

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE BOARD OF NURSING**

IN THE MATTER OF:)
)
SANDRA CORPUZ) OAH No. 14-2058-CNA
) Board Case No. 2014-001927
_____)

DECISION

I. Introduction

Sandra Corpuz applied to be a Certified Nurse Aide. Based on a criminal conviction from 1991 and a history of alcohol-related domestic violence and driving incidents, the Alaska Board of Nursing (Board) denied her application. Ms. Corpuz appealed that determination.

The hearing was held on May 5, 2015. Ms. Corpuz testified at length on her own behalf, and she was represented by attorney Nicholas Kittleson. Also testifying on her behalf were Katie Mangelsdorf, a former schoolteacher who has known Ms. Corpuz since 1972 when she was in the third grade; Nell Gustafson, a church volunteer in Homer who has known Ms. Corpuz for about a year; Cynthia Nation, the former elder care supervisor at Tanana Chiefs Conference who hired, trained and supervised Ms. Corpuz when she worked as a nurse's aide provider in the late 1990s; and Debra Beno, a college friend who has known Ms. Corpuz for over 30 years. The staff of the Board of Nursing were represented by counsel Harriet Milks, and the executive administrator of the Board, Dr. Nancy Sanders, testified on behalf of the staff.

Ms. Corpuz had the burden of proof at the hearing to establish by a preponderance of the evidence that she qualifies for certification as a Nurse Aide,¹ and she met her burden. Ms. Corpuz established that, because she has achieved long-term sobriety in her life, and because the investigative report on which the Board based its determination misinterpreted relevant statutes and presented a distorted picture of Ms. Corpuz's personal history, her application should be approved and she should be certified as a Nurse Aide.

II. Facts

Ms. Corpuz is 53 years old and is an admitted, recovering alcoholic. She was raised in Arctic Village, and she is fluent in Gwichin, the language of her village. She has been completely sober since May, 2000, when she completed a three-month, in-patient drug and

¹ AS 44.62.460(e); *ABC Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

alcohol rehabilitation program at the Ernie Turner Center in Anchorage.² Ms. Corpuz testified credibly and convincingly at the hearing that she has not had a single drink of alcohol since that time.

Prior to achieving sobriety, Ms. Corpuz's abuse of alcohol resulted in numerous complaints and arrests for domestic violence ("DV") incidents between her and her husband, and for driving while intoxicated or while her license was suspended.³ In addition to eight alcohol-related DV and driving complaints and arrests between 1984 and 2003, she was involved in two matters that resulted in criminal convictions and that were cited by the Board staff in support of the denial of Ms. Corpuz's CNA certification. In 1991, she was convicted of child abuse, under an Anchorage municipal ordinance,⁴ for an incident in late 1990 when she was intoxicated, was walking while holding her one-year old daughter, and she fell down, causing her daughter to be injured. In 1984 (at age 22) Ms. Corpuz was convicted of disorderly conduct in connection with what she described as a "riot" in a bar in Fairbanks, when she was also, admittedly, intoxicated. These are the only two incidents cited by the Board staff in its letter to Ms. Corpuz describing the grounds for the denial of CNA certification.⁵

In approximately 1998, Ms. Corpuz took the CNA preparatory course in anticipation of applying for CNA certification.⁶ Ultimately she did not complete the application process at that time. Subsequently Ms. Corpuz continued to communicate with Board staff with the intention of applying for CNA certification, and in connection with that process she obtained from the Alaska Court System what she believed was a full set of copies of the documents pertinent to her various criminal proceedings, and submitted them to the Board staff.⁷ Although Ms. Corpuz was unable to recall the precise dates of her communications over the years with Board staff, she testified credibly about them to the effect that there were numerous conversations over the years with different members of the staff.⁸

² R000014 (references to the administrative record are denoted by "R" followed by a page number).

³ See AR 000056-57.

⁴ The ordinance has been rewritten and no longer exists (its actual language is not a part of the record), but the facts of her crime most closely resembled a violation of AS 11.51.110, "Endangering the Welfare of a Child in the Second Degree," having to do with caring for a child while intoxicated (aggravated by the fact of the injury suffered by her daughter).

⁵ See Denial Letter from Dr. Sanders, AR 000102-103.

⁶ Corpuz testimony; Ms. Nation's testimony corroborated Ms. Corpuz's description of these efforts.

⁷ *Id.*

⁸ Dr. Sanders testified that a prior licensing examiner for the Board confirmed having spoken with Ms. Corpuz in prior years.

In 2010 Ms. Corpuz became employed by Providence Health Systems Anchorage as an environmental services attendant, and passed a screening, drug test, and background check as part of the hiring process.⁹ She also was “issued a final clearance for association with Providence” by the Department of Health and Social Services, Division of Public Health Certification and Licensing (“the Department”).¹⁰

As mentioned above, Ms. Corpuz successfully completed a three-month rehabilitation program in May 2000. Subsequently she had one additional DV complaint filed against her by her husband in 2004, but that complaint was not prosecuted and was ultimately dismissed.¹¹ In addition to the 2000 rehabilitation program, she has successfully completed DV conflict resolution and anger management courses through AWAIC and the Women’s Resource Center in Anchorage, and she continues to participate in counseling through AWAIC and through her church.

Ms. Corpuz moved to Homer in early 2014 and, over the course of three months, she completed the CNA prep course there. While she was there, through church contacts she met Nell Gustafson, who later testified on her behalf in the hearing. Ms. Corpuz passed the course examination, and in April 2014 she submitted the CNA certificate application at issue in this matter.

When Ms. Corpuz filled out the form application, she answered the question “have you ever been convicted of any misdemeanor or felony (including suspended imposition of sentence))?” by checking the box “yes” and writing “D/V misd. 2004 dropped, Anch AK.”¹² Ms. Corpuz testified credibly that the reason she only included the single 2004 incident was that in prior conversations with Board or Department staff, she had been led to the erroneous belief that she only needed to provide the last 10 years of her criminal history when she submitted her application in 2014.¹³ She may have given it little thought at the time she filled out the form, however, because she believed the Board staff already possessed a full set of documents

⁹ AR 000094-95, 000199.

¹⁰ AR 000199.

¹¹ *Id.*

¹² AR000141.

¹³ *See* AR000159.

regarding her criminal history, provided by her in connection with her earlier attempt to get certified as a CNA or her Department clearance to work for Providence.¹⁴

The Board staff followed up on Ms. Corpuz's application by requesting that she provide documents regarding her criminal history, and eventually she provided the entire package of documents again. The Board investigators ultimately reviewed her entire criminal history and recommended denial of her application. The investigators stated in their report to the Board that she "failed to provide truthful answers regarding her criminal history, advising only of a dropped 2004 domestic violence charge."¹⁵ The investigators then discussed her child abuse conviction as follows:

Ms. Corpuz [*sic*] conviction has similar elements of AS 11.51.100. Endangering the welfare of a child in the first degree. (a) A person commits the crime of endangering the welfare of a child in the first degree if, being a parent, guardian, or other person legally charged with the care of a child under 16 years of age, the person (B) charged by complaint, information, or indictment with a violation of AS 11.41.410 - 11.41.455 or a law or ordinance in another jurisdiction with similar elements; (d) Endangering the welfare of a child in the first degree under (a)(3) of this section is a (3) class A misdemeanor if the child suffers physical injury.¹⁶

The report then goes on to state "[t]he elements of Ms. Corpuz's 1991 conviction of Child Abuse (with injury to child) under the barrier crime matrix found in 7 AAC 10.905(b)(A) [*sic*] is a **permanent barrier crime**."¹⁷

Unfortunately, the investigators' report grossly misinterpreted or misquoted AS 11.51.100 by leaving out several subsections between (a) and (B), and in doing so it charges Ms. Corpuz with having violated AS 11.41.410 - .455, which are all sexual assault and sexual abuse

¹⁴ Corpuz testimony. Ms. Corpuz erroneously but reasonably believed that Board staff would be aware of documents she had provided to the Department, and that Board staff would have retained documents she submitted in the late 1990s. Neither is the case. The Department handles background checks for persons who will work at health facilities that receive federal funding, whereas the Board's investigators are employed by the Department of Commerce; and the Board does not retain documents submitted with past incomplete applications.

¹⁵ AR000101.

¹⁶ *Id.*

¹⁷ *Id.* (emphasis in original) (note that the correct citation to the pertinent permanent barrier crime regulation is 7 AAC 10.905(b)(7)(A)). The barrier crime provisions arguably may not even apply to CNA certifications, as they appear to be designed primarily for licensure of health facilities and providers who will receive payment from the Department. Dr. Sanders testified that she advised the Board against using the barrier crime regulations in connection with Ms. Corpuz's application, "because it's not a Board of Nursing regulation or statute." We need not resolve this question, however, for purposes of this appeal.

crimes.¹⁸ Dr. Sanders testified that she does not believe the Board was aware of the specific charges encompassed by these statutory sections enumerated in the report when it decided to deny Ms. Corpuz's application. Nonetheless, the fact remains that the primary investigative document on which the Board relied in reaching its decision was fundamentally flawed due to these errors. In fact, Ms. Corpuz's 1990 crime does not fit within any of the potential charges that can be brought under any of the subsections of AS 11.51.100. As mentioned above, the closest fit is AS 11.51.110, "endangering the welfare of a child in the second degree," with the added factor of the injury suffered by Ms. Corpuz's child. Violation of AS 11.51.110 is listed as a "five-year barrier crime" under 7 AAC 10.905(d)(3)(A).

Based on the investigators' report and recommendations, the Board denied Ms. Corpuz's application. She then filed this appeal.

III. Discussion

There is no doubt that Ms. Corpuz has a checkered past, and she readily admitted as much during the hearing. She was candid and credible about both her past history and her future plans and hopes, during her testimony.

The conclusion stated in the investigators' report that Ms. Corpuz was untruthful in her CNA application is incorrect. I find that her testimony on this issue was credible. She established, by a preponderance of the evidence, that she believed she had already fully disclosed her criminal history to the Board staff,¹⁹ that she had no intention of hiding anything from the Board, and that at worst she was negligent in filling out the application form. Ultimately she corrected her negligent omissions by fully disclosing the documents pertinent to her criminal charges and providing narrative descriptions of those charges to the Board staff.

Similarly, the conclusion in the investigators' report that Ms. Corpuz's child abuse conviction for an offense committed nearly 25 years ago should permanently bar her from CNA certification is unsupportable. When the conviction is viewed in concert with all of her other arrests, complaints and convictions, one can understand the concern the Board's investigators may have felt about her qualifications for certification. However, her 15 years of sobriety and

¹⁸ Notably, AS 11.41.410(a)(4) involves rape by a health care worker of a victim who is unaware of the act being committed, during the course of professional treatment of the victim. AS 11.41.434 involves sexual penetration of children and other forms of child sexual abuse. Although undoubtedly these errors in the investigators' report were unintentional, it is nonetheless disturbing that the report mistakenly accused Ms. Corpuz of such crimes.

¹⁹ *See, e.g.,* AR00055.

11-plus years since any kind of a complaint has been filed against Ms. Corpuz far outweigh the impact of her pre-sobriety criminal record, in favor of allowing her to be certified. If the Board has concerns that Ms. Corpuz may relapse and pose a risk to patients, it can exercise its discretion and attach appropriate conditions to the certification.

There is no dispute that CNAs are in great demand in Alaska, especially in the Bush and especially CNAs who can speak Native languages. These facts were emphatically confirmed by Dr. Sanders' testimony. Ms. Corpuz has clearly stated that she wants to be a CNA so she can help elders in Gwichin villages. All of Ms. Corpuz's witnesses testified that she is skilled at performing the types of nursing assistant duties required as a CNA, and that she is gifted at relating to and working with village elders.²⁰ All of these factors support her qualifications for CNA certification.

IV. Conclusion

Ms. Corpuz should be commended for making a concerted effort to turn her life around and achieving long-term sobriety, and for being motivated to become a CNA so she can help people in the villages where she was raised.

The Board's denial of Ms. Corpuz's CNA certification was based on a misinterpretation of the applicable statutes and a distorted presentation of her criminal history, and it did not take into account her 15 years of sobriety and efforts to get her life on track so that she can serve others. The denial, therefore, is reversed, and Ms. Corpuz should be certified as a CNA. The Board may wish to exercise its discretion to attach conditions to her certification, if deemed appropriate.

Dated this 20th day of June, 2015.

Signed _____

Andrew M. Lebo
Administrative Law Judge

²⁰ Nell Gustafson testified that she allowed Ms. Corpuz to use her as a mock patient as part of Ms. Corpuz's practice for her exams after completing the CNA prep course; this included Ms. Corpuz examining Ms. Gustafson and physically moving her as if she were paralyzed or otherwise immobilized. Ms. Gustafson said that Ms. Corpuz was very gentle, skilled and professional in performing such tasks.

Adoption

The Board of Nursing adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 8th day of July, 2015.

By: Signed
Signature
Denise C. Valentine, ANP-C
Name
Board of Nursing Chair
Title

[This document has been modified to conform to the technical standards for publication.]