

Before the
Administrative Hearing Commission
State of Missouri



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|-------------------------|---|----------------|
| SHANDI GARDNER, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 13-1938 BN |
| |) | |
| STATE BOARD OF NURSING, |) | |
| |) | |
| Respondent. |) | |

DECISION

Petitioner Shandi Gardner’s complaint is dismissed because we lack jurisdiction.

Procedure

Ms. Gardner, a licensed practical nurse, submitted a letter to this Commission on November 7, 2013, and included as attachments a copy of a proposed settlement agreement and cover letter from the Respondent State Board of Nursing. The Board in its cover letter explained its offer to resolve a matter concerning Ms. Gardner’s license, without hearing. We treated Ms. Gardner’s submission as a complaint. The Board filed a motion to dismiss on November 13, 2013. We ordered Ms. Gardner to file any response by December 2, 2103. She filed nothing.

We may grant a motion for involuntary dismissal based on a preponderance of admissible evidence, including “an allegation in the complaint, stipulation, discovery response of the

petitioner, affidavit, or other evidence admissible under the law.” 1 CSR 15-3.436(3).¹ Here, the Board relies in its motion on Ms. Gardner’s complaint, only. Therefore, we make the below Findings of Fact based on the allegations in her complaint.

Findings of Fact

1. Shandi Gardner was originally licensed in September 1996 by the State Board of Nursing as a licensed practical nurse.

2. Ms. Gardner believes she had properly and timely renewed her license, and that she was therefore authorized to practice nursing in Missouri through at least July 31, 2013.

3. The Board takes the position that Ms. Gardner’s license lapsed in May 30, 2012, and that Ms. Gardner practiced nursing without a current, valid Missouri license, from June 1, 2012 through July 31, 2013.

4. Ms. Gardner learned on July 31, 2013, from her employer, that the Board believed her license had lapsed. She immediately and successfully took steps to renew it.

5. On October 7, 2013, the Board sent Ms. Gardner a letter and proposed settlement agreement. The Board advised Ms. Gardner that it believed cause existed to discipline her license, and had decided to offer resolution of the matter through settlement. The proposed settlement agreement provided that the discipline imposed would be public censure of Ms. Gardner’s license. The Board further advised Ms. Gardner that if she wished to accept its proposal, she should sign and return the settlement agreement to the Board no later than December 6, 2013, or it (the Board) would file a complaint with the Administrative Hearing Commission.

¹ References to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update, unless otherwise specified.

6. Ms. Gardner signed the proposed settlement agreement, but no evidence shows that she returned it to the Board.

7. The proposed settlement agreement does not reflect that anyone signed it on behalf of the Board, nor does the evidence otherwise show that the Board has since signed it.

8. Ms. Gardner does not allege, and there is no evidence, that the Board has imposed public censure against her license, or any form of discipline, at this time.

9. Ms. Gardner filed a complaint with this Commission on November 7, 2013.

Conclusions of Law

This Commission is “a creature of statute and possesses no more or less authority than that granted by statute.” *Livingston Manor, Inc. v. Dep’t of Soc. Svs., Div. of Family Svs.*, 809 S.W.2d 153, 156 (Mo. App. W.D. 1991)(citation omitted).

We have not been granted authority by statute over every type of appeal involving nursing licensure. Rather, § 621.045.1, RSMo² provides that the Commission “shall conduct hearings and [render decisions] in those cases when, under the law, a license issued by...the [State Board of Nursing] may be revoked or suspended or when the licensee may be placed on probation or when an agency refuses to permit an applicant to be examined...or refuses to issue or renew a license of an applicant who has passed an examination...or who possesses the qualifications for licensure without examination[.]” *See also* § 621.120, RSMo (2000) (describing procedure for an applicant to appeal when “any agency listed in section 621.045 [refuses] to permit [the] applicant to be examined...for licensure or upon refusal of such agency to issue or renew a license of an applicant who has passed an examination...or who possesses qualifications for licensure without examination”).

More specifically, under the law relevant here, § 335.066.1, RSMo, we may hear an

² References are to “RSMo” are to the Revised Statutes of Missouri (Supp. 2012) unless otherwise noted.

appeal of the Board’s “refus[al] to issue or reinstate any certificate of registration or authority, permit or license required pursuant to chapter 335 for one or any combination of causes stated in subsection 2 of this section[.]” Section 335.066.2(1)—(16) lists 16 causes, or bases, for action against a licensee, including violation of §§ 335.011-335.096, RSMo. *See* § 335.056, RSMo (2000) (providing that it shall be illegal to practice nursing during a period of time when the person’s license is lapsed).

Ms. Gardner does not allege that her license is revoked or suspended, that the Board has refused to reinstate or renew it, or that the Board has taken any action against it at this time, based on any cause listed in § 335.066.2(1)—(16).

We note that we *do* have authority to review—at a licensee’s request—whether the terms of an executed settlement between the licensee and the Board constitute grounds for denial of licensure or discipline of the license of the licensee. *See* § 621.045.4(3) and .5, RSMo. But to trigger such review, the settlement agreement must have been executed, that is, “signed by all parties[.]” § 621.045.4(3). The only settlement agreement before us in the instant case has not been fully executed—only Ms. Gardner has signed it.

Ms. Gardner presents no basis for appeal to this Commission which the law provides us any jurisdiction to hear. Accordingly, we must dismiss.

Summary

We grant the Board’s motion to dismiss.

The hearing presently scheduled for January 28, 2014, is canceled.

SO ORDERED on December 18, 2013.

\s\ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner