

STATE OF FLORIDA
DEPARTMENT OF HEALTH

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Vicki R. Kanon*
DATE 3/20/02

BOARD: Medicine
CASE NUMBER: 2000-06494
COMPLAINT MADE BY: DOH/Profiling
COMPLAINT MADE AGAINST: Linda S. Harper
102 Park Place Blvd., A-3
Kissimmee, FL 34741
DATE OF COMPLAINT: August 14, 2000
INVESTIGATED BY: Roy Baggett
Consumer Services
REVIEWED BY: Wings S. Benton/bs
RECOMMENDATION: Dismiss 4099 *W*

NOTICE OF DISMISSAL/CLOSING ORDER ON RECONSIDERATION

THE COMPLAINT: Possible violation of Section 458.331(1)(a), Florida Statutes, by attempting to obtain a license to practice medicine by fraudulent misrepresentation; 458.331(1)(g), Florida Statutes, by failing to perform a statutory or legal obligation; Section 458.331(1)(h), by filing a report which the licensee knows to be false; Section 456.072(1)(v)(effective July 1, 1999), by making an untrue representation on a profile; and, Section 456.072(1)(w) (effective July 1, 1999), by failing to report a conviction, a finding of guilt, or entry of a plea of nolo contendere, regardless of adjudication, by October 1, 1999 or within 30 days of conviction.

THE FACTS: Subject is a licensed medical doctor, ME47298, first licensed in 1985.

Subject signed a Mandatory Practitioner Profile Questionnaire on May 3, 1999, and submitted it to the Department of Health. On the Profile Questionnaire, Subject checked the box indicating "NO" in response to the question: "Have you ever been convicted or found guilty, regardless of whether adjudication of guilt was withheld, or pled guilty or nolo contendere to a criminal misdemeanor or felony in any jurisdiction?" Subject did not change this response when given an opportunity on June 17, 1999 to view the profiling information that would be published.

Subject signed an application for license on March 23, 1985, and submitted it to the Department of Health or its predecessor. On the application Subject answered "no" to the questions, "Have you ever been convicted of a felony? ___; a misdemeanor? ____."

A criminal background check and investigation revealed she was arrested in Hillsborough County on November 1, 1978 for shoplifting a blouse worth \$48.00. She was charged with petty larceny (a misdemeanor), entered a plea of nolo contendere, and adjudication was withheld in November 1978. No fine, costs or other penalty was imposed.

Probable Cause was found on June 8, 2001, for violation of Sections 458.331(1)(a) and (h), Florida Statutes. An Administrative Complaint was filed on June 13, 2001, and served.

The evidence is insufficient to proceed with the prosecution. **The 1985 application form did not ask about pleas, nor did it state "regardless of whether adjudication was withheld". Subject should have listed the offense on the Profile Questionnaire, but the facts of this case suggest she did not intend to conceal.**

In response to the investigation, Subject states through her attorney, that at the time the Subject filed her application for a Florida license and submitted her profiling questionnaire, she understood the answers she provided to be true and correct and apologizes for the error.

To prove a violation at the Division of Administrative Hearings it may be necessary to prove: (a) that Subject intended to conceal; and, (b) that the criminal offense is related to the practice based on the surrounding facts and circumstances. The evidence must be clear and convincing in order to prevail.

THE LAW: Based on the foregoing reconsideration, and pursuant to Section 456.073(4), Florida Statutes, this case should be closed for insufficient evidence to continue with the prosecution.

It is, therefore, ORDERED, that the complaint should be and the same is hereby DISMISSED.

DONE and ORDERED this _____ day of _____, 2002.


Chairperson, Probable Cause Panel