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DCC-1980

STATE OF WISCONSIN
BEFORE THE
BOARD OF NURSING

IN THE MATTER OF THE REVOCATION
OR SUSPENSION OF THE LICENSE OF

Janet Fae Brown, T.P.N.
Respondent

FINAL DECISION
AND ORDER

ORDER 0001584

The State of Wisconsin Board of Nursing, having considered the above entitled matter and having reviewed the record and the proposed decision of the Examiner, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, In the Matter of the Disciplinary Proceeding against Janet Fae Brown, T.P.N., Respondent, except that the Board eliminates paragraph three of the Order, which would have required the Respondent submit updated medical reports prior to application or re-instatement of her license. The reason for the variance is that the Board did not believe the medical evaluation is relevant to the Findings of Fact or Conclusions made in the record.

Let a copy of this Order be served on the Respondent by certified mail.

Upon receipt of the Final Decision and Order, Respondent shall submit to the Board of Nursing, Respondent's original license.

Dated this 19th day of Feb, 1980.

BOARD OF NURSING

BY:

Marjorie Lundquist
MARJORIE LUNDQUIST, R.N., CHAIRPERSON

BROWN, Janet Fae, T.P.N.

NURSE

2-19-80

NO RENEWAL FOR 9 MONTHS and SUBMISSION
OF UPDATED MEDICAL REPORT

Description:

Brown knowingly provided false information to the board in applying for a license by stating that she had never before been licensed in Wis., and that she had never been convicted of a crime. The board denied her renewal of license for a nine month period. Also, an updated medical report is to be submitted which states Brown has no health problem before application for reinstatement.

FM 5/18/82

BEFORE THE
STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

PROPOSED DECISION
AND ORDER

JANET FAE BROWN, T.P.N.,

RESPONDENT

This is an administrative action brought by the State of Wisconsin, Department of Regulation and Licensing, Division of Consumer Complaints, the Complainant, against Janet Fae Brown, T.P.N., the Respondent, pursuant to secs. 441.07, 440.035(1) and 227.07, Wis. Stats., and Ch. RL 2, Wis. Adm. Code.

PROCEEDINGS

On or about September 7, 1979, a Complaint (a copy of which is attached hereto as DOCUMENT I and incorporated herein by reference) was filed with Philip A. Feigin, hearing examiner, by Complainant. In said Complaint, Complainant, by its Investigator, John L. Kitslaar III, alleged that Respondent was guilty of fraud in the procuring or renewal of a license within the meaning of sec. 441.07, Wis. Stats.

In addition, a Notice of Hearing (a copy of which is attached hereto as DOCUMENT II and incorporated herein by reference) was filed with said hearing examiner by Complainant on said day. In said Notice of Hearing, Complainant, by its Attorney, Paula Radcliffe Possin, called a hearing (a class 2 proceeding as defined in sec. 227.01(2), Wis. Stats.) on October 5, 1979, on the question of whether the license issued to Respondent pursuant to Ch. 441, Wis. Stats., should be suspended, revoked or limited, or Respondent reprimanded.

Finally, on said date, an Affidavit of Service (a copy of which is attached hereto as DOCUMENT III and incorporated herein by reference) was filed with said hearing examiner by Complainant. In said Affidavit of Service, Complainant's employee, Dennie Petersen, stated that true and accurate copies of said Complaint and Notice of Hearing had been served on Respondent by Certified Mail, Return Receipt Requested, in an envelope properly stamped and addressed to Respondent at 10-A Bayview Place, Superior, Wisconsin 54880.

On September 14, 1979, Complainant received said Certified Mail Receipt, signed by Janet F. Brown, and dated September 11, 1979 (a copy of which is attached hereto as DOCUMENT IV and incorporated herein by reference).

On September 21, 1979, an Answer (a copy of which is attached hereto as DOCUMENT V and incorporated herein by reference), dated September 18, 1979, was filed with Complainant by Respondent, and forwarded to said hearing examiner. In said Answer, Respondent admitted that the Board of Nursing had jurisdiction to take disciplinary action against her upon the facts alleged in said Complaint.

In addition, an Affidavit (a copy of which is attached hereto as DOCUMENT VI and incorporated herein by reference) by Respondent was attached to said Answer. In said Affidavit, Respondent described certain circumstances regarding her actions.

Finally, on said date, a letter (a copy of which is attached hereto as DOCUMENT VII and incorporated by reference) from Joseph A. McDonald, attorney for Respondent, was received by said Investigator for Complainant, and forwarded to said hearing examiner. In said letter, Attorney McDonald stated that he and Respondent did not intend to appear at the scheduled hearing, that Respondent's Answer made an appearance at such a hearing unnecessary, and requested that the matter be considered based on the record to date.

On October 4, 1979, a letter (a copy of which is attached hereto as DOCUMENT VIII and incorporated herein by reference), dated October 1, 1979, was received by said hearing examiner from said Attorney for Complainant. In said letter, Complainant requested that the hearing scheduled for October 5, 1979 be continued until November 2, 1979, and that a prehearing conference be scheduled for October 26, 1979. Attorney for Complainant represented that Attorney McDonald had agreed to the above-described continuance and scheduling.

In addition, an Amended Complaint (a copy of which is attached hereto as DOCUMENT IX and incorporated herein by reference), dated October 3, 1979, was filed by Complainant with said hearing examiner. Attorney for Complainant indicated in her above-described letter that a copy of this Amended Complaint was served upon Respondent. This Amended Complaint differed from the Complaint of September 7, 1979 in that Paragraph 10 was amended to include an allegation that, in her application for licensure dated January 16, 1978 and received by the Wisconsin Division of Nurses on January 26, 1978, Respondent had falsely represented that she had never been convicted of a crime.

On October 4, 1979, the hearing examiner issued a Notice for Continuance and Pre-Hearing Conference (a copy of which is attached hereto as DOCUMENT X and incorporated herein by reference), pursuant to the request of the parties.

On October 12, 1979, the hearing examiner received a letter (a copy of which is attached hereto as DOCUMENT XI and incorporated herein by reference), dated October 10, 1979, from attorney for Respondent, which was accompanied by a Notice of Hearing on Motion, a Motion and an Affidavit (copies of which are attached hereto as DOCUMENTS

XII, XIII and XIV, respectively, and incorporated herein by reference), all dated October 10, 1979.

In said letter, Attorney McDonald noted that he had agreed with Attorney Possin that the above-described Motion could be argued by telephone conference, and that Respondent would be present in Attorney McDonald's office during said conference.

In said Notice of Hearing on Motion, Respondent, by her attorney, called a hearing on Respondent's Motion for October 26, 1979, the date of the aforementioned prehearing conference.

In said Motion, Respondent, by her attorney, moved that the aforementioned Amended Complaint be dismissed in the interests of justice and equity.

In said Affidavit, in support of said Motion, Attorney McDonald stated that the additional allegation contained in the Amended Complaint regarded facts known to Complainant when the original Complaint was drafted. He went on to state that, by her actions in response to the original Complaint, ie. her Answer and Affidavit of September 18, 1979, Respondent would be left in an indefensible position were the Amended Complaint to stand, that Complainant was unfairly attempting to amend its Complaint, and that the Amended Complaint should be dismissed in the interests of justice and fair play and the action decided on the basis of the original Complaint, Answer and Affidavit.

On October 26, 1979, a hearing on the above-described Motion by Respondent was held by means of a telephone conference call between Wayne R. Austin, attorney for Complainant, Joseph A. McDonald, attorney for Respondent, and the hearing examiner. Arguments from both parties were heard, and the hearing examiner took the Motion under advisement.

Concurrently, the prehearing conference scheduled for said day was held, and the parties requested of the hearing examiner that the hearing scheduled for November 2, 1979 be continued until further Order, pending the ruling of the hearing examiner on the aforementioned Motion, and attempts by the parties to arrive at a stipulated settlement of the matter.

As a result, on said day, the hearing examiner issued an Order of Continuance (a copy of which is attached hereto as DOCUMENT XV and incorporated herein by reference) postponing said hearing until further Order.

On October 29, 1979, the hearing examiner issued his Decision (a copy of which is attached hereto as DOCUMENT XVI and incorporated herein by reference) denying the Motion of Respondent. The Decision was based on the findings of the hearing examiner that Complainant was entitled to file an Amended Complaint pursuant to Ch. 227, Wis. Stats., and the Wisconsin Rules of Civil Procedure, that Complainant was not

unfairly attempting to amend its Complaint, and that Respondent would not be left in an indefensible position were the Amended Complaint to stand. However, the hearing examiner stated that he would entertain a motion by Respondent to purge the record of the original Answer and Affidavit by Respondent in the interests of justice and fair play once an Answer to the Amended Complaint was filed.

The above-described Decision was implemented by an Order (a copy of which is attached hereto as DOCUMENT XVII and incorporated by reference) of the hearing examiner, dated October 29, 1979. In said Order, the Motion by Respondent was denied and Respondent was directed to file an Answer to the Amended Complaint within twenty (20) days from the date of service of said Order on Respondent.

On October 31, 1979, an Answer to Amended Complaint (a copy of which is attached hereto as DOCUMENT XVIII and incorporated herein by reference), dated October 30, 1979, was filed by Respondent, by her attorney, with the hearing examiner. In said Answer, Respondent, by her attorney, admitted all the allegations contained in the Amended Complaint filed by Complainant.

On December 10, 1979, the hearing examiner received a letter (a copy of which is attached hereto as DOCUMENT XIX and incorporated herein by reference), dated December 5, 1979, from Attorney Wayne R. Austin. In said letter, a proposed Order was described, and represented as being the result of negotiations between attorneys for Complainant and Respondent, and confirmed as such by Attorney Austin's letter (a copy of which is attached hereto as DOCUMENT XX and incorporated herein by reference), dated November 16, 1979, to Attorney McDonald, and Attorney McDonald's letter (a copy of which is attached hereto as DOCUMENT XXI and incorporated herein by reference), dated November 27, 1979, to Attorney Austin.

On December 27, 1979, the hearing examiner received a Waiver of Formal Hearing (a copy of which is attached hereto as DOCUMENT XXII and incorporated herein by reference), dated December 26, 1979, in which Respondent, by her attorney, waived her right to a formal hearing, impliedly submitting the matter for determination by the hearing examiner based on the record to date.

FINDINGS OF FACT

Sec. 227.09, Wis. Stats., provides a hearing examiner with broad authority to conduct administrative actions such as the matter at hand, and in particular to regulate the course of a hearing and dispose of procedural and similar matters. Sec. 227.031, Wis. Stats., provides that the procedures described by Ch. 227, Wis. Stats., shall be read in conjunction with the procedures described in the Wisconsin Rules of Civil Procedure and other provisions.

The status of the record in this proceeding most closely resembles a request by the parties for a judgment on the pleadings, as is described by Rule 802.06(3), Wisconsin Rules of Civil Procedure, and therefore, a motion for summary judgment, as is described by Rule 802.08(2), Wisconsin Rules of Civil Procedure. As a result, the hearing examiner must render his decision in favor of either Complainant or Respondent if, based on the pleadings, there is no genuine issue as to any material fact, and one party is entitled to prevail as a matter of law.

Pursuant thereto, and by reason of the fact that Respondent, by her attorney, admitted all the allegations contained in Complainant's Amended Complaint, the hearing examiner makes the following findings of fact:

1. JANET FAE BROWN, T.P.N., Respondent, is licensed by the Board of Nursing as a trained practical nurse (license number T 3615, issued on September 1, 1960).
2. Respondent's address is 10-A Bayview Place, Superior, Wisconsin 54880.
3. Respondent attended the Minneapolis Vocational School of Nursing in Minneapolis, Minnesota from February 8, 1947 through December 4, 1947.
4. On approximately June 16, 1948, Respondent was granted a license to practice as a trained practical nurse in Minnesota after successfully passing the State Board Test Pool Examination.
5. On September 1, 1960, Respondent received a license to practice as a trained practical nurse in Wisconsin by endorsement from Minnesota.
6. Respondent practiced as a trained practical nurse in Wisconsin subsequent to her licensure in Wisconsin, having worked in 1967 and 1968 at the Benson Nursing Home in Superior, Wisconsin, and at the Manor House in Madison, Wisconsin in 1970.
7. During the years 1967 through 1973, Respondent had contact with the Wisconsin Division of Nurses and the Board of Nursing in the form of correspondence concerning allegations of mental illness and drug abuse made against her.
8. In January, 1978, Respondent contacted the Wisconsin Division of Nurses for the purpose of applying for a license as a trained practical nurse in Wisconsin, as though she had never been licensed as a trained practical nurse before in this state.
9. On or about January 13, 1978, Respondent knowingly submitted false information to the Wisconsin Division of Nurses in the

process of procuring a license, by advising the Division in a letter (see DOCUMENT I-3) that she had not been previously licensed as a trained practical nurse in the State of Wisconsin.

10. On or about January 16, 1978, Respondent submitted to the Wisconsin Division of Nurses an application for licensure as a trained practical nurse (see DOCUMENT I-4, 5) in which she falsely represented to the Examining Council on Licensed Practical Nurses that she was licensed only in Minnesota, that she had only had nursing experience in Minnesota since graduating from the school of nursing, and that she had never been convicted of a crime, all of which representations are contrary to the facts.

CONCLUSIONS OF LAW

The record discloses that Complainant properly served Respondent with its Amended Complaint, and that an Answer to same was filed. Respondent, by her attorney, has admitted each and every allegation of said Amended Complaint, and has knowingly and willingly waived her right to a hearing. The hearing examiner finds that Respondent has been afforded due process of law as provided by Ch. 227, Wis. Stats.

The hearing examiner must determine if, based on the record, there is no genuine issue as to any material fact, and if either party is entitled to judgment as a matter of law. It is clear that there remains no genuine issue as to any material fact as a result of Respondent's Answer to Amended Complaint.

As to whether either party is entitled to prevail as a matter of law, it must be determined if the facts as established satisfy the requirements of the cause alleged. Complainant alleged that Respondent acted in such a manner as to constitute fraud within the meaning of sec. 441.07, Wis. Stats., and this allegation is contained in Paragraph 11 of the Amended Complaint. Respondent, by her attorney, admitted this allegation in the Answer to Amended Complaint. However, this allegation is a conclusion of law as contrasted to an allegation of material fact, whether or not admitted by Respondent. As such, it remains for the hearing examiner to determine if, as a matter of law, the facts as established constitute fraud within the meaning of sec. 441.07, Wis. Stats., and if Respondent is guilty of such fraud.

Respondent received a license to practice as a trained practical nurse in Wisconsin in 1960. She did so practice her profession during at least 1967, 1968 and 1970 in this state. However, in her letter to the Wisconsin Division of Nurses, Respondent stated she had not been previously licensed in Wisconsin as a trained practical nurse.

On or about January 16, 1978, Respondent submitted an application for licensure as a trained practical nurse in Wisconsin to the

Division of Nurses, and stated therein that she had never been licensed as such in any state except Minnesota, had only practiced in Minnesota, and had never been convicted of a crime. All of these statements were untrue. On this application, immediately above Respondent's signature, appears the following language:

I state, under the penalties for fraudulent writings, Section 946.32, Wis. Statutes, that I am the person who is referred to on this application, that the statements and representations made hereon are in my handwriting and are strictly true in every respect . . .

Based on the presence of this averment, the statement made by Respondent in her letter, the statements and omissions made in her application and the consistent falsehood of such statements and omissions, the hearing examiner must conclude that Respondent intentionally made false statements with knowledge of their falsity, with the intent to deceive the Wisconsin Division of Nurses to her benefit. Absent any qualification of the meaning of fraud as described in sec. 441.07, Wis. Stats., it must be concluded that common law concepts of fraud apply. As a result, the hearing examiner must conclude that Respondent is guilty of fraud in the procuring of a license within the meaning of sec. 441.07, Wis. Stats., thus, subjecting her to revocation, limitation or suspension of her license, denial of her application for renewal of her license, or reprimand, by the Board of Nursing.

PROPOSED ORDER

Attorneys for Complainant and Respondent have negotiated the terms of a proposed Order in resolution of the matter at hand, as contained in DOCUMENTS XIX, XX and XXI. Finding no reason to alter or contradict the terms contained therein, the hearing examiner hereby adopts said draft as his proposed Order, pursuant to sec. 227.09(2), Wis. Stats.

Now, therefore, it is ordered that pursuant to sec. 441.07, Wis. Stats., the license to practice as a trained practical nurse held by Janet Fae Brown (license number T-3615), issued September 1, 1960, shall not be renewed for a period of nine (9) months from the effective date of this Order.

It is further ordered that at the expiration of the aforesaid nine (9) month period, Janet Fae Brown may reapply for reinstatement of her license, and upon such reapplication, her license shall be reinstated on the condition that an updated medical report is submitted by Janet Fae Brown from a physician to be selected by the Board of Nursing and that such report states that Janet Fae Brown has no health

problems, including drug or alcohol dependency, which would prevent her from practicing safely and competently as a trained practical nurse, and that such report shows that Janet Fae Brown is emotionally capable of practicing as a trained practical nurse.

Dated this 3RD day of January, 1980, at Madison, Wisconsin.

Philip A. Feigin

Philip A. Feigin
Hearing Examiner

c/o Office of the Commissioner
of Securities

111 West Wilson Street
Madison, Wisconsin 53703

PAF:dpw