

RENDERED: DECEMBER 19, 2003; 2:00 p.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2002-CA-002501-MR

BRENDA O. SLONE-VASQUEZ

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE BARRY WILLETT, JUDGE  
ACTION NO. 01-CI-007242

KENTUCKY BOARD OF NURSING

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KNOPF, TACKETT, AND VANMETER, JUDGES.

KNOPF, JUDGE: Brenda Slone-Vasquez appeals from an order of the Jefferson Circuit Court, entered November 4, 2002, denying her petition for relief from a disciplinary sanction imposed by the Kentucky Board of Nursing. Slone-Vasquez contends that the Board misapplied KRS 314.091 and imposed an arbitrarily harsh sanction. The circuit court erred, she contends, by failing to so rule. We are not persuaded that the circuit court erred.

A licensed registered nurse in Kentucky since 1990, Slone-Vasquez pled guilty before the Laurel Circuit Court in October 2000 to the misdemeanor offense of facilitating the obtaining of a controlled substance by fraud or false statement.<sup>1</sup> Slone-Vasquez entered her plea pursuant to North Carolina v. Alford.<sup>2</sup> She admitted, in effect, that there was evidence of every element of the offense, such that she wished to waive her right to trial, but she did not admit guilt. By judgment entered November 21, 2000, the court sentenced her to six months in jail and probated that sentence for two years.

Having learned of Slone-Vasquez's indictment and guilty plea, the Board instituted disciplinary proceedings against her. The Board charged that her crime—she was accused of having obtained phentermine from a London pharmacy by means of a prescription fraudulently attributed to Dr. Mark Radmanesh—violated two subsections of KRS 314.091. In pertinent part that statute authorizes the Board to discipline licensees

upon proof that the person . . .  
(b) Has been convicted of a misdemeanor or felony which involved fraud, deceit, a breach of trust, or physical harm or endangerment to others, acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing; [or] . . .

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<sup>1</sup> KRS 218A.140; KRS 506.080.

<sup>2</sup> 400 U.S. 25, 27 L. Ed. 2d 162, 91 S. Ct. 160 (1971).

(d) Has negligently or willfully acted in a manner inconsistent with the practice of nursing.

A panel of the Board heard the case in July 2001. At the hearing, Slone-Vasquez testified that she had pled guilty not because she was guilty but because she wished to avoid the risk of a felony prosecution (along with her ex-husband, she had been indicted as a principal, not merely a facilitator) and to expedite resolution of the matter. She did not dispute that Dr. Radmanesh had not ordered the prescription in question, but she explained that Dr. Radmanesh, a friend and business associate of her ex-husband, had prescribed phentermine for her on several occasions as a migraine remedy. She had been unaware, she claimed, that this occasion was any different.

Notwithstanding Slone-Vasquez's testimony, the panel found that she had violated KRS 314.091(b) and (d) and recommended a probationary period of at least two years during which her license would be limited so as to preclude her employment by a nurse registry, temporary nurse employment agency, or home health agency, among other conditions. By order entered October 5, 2001, the Board adopted the panel's findings and recommendations.

Pursuant to KRS 314.091(6) and KRS 13B.140, Slone-Vasquez petitioned the Jefferson Circuit Court for relief from the Board's order. As noted above, it is from that court's

denial of her petition that Slone-Vasquez now appeals. She argues that KRS 314.091(b) applies only to convictions which involved "acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing," and that her conviction cannot be so characterized. To the extent that she thus asks us to construe the statute our standard of review is de novo.<sup>3</sup> To the extent that she claims that the Board made insufficiently supported findings, we apply the substantial evidence standard of review.<sup>4</sup> We disagree with both portions of Slone-Vasquez's argument.

KRS 314.091(b), we believe, contains a typographical error in that the "or" governing the series of nouns and noun phrases that complete the clause "which involved . . ." appears before the second-to-last rather than the last item in the series. In other words, the statute authorizes disciplinary sanctions for convictions "which involve fraud or deceit . . . or acts that bear directly on the qualifications or ability of the applicant or licensee to practice nursing." Because Slone-

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<sup>3</sup> Kentucky Education Professional Standards Board v. Gambrel, Ky. App., 104 S.W.3d 767 (2002); Board of Adjustments v. Brown, Ky. App., 969 S.W.2d 214 (1998); Kentucky Board of Nursing v. Ward, Ky. App., 890 S.W.2d 641 (1994).

<sup>4</sup> Johnson v. Galen Health Care, Inc., Ky. App., 39 S.W.3d 828 (2001); Oliver v. Kentucky Board of Medical Licensure, Ky. App., 898 S.W.2d 531 (1995).

Vasquez's offense involved fraud or deceit, the statute applied to it.

Moreover, even if we agreed with Slone-Vasquez that the statute was limited to convictions involving acts that bear directly on the nurse's qualifications or ability, we would agree with the Board and the circuit court that the statute applied. As the circuit court noted, Slone-Vasquez was convicted of participating in the misappropriation of a controlled substance. Notwithstanding her Alford plea,<sup>5</sup> the conviction raises doubts about Slone-Vasquez's ability to practice a profession that regularly gives access to such substances. We agree with the circuit court, therefore, that evidence of the fraud and controlled-substance-related conviction, without more, was sufficient to invoke the Board's disciplinary authority under KRS 314.091.

Even if the Board was authorized to discipline her, Slone-Vasquez next contends, in the absence of any evidence that she had ever erred, except insignificantly, on the job, the sanction the Board imposed was arbitrary and unjust. We disagree.

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<sup>5</sup> See Myers v. Secretary of Health and Human Services, 893 F.2d 840 (6<sup>th</sup> Cir. 1990) (discussing the admissibility and effect of Alford pleas in administrative proceedings).

For violations of its terms, KRS 314.091 authorizes the Board to issue reprimands or to "deny, limit, revoke, probate, or suspend any license or credential to practice nursing issued by the board." Which sanction to impose is thus a matter the General Assembly has assigned to the Board's discretion. A court, in reviewing the decision of the administrative agency,

may not substitute its view of the penalty or discipline assessed by the agency. The . . . court is without authority to change the penalty in the absence of a finding that the decision of the [agency] was arbitrary and capricious or a clear abuse of discretion.<sup>6</sup>

We are not persuaded that the Board abused its discretion in this case. It has not suspended or revoked Slone-Vasquez's license, but has limited it during a probationary period to positions less apt to provide unsupervised access to controlled substances. This limitation bears a reasonable relationship to Slone-Vasquez's conviction and to the Board's need to have its confidence in her restored. We agree with the circuit court, therefore, that the Board's sanction was not disproportionate and was based on substantial evidence.

In sum, the Board did not err by finding that Slone-Vasquez had violated KRS 314.091 upon proof that she had been

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<sup>6</sup> Louisville by Kuster v. Milligan, Ky., 798 S.W.2d 454, 458 (1990).

convicted of a crime involving fraud and the misappropriation of a controlled substance. Nor can the Board's sanction be deemed arbitrary or an abuse of discretion. Accordingly, we affirm the November 4, 2002, order of the Jefferson Circuit Court.

ALL CONCUR.

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