

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
18 SAP 06891

<p>North Carolina Substance Abuse Professional Practice Board Petitioner,</p> <p>v.</p> <p>Leon Jacobs Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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THIS MATTER came on for hearing before the Honorable Donald W. Overby, Administrative Law Judge presiding, on March 11, 2019, in the Old Cumberland County Courthouse, Fayetteville, N. C. This matter is pursuant to N.C.G.S. § 150B, Article 3A.

After brief evidence and discussion of applicable law, it was determined that this matter is appropriate for summary judgement in that there is no disagreement to the pertinent facts, and therefore there is no genuine issue of material facts. After discussion, both parties agree that summary judgment is the appropriate resolution of this matter.

FINDINGS OF FACT

1. Respondent Jacobs was convicted of two counts of “Sex Act with a Student by a Teacher.” The conviction was on June 21, 2004 in Scotland County, North Carolina and was based on acts that took place on January 7, 2004 and January 9, 2004.

2. Respondent Jacobs received concurrent suspended sentences for the two convictions and was placed on probation until approximately February 21, 2008.

3. At some point prior to February 23, 2010, Jacobs applied for licensure with the Petitioner Board. He properly disclosed his prior convictions and responded to inquiries by the Board concerning those convictions. There is no evidence that Jacobs has ever attempted to conceal the convictions from the Board. Respondent Jacobs has affirmatively disclosed the convictions as part of the application process and has been open and honest about those events.

4. On February 23, 2010 Jacobs was licensed as a Licensed Clinical Addictions Specialist (LCA No. 1584) by the then-existing, duly appointed Board. Licenses are renewed every two years and Respondent Jacobs has thus been renewed at least three times since the original license issued in 2010. He has continued to be open and honest about his convictions.

5. The parties stipulate and agree that the convictions would be Category II as defined in 21 NCAC 68 .0216(f)(2).

6. Evidence was introduced that every LME/MCO in which Respondent serves has been made aware of his circumstances and none have disapproved of his continued service in their facilities. There are no instances of improper behavior in any regard reported by any LME/MCO, or anyone else, since Respondent has been licensed.

Based upon the foregoing undisputed Findings of Fact, this Tribunal makes the following:

CONCLUSIONS OF LAW

1. Respondent Jacobs is subject to the North Carolina Substance Abuse Professional Practice Act and the rules promulgated thereunder. The Board has jurisdiction over the person of Jacobs and the subject matter of this proceeding. That authority has been delegated to the Office of Administrative Hearings pursuant to Article 3A of N.C.G.S. § 150B.

2. The requirements for certification and licensure are found in N.C.G.S. § 90-113.40. That statute has remained unchanged since Respondent's initial licensure in 2010 as is relevant to this contested case.

3. Duly promulgated rules applicable to this contested case are found in Title 21, Chapter 68 of the North Carolina Administrative Procedures Act entitled "Occupational Licensing Boards and Commissions." Applicable rules have remained unchanged since Respondent's initial licensure in 2010 as is relevant to this contested case.

4. 21 NCAC 68 .0216 provides that every applicant for an initial credential issued pursuant to Article 5C of Chapter 90 of the General Statutes shall undergo a background investigation, including a criminal record check.

5. Respondent Jacobs has from the very outset provided his criminal record and undergone the background check. He has never shirked his responsibility to be open and honest about his convictions and the facts surrounding his convictions.

6. The parties stipulate and agree that the convictions would be Category II as defined in 21 NCAC 68 .0216(f)(2).

7. 21 NCAC 68 .0216(f)(2) provides that the Board shall not certify or license an applicant convicted of a "Category II" offense unless 10 years have elapsed since the applicant has completed all aspects of his or her sentence. 21 NCAC 68. 0216(e)(2) defines Category II offenses to include "any other felony that results in bodily or emotional harm to another."

8. The Board has the general authority, under N.C.G.S. § 90-113.33(2) to issue, renew, deny, suspend, or revoke licensure, certification, or registration to practice in this State.

9. There is no question that the initial Board had statutory and promulgated rule authority to deny Respondent's licensure. It must be presumed that each Board, including the original licensing board and each successive board, has done its duty and considered whether or not to license, and each have decided to issue as opposed to deny.

10. Other than the convictions at issue herein, there is no blemish on Respondent's record.

11. Case law is clear that a person is justified in relying on representations by a state agency and its representatives or agents when the inquiry is made directly to the agency or its agent/representative, even if the information given by the agent/representative is erroneous. See, e.g., Fike v. Board of Trustees, State Employees' Retirement System, 53 N.C. App. 78, 279 S.E.2d 910, rev. den. 304 N.C. 194 (1981); Stallings v. North Carolina Department of the State Treasurer Retirement Systems Division, 194 N.C. App. 372 (2008) (Unpublished opinion); Walker v. Department of State Treasurer, Retirement Systems Division, 207 N.C. App. 266 (2010)(Unpublished opinion affirming Undersigned's decision); Weibenson v. Bd. of Trustees, State Employees Retirement System, 123 N.C. App. 246 (1996), 472 S.E.2d 592 (1996), aff'd on other grounds, 345 N.C. 734, 483 S.E.2d 153 (1997).

12. In Weibenson v. Bd. of Trustees, State Employees Retirement System, 123 N. C. App. 246 (1996), 472 S.E.2d 592 (1996), aff'd on other grounds, 345 N.C. 734, 483 S.E.2d 153 (1997), the Court of Appeals cites with particularity a statute which would have precluded Ms. Weibenson from participation in the retirement system for the time period at issue because she did not meet the required definition of "employee." In ruling for the Petitioner in that case, the Court of Appeals disregards that she is not an "employee" and decides the case on the basis of estoppel.

13. In this contested case, Respondent submitted his application including all information concerning his criminal law convictions. Those convictions are the only disqualifying events for Respondent. The Respondent did not then, nor ever, try to use deceit, guile, or trickery in obtaining his licensure.

14. Since his initial licensure, Respondent's licensure has been renewed three, if not four, times by each successive duly-appointed Board. He has justifiably relied on the Boards decision and now has been performing duties pursuant to the license for 9 years. He now has a protected property interest in continuing his practice.

15. Estoppel is a cause of action recognized in and based on law. While it may have been founded in "equity", many if not most civil causes of action have a historical basis in equity, i.e., trying to right a wrong by doing what is fair and just. Courts of equity were created as a corollary to courts of law in order to mete out "equity" when none was available by strict adherence to the law. Those distinctions between the courts no longer exist and courts of law may rely on equity as a remedy.

16. The Office of Administrative Hearings is not a “constitutional” court and is a statutory creation and with only the authority granted to it by the General Assembly. OAH does not grant equitable relief; however, estoppel is a cause of action based in law, and is not merely an equitable remedy. Estoppel is a cause of action within the jurisdiction of the Office of Administrative Hearings. As an example, Weibenson began as a contested case in OAH, just as many other cases have.

Based on the foregoing undisputed Findings of Fact and Conclusions of Law, the undersigned makes the following:

PROPOSAL FOR DECISION

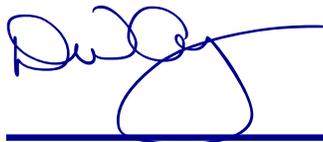
That the Petitioner Board’s intention to revoke or deny Respondent Jacobs licensure should be **DENIED**. Based upon the facts before this Tribunal, there is nothing that should prohibit Respondent from being licensed, and, therefore, the Respondent Jacobs should be licensed by this Board.

NOTICE AND ORDER

The **North Carolina Substance Abuse Professional Practice Board** will make the Final Agency Decision in this contested case. As the Final Decision maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

The undersigned hereby orders that agency serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

SO ORDERED, this the 26th day of April, 2019.



Donald W Overby
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Nelson G Harris
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Raleigh NC 27615
Attorney For Petitioner

Leon Jacobs
1377 Hazekiah Rd
Maxton NC 28364
Respondent

This the 26th day of April, 2019.



Jerrod Godwin
Administrative Law Judge Assistant
N. C. Office of Administrative Hearings
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