

IN THE MATTER OF: SAMANTHA BLAKE

NO. 24-CA-165

VERSUS

FIFTH CIRCUIT

THE LOUISIANA STATE BOARD OF
PRACTICAL NURSE EXAMINERS

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 835-523, DIVISION "H"
HONORABLE DONALD L. FORET, JUDGE PRESIDING

October 30, 2024

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Timothy S. Marcel

AFFIRMED

SMC

FHW

TSM

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS



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Deputy, Clerk of Court

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SAMANTHA BLAKE

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THE LOUISIANA STATE BOARD OF PRACTICAL NURSE EXAMINERS

John W. Becknell, III

CHEHARDY, C.J.

Plaintiff, Samantha Blake, seeks review of the trial court's judgment affirming the decision of defendant, the Louisiana State Board of Practical Nurse Examiners ("the Board"), to revoke her practical nursing license. For the reasons that follow, we affirm the Board's ruling.

Facts and Procedural History

Ms. Blake was licensed in Louisiana as a practical nurse on June 5, 2015. On April 20, 2022, the Board filed a formal Complaint against Ms. Blake, notifying her that a hearing would be held on May 17, 2022 to address the charges therein. Ms. Blake was invited to respond in writing to the charges at least 10 days before the scheduled hearing. On April 26, 2022, Ms. Blake submitted a response denying the allegations in the Complaint and stating that she would appear for the scheduled formal hearing.

The Board's Complaint included allegations that Ms. Blake was suspected of diverting medication, failing to follow protocol regarding the administration of medications, presenting professional certification cards that were not authentic, acting unprofessionally, and theft of time. The Complaint further alleged that Ms. Blake had been terminated for cause from positions with St. Francis Medical Center in 2017; from Winn Correctional Center in 2019; and from Favorite Healthcare Staffing for incidents that occurred when she worked at Cornerstone Specialty Hospital in Bossier City. Finally, the Notice alleged that Ms. Blake was deemed no longer eligible to work for CHG Medical Staffing d/b/a RN network, a nationwide nurse travel staffing company.

More specifically, while working for Winnfield Nursing & Rehab Center in 2015 and 2016, Ms. Blake was counseled for failing to follow medicine administration protocol by not signing out a narcotic; for failing to order medications in a timely manner, which meant that patients missed doses of

medication; and for speaking to a coworker in an inappropriate manner in front of the nursing station. Ms. Blake admitted that she was guilty of these infractions.

On October 10, 2017, while employed with St. Francis Medical Center, Ms. Blake clocked in for EPIC training at 7:07 a.m. At 4:00 p.m., she sent a text message to her supervisor asking to be clocked out, but video surveillance revealed that Ms. Blake left EPIC training at 12:14 p.m. St. Francis terminated her employment for theft of time. Ms. Blake responded that she did not know she was being paid for the training or that she continued to be paid after she left, as her previous employer did not pay for mandatory meetings.

While working for CHG Medical Staffing d/b/a RN network, Ms. Blake's file was randomly selected for an internal audit. The auditor discovered that the American Heart Association certification cards for CPR and Basic Life Support (BLS), as well as for Advanced Cardiovascular Life Support (ACLS), were not authentic. The BLS instructor named on the certification card in Ms. Blake's file had been inactive since 2014; the ACLS instructor named on that certification card had not taught a class since 2018, rendering the card invalid. Accordingly, Ms. Blake was no longer eligible for employment with RN network. Ms. Blake responded to the allegations by stating that she took the necessary classes and was not aware that her instructor was no longer a certified instructor.

On September 25, 2019, while working at Winn Correctional Center, the Board received a complaint alleging that on August 29, 2019, Ms. Blake was suspected of diverting medication for her own use after she was found going through a box of medications, and later seen with a red biohazard bag that she attempted to conceal within her jacket and then deposit in her own clear bag. The bag contained numerous pills including sertraline, dexamethasone, dicyclomine, olanzapine, cephalexin monohydra, ibuprofen, clindamycin, cephalexin, and a wristband. Her contract at Winn was terminated. Ms. Blake admitted to concealing

the medications but she claimed she was doing so in order to restock the medicine carts, because the pharmacist was not ordering all the necessary medications timely, and she had to keep these medications from being thrown away.

In April of 2021, while employed at Cornerstone Specialty Hospital through Favorite Healthcare Staffing, the staff could not locate Ms. Blake numerous times during her shifts. A review of electronic medical records also showed that Ms. Blake was delaying the wastage of narcotics anywhere from 20 minutes to five hours.¹ Finally, it was alleged that she did not properly document her assigned patients' charts.

The record reflects that the Board subpoenaed documentation from Ms. Blake's previous employers related to the allegations against her. The record also includes Ms. Blake's written responses to the various charges that arose over the course of her nursing career.

At the Zoom hearing, the hearing officer heard testimony from two nurses who worked at Cornerstone; from a representative of Winn Correctional Center; and from the Vice President of CHG Healthcare. Ms. Blake also testified on her own behalf.

¹ Institutions that distribute medicine to patients have policies for "wastage" of unused portions of narcotics doses. A Policy for Narcotics Wastage included in the record of this case states, in relevant part:

Wastage, destruction, and contamination of a controlled substance:

- i. Exact part of narcotic solutions used for dose:
 1. The nurse will use the proper number of tablets, ampules, or vials from the automated dispensing unit, recording the number of units taken as required.
 2. The nurse will expel into the RX Destroyer that portion of the narcotic solution that is not to be used and unused portions of tabs (1/2 tabs) will be wasted in the RX Destroyer.
 3. The nurse will chart the dose used and amount wasted, having this witnessed and signed by another nurse. The waste will be recorded in the ADM-Pyxis ES. Undocumented waste reports from the ADM-Pyxis ES will be monitored to assure compliance.
 4. Narcotic wastes are to be done when the dose is removed from the ADM-Pyxis ES.

In an Order dated November 4, 2022, the Board revoked Ms. Blake’s practical nursing license, imposed a \$1000 fine for her violations, and ordered her to pay \$1500 as a hearing assessment fee. In written reasons, the hearing officer found the witnesses to be credible. The hearing officer further determined that Ms. Blake did not take responsibility for her own actions and that she had unfounded explanations for the allegations against her. The hearing officer stated that many of Ms. Blake’s patients were vulnerable due to her actions and inactions. The hearing officer concluded as a matter of law that Ms. Blake had violated (i) La. R.S. 37:969(A)(4), as she was unfit, or incompetent by reason of negligence, habit, or other causes, and (ii) she was guilty of unprofessional conduct as enumerated in La. R.S. 37:978(A)(8)(a, b, g, h, i, j, l, and t).²

Ms. Blake filed a Petition for Judicial Review of the Board’s Order in the 24th Judicial District Court on December 1, 2022. On October 20, 2023, the trial court issued a written judgment affirming the Board’s November 4, 2022 decision and order. The trial court’s judgment further noted that the petitioner “failed to meet her burden of proof that Respondent’s decision was in violation of La. R.S. 49:978.1(G).”

² La. R.S. 37:978(A)(8) states, in relevant part:

8. being guilty of unprofessional conduct;
 - a. failure to practice practical nursing in accordance with the standards normally expected;
 - b. failure to utilize appropriate judgment in administering nursing practice;

 - g. improper use of drugs, medical supplies, or patients’ records;
 - h. misappropriating personal items of an individual or the agency;
 - i. falsifying records;
 - j. intentionally committing any act that adversely affects the physical or psychosocial welfare of the patient;

 - l. leaving a nursing assignment without properly notifying appropriate personnel;

 - t. violating any provisions of R.S. 37:961 et seq. (the practical nursing practice act), as amended or aiding and abetting therein.

Law and Analysis

A party aggrieved by a final agency decision in an adjudication proceeding is entitled to have that decision reviewed by the district court of the parish in which the agency is located. La. R.S. 49:978.1(A) and (B). The agency shall submit to the reviewing court the original or certified copy of the entire record of the administrative proceeding under review unless stipulated to the contrary by the parties. La. R.S. 49:978.1(D); *Matter of Ford v. Louisiana State Bd. of Prac. Nurse Examiners*, 22-481 (La. App. 5 Cir. 4/26/23), 361 So.3d 1200, 1206. A party aggrieved by the district court's decision is entitled to appeal to the appropriate appellate court. La. R.S. 49:979. An appellate court reviews the findings and decision of the administrative agency, not the decision of the district court. *Matter of Ford*, 361 So.3d at 1206 (citing *Sylvester v. City of New Orleans Through Code Enforcement and Hearings Bureau*, 17-283 (La. App. 4 Cir. 10/11/17), 228 So.3d 285, 287).

La. R.S. 49:978.1(G) sets forth the exclusive grounds upon which a reviewing court may reverse or modify an administrative agency's decision on appeal. That statute provides:

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity

to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

La. R.S. 49:978.1(G). *See also Spears v. Louisiana Bd. of Practical Nurse Examiners*, 16-587 (La. App. 5 Cir. 6/15/17), 223 So.3d 679, 687. Any one of the six bases enumerated in La. R.S. 49:978.1(G) is sufficient to modify or reverse an agency determination. *Blanchard v. Allstate Ins. Co.*, 99-2460 (La. App. 1 Cir. 10/18/00), 774 So.2d 1002, 1004, *writ denied*, 01-285 (La. 3/23/01), 787 So.2d 997.

Nevertheless, given the jurisprudential presumption of correctness of an agency's actions, the appellant bears the burden of proving that the record contains no facts that would establish the validity of the charges levied against her. *Spears*, 223 So.3d at 688. If a reasonable interpretation of the evidence supports the agency's determinations, the agency's decision is accorded great weight and will not be reversed or modified in the absence of a clear showing that the action was arbitrary or capricious. *Westbank Pharmacy of Belle Chase, LLC v. Louisiana Bd. of Pharmacy*, 23-1268 (La. App. 1 Cir. 5/31/24), 391 So.3d 66, 69.

Ms. Blake first asserts that she has a substantial right in her nursing license that cannot be taken away without due process. La. R.S. 49:977.3(C) states: "No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gives notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license."

The Board mailed Ms. Blake a copy of the Notice and Complaint on April 20, 2022. The Notice indicated that a virtual hearing would be held on May 17, 2022 to address the charges against her. Ms. Blake was invited to respond in

writing to the charges at least 10 days before the scheduled hearing. Ms. Blake submitted a response on April 26, 2022, denying the allegations and indicating that she would appear at the hearing. The Complaint further stated that Ms. Blake had the right to ask the Board for reconsideration or a rehearing within 10 days of its decision, or she could file a Petition for Judicial Review within 30 days from the date that the Board's final decision is mailed. Attached to the Complaint were rules applicable to the formal hearing process.

The Board also subpoenaed records from Ms. Blake's former employers and provided her with a copy of those records before the hearing, which she acknowledged receiving. During the hearing, the Board offered witness testimony and permitted Ms. Blake to cross examine witnesses and to testify on her own behalf. We find Ms. Blake has failed to show that she has been denied due process in these proceedings.

Ms. Blake next argues that the Board's revocation of her license was arbitrary and capricious. We disagree. The Board introduced, and the record contains, substantial evidence in support of the allegations found in the original Complaint. Ms. Blake has failed to meet her burden of proving that the record contains no facts that establish the validity of the charges levied against her. The witness testimony at the hearing substantially corroborated the written documentation offered in evidence. After review of the administrative record, we cannot say the Board's decision to revoke Ms. Blake's practical nursing license was arbitrary and capricious or that it violated any other grounds listed in La. R.S. 49:978.1(G) to justify reversal of the Board's decision.

CONCLUSION

The decision of the Louisiana State Board of Practical Nurse Examiners is affirmed.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **OCTOBER 30, 2024** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

24-CA-165

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE DONALD L. FORET (DISTRICT JUDGE)

DAVID R. ADEN (APPELLANT)

JOHN W. BECKNELL, III (APPELLEE)

MAILED

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