) (failing to meet minimal standards of acceptable and prevailing nursing practice), rule 64B9-8.005(2)(c) (misappropriating drugs), section 464.018(1)(h) (unprofessional conduct), and rule 64B9-8.005(1)(e) (committing acts of negligence, by omission or commission).

6. Petitioner, represented by counsel, elected an informal proceeding not involving disputed issues of material fact, choosing not to contest the allegations and opting to address mitigating/aggravating circumstances in a hearing before the Board.

7. On January 5, 2011, the Board issued a Final Order concluding that Mr. Fernandez committed the violations charged, and permanently revoking his RN license as the penalty.

8. Mr. Fernandez retained a different lawyer (who was his counsel of record in this case) to appeal the 2011 Final Order. The appeal was resolved by opinion in *Fernandez v. Department of Health, Board of Nursing*, 82 So. 3d 1202 (Fla. 4th DCA 2012) (*Fernandez I*). As described in the opinion, the only issues raised on appeal were the penalty assessments for Counts I and II. Accordingly, the court affirmed Count III without discussion. The court reversed the penalty assessments for Counts I and II. As to Count I, the court held that the 2011 Final Order was deficient for failing to explain the reason(s) for increasing the penalty above the penalty range in the Board's penalty guidelines rule. As to Count II, the court held that no penalty could be assessed for the violation found, because the Board had failed to adopt penalty guidelines for that violation. The court therefore remanded the case to allow the Board to reconsider the penalty assessed for just Counts I and III. The court acknowledged the Board's statutory authority codified in

section 456.072(2)(b) to impose the penalty of permanent revocation, which was not challenged by Mr. Fernandez. However, the court held that if the Board chose to impose that penalty, it had to explain its reason(s), since permanent revocation exceeded the penalty guidelines.

9. In *Fernandez I*, Mr. Fernandez did not challenge the fairness of the proceedings based on his election of an informal hearing. As the court pointed out: "Fernandez elected an informal hearing. By doing so, Fernandez admitted the factual allegations, seeking only to mitigate the penalties that might be imposed." *Fernandez I*, 82 So. 3d at 1203.

10. On August 29, 2012, the Board issued a second Final Order, again permanently revoking Petitioner's RN license. To address the court's directives in *Fernandez I*, the 2012 Final Order set forth five reasons justifying an upward deviation from the penalty guidelines rule to impose the penalty of permanent revocation.

11. Mr. Fernandez appealed the 2012 Final Order, arguing that none of the five reasons given for imposing the penalty of permanent revocation was supported by competent substantial evidence. As to one of the five reasons, the court agreed. But as to the other four reasons for increasing the penalty, the court rejected Mr. Fernandez's challenge to the adequacy of supporting evidence. Once again, the court recognized that the Board had the authority to increase the penalty based on reasons supported by the record evidence. However, the court could not determine whether, without considering the one reason found insufficiently supported, the Board would have imposed the same penalty. Therefore, the court remanded the case to the Board to reconsider the penalty based on the four reasons upheld by the court as adequately supported with record evidence. *Fernandez v. Dep't of Health, Bd. of Nursing*, 120 So. 3d 117 (Fla. 4th DCA 2013) (*Fernandez II*).

12. The 2014 Final Order was the Board's third and last Final Order. The 2014 Final Order set forth the four reasons to increase the penalty that were

upheld in *Fernandez II*, and again imposed the penalty of permanent revocation of Petitioner's RN license.

13. Mr. Fernandez did not appeal the 2014 Final Order. The permanent revocation of his RN license is therefore the outcome of the disciplinary action, and the findings of fact, conclusions of law, and penalty are binding on Petitioner, as well as the Board.

14. The 2014 Final Order adopted the allegations of fact in the Administrative Complaint, which were not disputed by Mr. Fernandez. The admitted facts relevant to Counts I and III were as follows:

> 5. At all times material to this Complaint, Respondent was employed at Sunrise Home Health Care (SHHC), located in Miami, Florida. Respondent was assigned to provide home health services to various clients of the agency.
>
> 6. On or about February 16, 2009, Patient MS, a 68 year old female, was a patient of SHHC. Patient MS, a female, had a prescription for Heparin Lock Flush: Flush catheter with 3-5mL of Heparin after last saline flush.
>
> 7. Heparin is used to prevent blood clots from forming in people who have certain medical conditions or who are undergoing certain medical procedures that increase the chance that clots will form. Heparin is also used to stop the growth of clots that have already formed in the blood vessels, but it cannot be used to decrease the size of the clots that have already formed. Heparin is also used in small amounts to prevent blood clots from forming in catheters (small plastic tubes through which medication can be administered or blood drawn) that are left in veins over a period of time. Heparin is in a class of medications called anticoagulants ('blood thinners'). It works by decreasing the clotting ability of the blood.
>
> 8. Respondent is not an employee of Miramar Memorial Hospital and does not have rights to practice medicine at Miramar Memorial Hospital.

> 9. On or about March 18, 2009, Patient RM, a 44 year old female was a patient at Miramar Memorial Hospital, located in Miramar, Florida. Patient RM was known to the Respondent.
>
> 10. On or about March 18, 2009, patient RM gave birth to twin female babies.
>
> 11. On or about March 19, 2009, Respondent was at Miramar Memorial Hospital visiting Patient RM.
>
> 12. On or about March 19, 2009, Respondent administered one or more syringes of Heparin (5cc each), belonging to Patient MS, to Patient RM via catheter. The syringes were found in the garbage can of Patient RM by her assigned nurse MB, an employee of Miramar Memorial Hospital.
>
> 13. On or about March 19, 2009, Patient RM did not have a prescription or physician's order for the use of Heparin.
>
> 14. On or about March 20, 2009, Respondent was interviewed by the Miramar police and admitted administering one syringe of Heparin to Patient RM, without a physician's order.

15. After adopting as its findings of fact the allegations in the Administrative Complaint, the Board made additional findings of aggravating facts in the 2014 Final Order:

> The Board finds aggravating facts as follows:
>
> 1. Respondent practiced nursing in a facility where he was not employed.
>
> 2. Respondent administered medication that belonged to another patient to RM, who was not his patient.
>
> 3. The medication that was administered to RM was brought into the hospital from Respondent's car.

> 4. Respondent administered medication to RM that was not ordered by RM's treating physician.
>
> 5. Respondent failed to advise hospital staff that he administered medication to RM.
>
> 6. Respondent administered heparin to RM to flush a foley catheter, which is not proper protocol for flushing a foley catheter.
>
> 7. Respondent has practiced nursing for 13 years.

16. The 2014 Final Order then set forth the Board's Conclusions of Law that Mr. Fernandez violated section 464.018(1)(n) (as charged in Count I, for failing to meet minimal standards of acceptable and prevailing nursing practice by misappropriating drugs) and section 464.018(1)(h) (as charged in Count III, for engaging in unprofessional conduct through negligence, by administering the medication Heparin to RM, who was not his assigned patient, without physician's order and without any knowledge of the patient's current medical treatment).

17. The 2014 Final Order next addressed the penalty for those violations, as follows:

> The Board is empowered by Sections 464.018(2) and 456.072(2), Florida Statutes, to impose a penalty against the licensee. The Board finds that a penalty harsher than the penalties stated in Rule 64B9-8.006 is warranted for the following reasons:
>
> 1. The danger to the public represented by Respondent's actions.
>
> 2. The length of time Respondent has practiced nursing.
>
> 3. The deterrent effect of the penalty being imposed.
>
> 4. The failure of Respondent to correct the violation.

18. Based on those four reasons, the Board permanently revoked Mr. Fernandez's RN license, effective upon the filing of the 2014 Final Order with the Department of Health's Agency Clerk (which was on January 16, 2014).

19. Despite permanent revocation of his RN license, Mr. Fernandez filed an application with the Board in 2020 for multistate RN licensure by endorsement.

20. The Board voted to deny the application at a noticed meeting. Mr. Fernandez did not appear at that meeting. The Board exercised its authority under sections 456.072(2) and 464.018(2) to refuse to certify the applicant for licensure because of the 2014 permanent revocation of Mr. Fernandez's RN license, and also because Mr. Fernandez's application disclosed that he had pled nolo contendere and was convicted for felony aggravated assault with a deadly weapon in 2001.[2] The Board found that the crime was related to the practice of nursing or the ability to practice nursing.

21. Mr. Fernandez requested a disputed-fact administrative hearing to contest the proposed denial of his application. He raised as the only disputed fact whether the 2001 conviction was directly related to the practice of nursing. He asserted that it was not, and contended that the applicable statutes and rules require that a criminal conviction must be *directly* related to one's professional practice. Based on his argument directed to one of the two reasons cited in the Notice of Intent to Deny, Mr. Fernandez contended that the Board should approve his application for RN licensure.

22. Mr. Fernandez's hearing request did not take issue with, or address, the other basis for the Board's refusal to certify the applicant for approval—that the Board had permanently revoked Mr. Fernandez's RN license by the 2014 Final Order. At the hearing, although Petitioner sought to dispute the

[2] "Road rage" was the term used by Petitioner's attorney in his opening statement to describe the incident underlying the 2001 nolo plea and conviction for felony aggravated assault with a deadly weapon. That description is apt, based on the evidence.

facts on which the 2014 Final Order was predicated, he offered no argument as to why he should be permitted to contest those facts now, or why he should be permitted to apply for an RN license in Florida at all, following the permanent revocation of his RN license.

Evidence Related to Whether Petitioner Proved Entitlement to Licensure

23. Assuming, arguendo, that the permanent revocation of Petitioner's RN license does not act to bar him from applying anew for an RN license, the next question is what evidence supports Mr. Fernandez's qualifications to meet the requirements for the license for which he has applied.

24. As the license applicant, at the final hearing Mr. Fernandez presented his case first. Mr. Fernandez did not offer his 2020 license application into evidence. The only document identified as a potential exhibit for Petitioner in the parties' Pre-hearing Statement was Mr. Fernandez's resume, but his resume was not offered into evidence.

25. Although Petitioner did not offer his 2020 application in evidence, Respondent did so, presenting as a composite exhibit what was described as Petitioner's 2020 application file.[3]

26. Neither Petitioner nor Respondent addressed, through evidence or argument at the hearing or by post-hearing submittal, whether the evidence supports a finding that Petitioner made a preliminary showing of compliance with the requirements for multistate RN licensure by endorsement.

27. The application form completed by Petitioner and signed on September 10, 2020, reflects that Petitioner is seeking multistate RN licensure by endorsement based on having successfully applied for and obtained RN licensure by examination in Florida in 2001.

[3] The portions of the application that are Mr. Fernandez's own statements can be considered admissions when offered against him, but statements recounting what others said or statements submitted by others are hearsay that cannot be the sole basis for findings of fact. *See* § 90.803(18)(a), Fla. Stat. (statements of a party offered against the party are admissible as exceptions to the hearsay prohibition).

28. Petitioner's application reflects that he has held one, and only one, nursing license in any state, and that is the Florida RN license number 9177203, issued on April 11, 2001, which was permanently revoked by the 2014 Final Order.

29. At the time Mr. Fernandez submitted his 2020 application, he did not hold an active license to practice nursing in another state.

30. No evidence was offered at the hearing to prove that Mr. Fernandez has ever held a license to practice nursing in another state. No evidence was offered to prove that Mr. Fernandez has actively practiced nursing in another state for two of the last three years, as would stand to reason in the absence of evidence that he holds a license to practice nursing in another state.

31. Mr. Fernandez designated the state of Florida as his "home state" for purposes of seeking a multistate license, and acknowledged that he does not hold a multistate license in any other state.

32. In separate application sections asking about the applicant's criminal history and disciplinary history, Mr. Fernandez disclosed his felony conviction for the road rage incident and the Board's revocation of his Florida RN license.

33. These disclosures triggered requirements in each section that the applicant provide: (1) a self-explanation describing the circumstances; (2) attach documentation (court records for the criminal history; complaint and Final Order for the disciplinary history); and (3) three "current (written within the last year) professional **Letters of Recommendation**." (underline and bold in original).

Petitioner's Response to Permanent Revocation Per 2014 Final Order

34. In his 2020 application, Mr. Fernandez took the opportunity in his self-explanation of the 2014 Final Order to dispute the findings and conclusions, and offer his own version of what happened.

35. Mr. Fernandez began his self-explanation by characterizing his actions as a "BIG mistake." Mr. Fernandez's self-explanation to the Board went on to

describe his visit to the hospital to see RM, FV's wife, who had given birth to twins. Mr. Fernandez described FV as an old friend who was also the owner of the home health agency where he worked. He said his friend/boss, FV, had called three times urging him to come visit to see the babies. Mr. Fernandez described being in RM's hospital room while RM's assigned nurse was tending to the patient and inserting a foley catheter. He described how thereafter, he and his friend/boss became concerned about the patient's status, called the assigned nurse "more than 4 times" and suggested that she take action that they thought was needed, but the nurse disagreed. According to Mr. Fernandez, he and FV "were there asking and begging her [the assigned nurse] for proper nurse implementations, we talk [to] her many times … but she never implements" what they were urging. The nurse contacted the patient's physician, who gave orders for medication, which was administered by the patient's assigned nurse. Mr. Fernandez said that after the nurse had implemented the doctor's orders, both RM (the patient) and FV (his friend/boss) asked Mr. Fernandez to help the patient, "knowing that I have on my car saline flushes Syringes [sic]." He said he asked the nurse one more time to take the step he thought was needed, but she did not. He and FV then went to the parking garage to Mr. Fernandez's car. Mr. Fernandez claimed he intended to get some *saline* syringes that he uses to flush his home health patients' catheters. Mr. Fernandez claimed that "fatally within those saline syringes flush Bag there were 2 heparin flush syringes," and he assigned blame to the home health office for putting the heparin syringes in the saline syringe bag by mistake. He admitted he took the bag with him to RM's room and performed the foley catheter flush. He also explained that "due to the rush of the situation and the effect of [FV] requesting my help (my home health boss) I had a poor judgment and flushed the [RM] Foley Cath, *no realizing at that moment she was not my patient*." (errors in original; emphasis added).

36. Mr. Fernandez added in his self-explanation that RM's assigned nurse found two heparin flush syringes in the patient's garbage can (confirming that Mr. Fernandez did not tell the assigned nurse or anyone else that he had administered to RM what he claimed he thought were saline flushes, but instead were heparin flushes), and the assigned nurse called the police.

37. Mr. Fernandez claimed he volunteered to the police that he was the one who administered the heparin flushes only because the police thought FV had tried to kill his wife after finding the two heparin flush syringes in her garbage can. He expressed regret for telling the truth: "And I blame my self-telling police the true."

38. Mr. Fernandez proceeded in his self-explanation to accuse both RM and FV of lying to the police by saying they never asked Mr. Fernandez for help. As Mr. Fernandez put it, when RM was interviewed by the police, "she denies THE TRUTH, she lied, she say NO to an important question done by the police, at that moment she denies requesting my help, the police asks her 3 times and 3 times she denial asking me for help that day." (errors in original). Mr. Fernandez then blamed his friend/boss, claiming RM later told him that "she lied to policeman following advice from her husband [FV], (who for fear or afraid of being discovered stealing from Medicaid and Medicare on his agency decided to lie to the police, [FV] the person who was my friend and the one who call me to the hospital that day willing to know my opinion about [RM's] poor condition, the same who asked me for help, the owner of community care home health nursing agency in which I usually worked under his orders. He instructed [RM] to lied to police)." (errors in original).

39. Mr. Fernandez's self-explanation ended with one final accusation—that the attorney he hired to represent him in the disciplinary case *also* lied: "I hired and lawyer Office for a formal hearing in from of board of nursing but they also lied to me and sent papers requesting an informal hearing … . In a formal hearing true will clarified the incident and the final result again my RN license it could have been different but the malpractice and bad

representation from my lawyer requesting an informal hearing in from of the board of nursing [d]on't allow me to dispute the charges on the administrative complaint." (errors in original).

40. As noted above, though, Mr. Fernandez retained a different lawyer— his counsel of record in this case— to appeal the first two Final Orders, and no issue was raised in *Fernandez I* or *Fernandez II* with regard to the propriety of the election or the resulting informal hearing.

41. At the hearing, Mr. Fernandez addressed the permanent revocation of his RN license by attempting to dispute the facts that he was deemed to have admitted (as stated by the court in *Fernandez I*). He offered testimony that was somewhat similar to his self-explanation, although there were several notable inconsistencies. Mr. Fernandez went into detail in describing the patient's condition, in an attempt to justify the appropriateness of what he did, although he offered no medical records to prove what he described. He offered largely hearsay testimony regarding what he was told by RM and FV, but offered no non-hearsay evidence (such as the testimony of FV, whom Mr. Fernandez continued to describe as his best friend). He offered some of the same accusations directed to RM's assigned nurse, although again, he offered no medical records to support his description of RM's condition, nor did he offer non-hearsay testimony to prove alleged conversations with the nurse. He repeated his claim that RM and FV begged him for help, omitting any reference to the different story they apparently told the police (which he characterized in his self-explanation as lies). Again, no corroborating non-hearsay testimony was offered, such as testimony from FV, his "best friend."

42. In the self-explanation, Mr. Fernandez only said that he and FV asked the assigned nurse multiple times to implement the procedure they thought was needed, and that in the rush and pressure of being asked for help by his friend and boss, *he did not even realize that RM was not his patient*. And rather than attempt to justify giving heparin to RM that was prescribed for one of his home health agency patients, without knowing RM's medical

background and without doctor's orders, Mr. Fernandez claimed that the home health agency put the heparin in the wrong bag by mistake. In marked contrast, at the final hearing Mr. Fernandez expanded his hearsay testimony to claim: that he asked other hospital staff members for help, to no avail; that the patient's condition required administration of heparin; and that he only took matters into his own hands as a last resort to address what he believed to be an emergency situation.[4] His embellishments lacked credibility, were inconsistent with his self-explanation (which also suffered from credibility questions[5]), and relied almost exclusively on hearsay that cannot be considered. What Mr. Fernandez did show, by his testimony and self-explanation, was that he accepts little to no responsibility, and instead, continues to blame and accuse everyone else for his actions.

43. Even if he had offered credible, non-hearsay evidence, Mr. Fernandez is bound by facts found in the 2014 Final Order permanently revoking his license. His testimony cannot be accepted, because it was contrary to facts he is not entitled to relitigate. These include the finding that he "administered heparin to RM to flush a foley catheter, which is not proper protocol for flushing a foley catheter." 2014 Final Order at 2, aggravating fact 6.

44. Mr. Fernandez is also bound by the reasons found by the Board to increase his penalty, including the first reason: "The danger to the public represented by [Mr. Fernandez's] actions." 2014 Final Order at 3. He had his opportunity to challenge the sufficiency of the evidence supporting that finding, and the court rejected that challenge in *Fernandez II*.

45. Mr. Fernandez offered no evidence to prove that he should no longer be considered a danger to the public. No evidence was offered to prove what Mr. Fernandez has been doing since the 2014 Final Order was issued. He

[4] Mr. Fernandez claimed he was told criminal charges filed against him would be dropped because he was acting as a Good Samaritan. This blatant hearsay cannot be considered.

[5] Mr. Fernandez's claims that he did not intend to administer heparin and that he did not realize RM was not his patient are, quite simply, unbelievable.

offered no proof of rehabilitative steps taken, professional activities, educational endeavors—nothing. The record is devoid of evidence to overcome the negative implications from the 2014 Final Order and the findings therein.

Petitioner's Response to Felony Conviction for Road Rage Incident

46. Nineteen days after Petitioner's Florida RN license was issued, on April 30, 2001, Petitioner committed an episode of "road rage." He was charged with aggravated assault with a deadly weapon, a third-degree felony. He pled nolo contendere and was convicted of this charge. For his crime, in addition to a probationary term, Petitioner was required to take an anger management course.

47. In his 2020 application, Mr. Fernandez included a short self-explanation to the Board, along with the court records, as required. In his self-explanation, he said that he thought another vehicle cut him off, and instead of getting an apology from the driver, the driver gestured with her middle finger. (Petitioner described the driver of the other vehicle as a male, but the court records he provided clearly identified the other driver as a female.) Petitioner admitted that he reacted to the gesture "with anger." He accelerated, made a U-turn, and forced the driver to pull off the road so he could confront her. (Petitioner did not describe what he did as forcing the other driver off the road; instead, he said that he accelerated and did the U-turn so that, once he was alongside the other driver, they could have a "discussion" through her car window. Yet, the only way it would have been possible to have a "discussion" with the driver through the window is if Petitioner was able to get the other vehicle to pull off the road so he could also stop his vehicle, approach the other vehicle, and have the so-called discussion with the other driver through the window.)

48. Petitioner admitted that his acceleration and U-turn were observed by a police officer. The eyewitness police officer completed a police report in affidavit form, which provided additional details corroborating and supplementing Petitioner's 2020 self-explanation.

49. According to the police report, the officer observed an initial close encounter between Mr. Fernandez's vehicle and the "victim's" vehicle. After the initial close encounter, in which no contact was made, Mr. Fernandez "began to spin his wheels and make a 180[-degree] aggressive turn to go after victim. While doing so and on his cellular phone, he jumped the concrete median and began to chase the victim." The police officer followed the two vehicles. The officer observed Mr. Fernandez pull his 2000 black Ford Expedition alongside of the victim and then swerve to cut off the victim's vehicle, forcing the victim to veer her vehicle off the road to avoid a collision. When Mr. Fernandez had successfully maneuvered the victim to stop her vehicle, he also stopped, exited his vehicle, and confronted the victim in her vehicle. The victim put her window down, whereupon Mr. Fernandez began to scream obscenities at the victim in both English and Spanish. At that point, the officer intervened. The officer directed the victim to sit on the curb and he interviewed her. The officer observed the victim to be visibly shaken. Mr. Fernandez was placed in custody and transported to the police station.

50. The eyewitness officer summarized his observations as follows: "[Mr. Fernandez] displayed a wanton disregard for the safety of other motorists (running red light, jumping median, cutting victim['s] vehicle off)." He concluded the police report with the following addition: "Det[ective] E. Garcia conducted interview of [Mr. Fernandez]. [Mr. Fernandez] admitted to purposely swerving his vehicle into the victim's path to stop the vehicle."

51. In Petitioner's self-explanation to the Board, he characterized his actions as follows: "I made a mistake and accelerated my car toward the [other vehicle] looking for an apology from him [sic]." "I made a mistake when I decide to chase the [other vehicle] and started a discussion with that person. I should no confront him [sic], I should have to continue my way[.]"

52. At the hearing, Petitioner, through counsel, offered two arguments for why the Board should not consider the felony conviction for the road rage incident as a reason to deny Petitioner's application. First, through argument

only, counsel asserted that the nolo plea and conviction for felony aggravated assault with a deadly weapon did not involve a crime that is related to the practice of nursing or the ability to practice nursing. Second, Petitioner's counsel raised for the first time[6] the argument that the Board should be estopped from asserting the felony conviction for the road rage incident as a reason to deny Petitioner's 2020 application. Counsel argued that Petitioner would have had to disclose the crime on every biannual license renewal application, in 2003, 2005, 2007, and 2009, until his license was revoked, and the Board should be estopped from raising this crime now because the Board purportedly knew about the crime and did not attempt to revoke or otherwise discipline Petitioner.

53. Petitioner did not offer any testimony regarding whether felony aggravated assault with a deadly weapon is, or should under the circumstances be considered, a crime related to the practice of nursing or the ability to practice nursing. Respondent presented testimony of Lisa Johnson, accepted as an expert in the practice of professional nursing. Ms. Johnson offered the opinion that Petitioner's road rage crime was related to the practice of or the ability to practice nursing. Her opinion was credible, was not refuted, and is credited.

54. Ms. Johnson based her opinion on two separate rationales. First, she explained that, based on her review of Petitioner's application, including the police report, Petitioner's conduct was "very disturbing." She opined that Petitioner's extreme reaction out of anger upon being upset by another driver, endangering other motorists, was contrary to the character and qualities required for the practice of professional nursing. She explained the importance of nurses always keeping a level head. Nurses must always

[6] Consistent with his hearing request, Petitioner stated his position in the joint Prehearing Statement in a single point, as follows: "Mr. Fernandez [sic] conviction for aggravated assault was not related to the practice of nursing."

critically think, and make decisions that are educated and informed, rather than driven by emotion. She added that one of the most surprising things was that the felony occurred just 19 days after Petitioner's RN license was issued, when he had just taken the oath and the expectations of the nursing profession were still fresh in his mind.

55. Ms. Johnson also pointed to the background screening laws applicable to a Level 2 screening, which Petitioner would have to undergo in order to work as an RN in health care facilities and virtually all other health care settings. Petitioner's nolo plea and conviction for felony aggravated assault with a deadly weapon is a disqualifying offense, meaning that Petitioner would be disqualified from working as a nurse in a hospital, nursing home, assisted living facility, home health agency, health care clinic, or other health care settings (such as nurse registries) that are required to conduct background screening of persons who provide personal care or services directly to patients/residents/clients. Petitioner would have the option of applying to the Board for an exemption from disqualification, and in such an application, he would have to provide clear and convincing evidence that he is rehabilitated.

56. No evidence was offered by Petitioner to indicate that he ever sought and obtained an exemption from disqualification from the Board because of his disqualifying offense, as should have been necessary for him to be providing patient care to home health agency patients.

57. No evidence was offered by Petitioner to support the claim that the Board was aware of the crime, as the predicate for counsel's new estoppel argument. The only testimony from Petitioner about this subject was that he renewed his nursing license every two years, and at the time he renewed his application in 2003, "the *department* was aware" of his crime. (Tr. 17, emphasis added). He referred vaguely to having "sent in all the paperwork" and every two years they allowed him to continue working as a nurse.

58. Petitioner did not testify that the Board had knowledge of the road rage incident or resulting nolo plea/conviction at any point before the application he filed in 2020 at issue in this case. No evidence was offered by Petitioner of: (1) his actual RN license renewal applications; (2) whether the RN license renewal applications were submitted to the Department of Health (as he seemed to suggest) and not to the Board[7]; or (3) the extent to which he did or did not disclose the felony conviction, submit a detailed self-explanation, or submit the court records, including the police report, as he did in the 2020 application at issue here. Petitioner's testimony falls short of proof as to what, if any, disclosures he made to the Board prior to 2020. There is no evidentiary basis to support a finding that the Board had prior knowledge of the road rage incident or felony conviction resulting from that incident.

Requirement for Recent Professional Recommendations

59. In response to disclosures of disciplinary history and criminal history in his 2020 application, the Board required Petitioner to submit three recent professional letters of recommendation. "Recent" was defined as "written within the last year."

60. In the *de novo* administrative hearing, it was incumbent on Petitioner to offer non-hearsay evidence serving the same purpose as the Board's requirement to submit recent professional letters of recommendation: to overcome the implication from the disciplinary history and criminal history that Petitioner is unfit for licensure.

61. Completely lacking at the hearing was any evidence regarding why Mr. Fernandez should now be trusted to not react with anger or rush into action based on emotions, as he did at the beginning and the end of his RN licensure tenure in Florida. In 2014, the Board determined that Petitioner's rash actions represented a danger to the public. No evidence was presented

[7] Respondent confirmed in its PRO that RN license renewal applications are submitted to and processed by the Department of Health, not the Board.

regarding what Mr. Fernandez has been doing since his license was revoked, to overcome the finding made in the 2014 Final Order. No character witnesses were offered. Mr. Fernandez did not present testimony, for example, of the three authors of the letters of support submitted with his application, to provide non-hearsay testimony offering recent positive professional support to potentially show rehabilitation despite his prior RN license revocation and his prior felony conviction.[8]

Ultimate Findings of Fact

62. Mr. Fernandez did not meet his burden of presenting evidence to demonstrate his qualifications for multistate RN licensure by endorsement for which he has applied.

[8] The three letters in Petitioner's application are hearsay and cannot be considered in this proceeding. Even if their hearsay nature were not an impediment, there are serious questions as to their reliability as "recent" letters. For example, one letter appears to be a recommendation for a job as a First Surgical Assistant (which presumably would require an active license that Mr. Fernandez has not had for at least seven years). In it, the author stated vaguely that "I have known Manuel Fernandez for the past number of years" and that Mr. Fernandez "has been working for Sunrise Home Health Care, Inc. for the past years as a RN with excellent evaluation." The letter was typed in its entirety except for the signature and the date, 6/20/2020, which was handwritten at top—a very curious form for a professional letter of recommendation. As of June 2020, it had been many years since Mr. Fernandez worked at the home health agency as an RN. Either the author was intentionally misleading by describing what sounded like Mr. Fernandez's current and recent experience as an RN, or the letter was written many years ago. Similarly, in another letter, the author described "Nurse Fernandez" as caring of his patients and dedicated to his job. The author stated she has known Nurse Fernandez for four years. The letter was typed, including the word "Dated:" typed just above the signature. However, the date itself was not typed; instead, 7/12/2020 was handwritten next to the typed "Dated:." But if the letter was written in July 2020, the author could not have vouched for "Nurse Fernandez" or described him as caring of his patients, because the author stated she only knew him for four years and Mr. Fernandez was not licensed to practice nursing or care for patients between July 2016 and July 2020. Here too, the impression from the letter's contents is that the letter was written many years ago, and the handwritten date was a fabrication. So too, the third letter was typewritten except for the date, 9/10/2020, added in handwriting. The third letter described Mr. Fernandez as a joy to work with, well-liked by his nursing colleagues, and a resource for "other" nurses to help with difficult cases. The description is in the current tense, as if Mr. Fernandez was currently working as a nurse at the time the letter was written. Once again, the handwritten date is incongruous, both as to form of a professional letter of recommendation, and as to the substance, since Mr. Fernandez could not have been practicing nursing in September 2020 or at any time for years before then.

63. The Board proved that Petitioner had his RN license permanently revoked based on violations of Florida law, for actions that represented a danger to public.

64. The Board proved that Petitioner pled nolo contendere and was convicted of a felony crime related to the practice of nursing or the ability to practice nursing.

65. Mr. Fernandez did not prove that the Board had prior knowledge of his nolo plea and conviction.

66. Mr. Fernandez offered no evidence to overcome the fitness concerns from his disciplinary history and criminal history. Instead, he continued to argue with the prior determinations, and demonstrated a lack of candor and deflection of responsibility to others in so doing.

## CONCLUSIONS OF LAW

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

68. As the applicant for licensure, Petitioner bears the burden at hearing of going forward initially with proof of his qualifications, and he carries the ultimate burden of persuasion as to his entitlement to the license for which he has applied. *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932, 934 (Fla. 1996).

69. The Board specified two reasons for denying Petitioner's application: (1) The Board's permanent revocation of Petitioner's RN license for violations of Florida law, grounds for denying the application pursuant to section 456.072(1)(f); and (2) Petitioner's nolo plea and conviction for felony aggravated assault with a deadly weapon, found to be a crime related to the practice or ability to practice nursing, grounds for denying the application pursuant to sections 456.072(1)(c) and 464.018(1)(c). The Board bears the burden of proving that Petitioner violated the specified statutes, which

establish grounds to deny the application as a regulatory measure based on the applicant's unfitness for licensure. *Osborne Stern*, 670 So. 2d at 934.

70. Pursuant to section 120.57(1)(k), the DOAH administrative hearing is *de novo*. Findings of fact made by the presiding judge must be based solely on evidence admitted during the hearing and matters officially recognized. § 120.57(1)(j), Fla. Stat. The only exceptions are for matters deemed admitted pursuant to Florida Rule of Civil Procedure 1.360(a), and facts to which the parties have stipulated. *See Delgado v. Ag. for Health Care Admin.*, 237 So. 3d 432, 437 (Fla. 1st DCA 2018).

71. The standard of proof, both with regard to Petitioner's burden to prove entitlement to the license for which he has applied and with regard to Respondent's burden to prove the specific violations relied on to deny the application, is by a preponderance of the evidence. *Fla. Dep't of Child. & Fams. v. Davis Fam. Day Care Home*, 160 So. 3d 854, 857 (Fla. 2015). The standard of proof as to the equitable estoppel claim raised by Petitioner's counsel during the hearing is the clear and convincing evidence standard. *Hoffman v. Dep't of Mgmt. Servs., Div. of Retirement*, 964 So. 2d 163, 166 (Fla. 1st DCA 2007).

72. As the agency responsible for regulating the profession of nursing under the state's police power, the Board has particularly broad discretion to determine the fitness of applicants who are seeking to engage in an occupation, the conduct of which is a privilege rather than a right, and which is potentially injurious to the public welfare. *Osborne Stern*, 670 So. 2d at 934; *Astral Liquors, Inc. v. Dep't of Bus. Reg.*, 463 So. 2d 1130, 1132 (Fla. 1985) ("[D]iscretionary authority is particularly necessary where an agency regulates occupations which are practiced by privilege rather than by right and which are potentially injurious to the public welfare.") (internal quotations omitted).

73. Petitioner failed to meet his initial burden of going forward with evidence to prove he qualifies for licensure for which he has applied. He did not even offer his completed application in evidence in his case-in-chief.

74. The Notice of Intent to Deny characterized Petitioner's 2020 application as an application for multistate RN licensure by endorsement. That characterization is consistent with Petitioner's designation of Florida as his "home state" in his application, a designation that must be made if the applicant is requesting a multistate license. Petitioner did not dispute that characterization of his application in his hearing request or during the hearing. Petitioner's 2001 felony conviction disqualifies him from obtaining a multistate RN license. *See* § 464.0095, Article III (3)(g), Fla. Stat. (providing that in order to obtain a multistate license in the applicant's home state, the applicant must not have been convicted of "a felony offense" under state or federal criminal law).

75. The Board proved that Petitioner had his license to practice nursing revoked by the licensing authority for violations under Florida law. Pursuant to section 456.072(1)(f) and (2), the 2014 Final Order revoking Petitioner's RN license provides grounds to deny Petitioner's 2020 application for multistate RN licensure by endorsement.

76. It is by no means clear that the permanent revocation of Petitioner's RN license should not stand as a bar to Petitioner's attempted application for another RN license in Florida. *See, e.g., Longenecker v. Turlington*, 464 So. 2d 1249 (Fla. 1st DCA 1985). In *Longenecker*, a teacher's application for a teaching certificate was denied by the Department of Education because the teacher's original teaching certificate had been permanently revoked. The court affirmed. After quoting the statutory authority to suspend, temporarily revoke, or permanently revoke a teacher's teaching certificate, the court analyzed the teacher's request for relief as follows:

> In the instant appeal, without challenging the statute itself, appellant urges us to adopt a beneficient interpretation of the statutory term "permanent" in order that the disciplinary measure exacted against him might endure for a period of time something short of eternity. Were we inclined to accord appellant such judicial clemency, our benevolence would nonetheless be checked by the specific legislative scheme embodied in section 231.28 [now section 1012.795, Florida Statutes], clearly evincing the legislature's intent that "permanent" means "permanent."

*Longenecker*, 464 So. 2d at 1250. The court concluded that since "'permanent' means 'permanent'" the teacher's right to reinstatement of, or reapplication for, a teaching certificate was foreclosed. *Id.* So, too, in *Fernandez I* and *Fernandez II*, the court acknowledged the statutory authority of the Board to impose the penalty of permanent revocation of Mr. Fernandez's RN license, as the Board ultimately did in the 2014 Final Order, pursuant to section 456.072(2)(b), Florida Statutes (2008) (the law in effect at the time of the underlying violations). Section 456.072(2)(b) remains unchanged, still authorizing "permanent revocation."

77. If the 2014 Final Order does not stand as a bar to Petitioner's re-application for an RN license, then without question section 456.072(1)(f) provides grounds for denying Petitioner's application. Section 456.072(1)(f) is triggered by action against a license to practice any regulated profession "by the licensing authority of any jurisdiction"[9] for a violation that would constitute a violation under Florida law. The permanent revocation of Petitioner's RN license by the Board for violations of Florida law plainly falls within the ambit of this statute, and Petitioner has not suggested otherwise.

[9] In contrast, section 464.018(1)(b), not cited by the Board in the Notice of Intent to Deny, applies only to "[h]aving 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*." (emphasis added). The different phrase chosen in section 456.072(1)(b)—"any jurisdiction"—must be interpreted differently. Florida is certainly "any jurisdiction."

It would be an absurd interpretation of the law to conclude that the Board is somehow precluded from denying Petitioner's 2020 license application based on the permanent revocation of Petitioner's RN license in 2014 for violations of Florida law.

78. Of particular significance in the 2014 Final Order is the first reason given by the Board for permanently revoking Petitioner's RN license: "The danger to the public represented by Respondent's actions." Final Order at 3. The permanent revocation of Petitioner's license, and the reasons for it, stand as compelling evidence of his unfitness to be licensed to practice nursing in Florida. If Petitioner is not barred altogether from submitting a new application, then the Board must be afforded the discretion to determine in 2021 whether Petitioner can overcome that by proving that he is no longer unfit to be licensed.

79. On this point, the record is devoid of any evidence to prove that Petitioner has regained fitness to be licensed as an RN, after the Board found that his license had to be permanently revoked because his actions represented a danger to the public in the 2014 Final Order. Instead, it is apparent from Petitioner's testimony that Petitioner has not accepted the findings in the 2014 Final Order, even though he is bound by them. He did not attempt to prove he is no longer a danger to the public; instead, he argued with the factual premises of the 2014 Final Order. And he contradicted himself in retelling what happened, displaying a lack of candor.

80. The Board also proved that Petitioner's nolo plea and conviction for felony aggravated assault with a deadly weapon was for a crime related to the practice of, or the ability to practice, nursing, which provides separate grounds to deny his application for multistate RN licensure by endorsement, pursuant to section 456.072(1)(c).[10]

[10] Section 464.018(1)(c), also cited by the Board, contains language similar to section 456.072(1)(c), with one notable difference: section 464.018(1)(c) requires that the crime be *directly* related to the practice of nursing or the ability to practice nursing. Section 456.072(1)(c) does not add the word "directly."

81. The Board's expert reasonably opined that evidence[11] of the circumstances of the road rage incident that led to the nolo plea and conviction were disturbing, raising serious concerns about Petitioner's character and judgment. His actions were in stark contrast to the attributes needed to practice nursing: level-headed, critical thinking, and never acting off emotion.

82. The statutory provisions addressing crimes related to the practice of or the ability to practice a profession are not to be interpreted as limited to acts specifically listed in the statutory definition of the practice of a profession. *Doll v. Dep't of Health*, 969 So. 2d 1103 (Fla. 1st DCA 2007). In *Doll*, the court held that a chiropractic physician's crime of conspiracy to defraud a health beneficiary program was related to the practice of, or the ability to practice, his profession. In deciding that question, the court held that its inquiry was not limited to the technical ability of Doll in his practice in an office setting. "If the crime relates to or presents a danger to public welfare, as it did, that in itself would be grounds to impose discipline." *Id.* at 1105. The court added that Doll's crime demonstrated "a lack of honesty, integrity, and judgment… . That conduct breached the trust and confidence placed in Doll by his licensure[.]" *Id.* As further support for its interpretation, the court cataloged appellate cases similarly applying the same law, as follows:

> 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 doctor's license after the doctor was convicted of solicitation to commit first-degree murder. 501 So. 2d 740 (Fla. 3d DCA 1987).

[11] The eyewitness police officer's sworn statement of his personal observations would be admissible over a hearsay objection in a civil action in Florida, pursuant to the exception to the hearsay prohibition in section 90.803(8), Florida Statutes. Police reports/statements of matters observed by the officers are admissible under that exception, except in criminal cases. Therefore, the police report/affidavit may be considered as substantive evidence of the truth of the matters asserted.

> The Fifth District Court of Appeal has held that although an accountant's fraudulent acts involving gambling did not relate to his technical ability to practice public accounting, the acts did justify revocation of the accountant's license for being convicted of a crime that directly relates to the practice of public accounting. *Ashe v. Dep't of Prof'l Regulation, 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.

*Doll*, 969 So. 2d at 1106.

83. As in *Doll*, Petitioner's crime stands as evidence of his lack of integrity and judgment, as well as his inability to tamp down his anger or resist an emotional response in the heat of anger.[12] As in *Rush*, 448 So. 2d at 27, Petitioner's conduct "shows a lack of honesty, integrity, and judgment, and an unwillingness to abide by the Laws of the State of Florida[.]"

84. As further support for concluding Petitioner's crime must be considered related to the practice of or ability to practice nursing, the Legislature has designated the crime as a disqualifying offense for nurses employed in virtually all health care settings, including the home health agency setting where Petitioner was working. Petitioner would not be permitted to work as a nurse in such a setting without first obtaining an

[12] Some of these same attributes were on display in 2009, when Petitioner once again exercised poor judgment, driven by a rush of emotional response, as he admitted in his self-explanation submitted to the Board with his 2020 application. He claimed his judgment was so clouded that he was not even aware that RM was not his patient.

exemption from disqualification by providing clear and convincing evidence to the Board that he is rehabilitated. Petitioner presented no evidence that he obtained such an exemption from disqualification from the Board.

85. The belated attempt of Petitioner's counsel to assert the "defense" of estoppel fell flat, due to a complete absence of evidentiary predicate. As such, it is unnecessary to dwell on the legal analysis.[13] Petitioner failed to prove that the Board should be estopped from raising his road rage crime as a basis for denying his application.

86. The Board met its burden to prove the specific statutory violations identified in the Notice of Intent to Deny, as proof of Petitioner's lack of fitness for licensure.

87. Petitioner failed to meet his ultimate burden of persuasion that he is entitled to multistate RN licensure by endorsement. In this regard, the Florida Supreme Court emphasized that "while the burden of producing evidence may shift between the parties in an application dispute proceeding, the burden of persuasion remains upon the applicant to prove [his] entitlement to the license. … The denial … is not a sanction for the applicant's violation of the statute, but rather the application of a regulatory measure." *Osborne Stern*, 670 So. 2d at 934 (footnote omitted).

88. In *Osborne Stern*, the Court referred to its opinion in *Florida Board of Bar Examiners re R.B.R.*, 609 So. 2d 1302 (Fla. 1992), as illustrating the difference in character between proceedings for licensure as compared to those for suspension or revocation. The Court explained:

> In *R.B.R.*, we concluded
>
> > that the Board's findings are supported by competent and substantial evidence and that such findings in the aggregate are sufficient to justify nonadmission to the Bar. Although R.B.R. presented evidence of his success in

[13] Respondent's PRO set forth the legal analysis of estoppel, and the undersigned agrees with that analysis, but it was not shown to be even arguably applicable here.

> law school and letters of recommendation from his probation officer, law professors, and employers, the Board found this evidence to be insufficient to overcome the seriousness of R.B.R.'s misconduct and his continuing lack of candor. We agree.

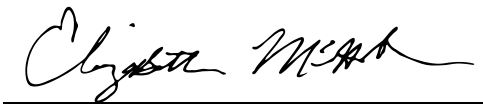
*Osborne Stern*, 670 So. 2d at 935 n. 4 (quoting *R.B.R.*, 609 So. 2d at 1304).

89. The same conclusion applies here, to an even greater extent. Unlike R.B.R., Petitioner made no effort to present evidence to make a showing sufficient to overcome the Board's evidence of specific violations that called into question Petitioner's fitness for licensure. Similar to R.B.R., though, Petitioner's attempt to explain his past violations demonstrated a lack of candor that only added to the fitness concerns.

## RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Nursing issue a final order denying the application of Manuel Fernandez for multistate registered nurse licensure by endorsement.

DONE AND ENTERED this 9th day of July, 2021, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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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.