

Mo. Admin. 08-1730 BN (Mo.Admin.Hrg.Comm.), 2010 WL 3257686

Administrative Hearing Commission

State of **Missouri**

MARTA **CALDWELL**, Petitioner

vs.

STATE **BOARD OF NURSING**, Respondent

No. 08-1730 BN

July 9, 2010

DECISION

*1 We grant Marta **Caldwell's** application for licensure as a registered professional **nurse** ("RN") because she has proven that she meets the qualifications for licensure.

Procedure

On October 7, 2008, **Caldwell** filed a complaint appealing the State **Board of Nursing's** ("the **Board**") decision denying her application for licensure. On November 5, 2008, the Board filed an answer. By order dated January 2, 2009, we granted **Caldwell's** motion to file an amended complaint. On January 30, 2009, the Board filed an answer to the amended complaint. On October 22, 2009, we held a hearing on the complaint. Both the Board and **Caldwell** were represented by counsel.¹ The matter became ready for our decision on January 29, 2010, the date the last brief was filed.

Findings of Fact

1. **Caldwell** submitted her application for a license as an RN by examination ("application") to the Board in September 2007. On her application **Caldwell** disclosed that she had been charged with crimes in her past.
2. The Board required additional information from **Caldwell**. The Board mailed notice of its decision to deny **Caldwell's** application on September 15, 2008.
3. **Caldwell** has completed the basic professional curriculum in an accredited **nursing** program. She graduated with an associate's degree in **nursing** from Metropolitan Community College in December 2007.
4. Before entering **nursing** school, **Caldwell** was a bartender, waitress and card dealer.

Criminal Record

5. In 1991, **Caldwell** drove a vehicle under the influence of alcohol twice within a two-week period and was charged with driving while intoxicated ("DWI").
6. On March 13, 1996, **Caldwell** was driving her 3 1/2 year old son. She had consumed some alcohol. She hit another car while forcing her son to stop unbuckling his seat belt, and injured her son. She drove to the boy's father's house where she refused to take a breathalyzer test. **Caldwell** was charged with the crime of driving while intoxicated.

7. As a result of the 1996 incident, **Caldwell** participated in an employee assistance program called Total Concept for three months. The program was three days a week for three hours each night. She successfully completed the program. **Caldwell** was placed on two years' probation.

8. On September 2, 2007, **Caldwell** was at a friend's house where she consumed two margaritas. She drove, swerved while texting, and was stopped by the police for swerving the car. **Caldwell** refused to take the breathalyzer test.

9. On February 27, 2008, in the Circuit Court of Platte County, **Caldwell** pled guilty to DWI as a prior offender. She was sentenced to 14 days in jail and was placed on a work release program.

Current Circumstances

10. **Caldwell** is currently employed at Research Medical Center in Kansas City, **Missouri**.

11. **Caldwell** began working as a **nurse** at Research Medical Center upon her initial hire on January 7, 2008. She took the job of patient care technician when the Board denied her application. **Caldwell** has worked as a patient care technician since that time.

*2 12. As a patient care technician on the ortho/neurological unit floor at the hospital, **Caldwell** administers patient care to promote the physical and emotional health and personal comfort needs of assigned patients.

13. In her work at Research Medical Center, **Caldwell** is dependable, works extra shifts, and accommodates the ortho/neurological unit's needs. **Caldwell** is "reliable and completes all work assignments accurately and in a timely manner."²

14. **Caldwell** is a team player who cheerfully and willingly completes any task within her abilities. She is caring, compassionate, and an asset to the ortho/neurological unit.

15. During her employment at Research Medical Center, **Caldwell** has followed all policies and received many compliments from co-workers, patients and their families.

16. **Caldwell** receives regular and formal performance evaluations at Research Medical Center. All of her evaluations have been positive.

17. **Caldwell** has never been reprimanded, disciplined or punished while working at Research Medical Center.

18. **Caldwell** goes to Alcoholics Anonymous meetings and does not drink alcohol.

19. **Caldwell** has a sober support system and has developed ways to address stress in her life without alcohol.

20. **Caldwell** no longer associates with past drinking friends and is no longer in an abusive relationship with her husband.

Conclusions of Law

We have jurisdiction to hear the complaint.³ The applicant has the burden to show that he or she is entitled to licensure.⁴ We decide the issue that was before the Board,⁵ which is the application. We exercise the same authority that has been granted to the Board.⁶ Therefore, we simply decide the application *de novo*.⁷

I. Objection to Transcript

On October 21, 2009, **Caldwell** filed an objection and motion to strike the Board's transcript designations and summaries. The motion was argued at the hearing. We denied the motion.⁸ We also admitted the transcript into evidence.⁹

II. Cause for Denial

A. Notice of Reason for Denial

When an applicant for licensure files a complaint, the agency's answer provides notice of the grounds for denial of the application.¹⁰ The Board's original answer cites § 335.066:

1. The board may refuse to issue or reinstate any certificate of registration or authority, permit or license required pursuant to chapter 335 for one or any combination of causes stated in subsection 2 of this section or the board may, as a condition to issuing or reinstating any such permit or license, require a person to submit himself or herself for identification, intervention, treatment, or rehabilitation by the impaired **nurse** program as provided in section 335.067. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

***3** 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use or unlawful possession of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 335.011 to 335,096;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to sections 335.011 to 335.096, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 335.011 to 335.096;

* * *

(12) Violation of any professional trust or confidence[.]

The Board's amended answer provides no factual basis for us to find cause for denial. The Board's original answer cites such conduct as pleading guilty to and committing the crime of driving while intoxicated. It cites **Caldwell's** alcohol use. The Board's amended answer cites only the following as reasons to deny **Caldwell's** application:

7. The Board asserts as an affirmative defense that Petitioner fails to state a claim for which relief may be granted because Petitioner's First Amended Complaint contains no allegations which require the Board to grant Petitioner's RN Application.

8. The Board asserts as an affirmative defense that the AHC lacks jurisdiction to grant Petitioner any relief because Petitioner does not meet the requirements for licensure as an RN.

9. For these reasons, the Board requests this Commission issue an Order upholding the Board's decision denying licensure to Ms. **Caldwell** for violations of Chapter 335 and for failing to meet the requirements for licensure as a **nurse**.

The **Board** abandoned its original answer when it filed the amended answer.¹¹

The Board's amended answer states that **Caldwell** is not qualified, but gives us no reasons why she is not. There is no specific conduct cited. There is no specific law cited. In our order dated February 24, 2009, we put the Board on notice of the differences in the original and amended answer. We stated: "We also note that the Board's amended answer appears to abandon some of the specific causes for denial that were set forth in the original answer."

*4 Although we took evidence at the hearing concerning **Caldwell's** alcohol use and criminal conduct, we do not consider these as reasons for denial under § 335.066 because the Board did not assert that they were. The Board's amended answer states merely that **Caldwell** is not qualified for licensure. We consider the alcohol and criminal conduct only as to **Caldwell's** qualifications for licensure. If **Caldwell** fails in her burden of proving that she is qualified, then we will deny her application. If she proves that she is qualified, we will grant it.

B. Qualifications for Licensure

The qualifications for licensure as a registered **nurse** in **Missouri** are found in § 335.046:¹²

1. An applicant for a license to practice as a registered professional **nurse** shall submit to the board a written application on forms furnished to the applicant. The original application shall contain the applicant's statements showing the applicant's education and other such pertinent information as the board may require. The applicant shall be of good moral character and have completed at least the high school course of study, or the equivalent thereof as determined by the state board of education, and have successfully completed the basic professional curriculum in an accredited or approved school of **nursing** and earned a professional **nursing** degree or diploma. Each application shall contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing same, subject to the penalties of making a false affidavit or declaration. Applicants from non-English-speaking lands shall be required to submit evidence of proficiency in the English language. The applicant must be approved by the board and shall pass an examination as required by the board. The board may require by rule as a requirement for licensure that each applicant shall pass an oral or practical examination. Upon successfully passing the examination, the board may issue to the applicant a license to practice **nursing** as a registered professional **nurse**. The applicant for a license to practice registered professional **nursing** shall pay a license fee in such amount as set by the board. The fee shall be uniform for all applicants. Applicants from foreign countries shall be licensed as prescribed by rule.

* * *

3. Upon refusal of the board to allow any applicant to sit for either the registered professional **nurses'** examination or the licensed practical **nurses'** examination, as the case may be, the board shall comply with the provisions of section 621.120. RSMo, and advise the applicant of his or her right to have a hearing before the administrative hearing commission. The administrative hearing commission shall hear complaints taken pursuant to section 621.120. RSMo.

4. The board shall not deny a license because of sex, religion, race, ethnic origin, age or political affiliation.

1. Education/Training

*5 **Caldwell** has completed the education and training to sit for examination as an RN.

2. Good Moral Character

The Board argues that **Caldwell** lacks good moral character because of her past experiences with alcohol and the crimes associated with it. Although her past is serious, we believe **Caldwell** that she has changed her life and wants to succeed as a **nurse**. She has disclosed her past to the Board and her employer. **Caldwell's** work history at Research Medical Center and her co-workers' comments about her are positive. **Caldwell** has shown that she has good moral character, a qualification for licensure.

Summary

Caldwell has shown that she meets the qualifications for licensure. We grant her application.

SO ORDERED on July 9, 2010.

NIMROD T. CHAPEL, JR
Commissioner

Footnotes

- 1 Different attorneys represented the Board throughout this case.
- 2 Pet. Ex. 2.
- 3 Section 621.045. Statutory references, unless otherwise noted, are to RSMo Supp. 2009.
- 4 Section 621.120, RSMo 2000.
- 5 *Department of Soc. Servs. v. Mellas*, 220 S.W.3d 778 (Mo. App., W.D. 2007).
- 6 *J. C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20 (Mo. banc 1990).
- 7 *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974).
- 8 Tr. at 9.
- 9 Tr. at 17.
- 10 *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).
- 11 *Johnson v. GMAC Mortg. Corp.*, 162 S.W.3d 110, 116 (Mo. App., W.D. 2005); *Westinghouse Electric & Mfg. v. Tweedle*, 240 S.W. 863 (Mo. App., Spr. D. 1922).
- 12 RSMo. 2000.

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