

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION NINE**

CAROLYN LANCLOS,)	
)	
Petitioner,)	
)	
v.)	Case No. 10 C 1575
)	
KANSAS STATE BOARD OF NURSING,)	
)	
Respondent.)	

MEMORANDUM DECISION AND ORDER

This matter comes before the Court on Petitioner, Carolyn Lanclos's, Petition for Judicial Review. After careful consideration of the law, the facts, and the arguments of the parties, the Court finds and concludes as follows.

FINDINGS OF FACT

1. On February 11, 2008, Petitioner filed an endorsement application with the Kansas State Board of Nursing ("the Board").
2. Petitioner answered "No" to the following questions on the application: Have you ever been convicted of a misdemeanor? Have you ever been convicted of a felony?
3. The Board granted Petitioner a license to practice nursing.
4. Some time thereafter, the Board received information that Petitioner had criminal convictions that she did not disclose.
5. On June 2, 1977, Petitioner was convicted of petty theft, a misdemeanor, in the Municipal Court of Overland Park, Kansas.
6. On March 14, 1979, Petitioner pled guilty to first-degree robbery, a felony, in the Circuit Court of Jackson County, Missouri.

7. On July 8, 1994, Petitioner was convicted of driving under the influence, a misdemeanor, in the Municipal Court of Lawrence, Kansas.
8. On January 12, 1995, Petitioner pled no contest to possession of cocaine, a drug-felony, in the District Court of Douglas County, Kansas.
9. On November 26, 1997, Petitioner was convicted of petty theft, a misdemeanor, in the Municipal Court of Lawrence, Kansas.
10. The Board's investigative committee found reasonable grounds to believe Petitioner violated the Kansas Nurse Practice Act (KNPA).
11. The Board found violations of the following provisions: K.S.A. 65-1120(a)(1), (a)(2), & (a)(4).
12. On November 24, 2009, the Board filed its petition.
13. In response, Petitioner admitted that the convictions were correct, but claimed that at the time she applied for her license, she believed the convictions to have been expunged.
14. At a hearing on the petition, Petitioner testified that she had requested a criminal background check from the Kansas City, Missouri, Police Department that showed no convictions. Thus, she did not report any Missouri convictions.
15. Petitioner further testified that she thought the attorney she hired in 2002 had gotten all of her Kansas convictions expunged. When later advised to the contrary, Petitioner filed motions to expunge all of her criminal convictions.
16. Petitioner's petty theft conviction was expunged on August 6, 2009.
17. Petitioner's motion to expunge her felony drug conviction was scheduled for hearing in the Douglas County, Kansas, District Court in August, 2008.

18. Petitioner's motion to expunge her second petty theft conviction was filed on July 6, 2009.
19. Petitioner completed an intensive 30-day drug rehabilitation program and a six-month follow-up program in 1999.
20. On February 11, 2010, the Administrative Hearing Officer denied the Board's petition to revoke Petitioner's license, finding that she had not violated the provisions of K.S.A. 65-1120 as alleged.
21. The Attorney General's office filed for review with the Board, who granted the request and reversed the decision of the Administrative Hearing Officer.
22. The Board ultimately found that Petitioner violated K.S.A. 65-1120(a)(1) & (2), and revoked Petitioner's license.

STANDARD OF REVIEW

The Court's scope of review is strictly limited by the Kansas Judicial Review Act ("KJRA"), K.S.A. 77-601 *et seq.* The Court has no authority to substitute its judgment for that of an administrative tribunal on questions of fact. *See Lacy v. Kansas Dental Bd.*, 274 Kan. 1031, 1040, 58 P.3d 668 (2002). In determining if there is substantial evidence to support the conclusion of an administrative tribunal, the Court must consider the record as a whole, including evidence that both supports and detracts from the administrative tribunal's findings. *See Herrera-Gallegos v. H & H Delivery Service, Inc.*, 42 Kan. App. 2d 360, 361-62, 212 P.3d 239 (2009).

"Substantial evidence is such legal and relevant evidence as a reasonable person might accept as being sufficient to support a conclusion." *Blue Cross & Blue Shield of Kansas, Inc. v.*

Praeger, 276 Kan. 232, 263, 75 P.3d 226 (2003). Although it is appropriate to consider an administrative agency's interpretation of a statute or regulation, it is ultimately the responsibility of the Court to decide questions of law. See *Fieser v. State Bd. of Healing Arts*, 281 Kan. 268, 270-71, 130 P.3d 555 (2006).

DISCUSSION AND CONCLUSIONS OF LAW

K.S.A. 65-1120(a)(1)

The Board found that Petitioner had violated K.S.A. 65-1120(a)(1) when she answered "No" to the criminal conviction questions on the application. The conclusion rests on the definitions of Fraud and Deceit. Fraud is "an untrue statement of material fact, known to be untrue by the person making it, made with the intent to deceive or recklessly made with a disregard for its truthfulness, where another party justifiably relies upon the statement and acts to his injury." *Slaymaker v. Westgate State Bank*, 241 Kan. 525, 531, 739 P.2d 444 (1987). Deceit is "[a] false statement of fact made by a person knowingly or recklessly (i.e., not caring whether it is true or false) with the intent that someone else will act upon it." Blacks Law Dictionary, 9th ed. 2009.

The Board questioned Petitioner's credibility. Although testifying that she thought there would be no record of her Missouri robbery conviction, because she was allegedly told this, she made a point to search her Missouri records for the conviction. She also testified that she believed it to have been expunged, despite her belief that there would be no record of the conviction. The Board viewed these statements as inconsistent.

Furthermore, though she hired an attorney in 2002 to facilitate having her convictions expunged, she never received confirmation of any of her convictions being expunged, and the evidence does not show that she consulted the attorney before filing her application. The Board

found that she merely assumed that her convictions were expunged, and that she could have done more to verify the status of the convictions. The Board found that the record check with the police department was an act of risk-assessment for answering "No" on the application. Based upon this finding, Petitioner was indifferent as to the truth of her answer.

The Court finds that the Board's finding is supported by substantial evidence. With regard to the Missouri conviction, Petitioner's inconsistent testimony calls into question what she actually knew at the time of her application and her motives regarding the actions she allegedly took concerning her Missouri convictions. This Court does not re-weigh the evidence. Instead, this Court looks to whether substantial evidence in the record supports the Board's conclusion. Here, it does.

The Board's findings with regard to the Kansas convictions are supported by substantial evidence. Petitioner had several convictions in Kansas. She had hired an attorney in 2002 to take the necessary steps to have her convictions expunged. Yet, there is no evidence that Petitioner consulted this attorney in preparing her application, no evidence that she ever received confirmation that her Kansas convictions had been expunged, and no evidence that she performed a criminal records check in Kansas other than checking her drug conviction on the court computer. There is little evidence that she made any effort to verify the status of her Kansas convictions. Therefore, substantial evidence supports the Board's finding that she was indifferent to the truth of her answers to whether she had been convicted of either a misdemeanor or a felony.

K.S.A. 65-1120(a)(2)

This issue rests largely upon an interpretation of the clause prohibiting the grant of a license to "a person with a felony conviction for a crime against persons as specified in article 34

of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.” K.S.A. 65-1120(a)(2). Despite Petitioner’s claim that the meaning of this statute is clear and unambiguous, the Court finds that it is so worded that it could carry more than Petitioner’s desired meaning—specifically, the meaning sought by the Board.

Petitioner is correct that courts should give words their ordinary meanings when construing statutes, but “statutes and regulations should never be construed to yield unreasonable or absurd results.” *State v. Le*, 260 Kan. 845, 850, 926 P.2d 638 (1996). The Court finds that accepting the interpretation advanced by Petitioner would lead to an absurd result. The goal behind barring licensure to those convicted of person felonies is the ensured protection of people. The legislature decided that those who commit felonies against persons should not be licensed by the state to perform a job that requires extensive personal interaction. It is counter to the goal of the statute to limit such convictions to only those that occurred in Kansas.

Consider the scenario where a person commits a person felony in Kansas City, Missouri. Assume that Missouri has a similar statute, and that both Missouri and Kansas construe their statutes to be limited to convictions within their states. The Missouri felon moves to Kansas City, Kansas and applies for a nursing license. If the statute is construed to be limited to in-state person felony convictions, the goal of the statute to protect Kansans is entirely hollow. This is an enormous loophole and, thus, an absurd result.

By contrast, the interpretation advanced by the Board supports the purpose of the statute. Reading the word “specified” to be the same as “defined” or “set out” supports the Board’s conclusion. In this way, it makes article 34, chapter 21 a ruler with which to measure out of state crimes. If an out of state crime meets the elements of a person felony in Kansas, the statute serves to bar licensure. This is a reasonable reading of the statute, and is supported by Attorney

General Opinion No. 97-88. The Court finds that K.S.A. 65-1120(a)(2) is properly interpreted to mean that any felony conviction in any state that meets the elements of a Kansas person-felony is a conviction that serves to bar licensure in Kansas.

The next step is to determine whether Petitioner's Missouri robbery conviction meets the elements of a person-felony in Kansas. Petitioner was convicted of first-degree robbery in Missouri on March 14, 1979. Missouri Revised Statutes § 569.020 lists the elements of robbery in the first degree:

1. A person commits the crime of robbery in the first degree when he forcibly steals property and in the course thereof he, or another participant in the crime,
 - (1) Causes serious physical injury to any person; or
 - (2) Is armed with a deadly weapon; or
 - (3) Uses or threatens the immediate use of a dangerous instrument against any person; or
 - (4) Displays or threatens the use of what appears to be a deadly weapon or instrument.
2. Robbery in the first degree is a class A felony.

At the time Petitioner applied for her license, Robbery was defined in K.S.A. 21-3426 and K.S.A. 21-3427. "Robbery is the taking of property from the person or presence of another by force or by threat of bodily harm to any person." K.S.A. 21-3426. "Aggravated robbery is a robbery . . . committed by a person who is armed with a dangerous weapon or who inflicts bodily harm upon any person in the course of such a robbery." K.S.A. 21-3427. "Aggravated robbery is a severity level 3, person felony." K.S.A. 21-3427.

Although some of the language is different, the Court finds that the Kansas crime of aggravated robbery wholly encompasses the elements of first degree robbery in Missouri. Missouri defines "dangerous instrument" and "deadly weapon" in Mo. Rev. Stat. § 556.061:

“(9) ‘Dangerous instrument’ means any instrument, article or substance, which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury; (10) ‘Deadly weapon’ means any firearm, loaded or unloaded, or any weapon from which a shot, readily capable of producing death or serious physical injury, may be discharged, or a switchblade knife, dagger, billy, blackjack or metal knuckles.”

“Deadly weapon” is merely a defined sub-group of “dangerous instrument”—the two are not mutually exclusive. *State v. Steffenhagen*, 671 S.W. 2d 344, 346 (Mo. App. E.D. 1984).

“It is elementary that in order to constitute robbery in the first degree, the property must be taken from the person robbed by violence to his person or by putting him in fear.” *State v. Gideon*, 453 S.W. 2d. 938, 940 (Mo. 1970). Fear, “a subjective state,” . . . can be present without any violence to the person.” *Gideon*, 453 S.W. 2d at 940.

Kansas’s crime of aggravated robbery makes no distinction between types of weapons used, instead, uses the phrase “dangerous weapon.” The statute does not define what a dangerous weapon is. However, Kansas appellate courts have read the term broadly to include any object “intended by the user to convince the victim that it is a dangerous weapon and the victim readily believes it is a dangerous weapon.” *State v. Percival*, 32 Kan. App. 2d 82, 91-92, 79 P.3d 211 (2003) (citing *State v. Colbert*, 244 Kan. 422, 425-26, 769 P.2d 1168 (1989)). The key is the victim’s point of view. *Percival*, 32 Kan. App. 2d at 91. Thus, the inquiry is subjective.

In both states, the basic elements are a taking by force or threat of force in circumstances including the use or apparent use of a dangerous object. As the elements are aligned, Petitioner’s conviction for first degree robbery in Missouri serves to bar her ability to become licensed as a nurse in Kansas. There is sufficient evidence to support the Board’s revocation of Petitioner’s license.

Finally, the Board found that Petitioner violated K.S.A. 65-1120(a)(2) in that she had not sufficiently established, following her drug convictions, that she was rehabilitated to warrant the public trust. The Administrative Hearing Officer found that Petitioner had no drug or alcohol abuse convictions since 1995 and that she had worked as a nurse for 10 years without discipline against her license for drug or alcohol problems.

The Board reversed, finding that the Administrative Hearing Officer ignored evidence of Petitioner's drug and alcohol use after 1995 and that the Administrative Hearing Officer was mistaken regarding Petitioner's work history. Evidence and testimony shows Petitioner continued to use drugs and alcohol until she entered rehabilitation in 1999. Although Petitioner admitted evidence from her counselor in the Washington D.C. area rehabilitation clinic that she successfully completed the course, the Board gave the evidence very little weight because it lacked authenticity and because it merely evidenced proof of program completion but did not evidence continued sobriety after Petitioner returned to Kansas.

K.S.A. 65-1120(a)(2) burdens Petitioner to properly establish that she was rehabilitated. Here, she has alleged rehabilitation since 1999. The most concrete evidence tending to show rehabilitation was the note from the drug counselor that purported to indicate successful completion of the program in 1999. However, the Board questioned the authenticity of the note from the drug counselor. The Court must consider any credibility determinations made by the agency. *Herrera-Gallegos*, 42 Kan. App. 2d at 362. The Board further did not credit the note with establishing continued sobriety after 1999. Without more than a statement of sobriety by the Petitioner and the note from the counselor, Petitioner does not meet the burden to establish that she has been rehabilitated and does not satisfy her burden of proving the invalidity of the agency action. See K.S.A. 65-1120(a)(2); K.S.A. 77-621(a)(1).


CONCLUSION

Even with considering evidence that both supports and detracts from the Board's determination, the Court finds that the Board's conclusions are supported by substantial competent evidence. Perhaps most fatal to Petitioner's claim is that due to her having been convicted of what would be deemed a person felony in Kansas, she is not eligible to be a licensed nurse in Kansas pursuant to K.S.A. 65-1120(a)(2). This conclusion is supported by the facts and the law.

It is worth commending Petitioner for her efforts to put her past behind her and move forward with her life. However, the law of Kansas binds the decision of this Court. Therefore, the Court must deny Petitioner's Petition for Judicial Review. This Memorandum Decision and Order shall serve as the final judgment of the Court. No further journal entry is required.

IT IS SO ORDERED.

This 1st day of July, 2011.


Hon. Charles E. Andrews
District Court Judge