

BEFORE THE IOWA BOARD OF
PHYSICIAN ASSISTANT EXAMINERS

IN THE MATTER OF THE) CASE NO. 04-013; 05-003
STATEMENT OF CHARGES AGAINST:) DIA NO. 06DPHPA001
)
CHERI BUSH-MCCLELLAND) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
Respondent) DECISION AND ORDER

On May 17, 2006, the Iowa Board of Physician Assistant Examiners (Board) issued a Notice of Hearing and Statement of Matters Asserted (Confidential) to Cheri Bush-McClelland (Respondent) charging her with:

COUNT I: Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within the profession, in violation of Iowa Code section 147.55(5), 272C.10(5) and 645 IAC 329.2(11).

COUNT II: Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action, in violation of 645 IAC 329.2(13).

The hearing was held on July 19, 2006 at 9:30 a.m. at the Lucas State Office Building, Fifth Floor Conference Room, Des Moines, Iowa. Respondent Cheri Bush-McClelland did not personally appear for the hearing but was represented by attorney Eric Parrish. Assistant Attorney General Emily Kimes-Schwiesow represented the state of Iowa.

The following Board members served as the presiding officers for the hearing: Edward Friedmann, PA, Chairperson; Patricia Weishaar, PA; John H. Olson, PA; Fred Strickland, DO; and Mara Swanson and Mary Charlton, public members. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Following the hearing, the Board convened in closed executive session,

pursuant to Iowa Code section 21.5(1)(f), to deliberate their decision. Following deliberations, the Board returned to open session and approved a motion revoking Respondent's license. The Board directed the administrative law judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations. The Board's chairperson was authorized to sign the Board's decision, following review by the Board.

THE RECORD

The parties stipulated to State Exhibits 1-8 (see Exhibit Index for description). No testimony was offered.

FINDINGS OF FACT

1. On June 22, 2001, Respondent was issued license number 600-001358 by the Board to engage in the practice of a physician assistant, subject to the laws of the state of Iowa and the rules of the Board. Respondent's license is active and expires on September 30, 2007. (State Exhibits 3, 8)

2. Respondent has a history of prior discipline by this Board. On January 24, 2002, Respondent pled guilty to the felony, "Use and Attempt to Use, With the Intent to Defraud, an Unauthorized Access Device (Credit Card)", in the United States District Court for the Southern District of Iowa. Respondent was sentenced to three years federal probation and ordered to complete a mental health evaluation and pay \$22,500 in restitution.

On October 15, 2003, Respondent and the Board entered into a Combined Statement of Charges, Settlement Agreement, Consent Order and Final Order, based on this felony conviction. The Consent Order placed Respondent's physician assistant license on probation until January 2005 or until she was released from the terms of probation imposed by the federal court. Respondent agreed to complete 30 contact hours of continuing education applicable to professional ethics and to file quarterly reports with the Board. Respondent also agreed to refrain from any conduct that would violate the statutes and rules governing the practice of a physician assistant in the state of Iowa. (State Exhibit 8)

3. On December 8, 2005, Respondent entered a guilty plea¹, to three felonies: the Class C Felony of Obtaining or Attempting to Obtain a Prescription Drug by Fraud, Deceit, Misrepresentation or Subterfuge and two Class D Forgery felonies. Fourteen other counts were dismissed as part of a plea bargain. On February 22, 2006, Respondent was sentenced in Polk County District Court to be imprisoned for a total period of 20 years. However, the sentence was suspended and Respondent was placed on probation for a period of five years, subject to terms and conditions. The terms and condition of probation included, but were not limited to: completion of a substance abuse evaluation and mental health evaluation and follow through on any treatment recommendations. Respondent was also ordered to pay restitution and fined \$1000. (State Exhibits 4, 6)

4. On March 8, 2006, the Iowa Board of Pharmacy Examiners revoked Respondent's controlled substances registration based in part on its finding that Respondent had stolen a prescription form from a medical clinic that had terminated her employment and then used the form to write a controlled substances prescription for a person who was not a patient of the clinic. (State Exhibits 5, 7)

CONCLUSIONS OF LAW

Count I

Iowa Code section 147.55(5) provides, in relevant part:

A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

...
5. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

Accord, Iowa Code section 272C.10(5) and 645 IAC 329.2(11).

The preponderance of the evidence established that Respondent violated Iowa Code sections 147.55(5), 272C.10(5), and 645 IAC 329.2(11) when she was convicted of three felonies that were

¹ Respondent's guilty plea was entered pursuant to North Carolina v. Alford, 400 U.S. 25 (1970)

related to her practice as a physician assistant. Respondent conceded that the evidence in the record supports this count.

COUNT II

645 IAC 329.2(13) provides, in relevant part:

645-329.2(148C,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645-329.3(272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

...

329.2(13) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state;...

The preponderance of the evidence established that Respondent violated 645 IAC 329.2(13) when the Iowa Board of Pharmacy Examiners revoked her controlled substances registration on March 8, 2006.

SANCTION

In determining an appropriate sanction, the Board considered the serious nature of the violations, including the number and nature of the felony convictions; Respondent's prior disciplinary violation/felony in 2002; and Respondent's failure to personally appear before the Board. 645 IAC 329.4. These factors amply support the Board's decision to revoke Respondent's license.

DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 600-001358 issued to Respondent Cheri Bush-McClelland is hereby **REVOKED**.

IT IS FURTHER ORDERED that before the Board will consider an application for reinstatement, Respondent must establish:

1. That she has fulfilled all of the requirements imposed on her by the Polk County District Court and has been discharged from probation.
2. That she has no pending criminal charges;

3. That she has completed mental health and substance abuse evaluations at facilities approved by the Board and has fully complied with any recommendations made as a result of the evaluations.

IT IS FURTHER ORDERED that Respondent will be required to personally appear before the Board on any application for reinstatement. At that time, the burden of proof will be on Respondent to establish that that the basis for the revocation no longer exists, and that it is in the public interest for her license to be reinstated. 645 IAC 11.31.

FINALLY, IT IS ORDERED that the Respondent shall pay a \$75.00 hearing fee and the \$45.00 fee for the court reporter. The \$120.00 shall be paid within thirty (30) days of receipt of this decision. If a transcript is ordered, the cost will be charged to the party requesting it. Iowa Code section 272C.6(6); 645 IAC 11.23.

This findings of fact, conclusions of law, decision and order is approved by the board on August 30, 2006.

Any appeal to the district court from a decision in a contested case shall be taken within 30 days from the date of issuance of the decision by the board. Iowa Code section 17A.19; 645 IAC 11.29.