Decided and Entered: December 5, 2024   CV-23-2101
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In the Matter of MERY FRANCES
      CARBONELL, Also Known
      as MERY FRANCES
      GOODEN,
               Petitioner,
        v   MEMORANDUM AND JUDGMENT

NEW YORK STATE EDUCATION
      DEPARTMENT OFFICE OF
      PROFESSIONAL DISCPLINE
      STATE BOARD FOR
      NURSING,
               Respondent.
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Calendar Date: October 9, 2024

Before: Garry, P.J., Reynolds Fitzgerald, Fisher, McShan and Powers, JJ.

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    Hammock & Sullivan, PC, Bayside (*Donna M. Sullivan* of counsel), for petitioner.

    Letitia James, *Attorney General*, Albany (*Rachel Raimondi* of counsel), for respondent.

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Reynolds Fitzgerald, J.

    Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of the Committee on the Professions denying petitioner's application to become a registered professional nurse.

In February 2019, petitioner pleaded guilty in Supreme Court, New York County to grand larceny in the fourth degree, a Class E felony, in full satisfaction of multiple charges pertaining to her involvement, as a high managerial agent acting within her scope of employment as a pharmacist, in a kickback scheme for filing false prescription claims and stealing funds from a Medicaid-funded health plan between January 2014 and July 2017. She was sentenced to four years of probation and required to pay restitution, excluded as an enrolled Medicare and Medicaid provider, and agreed to surrender her pharmacist license.

Shortly thereafter, in July 2019, petitioner filed an application to be licensed as a registered professional nurse. To qualify for licensure, an applicant must be of good moral character (*see* Education Law § 6905 [7]). In December 2019, Supreme Court issued petitioner a temporary certificate of relief from disabilities.[1] Based on petitioner's conviction, her application was referred for a hearing before a panel of the State Board of Nursing, which is part of respondent State Education Department (*see* 8 NYCRR 28-1.5). Following the hearing, the panel determined that petitioner's application should be denied because she did not meet the moral character requirement. Upon petitioner's administrative appeal, respondent's Committee on the Professions (hereinafter COP) unanimously upheld the determination. Petitioner commenced this CPLR article 78 proceeding seeking to set aside COP's determination. Supreme Court, finding an issue of substantial evidence, transferred the proceeding to this Court.

"The Legislature has vested the Education Department, among others, with the responsibility to evaluate whether an applicant seeking professional licensure has demonstrated good moral character, and the determination, made after an evidentiary hearing, will be upheld if supported by substantial evidence" (*Matter of Holden v Naccarato*, 181 AD3d 1076, 1077 [3d Dept 2020] [internal quotation marks, brackets, ellipsis and citations omitted]; *see Matter of Barran v Department of Educ. of State of N.Y.*, 20 AD3d 752, 755 [3d Dept 2005], *lv denied* 5 NY3d 713 [2005]). "Under

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[1] A certificate of relief from disabilities may be granted to relieve an individual of any forfeiture of a license or to remove any bar to his or her employment automatically imposed by law as a result of his or her conviction of a crime (*see* Correction Law §701 [1]). "A certificate of relief from disabilities shall not, however, in any way prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege" (Correction Law §701 [3]).

Correction Law § 752, a license application shall not be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of good moral character when such finding is based upon the prior convictions, unless: (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license sought; or (2) the issuance of the license would involve an unreasonable risk to the safety or welfare of specific individuals or the general public" (*Matter of Levy v New York State Educ. Dept.*, 172 AD3d 1674, 1675 [3d Dept 2019] [internal quotation marks, brackets and ellipses omitted]). Respondent determined that both exceptions have been established.

Petitioner contends that COP failed to consider the specific factors outlined in Correction Law § 753 in rendering its determination, specifically the presumption of rehabilitation created by her certificate of relief from disabilities (*see* Correction Law § 753 [2]). Notwithstanding petitioner's contention, COP reasonably determined that her conviction involved dishonesty, which is a characteristic integral to the practice of nursing,[2] especially as it relates to the handling of prescription medication. COP further determined that the practice of nursing includes the duty to administer prescriptions and properly account for those administrations, for both patient safety and appropriate billing, and that the public depends on a nurse to fulfill this duty with the utmost care, precision and honesty. Finally, COP specifically found petitioner less than credible, citing specifically to her attempt to excuse her actions through what she called her "conscious avoidance," i.e., deliberately turning a blind eye to the nefarious events that surrounded her, and her proffer of this "conscious avoidance" as the reason she pleaded guilty to the crime. COP determined that this lack of acceptance of responsibility for her actions was a potentially lethal trait in a registered nurse as it relates to the above-noted duties. Based on our review of the record, we cannot agree that COP failed to consider the appropriate factors in rendering its determination (*see Matter of Levy v New York State Educ. Dept.*, 172 AD3d at 1675; *Matter of Wunderlich v New York State Educ. Dept., Comm. on the Professions*, 82 AD3d 1345, 1347 [3d Dept 2011], *lv denied* 17 NY3d 715 [2011]).

Contrary to petitioner's assertion that COP failed to give proper weight to her certificate of relief from disabilities, COP specifically referenced the certificate and stated that it was not convinced that there was evidence of rehabilitation as petitioner failed to undertake any ethics coursework, counseling or volunteer work since receipt of the certificate. Additionally, COP noted that petitioner's conviction occurred shortly before the submission of her application, that she was a mature adult at the time of her

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[2] Petitioner conceded this during her State Education Department hearing.

conviction, was enrolled in the nursing program prior to being charged and had completed two other professional licensure programs prior to entering nursing school – yet still committed the crimes for which she was convicted. Given the above, we are unpersuaded that respondent failed to give proper weight to the presumption of rehabilitation created by her certificate of relief from disabilities (*see Matter of Wunderlich v New York State Educ. Dept., Comm. on the Professions*, 82 AD3d at 1347). The record contains substantial evidence supporting COP's determination to deny petitioner's application based on her failure to meet the moral character requirement (*see Matter of Holden v Naccarato*, 181 AD3d at 1078-1079; *Matter of Levy v New York State Educ. Dept.*, 172 AD3d at 1676; *Matter of Wunderlich v New York State Educ. Dept., Comm. on the Professions*, 82 AD3d at 1347).

  Garry, P.J., Fisher, McShan and Powers, JJ., concur.

  ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

       ENTER:

       Robert D. Mayberger
       Clerk of the Court