

Before the
Administrative Hearing Commission
State of Missouri



TRICIA LYNN BROWN,)	
)	
Petitioner,)	
)	
v.)	No. 13-0182 BN
)	
STATE BOARD OF NURSING,)	
)	
Respondent.)	

DECISION

We deny Petitioner Tricia Brown a license to practice as a registered nurse.

Procedure

Ms. Brown filed a complaint on February 4, 2013, appealing the Board's decision to issue her a probated nursing license.

We held a hearing on April 23, 2013. Ms. Brown appeared in person and was represented by her attorneys, Kevin Dolley and Conor McCullough. The Board was represented by its counsel, Rodney P. Massman. The case became ready for decision on August 12, 2013, when the parties completed supplemental briefing.

Findings of Fact

1. Tricia Brown had trouble with alcohol that increased in severity for 20 years, most of her adult life. By her own admission, she has an alcohol addiction.

2. Ms. Brown was arrested on August 10, 2007 for driving while intoxicated. At the time, she had a job tending bar where she was “permitted to drink...at the end of [her] shift.”¹ When she was arrested, she was placed in a holding cell with 43 other women, including ones who had committed violent crimes. She slept under a bench and awoke to someone trying to steal her shoes. She was “scared”² and the episode “was definitely a low point” for her.³ She received a suspended imposition of sentence, or SIS, for the offense.

3. Ms. Brown was arrested a second time for driving while intoxicated, on September 17, 2009, with a blood alcohol content of .128. At the time, she had completed her probationary period for the 2007 DWI and was still working as a bartender. She had worked a day shift at the bar, and was in a hurry to leave, but was waiting for a friend to fix her broken headlight. “In the meantime somebody [bought her] a shot and [she] did it. And [she] left with a headlight out and got pulled over immediately after and received [her] second” DWI.⁴ She received an SIS for the offense.

4. The date Ms. Brown last drank alcohol was February 10, 2010, and the date her sobriety began was February 14, 2010.

5. On February 14, 2010, Ms. Brown entered a Narconon-based, residential treatment center in Colorado. She left on May 7, 2010 after completing the program.⁵

6. After she left the center, Ms. Brown did not have any face-to-face, follow-up treatment with center personnel. They phoned her from time to time over the course of about a

1 Tr. 62.

2 Tr. 63.

3 *Id.*

4 *Id.*

5 The program uses a rational recovery, cognitive behavior therapy model, Tr. 65, rather than the 12-step model commonly associated with Alcoholics Anonymous programs, Tr. 108.

year. The phone calls ended in May 2011. She was not subject to random alcohol testing during that year.

7. In August 2012, Ms. Brown prepared her application to the State Board of Nursing for a license as a registered professional nurse by examination. The Board received it on September 12, 2012.

8. The end of the application contains a “Sworn Affidavit” section for the applicant to sign in the presence of a notary. The preprinted language on the form, immediately above the applicant’s signature line, provides that “the statements [in the application] are strictly true in every respect...and I...have read and understood this affidavit.”⁶ Ms. Brown signed it before a notary.

9. Question 6 on the application asked:

6. Have you ever been convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime, whether or not sentence was imposed (excluding traffic violations)?

Ms. Brown answered, “No.”⁷

10. Question 7 on the application asked:

Have you ever been convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any traffic offense resulting from or related to the use of drugs or alcohol, whether or not sentence was imposed?

Ms. Brown answered, “No.”⁸

11. Question 9 on the application asked:

Do you currently, or did you within the past five years, use any prescription drug, controlled substance, illegal chemical substance,

⁶ Ex. D.

⁷ Ex D, Tr. 82.

⁸ Ex. D.

or alcohol, to the point where your ability to practice as a registered professional nurse would be affected?

Ms. Brown answered, “No.”⁹

12. When she was preparing her application, Ms. Brown consulted with a lawyer in regard to Questions 6, 7, and 9.

13. Question 10 on the application asked:

Are you now being treated, or have you been treated within the last five years, through a drug or alcohol rehabilitation program?

Ms. Brown answered, “Yes.”¹⁰

14. The “Yes” answer to Question 10 triggered the instruction printed immediately below that question:

If Yes, explain fully in a separate notarized statement and provide the discharge summary or other official documentation that shows your diagnosis, prognosis, and treatment plan.^[11]

15. Ms. Brown did not submit a discharge summary with her application, or any other official documentation that showed her diagnosis, prognosis, and treatment plan. She did submit a letter, dated September 6, 2012 and which she signed before a notary, to the Board “to plead her case for a nursing license.”¹² She stated,

Events that occurred in my life during the year of 2009 to 2010 are something I am far from proud of, but regardless I sought help. After being arrested for a DUI, I realized that I was using alcohol to cope with my lack of success and recent lay off [sic]. I attended a three month inpatient rehabilitation program where I learned the life skills I needed to go through life sober and successful.^[13]

⁹ Ex. D.

¹⁰ *Id.*

¹¹ *Id.*

¹² Ex. E.

¹³ *Id.*

In the same letter, she admitted that she had previously quit a nursing program in the past because she was not emotionally prepared to follow through. She also related that her current coping mechanisms to stay calm and sober are meditation and yoga.

16. At the Board's request, Ms. Brown submitted a form packet, which the Board refers to as the chemical dependency or CD packet, in late October 2012. The packet is lengthy. It is organized to collect information about 14 "Items" or topics: Information About You; Resume; Employment; History of Treatments Received; Aftercare Participation and Relapse Prevention Plan; Addictionologist Evaluation and Evidence of Compliance; Support Group (AA/NA, other) Participation; Drug Screens; Criminal Record Information; Health Care Providers: List, Medications, Diagnosis; Pharmacy Information; Licensure Information in NC and other states; Releases from Providers; and Reference Letters.¹⁴

17. The last page of the Information Section of the CD packet contains the preprinted declaration: "The statements in this document and the items attached are true in every respect," below which Ms. Brown signed and wrote the date "10-23-12."¹⁵

18. Item 1 in the CD packet asks for "date of sobriety," which Ms. Brown answered, "2-14-09." The next line asks for "date last drank alcohol," which she answered, "2-10-09."¹⁶ Both answers were wrong.

19. Item 5 in the CD packet asks about dates of treatment received. In writing down the admission date for her treatment at the Narconon facility, she first wrote "2-14-09" and then "scribbled" over the "09" so that her answer read "2-14-10."¹⁷

¹⁴ Ex. F-1.

¹⁵ Ex. F-2.

¹⁶ *Id.*

¹⁷ Ex. F-5.

20. In regard to Item 6 in the CD packet, and at the request of the Board, Ms. Brown was evaluated in late 2012 by a substance abuse professional whom she selected from a Board-approved list, Greg Krueger, MSW, LCSE.

21. Mr. Krueger administered the Michigan Alcohol Screening Test (MAST), on which Ms. Brown scored 23 out of 56. A score of five or more points on the MAST suggests probable drug or alcohol addiction.¹⁸ A score of 23 on the MAST is “high.”¹⁹

22. Mr. Krueger concluded in his report, which Ms. Brown submitted as part of Item 6, that Ms. Brown met the criteria for diagnosis as alcohol dependent, and that she is “in full remission.”²⁰ He additionally concluded:

I am comfortable with Ms. Brown working in the nursing profession only if the following stipulations are in place: 1. Ms. Brown should remain alcohol free, ongoing; 2. Ms. Brown should be given random tests for alcohol for the period of time that she is under any probationary status in order to monitor her compliance with the stipulation that she remain alcohol free.^[21]

23. A substance abuse disorder is a chronic illness and is characterized by periods of remission and relapse. In general, the rate of relapse among nurses who are substance abusers is lower than in the general population, due to the growth of supportive programs and strict state monitoring programs.²² But nursing is a stressful profession. Stress is a trigger for relapse, and new nurses are more likely than experienced nurses to feel stress from the high pressure of the

¹⁸ Ex. F-7.

¹⁹ Board’s expert, Dr. Janet Elliott, Tr. 156.

²⁰ Ex. F-7.

²¹ *Id.*

²² Ex. H.

profession, particularly in the first five or six years of practice.²³ And alcohol abusers tend to go back to alcohol because it is easy to get.²⁴

24. Ms. Brown is at high risk for relapse.²⁵

25. Ms. Brown graduated from an accredited, Missouri school of nursing in December 2012. She has never held a Missouri nursing license.

26. The Board issued an order on January 9, 2013 in which it concluded that once Ms. Brown passed the registered professional nurse examination, she would be issued a probated license. The probation would commence on the date she passed the examination and would last for five years.

27. The Board's order provided certain terms and conditions of probation, including that Ms. Brown would:

- a. keep the Board informed of her place of employment and any change, or of her unemployment;
- b. provide a copy of the probation order to current and potential employers;
- c. provide the Board with employer evaluations;
- d. not serve on any administrative staff;
- e. work as a nurse only with on-site supervision;
- f. not work in home health care, hospice, or durable medical equipment;
- g. not work in a healthcare-related position for a temporary employment agency or as a healthcare-related independent contractor;
- h. provide the Board with updates of treatment evaluations at least quarterly from a chemical dependency professional, or provide a letter demonstrating successful completion of treatment;
- i. submit evidence of regular attendance at Alcoholics Anonymous or a similar support group, meeting at least quarterly;

²³ Tr. 146-148, Board expert, Dr. Janet Elliott.

²⁴ *Id.*, Tr. 161.

²⁵ *Id.*

- j. contract with a Board-approved contractor to participate, at her own cost, in a random testing program;
- k. abstain from the use or possession of alcohol;
- l. abstain from the use of controlled substances unless prescribed and to notify the Board if prescribed; and
- m. participate in certain online continuing education classes within the first year.

Conclusions of Law

We have jurisdiction. §§ 335.066 and 621.045, RSMo.²⁶

The Board bears the burden of proving that a basis exists to deny Ms. Brown’s license and for imposing probation, if available. § 324.038 and § 335.046, RSMo (2000); *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000). Its answer herein establishes notice of those bases. 1 CSR 15-3.380(2)(E).²⁷ *See also Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App. E.D. 1984) (refusal-to-license case decided under administrative review provisions then existing in Chapter 161, RSMo (1978), and subsequently transferred to Chapter 621, RSMo).

This Commission decides the issues anew, stepping into the place of the Board, exercising any discretion it has, and remaking its decision. *State Bd. of Regis. for the Healing Arts v. Trueblood*, 368 S.W.3d 259, 265-266 (Mo. App. W.D. 2012).

The Board decided to issue Ms. Brown a probated license, based on § 335.066.1 and .2(3):

- 1. The board may refuse 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 or the board may, as a condition to

²⁶ All references to “RSMo” are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

²⁷ All 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.

issuing or reinstating any such permit or license, require a person to submit himself or herself for identification, intervention, treatment, or rehabilitation by the impaired nurse program as provided in section 335.067. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to sections 335.011 to 335.096 or in obtaining permission to take any examination given or required pursuant to sections 335.011 to 335.096[.] [Emphasis added]

The Board also based its decision on § 335.046.1:

An applicant for a license to practice as a registered professional nurse shall submit to the board a written application on forms furnished to the applicant. The original application shall contain the applicant's statements showing the applicant's education and other such pertinent information as the board may require. The applicant shall be of good moral character and have completed at least the high school course of study, or the equivalent thereof as determined by the state board of education, and have successfully completed the basic professional curriculum in an accredited or approved school of nursing and earned a professional nursing degree or diploma. Each application shall contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing same, subject to the penalties of making a false affidavit or declaration. The applicant must be approved by the board and shall pass an examination as required by the board. The board may require by rule as a requirement for licensure that each applicant shall pass an oral or practical examination. Upon successfully passing the examination, the board may issue to the applicant a

license to practice nursing as a registered professional nurse. ...
[Emphasis added.]

A. Sufficiency of the Board's Answer

As a preliminary matter, we address Ms. Brown's argument that the Board's answer is insufficient and that she is therefore summarily entitled to a non-probated license. Specifically, she argues that the answer violates 1 CSR 15-3.380(2)(E)1 and 2, because it lacks allegations of facts on which the Board bases its action, stated "with sufficient specificity . . . to enable [her] to address such allegations," and lacks citations to the provisions of law that allow the Board to base its action on the alleged facts.²⁸ We conclude the answer is sufficient for purposes of satisfying the regulation and providing notice.

In *Ballew*, a refusal-to-license case, the Court of Appeals explained that a case in which a petitioner seeks review of a licensing agency's action can be different from "most civil proceedings where basic issues are set out in the first pleading and effectively joined by a simple denial," because "issues...often cannot be discerned with certainty until the agency files its answer stating the *reason* for its refusal. In such instance, the second pleading, the answer, serves the basic function of 'notice' in the sense of due process to the applicant." 670 S.W.2d at 103 (emphasis in original).

The circumstances also matter. In *Ballew*, the director of the licensing agency failed to specify in his answer the facts on which he relied, instead setting out the conclusion that the licensee was guilty of conduct proscribed by a cited criminal law. *Id.* The licensee argued that those paragraphs of the answer should have been stricken and the director precluded from introducing related evidence, which would have prevented the director from proving the grounds for refusal to license. *Id.* The Administrative Hearing Commission refused to strike. *Id.*

²⁸ Petitioner's Proposed Findings of Fact and Conclusions of Law, pp. 14-15.

The appellate court affirmed, reasoning that the licensee was indicted for the acts for which he knew the director refused to license him, and was fired by his employer for those same acts. *Id.* Although “it would have been better practice for the [d]irector to specify the facts on which he relied,” the licensee was “fully aware of the reasons underlying the [d]irector’s allegations in his answer and what was to be litigated at the hearing.” *Id.* The court therefore concluded that this Commission had not abused its discretion in refusing to strike certain portions of the answer. *Id.*

Regulation 1 CSR 15-3.380(2)(E), concerning answers in cases before this Commission, is consistent with *Ballew*:

(E) When the petitioner seeks review of respondent’s action, [the answer shall] include—

1. Allegations of any facts on which the respondent bases the action, with sufficient specificity to enable the petitioner to address such allegations;
2. Any provision of law that allows the respondent to base the action on such facts;
3. A copy of any written notice of the action of which petitioner seeks review, unless such written notice was included in the complaint; and
4. Facts that show that the respondent has complied with any provisions of law requiring the respondent to notify the petitioner of the action that petitioner is appealing.

Here, the Board in its answer admits paragraphs 1-11, 18, 24-26, and 28-29 of Ms. Brown’s complaint. Among other things, the admitted paragraphs include reference to the Board’s order (attached to the complaint) as a whole and to specific portions of it; citations to statutes including §§ 335.046.1, and 335.066.1 and .2(3); the Board’s finding that Ms. Brown misrepresented the year of her last drink and of her sobriety; the actual and false dates; the dates and circumstances of her two DWIs; and the Board’s determination that it had cause to deny a

license to Ms. Brown based on her misrepresentation on her application and her lack of good moral character.

We conclude that the Board's answer—through its admissions of the above-listed paragraphs in Ms. Brown's complaint, including the attached copy of the Board's order—contained sufficiently specific allegations of fact and citation to the operative provisions of law, to provide notice to Ms. Brown of what would be litigated at the hearing. We further conclude that she was fully aware of the Board's reasons for its action.

We therefore deny Ms. Brown's request to summarily grant her non-probated licensure.

B. Grounds for denial or probation

The Board argues cause for denial of licensure or for licensure subject to probation is established in two ways here: lack of good moral character, and misrepresentation on her application materials. We address them in turn.

1. Good moral character

We conclude Ms. Brown lacks "good moral character" for purposes of § 335.046.1.

"Good moral character" is not statutorily defined in § 335.046.1. But in the analogous context of physicians' license cases under § 334.100, it "is generally defined as honesty, fairness, and respect for the rights of others and for the laws of the state and the nation." *Hernandez v. State Bd. of Regis'n for the Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App. W.D. 1997). A finding of rehabilitation can be implicit in a finding of good moral character, as in the case of a person who has committed criminal conduct but has been rehabilitated. *See State Bd. of Healing Arts v. De Vore*, 517 S.W.2d 480, 487 (Mo. App. K.C.D. 1974); *State Bd. of Healing Arts v. Finch*, 514 S.W.2d 608, 616 (Mo. App. K.C.D. 1974). An applicant who is rehabilitated

acknowledges his or her past crimes or misconduct and embraces a new moral code. *Francois v. State Bd. of Regis. for the Healing Arts*, 880 S.W.2d 601, 603 (Mo. App. E.D. 1994).

We further note that in general, and by law, a licensing board may consider conviction of a felony or misdemeanor as some evidence of lack of good moral character, but the licensing board must also consider the nature of the crime in relation to the type of licensure sought, when the conviction occurred, the applicant's conduct since the conviction, and any other evidence relevant to good moral character. § 314.200, RSMo (2000).

Applying the definition of good moral character, *Hernandez*, 936 S.W.2d at 899 n.1, we find Ms. Brown lacking. She has a 20-year history of alcohol addiction, which increased in severity over time, spanning most of her adult life. Ms. Brown has two episodes of driving while intoxicated in the fairly recent past, 2007 and 2009. She testified that at the time of the first one, she had a job tending bar where she was “permitted to drink...at the end of [her] shift.”²⁹ When she was arrested, she was placed in a holding cell with 43 other women, including ones who had committed violent crimes. She was “scared.”³⁰ She slept under a bench and awoke to someone trying to steal her shoes. “It was definitely a low point” for her.³¹

At the time of the 2009 DWI, she had completed her probationary period for the 2007 DWI and was still working as a bartender. She testified that she had worked a day shift at the bar, and was in a hurry to leave, but was waiting for a friend to fix her broken headlight. She further testified that “[i]n the meantime somebody [bought her] a shot and [she] did it. And [she] left with a headlight out and got pulled over immediately after and received [her] second”

²⁹ Tr. 62.

³⁰ Tr. 63.

³¹ *Id.*

DWI.³² She was found to have been driving with a blood alcohol content of .128, markedly above the legal limit, and plainly drank more than the one shot she testified about.

In short, Ms. Brown twice violated the law against driving while intoxicated, in incidents that were relatively close to one another and relatively recent, and was dishonest in describing the second one. The two incidents manifested a lack of respect for the right to be safe of those persons with whom she shared the roadway.

Ms. Brown is not rehabilitated. She drank as recently as 2010. After her second DWI, she did participate in in-patient treatment for her alcohol addiction. A substance abuse professional has recently concluded (November 2012) that she is presently in remission. But she scored high on a test of alcohol addiction that he administered to her, and he did not conclude she is rehabilitated.

We are very troubled by the description of the DWI incidents she provided to us in her testimony herein in April 2013, because she minimized her responsibility for drinking with respect to both. She testified that she was “permitted” to drink at the end of her shift (the 2007 incident), and that “someone” (else) bought her a shot and she did it (the 2009 incident). She further minimized the 2009 incident by pointing out that she was “immediately” pulled over. And notwithstanding her testimony that she did “a shot” prior to being pulled over, she plainly drank more than that—at .128, her blood alcohol was markedly over the legal limit.

We are also troubled by the error Ms. Brown made in her CD packet.³³ She testified that in October 2012, when she was filling it out, she was stressed and in a hurry due to preparing for her nursing finals, and the stress and hurry caused her to misstate the date of her last drink and of

³² Tr. 63.

³³ We conclude below that Ms. Brown did not make a “misrepresentation” for purposes of § 335.066.2(3).

her sobriety by a year.³⁴ We consider it significant, in assessing whether Ms. Brown is rehabilitated, that stress and hurry got the better of her when she was answering questions under oath, particularly these questions. She admitted that her date of sobriety is important to her.³⁵ But she is very competent in regard to managing details. She testified that during the clinical portion of her nursing training, an admittedly stressful time, she “never” made documentation errors.³⁶ She similarly testified that during the preceptorship portion of her program, she made “no” documentation errors, and was in fact recognized by her supervisor as providing “the safest and most effective care of any” supervisee whom the supervisor ever had.³⁷ The particular errors she made, and the reason she made them, go to a failure to fully acknowledge her past conduct, and weigh against a finding of rehabilitation.

Certainly, there is no evidence that Ms. Brown ever participated in her nursing training while under the influence of alcohol, or that alcohol is a substance associated with the typical setting in which nurses practice. But we find the evidence in regard to nursing, stress, and alcohol abuse relevant in regard to the relation between nursing and Ms. Brown’s difficulties with alcohol. Nursing is a stressful profession, especially for new nurses. Stress is a trigger for relapse, and new nurses are more likely than experienced nurses to feel stress from the high pressure of the profession, particularly in the first five or six years of practice. And alcohol abusers tend to go back to alcohol because it is easy to get. In general, the rate of relapse among nurses who are substance abusers is lower than in the general population, but that is due to the growth of supportive programs and strict state monitoring programs. Therefore, we do consider Ms. Brown’s difficulties with alcohol to be related to the type of licensure sought.

³⁴ Tr. 71-73.

³⁵ Tr. 95.

³⁶ Tr. 69-70.

³⁷ Tr. 70.

We acknowledge that friends and colleagues provided letters of support to the Board on behalf of Ms. Brown's application.³⁸ We also acknowledge that she undertook and succeeded in a difficult course of study to become a nurse, a significant and laudable accomplishment.

Nevertheless, based on a preponderance of the evidence, we conclude she has not fully acknowledged her past misconduct or embraced a new moral code, and is not rehabilitated. She lacks good moral character for purposes of § 335.046.1.

2. Misrepresentation

"Misrepresentation" is not statutorily defined for purposes of § 335.066.2(3). But § 334.100, RSMo, relating to physician license discipline, is analogous here and uses the same word. In a proceeding under § 334.100, the Court of Appeals defined it as "a falsehood or untruth made with the intent of deceit rather than inadvertent mistake." *Hernandez*, 936 S.W.2d at 899 n.3.

We reject the Board's argument that we can base discipline on Ms. Brown's answers of "no" to questions 6, 7, and 9 on her original application, which the Board claims were misrepresentations. First, the Board's answer does not clearly include such grounds.

We also find credible Ms. Brown's testimony that she consulted with an attorney in regard to how to answer those questions. Whether the Board disagrees with the attorney's advice or even if the advice was wrong, which we do not decide, is not relevant. Under the circumstances, Ms. Brown's reliance on that advice is reasonable and disproves an intent on her part to deceive.

A closer question is the matter of certain representations Ms. Brown made in the CD packet she prepared at the Board's request, after she submitted her original application. She

³⁸ Ex. F-15.

wrote that the dates of her last drink and her sobriety were in 2009, the wrong year, rather than in 2010, the right one. The Board argues she had the intent to deceive, that is, she stated the earlier year to downplay the recency of her difficulties with alcohol.

Ms. Brown concedes she made a mistake in indicating 2009, but denies she intended to deceive the Board. She testified that she was studying for her nursing finals when she prepared the materials, and that while stressed and in a hurry, made a scrivener's error.

The circumstances under which Ms. Brown indicated 2009 give us pause. But we find her testimony and explanation credible and conclude she did not make a misrepresentation by indicating 2009 rather than 2010.

Accordingly, we find no cause for discipline under § 335.066.1 and .2(3).

C. License denial, issuance, or issuance subject to probation

We separately address the appropriate step to take in view of our conclusions that the Board established lack of good moral character—a failure of qualification, but not misrepresentation—a disciplinary ground. We conclude Ms. Brown's license should be denied outright, rather than issued outright or issued subject to probation.

At our request, the parties filed supplemental briefing to address whether a finding of lack of good moral character under § 335.046.1 could support issuance of a probated license. The Board argued that it could. Ms. Brown argued it could not and our only option would be to issue or deny a license outright. The parties largely confined their arguments to examination of the statutory language and a handful of prior decisions of this Commission. Neither party cited case law on point, and we have located none.

Section 335.046.1 is a nursing licensure qualification statute, and includes the requirement that “[t]he applicant shall be of good moral character[.]”³⁹ Subsection 2 provides that upon the applicant’s successful passage of the appropriate examination, the Board “may issue” a license. Giving effect to the plain language and all parts of § 335.046, we conclude good moral character is a prerequisite to issuance of a license, like any of the other qualifications an applicant “shall” have, such as completion of the appropriate courses of study and successful passage of the appropriate examinations, and that an applicant’s lack of good moral character requires denial of a license. Section 335.046 contains no provision for issuance of a probated license when an applicant lacks one or more qualification, and we find none elsewhere. Under § 335.046, a license is or isn’t issued, period.

We find none of the Board’s arguments persuasive. For authority for probation when an applicant lacks good moral character, the Board points to §§ 324.038, 335.046, and 335.066, and certain legislative history, and urges us to read the statutes *in pari materia*. Its argument is not persuasive because the existing statutes—as written—are clear enough that resorting to rules of construction is not appropriate. Section 335.046, as discussed, requires good moral character and contains no provision for issuance subject to probation.

Separately, § 324.038 does provides the Board with the authority to issue a license subject to probation in lieu of outright denial, but it explicitly provides such authority only in connection with grounds that would serve to file a disciplinary complaint:

1. Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license,

³⁹ Emphasis added.

may, at its discretion, issue to an applicant a license subject to probation.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived....

[Emphasis added.]

Section 335.066, in turn, lists 16 grounds for the filing of a disciplinary complaint, and those grounds do not include lack of “good moral character.” The absence of good moral character from the 16 grounds is logical enough, given that § 335.066 is a disciplinary statute, and it seems an ill fit to “discipline” a licensee for lack of good moral character, a licensure qualification under § 335.046.

The Board plucks a sentence from the middle of § 324.038.2 (set forth in full above), pointing to it as “probably the most illustrative” of the statutory language demonstrating a probated license may be issued in the case of lack of good moral character:

Such complaint shall set forth that the . . . licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession.^[40]

We disagree. Relating back to subsection 1, subsection 2 *begins* with:

The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective.

As discussed above, subsection 1 provides for imposing probation, but only when disciplinary grounds exist. Additionally, a reading of subsection 2 in its entirety reinforces its relation back to subsection 1.

We also reject the Board’s argument that reading the statutes to preclude probation in the case of license denial, based on lack of good moral character, renders superfluous portions of the statutes. For example, the Board argues that if § 324.038 allowed only for probation for disciplinary grounds, then § 324.038.2 would not need to require the Board to notify an applicant of “the basis” for imposing probation, because “it [the basis for denial] would be obvious, i.e., Section 335.066.2, RSMo.”⁴¹ Of course, the basis for denial would not be obvious, inasmuch as § 335.066.2 contains 16 grounds and the Board typically must, as a matter of due process, explicitly identify which ground or grounds an applicant should be prepared to defend.

The Board also points to laws and regulations unrelated to nursing licensure that would appear to permit probation in those other contexts. That such other laws and regulations exist only reinforces the narrower range of options here.

Finally, the Board argues that if applicants who lack good moral character cannot receive a probated license and must be denied licensure, then such persons could “[c]onceivably...be forever denied a license and imprinted with the stamp of bad moral character, forever. The

⁴⁰ Respondent’s Supplemental Brief, pp. 5-6.

⁴¹ Respondent’s Supplemental Brief, p. 6.

Board would be left with the only option to deny licensure completely in every case in which moral character is raised and appears relevant.”⁴² The Board overlooks that it chose to claim herein that Ms. Brown lacked good moral character and undertook, successfully, to prove it. And we are of course bound to follow the statutes as written.

The Board also overlooks that a lack of good moral character is not immutable. Quite the contrary, and as discussed above, the law acknowledges the possibility of rehabilitation. We see nothing in the statutory scheme that would prohibit an applicant who has at one time been found not to be rehabilitated and denied licensure, from reapplying once rehabilitated and gaining licensure at that time.

In view of the foregoing, and based on our conclusion that Ms. Brown lacks the requirement under § 335.046 of good moral character, we deny her licensure.

Summary

We deny Petitioner Tricia Brown a license to practice as a registered nurse.

SO ORDERED on August 27, 2013.

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

⁴² Respondent’s Supplemental Brief, p. 12.