

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF NURSING,)	
)	
Petitioner,)	
)	
vs.)	No. 12-2070 BN
)	
HOLLY PARKER,)	
)	
Respondent.)	

DECISION

Holly Parker is subject to discipline because she unlawfully possessed a controlled substance and pled guilty to the criminal offense of possession of a controlled substance. We cancel the hearing.

Procedure

On November 26, 2012, the State Board of Nursing (“the Board”) filed a complaint seeking to discipline Parker. On August 16, 2013, Parker was served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail.¹ On September 27, 2013, Parker filed an answer admitting the factual allegations in the complaint. On November 26, 2013, we held a prehearing conference. During the prehearing conference, Parker orally reaffirmed her admissions

¹ Prior attempts at service were unsuccessful.

of the allegations in the complaint. We allowed the Board leave to file a motion for a decision on the pleadings less than 45 days before the hearing date.²

On December 3, 2013, the Board filed a motion for decision on the pleadings. The following facts are undisputed and drawn from the complaint and the answer.

Findings of Fact

1. Parker is licensed by the Board as a licensed practical nurse. This license was current and active at all relevant times. Parker's license expired May 31, 2012.

2. Before September 28, 2011, Parker possessed Xanax (alprazolam), a controlled substance,³ without a prescription.

3. On September 28, 2011, in the Circuit Court of Mississippi County, Missouri, Parker pled guilty to Possession of Controlled Substance Except 35 Grams or Less of Marijuana, a Class C felony.

4. Parker received a suspended imposition of sentence and was placed on three years' supervised probation.

5. On November 2, 2011, Parker self-reported her guilty plea to the Board.

Conclusions of Law

We have jurisdiction to hear the complaint.⁴ The Board has the burden of proving that Parker has committed an act for which the law allows discipline.⁵

We grant a motion for a decision on the pleadings when the adverse party's pleadings establish facts that entitle any party to a favorable decision and no party raises a genuine issue as

² 1 CSR 15-3.446(2)(B). All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

³ Section 195.017.8(2)(a). Statutory references, unless otherwise noted, are to the 2012 Supplement to the Revised Statutes of Missouri.

⁴ Section 621.045.

⁵ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

to such facts.⁶ Parker admitted all of the factual allegations set forth in the complaint. But statutes and case law instruct us that we must “separately and independently” determine whether such facts constitute cause for discipline.⁷ Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

The Board argues that there is cause for discipline under § 335.066:

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:

(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;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to sections 335.011 to 335.096, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

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

⁶ 1 CSR 15-3.446(4).

⁷ *Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

Subdivisions (1) and (14) – Unlawful Drug Possession

The Board argues that Parker violated a drug law and unlawfully possessed controlled substances. She violated § 195.202.1:

Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

Parker is subject to discipline under § 335.066.2(1) because she unlawfully possessed a controlled substance – alprazolam. She is subject to discipline under § 335.066.2(14) for violating § 195.202.1.

Subdivision (2) – Guilty Plea

Parker pled guilty to § 195.202.1 as quoted above.

Reasonably Related

Reasonable relation is a low threshold. To relate is to have a logical connection.⁸ The crime of possession of a controlled substance is reasonably related to the duties of a licensed practical nurse who is responsible for handling and administering controlled substances.

There is cause for discipline under § 335.066.2(2).

Moral Turpitude

Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”⁹

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*,¹⁰ a case that involved

⁸ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 1050 (11th ed. 2004).

⁹ *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

¹⁰ 213 S.W.3d 720 (Mo. App., W.D. 2007).

discipline of a teacher's certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:¹¹

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude," such as illegal parking (Category 2 crimes); and
- (3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of "the related factual circumstances" of the offense to determine whether moral turpitude is involved.¹²

Felony drug possession is a Category 1 crime.¹³ Therefore, it is a crime involving moral turpitude. Accordingly, there is cause for discipline under § 335.066.2(2).

Summary

Parker is subject to discipline under § 335.066.2 (1), (2), and (14). We grant the motion for a decision on the pleadings and cancel the hearing.

SO ORDERED on December 10, 2013.

/s/ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹¹ 213 S.W.3d at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

¹² *Brehe*, 213 S.W.3d at 725.

¹³ *In re Shunk*, 847 S.W.2d 789, 791 (Mo. banc 1993).