September 2014

Frances Fox vs. Department of Health

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions
IN THE MATTER OF:

FRANCES J. FOX,  
_Petitioner_,  

v.  
TENNESSEE DEPARTMENT OF HEALTH,  
_Respondent_.

DOCKET NO: 17.38-120441J

INITIAL ORDER

This matter was heard on May 20, 2013, before Ann M. Johnson, Administrative Judge, sitting for the Commissioner of the Tennessee Department of Health. The Petitioner Frances J. Fox was represented by attorney T. Scott Jones. The Department of Health was represented by Diona E. Layden, Deputy General Counsel.

The issue in this case concerned the Petitioner’s request for the removal of her name from the Abuse Registry. After full consideration of the record and the arguments of counsel, it is determined that the Petitioner’s request should be granted. This conclusion is based upon the following.

FINDINGS OF FACT

1. In November of 2006, the Petitioner Frances J. Fox, a registered nurse (R.N.) licensed in the state of Tennessee with a multi-state privilege, was employed at the National Healthcare Corporation at Fort Sanders in Knoxville, Tennessee.
2. After an incident with a patient on November 2, 2006, charges were brought against the Petitioner by the Tennessee Board of Nursing.

3. On September 5, 2007, the Petitioner entered into a Consent Order with the Board of Nursing, admitting to several charges including unprofessional conduct and intentionally or negligently causing physical or emotional injury to a patient.

4. The Petitioner agreed to a suspension of her nursing license until she had a mental health evaluation with the Tennessee Professional Assistance Program (TnPAP), to occur within thirty (30) days. The Petitioner agreed to abide by the recommendations of the evaluation. If a TnPAP contract was recommended, then the Petitioner agreed to sign the contract and abide by its terms. After the contract was signed, the Petitioner’s license would be placed on probation to run concurrent with the contract and until the contract terms were fulfilled. The probation would be no less than three (3) years.

5. On December 10, 2007, the Petitioner’s name was placed on the Abuse Registry, which resulted in additional charges before the Board of Nursing. After a hearing, the Petitioner’s license suspension was extended for an additional one (1) year.

6. On October 23, 2009, the Petitioner successfully completed her TnPAP Monitoring Agreement. The letter of completion commends the Petitioner for her success, noting that she “fully participated in the program and [] followed the rigorous terms and conditions.”

7. On December 14, 2010, the Petitioner’s nursing license was reinstated by the Board of Nursing, and her probation was lifted.

8. According to the Petitioner, she had received no discipline against her nursing license except for the incident at issue.
9. The Petitioner expressed remorse concerning the incident as well as the lessons she learned that would prevent any similar issues in the future.

10. Pursuant to TENN. CODE ANN. § 68-11-1003(g), the Petitioner applied to the Department of Health for the removal of her name from the Abuse Registry. After this request was denied, the Petitioner appealed.

**APPLICABLE LAW**

1. Pursuant to both federal and state regulation, the Tennessee Department of Health is required to “establish and maintain a registry containing the names of any persons who have been determined to have abused, neglected, exploited, or misappropriated the property of vulnerable individuals.” TENN. CODE ANN. § 68-11-1001; see also TENN. CODE ANN. §§ 68-11-1001, et seq.; 42 U.S.C.A § 1396(r); 42 C.F.R. §§ 483.13, 488.301, 488.332, and 488.335.

2. A person listed on the Abuse Registry can apply for removal from the list through the following procedure as specified in TENN. CODE ANN. § 68-11-1003:

   (g)(1) A state agency that has placed a person in the registry pursuant to this part may recommend to the department the removal of the person’s name if:

   . . .

   (B) An advisory group convened by the state agency composed of persons with experience in the subject matter areas of the agency’s work, or who by experience or education the agency determines are qualified to provide recommendations to the agency regarding a person’s likelihood of committing further acts or omissions that led to the person’s placement of the registry determines, based upon evidence presented to the group, that removal of the person from the registry is clearly warranted, then the group may recommend in writing to the agency a waiver and removal of the person from the registry.

   (2) The final decision regarding the recommendation for removal from the registry shall be made by the state agency and the recommendation shall be reduced to writing, giving the agency’s reasons for the decision and sent to the person seeking the waiver.

   . . .

   (4) If the person seeking a waiver is dissatisfied with the determination made by the state agency, the person shall be permitted to appeal. The appeal shall be
conducted as a contested case hearing pursuant to the Uniform Administrative Procedures Act.

ANALYSIS and CONCLUSIONS OF LAW

The Petitioner has carried the burden of proof, showing by a preponderance of the evidence that her name should be removed from the Abuse Registry. The single occurrence that resulted in placement on the Abuse Registry occurred in 2006. There was no evidence presented to show that this was a pattern of behavior or that the incident involved actions that were likely to be repeated. Furthermore, there was nothing to show that similar types of issues have occurred recently, or any time at all since 2006. The Petitioner successfully completed the “rigorous” TnPAP program, which apparently included a mental health examination, counseling, and other requirements. The Petitioner has expressed remorse for her actions as well as assurances that no such problems would occur in the future. The State called no witnesses and presented no evidence to the contrary.

Based upon the evidence, it is determined that there is no real likelihood that the Petitioner will commit further acts or omissions that led to her placement on the Abuse Registry. Therefore, removal of her name from the registry is warranted.

Accordingly, the Petitioner’s request for the removal of her name from the Abuse Registry is hereby GRANTED.

It is so ORDERED.

This Initial Order entered and effective this _____ day of ______________, 2014.

__________________________________
Ann Johnson
Administrative Judge
Filed in the Administrative Procedures Division, Office of the Secretary of State, this ______ day of ____________________ 2014.

J. Richard Collier, Director
Administrative Procedures Division