

BEFORE THE KANSAS STATE BOARD OF NURSING

IN THE MATTER OF:)
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)
GREGORY CHRISTENBERRY)
LIC. NO. 23-018665-082)

Case No. 92-089-8

OCT 22 1993 520

INITIAL ORDER

NOW ON THIS 19th day of October, the above-captioned matter comes on for hearing before Ms. Helen R. Rice, Hearing Officer designated by the Board of Nursing, on the Petitioner's request for hearing. The Petitioner, Gregory Christenberry, license number 23-018665-082, appears in person and pro se. The Respondent, the Kansas State Board of Nursing appears through its disciplinary counsel, Assistant Attorney General Mark S. Braun.

On or about April 26, 1993, the Petitioner filed an application with the Kansas State Board of Nursing for reinstatement of his license to practice in Kansas as a Licensed Practical Nurse. By Summary Order issued September 3, 1993, that application for reinstatement was denied. Petitioner requested a hearing pursuant to the Kansas Administrative Procedures Act (KAPA) and as advised in the Summary Order. This proceeding is the hearing requested subsequent to the Summary Order.

The Hearing Officer inquires if either side had any preliminary matters. Respondent states his request to amend Finding of Fact No. 1 in the Summary Order to change the date from May, 21, 1992 to May 21, 1991, to properly reflect when Petitioner entered the Kansas State Nurses' Association's Peer Assistance

Program. Petitioner states no objection. The Hearing Officer allows the amendment.

The matter proceeds to hearing. The Petitioner presents his case, offers exhibits 1-4 and rests. Exhibit No. 1 is a copy of the conditions of probation and release of probation of the Petitioner in Shawnee County District Court case number 91-CR-1992. Exhibit No. 2 is Journal Entry of the conviction and sentencing of the Petitioner for possession of marijuana in Shawnee County District Court case number 92-CR-2175. Exhibit No. 3 is one page of a Discharge Summary from the Shawnee County Mental Health Center. Exhibit No. 4 is a packet containing three letters: the first from a Mr. Goody Ari at the Shawnee County Department of Corrections dated October 13, 1993; the second from Ruth Johnson, R.N., at Meadowbrook Manor; and the third from James McMillan, Court Services Officer of the Third Judicial District, Petitioner's probation officer. Respondent states no objections to the admission to the exhibits, except with respect to Exhibit No. 3, Respondent requests the Hearing Officer to consider that the exhibit is only one page of a multi-page document. With that, the Petitioner's exhibits are admitted.

Respondent then cross-examines the Petitioner and offers Respondent's exhibits No. 1 and No. 2. Exhibit No. 1 is a handwritten letter from the Petitioner to whom it may concern, accompanied by a handwritten note stating it was received by the Board on June 1, 1993. Exhibit No. 2 is a copy of a letter to Petitioner from Ms. Diane Glynn, Board Practice Specialist, dated

May 28, 1993. Petitioner states no objections to the admission of the Respondent's exhibits and they are admitted.

The Hearing Officer also inquires of the Petitioner.

Both sides are given the opportunity to make any closing statements. Petitioner declines to make one. The Respondent makes a closing statement. The Hearing Officer recesses the hearing and excuses the parties for 15 minutes for deliberation. The hearing resumes and, based on the evidence and testimony presented, the Hearing Officer makes the following Findings of Fact, Conclusions of Law and issues a ruling in the case.

FINDINGS OF FACT

1. Petitioner, Gregory Christenberry, has previously been licensed to practice as a license practical nurse (L.P.N.) in the State of Kansas.

2. Petitioner submitted an application for reinstatement on or about April 26, 1993.

3. The reinstatement application was filled out, signed and sworn by the Petitioner.

4. Respondent intentionally omitted information about two criminal convictions, other than traffic offenses, from question 12 of the reinstatement application. The two convictions were a battery conviction in 1991, (Shawnee County District Court case number 91-CR-1992), and a possession of marijuana conviction in 1992, (Shawnee County District Court case number 92-CR-2175.)

5. Petitioner successfully completed probation in the 1991 case, but is still on probation for the 1992 case.

6. Petitioner admitted to dishonesty and deceit in filling out the application as well as lying to a law enforcement official in concealing his identity from that official. Sufficient evidence has been presented to show rehabilitation from this criminal and deceitful activity is not complete.

7. Petitioner admitted to a long standing addiction to, and abuse of, a variety of substances.

8. Petitioner admits he is working to recovery of addiction, but he has not yet reached that point.

CONCLUSIONS OF LAW

1. The Board and, by designation this Hearing Officer, has jurisdiction over Petitioner ^{NR} and ~~the~~ because he has applied for reinstatement of his license to practice as a licensed practical nurse in Kansas. Petitioner sought this hearing pursuant to the Kansas Administrative Procedures Act (KAPA, K.S.A. 77-501 et seq.) once the Summary Order was issued. Further, under the Kansas Nurse Practice Act, K.S.A. 65-1113 et seq., specifically K.S.A. 65-1120(b), hearings are to be conducted pursuant to KAPA.

2. Petitioner timely filed his request upon receipt of the Summary Order.

3. Petitioner received proper notice of this hearing. The notice was mailed to Petitioner's at his last known address on September 29, 1993. Today's hearing date is October 19, 1993. More than 10 days have elapsed since notice was served.

4. Petitioner is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing, in violation

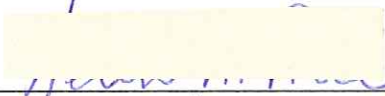
of the Nurse Practice Act, specifically K.S.A. 65-1120(a)(1). Dishonesty cannot be tolerated in nursing where accurate and honest assessments must be made and documented.

5. Petitioner is guilty of a misdemeanor involving an illegal drug offense, and after investigation, it is clear Petitioner has not sufficiently rehabilitated himself to warrant the public trust, in violation of K.S.A. 65-1120(a)(2).

6. Petitioner's current alcohol/drug addiction renders him unable to practice with safety and skill, in violation of K.S.A. 65-1120(a)(4).

IT IS THEREFORE ORDERED that Petitioner's application for reinstatement to practice as a licensed practical nurse, (L.P.N.), is hereby denied.

IT IS SO ORDERED

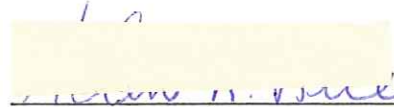


Helen R. Rice
Designated Hearing Officer
Kansas State Board of Nursing

NOTICE REGARDING RELIEF FROM ORDER

This is an Initial Order. The parties to whom this Initial Order is issued may file a petition for review with the agency head within fifteen (15) days after service of this order. The petition for review must state its basis. Unless a later date is stated in an initial order, or the order is reviewed, an initial order shall become a final order without further notice or proceedings thirty (30) days after the attached Certificate of Service.

IT IS SO ORDERED this 21st day of October, 1993.


Helen R. Rice
Designated Hearing Officer

CERTIFICATE OF SERVICE

I certify that on the 21st day of October, 1993, a copy of the foregoing **INITIAL ORDER** was served by depositing the same in the United States Mail, first-class postage prepaid, addressed to the following:

Gregory Christenberry
628 S.W. Tyler #2
Topeka, Ks 66603

Mark S. Braun
Disciplinary Counsel
Assistant Attorney General
Kansas State Board of Nursing
900 S.W. Jackson Street 551-S
Topeka, Ks 66612-1230

BEFORE THE KANSAS STATE BOARD OF NURSING
Landon State Office Building
900 SW Jackson, Suite 551-S
Topeka, Kansas 66612-1230
(913) 296-8401

IN THE MATTER OF

GREGORY CHRISTENBERRY,

Case No. 97-0210-5

MEMORANDUM DECISION AND INITIAL ORDER

NOW ON this 18th day of July, 1997, comes on for the decision the Reinstatement Application filed by the Respondent, Gregory Christenberry.

After reviewing the evidence, the agency file and hearing the statements and arguments of the Respondent and counsel for the Board, and after being otherwise well and duly advised in the premises, the Hearing Officer finds and orders as follows:

1. Respondent, Gregory Christenberry, filed a Reinstatement Application with the Board on April 17, 1997. This is his second Reinstatement Application.
2. The Respondent has received proper Notice of Hearing upon the Reinstatement Application and has waived counsel.
3. The Respondent first applied for an LPN license in 1988 and was licensed at that time. That license was not timely renewed and Respondent filed a Reinstatement Application with the Board in 1992. Reinstatement of that license was denied by the Board's Summary Order dated September 3, 1993. That Order found, in part, that the Respondent was addicted to the use of habit forming drugs and habitually intemperate in the use of alcohol. The Respondent requested an administrative hearing in connection with the Summary Order. Following the administrative hearing, the Board's Hearing Officer issued an Initial Order dated October 22, 1993 which found the Respondent to have been guilty of fraud or deceit in procuring or attempting to procure a license; to have been found guilty of a misdemeanor involving an illegal drug offense and not being

sufficiently rehabilitated to warrant the public trust; and being unable to practice as an LPN with safety and skill due to his current alcohol/drug addiction. His application for reinstatement was denied

4. In this Reinstatement Application and in his testimony at the hearing, the Respondent indicates that he has not worked as a nurse since the lapse of his license. He has worked as a CNA for various employers and is currently working as such at Terrace Garden in Wichita, Kansas. He has not had any refresher training nor taken any continuing nursing education classes. His license initially lapsed (was not renewed) due to his not completing sufficient continuing education courses.

5. The Respondent has an extensive criminal history. He had been convicted of robbery in 1985, prior to his initial licensure. He was convicted of battery in 1991 and convicted of possession of marijuana in 1992. Petitioner's exhibit 1, which was a letter from Respondent submitted with this Reinstatement Application, recites other convictions, which were not even a part of the record in the prior proceedings: convictions for two counts of possession of hallucinogenic drugs in 1976; a conviction of giving a worthless check in 1985; and a conviction of obstruction of legal process or official duty in 1991. Subsequent to the hearing in the previous reinstatement case, he has had two DUI convictions (in 1992 and 1995) and a conviction for harassment by telephone in 1994. Apparently, he has successfully completed all sentences and probationary programs in connection with all of these offenses. He has been off of probation now for about one year, his longest period of being off of probation since 1991.

6. The Respondent's testimony is that he has had at least relapse in alcohol use since the last hearing. He has lived in halfway houses on two occasions and currently is in no aftercare other than attending AA and NA meetings three times per week.

7. The Respondent asserts that he has been free from drug and alcohol use for two years.

8. The question to be decided, is whether it is in the public's best interests to have the

Respondent's license reinstated. The purpose of the Kansas Nurse Practice Act, K.S.A. 65-1113, *et. seq.*, is the same as that of the Kansas Healing Arts Act (K.S.A. 65-2801 *et. seq.*) as stated in *Vakas v. Kansas Board of Healing Arts*, 248 Kan. 589, 808 P.2d 1355 (1991), Syl. ¶ 1: "to protect the public 'against unprofessional, improper, unauthorized and unqualified practice ... and from unprofessional conduct by persons licensed to practice under this act.'"

9. There are eight factors, as set forth in *Vakas*, which are to be considered in determining whether a license to practice medicine should be reinstated. These factors are also applicable to the consideration of whether a license to practice professional nursing should be reinstated, and should be considered in this particular case. The factors are (1) the present moral fitness of the applicant; (2) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession; (3) the extent of applicant's rehabilitation; (4) the nature and seriousness of the original misconduct; (5) the conduct subsequent to discipline; (6) the time elapsed since the original discipline; (7) the applicant's character, maturity, and experience at the time of the original revocation; and (8) the applicant's present competence in medical (nursing) skills. *Vakas*, *supra.*, Syl. ¶ 2.

10. The nature and seriousness of the original misconduct is severe. The previous Order of the Board which denied reinstatement found the Respondent to have made misrepresentations on his Reinstatement Application and found him to be unsuitable for licensure due to drug and alcohol addiction.

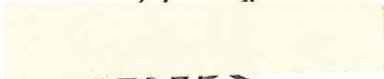
11. The Respondent has admitted that he made false statements on the previous Reinstatement Application. Further, the evidence in this proceeding indicates that the Respondent had a more extensive criminal history than was originally revealed in the prior proceedings. Additionally there have been two criminal convictions subsequent to the previous proceedings. The Respondent's criminal history contains crimes relating to substance abuse (DUI and possession of marijuana), crimes against persons (battery and harassment by telephone) and theft (robbery).

12. The Respondent's present competence in professional nursing skills due to the length of his absence from nursing employment and lack of recent education is suspect. There is no evidence produced that would indicate that the Respondent is presently competent to practice nursing.

13. The Respondent, apparently, from the evidence produced, is now off probation and has had no criminal convictions within the last two years. It cannot be said, however, when considering his criminal and substance abuse history as a whole, that a sufficient length of time has elapsed to assure his present moral fitness. He has had some periods of time between various episodes of illegal behavior, only to relapse again. Evidence of sufficient rehabilitation is not persuasive.

14. In light of all of the aforementioned findings and conclusions, a reinstatement of the Respondent's license is not considered to be in the public interest.

IT IS THEREFORE ORDERED that the Respondent's application for reinstatement be denied.


TERRY E. BECK, Hearing Officer

Dated: July 18, 1997

NOTICE REGARDING RELIEF FROM THIS ORDER
STATEMENT OF APPEAL RIGHTS

This is an Initial Order. The parties to whom this Initial Order is issued may file a petition for review with the Agency Head within fifteen (15) days after service of this order. The petition for review must state the specific grounds upon which relief is requested. Unless a later date is stated within the Initial Order, a stay is granted, or the order is reviewed, an Initial Order shall become a final order without further notice or proceedings thirty (30) days after the date of service as indicated by the attached certificate of service.


CERTIFICATE OF SERVICE

This is to certify that on the 21st day of July, 1997, I deposited a true and correct copy of the Initial Order in the United States Mail, first class postage prepaid to the following:

Gregory Christenberry
1643 S St. Francis
Wichita, Kansas 67211

and by hand delivering a copy to

Mark S. Braun, Disciplinary Counsel
Assistant Attorney General
Kansas State Board of Nursing
Landon State Office Building
900 SW Jackson, Suite 551-S
Topeka, Kansas 66612-1230



Diane M. Glynn
Practice Specialist