

**BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS
FOR THE STATE OF NEW MEXICO**

IN THE MATTER OF:

Case no. NHA-19-01-APP

Emmanuel Azzun,

Respondent.

FINAL DECISION AND ORDER

THIS MATTER came before a quorum of the New Mexico Board of Nursing Home Administrators (hereinafter “Board”) at a meeting held on May 4, 2020, via Cisco Webex due to the COVID-19 public health emergency, regarding alleged violations by the Respondent of the Nursing Home Administrators Act, NMSA 1978, Sections 61-13-1 to -17 (1993, as amended through 2020), and its rules and regulations, 16.13.1 to -19 NMAC. A formal evidentiary hearing was held on February 12, 2020, at the Toney Anaya Building, by designated Hearing Officer Dan Rubin, pursuant to the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -34 (1957, as amended through 2017), the Nursing Home Administrators Act, and the Board’s rules. Based on its review of the whole record, the Board voted to deny Respondent’s application for licensure and issue the following:

FINDINGS OF FACT

1. Respondent filed an application for licensure on or about January 22, 2019, to the Board of Nursing Home Administrators.
2. The Board served a Notice of Contemplated Action (“NCA”) against Respondent on November 14, 2019, by certified mail, return receipt requested, based on Respondent making false and misleading statements regarding his disciplinary history in Kansas to Board Administrator Nick Alderete in connection with Respondent’s application for reciprocity licensure. Specifically, Respondent stated to Mr. Alderete that the Kansas Board proceedings were “not a board issue” and that “I don’t live in Kansas so I agreed not to renew my

license.” Such statements constituted fraud and deceit in procuring or attempting to procure a license in New Mexico, based on the following:

- a. Respondent’s Oklahoma license was disciplined in 2008 and Respondent voluntarily surrendered his license for four (4) years.
- b. On March 1, 2007, Respondent was the administrator of record at an Oklahoma nursing home facility in which a burdening incident occurred. Respondent was present at the facility when the incident occurred.
- c. The Oklahoma Nursing Board found that Respondent engaged in misuse and management of resident funds, failed to provide adequate staffing, and failed to ensure the minimum of fire and emergency drills were conducted at his facility.
- d. The Oklahoma Board denied Respondent’s 2012 application for reinstatement of his license after he failed to meet the terms of his consent order.
- e. Respondent engaged in fraud or deceit in procuring or attempting to procure a license in Oklahoma in 2016; the Oklahoma Board found that Respondent misrepresented his experience by claiming that he was the administrator of record at a facility where he was an unpaid volunteer and that Respondent failed to disclose adverse actions to his licenses in other states to the Board.
- f. In 2015, the Oklahoma Board indefinitely suspended Respondent’s license and determined that it would not again consider reinstatement of his license.
- g. On July 31, 2018, the Kansas Board entered a Summary Proceeding Order Vacating Order of Suspension of Respondent’s license.
- h. The Kansas Board’s order reflects Respondent’s settlement of a complaint filed against him; the settlement required Respondent to allow his license to expire on June 30, 2018, prohibits Respondent from applying for reinstatement of his license for three (3) years, and prohibits Respondent from contacting several listed individuals whom he had previously harassed.

- i. The Kansas Complaint Investigatory Committee established by a preponderance of persuasive and credible evidence that Respondent had engaged in a pattern of unprofessional conduct going back fifteen (15) years.
 - j. The Kansas Committee found that Respondent had engaged in a pattern of harassment against another Kansas licensed adult care home administrator since 2004.
 - k. The Kansas Committee also found that numerous individuals had repeatedly requested that Respondent cease his intimidating emails and phone calls, but that he continued to engage in such tactics.
 - l. On December 31, 2018, following the entry of the Kansas Order, Respondent sent a threatening email to Brenda Dreher, an official with the Kansas Department for Aging and Disability Services.
 - m. Massachusetts permanently revoked Respondent's license on February 1, 2018, finding that Respondent had engaged in fraudulent or deceptive practices.
 - n. Respondent's request for licensure was denied in Maryland in 2015 and in Missouri in 2010.
3. Respondent engaged in a pattern of threatening and abusive behavior toward Mr. Alderete. On February 28, 2019, Respondent emailed Mr. Alderete and stated "I have never had any issue with any State, Kansas or any state" since the discipline against his Oklahoma license in 2008. Respondent later emailed Mr. Alderete and called him a liar.
 4. Respondent pled nolo contendere on March 21, 2014, in Oklahoma to a charge of false claim on insurance, a felony.
 5. On or about December 23, 2019, the Board notified the parties of its appointment of Mr. Jeremiah Kelly as hearing officer and issued a notice of hearing on February 11, 2020, with the hearing to be held in Hearing Room 1 of the Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico.

6. On February 11, 2020, due to exigent circumstances involving the health of Mr. Kelly, the Board emailed an amended notice of hearing for February 12, 2020, at the same location. All parties received electronic notice and agreed to attend the hearing rescheduled for February 12, 2020.
7. The aforementioned amended notice of hearing further noted the Board's appointment of Mr. Dan Rubin as hearing officer.
8. The hearing was held on February 12, 2020, consistent in all other respects with the aforementioned notice of hearing.
9. Appearing as the administrative prosecutor from the New Mexico Attorney General's Office at all times relevant herein was Ms. Amye G. Green.
10. Respondent represented himself at all relevant times herein.
11. At the hearing, Respondent raised no objections.
12. The prosecutor called Respondent as her only witness.
13. Respondent testified on his own behalf and called no other witnesses.
14. At the hearing, the prosecutor submitted seventeen (17) exhibits that were admitted into the record without objection.
15. Respondent submitted two exhibits at the hearing without objection; by leave of the hearing officer, Respondent submitted via email on February 13, 2020, seven (7) additional documents reflecting his level of graduate education, which Hearing Officer Rubin entered into the administrative record collectively as Exhibit C.
16. The prosecutor submitted proposed findings of fact and conclusions of law via email on February 20, 2020, copying Respondent.
17. Respondent submitted proposed findings of fact and conclusions of law via email on February 20, 2020, copying the prosecutor.

18. Based upon the evidence submitted by both parties, a preponderance of the evidence supports the finding that Respondent is not currently holding a nursing home administrator's license in good standing in another jurisdiction.
19. With respect to the findings above related to Oklahoma, Kansas, and Massachusetts, Respondent has been found by a nursing home licensing board or other duly recognized state agency to be responsible for the abuse or neglect of nursing home residents and the misappropriation of their personal funds or property.
20. Respondent has had a revoked, suspended or denied license by another state for the reasons stated above.

CONCLUSIONS OF LAW

1. Respondent submitted an application for licensure with the Board and is therefore subject to the Board's jurisdiction.
2. In accordance with NMSA 1978, Section 61-1-3, the Board provided Respondent proper notice and a hearing with regard to the allegations against him. Further, Respondent was provided timely notice of the hearing and advised of his rights.
3. Applicants for reciprocity licensure must meet a number of prerequisite requirements, two of which are being of good moral character and having no history of disciplinary against any professional licenses ever held. *See* 16.13.5.9 NMAC.
4. It is the Board's duty to approve the applications of qualified licensure applicants for reciprocity. *See* NMSA 1978, Section 61-13-6.
5. The Board may refuse to issue a license, in accordance with the procedures contained in the Uniform Licensing Act for reasons including that the applicant is guilty of fraud or deceit in procuring a license as a nursing home administrator and is guilty of failing to comply with any of the provisions of the Nursing Home Administrators Act or any rules and regulations of the board adopted and filed in accordance with the State Rules Act. *See* NMSA 1978, Section 61-13-13.

6. Pursuant to the ULA, Respondent had the burden of satisfying the Board that Respondent had the qualifications to be licensed. *See* § 61-1-4(C) (providing that “the burden of satisfying the board of the applicant's qualifications shall be upon the applicant”).
7. Respondent’s actions towards the staff at the Regulation and Licensing Department, specifically Mr. Alderete, as well as Respondent’s professional history in other states, which is replete with findings by those states regarding unacceptable and unprofessional conduct, demonstrate that Respondent is not of good moral character.
8. Respondent violated 16.13.5.9(A) NMAC by a preponderance of the evidence by failing to be of good moral character and 16.13.5.9(C) NMAC by having a history of disciplinary action against professional licenses held in Oklahoma, Kansas, and Massachusetts. As such, the Board may take disciplinary action under NMSA 1978, Section 61-13-13.
9. The Board finds that Respondent failed to satisfy the burden of proof that he has the qualifications to be granted a license.
10. Having reviewed the matter, the Board finds there is sufficient evidence to justify the Board in denying Respondent’s application for licensure as contemplated in the NCA.

ORDER

Based on the Findings of Fact and Conclusions of Law stated above, a quorum of the Board voted to deny Respondent’s application for licensure.

IT IS SO ORDERED.

/s/ Jolene Greene
Jolene Greene, Chair
New Mexico Board of Nursing Home Administrators

May 11, 2020
Date

JUDICIAL REVIEW

This Order constitutes a final decision for purposes of initiating any contemplated judicial review pursuant to the provisions of the Uniform Licensing Act, NMSA 1978, Section 61-1-17 and 39-3-1.1. An aggrieved party has the right to judicial review of this Order by filing a notice of appeal under Rule 1-074 NMRA within thirty (30) days of the date of the filing of the final decision. Any pleadings filed with the District Court must be served on the Board's counsel, Assistant Attorney General Alexis Shannez Dudelczyk, sdudelczyk@nmag.gov.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document and any attachments were sent via certified mail, return receipt requested, to Respondent Emmanuel Azzun at his last known address of record on May 11, 2020.

Certified No. 7018 2290 0001 7943 8386

/e/ Kathleen Roybal

Kathleen Roybal, Compliance Liaison