State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JENNIFER ANN NOLAN,	)	**Case No. 205814**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On April 29, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract (MVESC) producer license to Jennifer Ann Nolan. After reviewing the Petition and the Investigative Report, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Jennifer Ann Nolan ("Nolan") is a Missouri resident with a residential address of record of 1460 Yaqui Drive, Florissant, Missouri, 63031.

2. On October 29, 2013, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Nolan's Application for Motor Vehicle Extended Service Contract Producer License ("Application").

3. Nolan indicated in her Application that in the past she had used the name Jennifer Ann Grayson, indicating that it had been her married name. For purposes of this Order, when applicable, "Nolan" shall also refer to the applicant when she used the name Jennifer Ann Grayson.

4. Background Question No. 1 of the Application asks the following:

   Have you ever been convicted of a crime, had a judgement withheld or deferred, or are you currently charged with committing a crime?

   "Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license or juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict of

a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

"Had a judgement withheld or deferred" includes circumstances in which a guilty plea was entered and/or a finding of guilt is made, but imposition or execution of the sentence was suspended (for instance, the defendant was given a suspended imposition of sentence or a suspended execution of sentence—sometimes called an "SIS" or "SES").

If you answer yes, you must attach to this application:
a) a written statement explaining the circumstances of each incident,
b) a copy of the charging document, and
c) a copy of the official document which demonstrates the resolution of the charges or any final judgement[.]

5. Nolan answered "Yes" to Question No. 1 and attached to her Application documentation and a written explanation indicating that Nolan had been convicted of a felony:

   a. On April 4, 2013, Nolan pleaded guilty in the United States District Court, Eastern District of Missouri to the federal Felony of Obtaining Possession of Fentanyl by Subterfuge, in violation of 21 U.S.C. § 843(a)(3). On July 25, 2013, the court sentenced Nolan to three years' probation. The probation included requirements that Nolan participate in a substance abuse treatment program and submit to drug tests.[1]

6. Background Question No. 2 of the Application asks the following:

Have you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?

"Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation r surrendering a license to resolve and administrative action. "Involved" also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid denial. INCLUDE any business so named because of your actions, in your capacity as an owner, partner, officer, director, or member or manager of a Limited Liability Company. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

If you answer yes, you must attach to this application:
a) a written statement identifying the type of license and explaining the circumstances of

[1] *U.S. v. Jennifer Ann Nolan*, U.S. Dist. Ct., E.D. Mo., No. 4:12CR00428-1 SNLJ (Nolan is currently on probation for the Felony).

each incident,

b) a copy of the Notice of Hearing or other document that states the charges and allegations, and

c) a copy of the official document which demonstrates the resolution of the charges or any final judgment.

7. Nolan answered "Yes" to Question No. 2 and attached to her Application documentation of administrative actions involving Nolan regarding a professional license and a written explanation (the same written explanation addressed both Nolan's criminal history and her history of administrative actions). Nolan disclosed that:

a. On December 1, 2012, in a Settlement Agreement Between Missouri State Board of Nursing and Jennifer Nolan, RN 128919 (Case Number 2012-000676), with Nolan's consent, the Missouri State Board of Nursing placed Nolan's license to practice as a registered professional nurse in the State of Missouri (License Number RN 128919) on probation for five years. The Agreement further imposed restrictions on Nolan's circumstances of employment and access to controlled substances in the course of her practice as a nurse. The Agreement further required Nolan to undergo evaluation and possible treatment for chemical dependency, to submit to random alcohol and drug screenings, and to complete certain continuing education courses.

b. In the Agreement, Nolan stipulated that she diverted approximately 188 vials of the Schedule II controlled substance Fentanyl from Pyxis machines at Des Peres Hospital. According to the stipulations, in doing so Nolan also violated hospital security protocols intended to prevent such diversions of controlled substances by hospital employees, in that she falsely claimed to have removed some of the Fentanyl for a patient when in fact she diverted it for her own use, and in that she failed to document the administration or waste of the remainder of the Fentanyl.

c. The Agreement's Joint Conclusions of Law cited cause for discipline to Nolan's license under § 335.066.2(1), (5), (12) and (14), RSMo. Those subsections provided that the Missouri Board of Nursing may seek discipline to a license "for any of the following causes":

> (1) Use or unlawful possession of any controlled substance, as defined in chapter 195, 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;
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> * * *
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> (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;

* * *

(14) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

d. The Missouri Board of Nursing had previously placed Nolan's license to practice as a registered professional nurse in the State of Missouri on probation for five years, approximately seventeen years ago. Nolan did not cite the specific grounds for that discipline but disclosed the discipline in the context of disclosing a prior episode of Nolan's drug abuse. Nolan did not provide documentation of this disciplinary action beyond her disclosure in the written explanation.

e. Her initial abuse of drugs was a way of coping with repressed childhood trauma, and her recent relapse was a way of coping with trauma suffered by one of her children.

8. In her written explanation, Nolan further stated:

> I have been clean & sober for almost 2 yrs now. Working very hard to stay that way. I have found my religion again & ongoing counseling weekly. Have completed an intense rehab program and trying to finish community service as well.

9. Investigation by the Consumer Affairs Division revealed that on September 24, 1998, Nolan, then known by her married name Jennifer A. Grayson, entered into a Settlement Agreement Between State Board of Nursing and Jennifer Grayson, under which the Missouri State Board of Nursing placed Nolan's license to practice as a registered professional nurse on five years' probation, effective October 14, 1998.[2]

10. In the 1998 Agreement, Nolan stipulated that while employed at Christian Hospital in St. Louis, she "misappropriated Demerol [a controlled substance] for her personal consumption on a number of occasions" and did not have a valid prescription for Demerol when she did so.

11. On December 12, 2001, the Acting Executive Director of the Missouri State Board of Nursing issued an Order modifying the 1998 Settlement Agreement to reflect that Nolan had completed her probation imposed under that Agreement as of December 12, 2001.

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[2] State Board of Nursing v. Jennifer Grayson, Before the Missouri State Board of Nursing, Nos. NUI-1296-247 and NUI-0197-290.

CONCLUSIONS OF LAW

12. Section 385.209 RSMo, Supp. 2012, provides, in part:

> 1. The director may suspend, revoke, refuse to issue, or refuse to renew a registration or license under sections 385.200 to 385.220 for any of the following causes, if the applicant or licensee or the applicant's or licensee's subsidiaries or affiliated entities acting on behalf of the applicant or licensee in connection with the applicant's or licensee's motor vehicle extended service contract program has:
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> * * *
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> (4) Misappropriated or converted any moneys or properties received in the course of doing business;
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> (5) Been convicted of any felony;
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> (6) Used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere[.]

13. Just as the principal purpose of § 375.141, the insurance producer disciplinary statute, is not to punish licensees or applicants, but to protect the public, *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984), the purpose of § 385.209 is not to punish applicants for a motor vehicle extended service contract producer license, but to protect the public.

14. The Director may refuse to issue an MVESC producer license to Nolan under § 385.209.1(5) because Nolan has been convicted of a felony:

    a. Obtaining Possession of Fentanyl by Subterfuge, a federal felony in violation of 21 U.S.C. § 843(a)(3).

15. The Director may refuse to issue an MVESC producer license to Nolan under § 385.209.1(4) because Nolan misappropriated properties received in the course of doing business:

    a. In her 1998 Agreement Between State Board of Nursing and Jennifer Grayson, Nolan stipulated that while employed at Christian Hospital in St. Louis, she "misappropriated Demerol [a controlled substance] for her personal consumption on a number of occasions" and did not have a valid prescription for Demerol when she did so; and

    b. In her 2012 Settlement Agreement Between Missouri State Board of Nursing and Jennifer Nolan, RN 128919 (Case Number 2012-000676), Nolan stipulated that she diverted approximately 188 vials of the Schedule II controlled substance

Fentanyl from Pyxis machines at Des Peres Hospital. According to the stipulations, in doing so Nolan also violated hospital security protocols intended to prevent such diversions of controlled substances by hospital employees, in that she falsely claimed to have removed some of the Fentanyl for a patient when in fact she diverted it for her own use, and in that she failed to document the administration or waste of the remainder of the Fentanyl.

16. The Director also may refuse to issue an MVESC producer license to Nolan under § 385.209.1(6) because Nolan used fraudulent or dishonest practices, or demonstrated incompetence or untrustworthiness in the conduct of business in this state:

    a. In her 1998 Agreement Between State Board of Nursing and Jennifer Grayson, Nolan stipulated that while employed at Christian Hospital in St. Louis, she "misappropriated Demerol [a controlled substance] for her personal consumption on a number of occasions" and did not have a valid prescription for Demerol when she did so;

    b. In her 2012 Settlement Agreement Between Missouri State Board of Nursing and Jennifer Nolan, RN 128919 (Case Number 2012-000676), Nolan stipulated that she diverted approximately 188 vials of the Schedule II controlled substance Fentanyl from Pyxis machines at Des Peres Hospital. According to the stipulations, in doing so Nolan also violated hospital security protocols intended to prevent such diversions of controlled substances by hospital employees, in that she falsely claimed to have removed some of the Fentanyl for a patient when in fact she diverted it for her own use, and in that she failed to document the administration or waste of the remainder of the Fentanyl; and

    c. Nolan's misappropriation and diversion of controlled substances from hospitals where she was employed as a nurse was fraudulent and dishonest in that Nolan violated the professional trust the State Board of Nursing had placed in her by granting her a nursing license and that the hospitals and had placed in her by granting her access to the controlled substances solely for purposes of patient care. While working as a nurse at the Des Peres Hospital, Nolan also violated security protocols and falsified paperwork in order to circumvent the hospital's measures to ensure that Fentanyl was used only for patient care. Nolan's abuse of the professional trust placed in her also demonstrated an incompetent lack of willingness to conform herself to professional standards and that she was unworthy of trust.

17. The Director has considered Nolan's history and all of the circumstances surrounding Nolan's Application. Although Nolan appears to be working to refrain from the abuse of controlled substances that led to her two instances of professional discipline and her felony conviction, her federal felony conviction is recent, and her actions that led to the conviction were recent and were serious violations of professional trust. As an MVESC producer, Nolan would have access to sensitive financial information of members of the public, which, given Nolan's history of violating professional trust, presents an

unacceptable risk of danger to the public. Granting Nolan an MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a MVESC producer license to Nolan.

18. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Jennifer Ann Nolan** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 2ND DAY OF MAY, 2014.

JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send your complaint by registered or certified mail, it will not be considered filed until the Administrative Hearing Commission receives it.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following addresses:

Jennifer Ann Nolan
1460 Yaqui Drive
Florissant, Missouri 63031

Certified No. 7009 3410 0001 9254 7721

Angie Gross

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