

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GREGORY LEE RHODES
31862 Via Pato
Trabuco Canyon, CA 92670

Case No. 2008-752

OAH No. 2009080694

Respondent.

DECISION

The attached proposed decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on **February 22, 2010**

IT IS SO ORDERED this **19th** day of **January, 2010**.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Citation Against:

GREGORY LEE RHODES
31862 Via Pato
Trabuco Canyon, CA 92670

Respondent.

Case No. RN 2008-752

OAH No. 2009080694

PROPOSED DECISION

On October 27, 2009, in Laguna Hills, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Karen L. Gordon, Deputy Attorney General, Office of the Attorney General, represented complainant.

Respondent represented himself.

The matter was submitted on October 27, 2009.

FACTUAL FINDINGS

1. On March 30, 2009, Ruth Ann Terry, M.P.H., R.N., Executive Officer, Board of Registered Nursing of the State of California (Board), filed Citation No. 2008-752 in her official capacity. The citation included an administrative fine of \$2,500.00 and an order of abatement.

Respondent requested an informal citation conference.

A telephonic informal conference was held and on April 30, 2009, the executive officer of the Board affirmed the citation but reduced the amount of the administrative fine to \$2,000.00.

Respondent filed a timely request for a hearing.

2. The Board issued Registered Nurse license number 383466 to Kelli J. Humphrey on March 31, 1985.

3. The Board has never issued a Registered Nurse license to respondent.

4. Between 1999 and November 1, 2008, respondent worked as a registered nurse using forged credentials at the Newport Beach Surgery Center.

5. Between 2004 and 2005, respondent worked at the Huntington Beach Surgery Center in a position requiring a licensed registered nurse. He worked as a surgery coordinator and supervisor, and used false credentials.

6. From January 9, 2007 to March 5, 2009, respondent worked at the Orange County Surgery Center in Santa Ana as a registered nurse using fraudulent credentials.

7. On February 7, 2008, respondent applied for and was interviewed for a registered nurse position with the Newport Bay Surgery Center. He provided a forged copy of a California Registered Nurse license showing license number 383466 (a license belonging to Kelli J. Humphrey) had been issued to respondent. He also provided a resume with the heading "Lee Rhodes, RN."

8. On March 23, 2009, in the Superior Court of Orange County, respondent pled guilty and was convicted of one count of violating Business and Professions Code section 2796, impersonating a registered nurse. He was placed on probation, ordered to pay an undetermined amount of restitution, pay \$25.00 in fines, and serve a period of time in jail.

9. Respondent testified in his own behalf at the hearing and admitted the charges filed against him. He pointed out he confessed to the Board's investigator immediately upon being informed of the complaint that he had applied for a position as a registered nurse at the Newport Bay Surgery Center but did not have an RN license.

Respondent appeared at the hearing to plead for a reduction in the amount of the administrative fine. He testified he had been in an accident and had lost an eye and a thumb, he is on disability and has no other income, his wife has left him and took their three children, and he needs to protect his family. He has not worked since March. He testified the issue is "water under the bridge," and he regrets he did not get an opportunity to apologize to his employers.

Respondent was aware of the restitution order, but does not know how much in restitution he is to pay or to whom. He has not paid anything in restitution.

Respondent has never attended nursing school or received the training registered nurses receive. He received two years of training as a surgical and orthopedic technician from the Navy and performed that work for 14 years while a corpsman in the Navy. He got out of the Navy in 1989. In 1996, he started working at the Newport Beach Surgery Center as a technician and worked there for three years before he started working as a registered nurse. He did not explain

how he convinced his employers to allow him to work as an R.N. When he began working at the Huntington Beach Surgery Center, he worked as a circulating nurse and as a director of nursing.

Respondent testified that at the informal hearing, he asked that the fine be reduced and offered evidence of mitigation.

When asked to explain why he fraudulently presented himself as a registered nurse, respondent testified that it was because of greed. He added that he believed he had some working knowledge of nursing and he had never had any problems with patients, who he treated well.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2795 provides:

Except as provided in this chapter, it is unlawful for any person to do any of the following:

- (a) *To practice or to offer to practice nursing in this state unless the person holds a license in an active status.*
- (b) *To use any title, sign, card, or device to indicate that he or she is qualified to practice or is practicing nursing, unless the person has been duly licensed or certified under this chapter.*

2. Business and Professions Code section 2796 provides:

It is unlawful for any person or persons not licensed or certified as provided in this chapter to use the title "registered nurse," the letters "R.N.," or the words "graduate nurse," "trained nurse," or "nurse anesthetist."

It is unlawful for any person or persons not licensed or certified as provided in this chapter to impersonate a professional nurse or pretend to be licensed to practice professional nursing as provided in this chapter.

3. Title 16, California Code of Regulations, section 1435.3 provides:

The Executive Officer of the board or his/her designee may issue citations, in accordance with Section 148 of the Code, against any individual (as defined in section 302(e) of the Code) who is performing or who has performed services for which licensure is required under the Nursing Practice Act or regulations adopted pursuant thereto. Citations issued under this section shall meet the requirements set forth in subdivisions (b), (c), (d), and (e) of Section 1435 and shall be subject to the provisions of Sections 1435.2, 1435.4, 1435.5 and subdivisions (a), (b), and (c) of Section 1435.6. Each citation issued under this section shall contain an order of

abatement. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

4. Cause to affirm the citation order, administrative fine, and order of abatement against respondent for violations of Business and Professions Code sections 2795 and 2796, and Title 16, California Code of Regulations, section 1435.3, was established by Findings 2 through 8.

5. At the hearing, respondent sought to reduce the amount of the administrative fine imposed by the Board against him. He offered little evidence of mitigation and no evidence of rehabilitation. He testified that circumstances have turned against him recently and he can ill-afford a \$2,000.00 fine.

Title 16, California Code of Regulations, sections 1435.2 and 1435.4 govern the amount of the fine the Board may impose and the factors that should be considered in determining the amount of the fine. The typical range of a fine is \$0.00 to \$2,500.00, but the fine can be increased up to \$5,000.00 under certain circumstances, such as multiple violations that demonstrate a willful disregard of the law. Factors to be considered, according to the Board, are the gravity of the violation, history of the same or similar violations, length of time that has passed since the date of the violation, consequences of the violation including actual or potential harm to patients, good or bad faith, willfulness of the violation, cooperation with the investigation, remediation, or other mitigating or aggravating factors.

The evidence showed that respondent fraudulently worked as a registered nurse for ten years for three different employers, used a license number issued to someone else, and represented himself as an experienced registered nurse when attempting to obtain employment with another employer. Respondent obviously knew he was not licensed nor trained as a registered nurse, and his only explanation for acting as he did for ten years was greed. While respondent believed that he did not endanger any patients, and, in fact, treated them well, his very lack of knowledge and training as a registered nurse prevented him from knowing whether he was acting appropriately. His actions over the course of ten years undoubtedly endangered the health of patients.

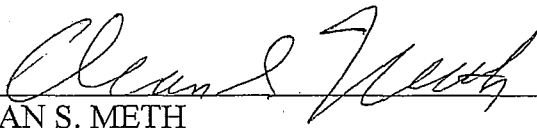
There is substantial evidence of aggravating factors that support the amount of the fine imposed by the Board. Respondent's violations were willful and repeated. They occurred over a long period of time, and little time has passed since his deception was exposed. He is on criminal probation. He acted in bad faith and endangered his patients. The only evidence of mitigation is respondent's cooperation with the Board. Respondent informed the Board of his difficult financial situation during the informal conference, and that resulted in a reduction of \$500.00 in the amount of the fine. Respondent's circumstances do not justify a further reduction in the amount of the fine. Respondent benefited greatly from his continued, fraudulent conduct. A \$2,000.00 fine is a small price to pay for what he has done.

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ORDER

The Citation Order, administrative fine of \$2,000.00, and order of abatement issued against respondent Gregory Lee Rhodes are affirmed.

DATED: 11/17/09



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings
