

BEFORE THE BOARD OF NURSING
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-10-0430-NUR REGARDING:

THE APPLICATION FOR RN LICENSE) Case No. 91-2011
BY ENDORSEMENT OF CUIBO JIANG.)
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**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

Yuting Jiang Sundman (formerly known as Cuibo Jiang) appeals from the Montana Board of Nursing’s denial of her request to be licensed as a registered nurse in Montana. Hearing Examiner Gregory L. Hanchett convened a contested case hearing in this matter on September 21, 2010. Tyler Moss, agency legal counsel, represented the Department of Labor and Industry (Department). Sundman appeared on her own behalf. Sundman and Cynthia Gustafson, Director of the Montana Board of Nursing, testified under oath. The parties stipulated to the admission of Department’s Exhibits 1 through 11 and Sundman’s Exhibits A through E. Based on the evidence adduced at hearing, the following findings of fact, conclusions of law and recommended decision are made.

II. FINDINGS OF FACT

1. Sundman applied to the Montana Board of Nursing (BON) for endorsement licensure as a registered nurse on January 15, 2009. She submitted a second endorsement application on December 9, 2009.

2. Sundman received her nursing education in the People’s Republic of China. She was licensed as an RN by the State of California in 2006. Exhibit 8. As a prerequisite to obtaining her license in California, Sundman took and passed the NCLEX test mandated by Montana administrative rule.

3. Sundman submitted her record of education upon which she relied to obtain her licensure in Montana. This education was comprised of several nursing courses, the bulk of which were obtained at the Harbin Medical University which conferred upon Sundman a bachelor's degree in nursing. Exhibits A and B. She also provided transcripts from the Heilongjiang Sanitation School in China. She attended this school from age 16 to age 19. Exhibit C. She has also taken course work at Mount St. Mary College in Los Angeles, California. However, there is no indication in the transcript received from that institution that it awarded Sundman any degree. Exhibit E.

4. The clinical portion of the nursing curriculum prescribed by administrative rule for applicants for Montana licensure is very important. The NCLEX examination is designed only to test the applicant's knowledge of various facets of practical nursing. The examination does not test the applicant's clinical skills. Adequate knowledge of licensed practical nursing and adequate clinical skills are essential to ensuring the health, safety, and welfare of patients that an LPN will come in contact with during his or her work. For this reason, BON requires that the applicant not only obtain a passing grade on the NCLEX but also attend and graduate from an educational program that is equivalent to the educational programs offered in the United States. Without the ability to verify through the applicant's course work that the clinical training of the applicant is the equivalent of that which would be required of nurses trained in the United States, the BON cannot ensure that the public health, safety, and welfare is adequately protected.

5. The Harbin transcripts do not reflect any clinical experience.

6. As required by administrative rule, once the application was complete, BON investigators submitted the foreign transcripts to the Commission on Graduates of Foreign Nursing Schools (CGFNS) for analysis as to whether Sundman's education in China was comparable to United States nursing education standards. In response to the request, BON received a report from CGFNS. Exhibit 9.

7. The CGFNS report indicates that the Heilongjiang courses, which appear to encompass all of Sundman's clinical experience, were the same as high school courses in the United States. There is no counterpart to such education in the United States. Exhibit 9, Bates stamp pages 000022, 000023.

8. The report also indicates that the Harbin courses were not comparable to a program of study in the United States. The report noted, however, that the course work "[m]ay be considered for undergraduate admission, with transfer credit

determined through a course-by-course analysis.” Exhibit 9, Bates stamp page 000024.

9. After reviewing the CGFNS report, the BON denied Sundman’s application, finding that she did not have education that was equivalent to a United States course of study required for licensure as a registered nurse.

10. It is apparent from Sundman’s testimony, and the hearing examiner so finds, that Sundman’s courses at Harbin Medical University were not self-taught. Rather, Sundman was not a state sponsored student at Harbin (i.e., she had to pay for her own schooling as the cost was not borne by the state). All classes at Harbin were taught in a classroom setting by instructors.

III. CONCLUSIONS OF LAW¹

1. When BON proposes to deny a practical nurse’s license, an applicant may request a hearing on the denial (Mont. Code Ann. § 37-1-131(2)). The applicant has the burden of proving that the agency’s denial of the license was improper. *See, e.g., Montana Environmental Information Center and Environmental Defense v. Montana Dept. Of Environmental Quality*, 2005 MT 96, ¶16, 326 Mont. 502, ¶16, 112 P.3d 964, ¶16 (holding that under the Montana Administrative Procedures Act, the party asserting that an agency determination is in error has the burden of going forward with evidence and the burden of persuading the fact finder that the agency’s determination was in error). *See also*, Mont. Code Ann. § 39-8-405 (an applicant for a license to practice as a registered professional nurse shall submit to the department evidence that he has completed basic professional curriculum in an approved school of nursing and holds a diploma from that school and that he meets the other qualification requirements the board prescribes).

2. Sundman seeks to have the denial of her application for licensure overturned. As such, she bears the burden of proof to demonstrate that the Board’s denial of her license was erroneous either in fact or law.

3. A professional licensing board may grant or deny a license. Mont. Code Ann. § 39-1-307(1)(e). BON is authorized to set and enforce standards and rules governing the licensing of registered nurses. Mont. Code Ann. § 39-1-131.

¹Statements of fact in the conclusions of law are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

Under Title 37, Chapter 8, the purpose of the licensing requirements and the specific requirement that an applicant prove her qualifications is to safeguard life and health. Mont. Code Ann. § 39-8-101.

4. Admin. R. Mont. 24.159.1229 articulates requirements for foreign educated persons wishing to obtain licensure by endorsement from another state. That regulation requires:

* * *

(3) Foreign educated applicants for registered nurse licensure by endorsement from another state of the United States must:

- (a) fulfill the requirements of ARM 24.159.1288;
- (b) have passed the NCLEX or state board test pool exam in the other state;
- (c) provide verification of licensure in good standing in the other state;
- (d) complete the CGFNS CES healthcare profession and science course-by-course evaluation verifying the applicant's nursing education credentials and comparing the applicant's foreign nursing education credentials and comparing the applicant's foreign nursing education with the U.S. nursing education standards. The board may deny licensure to a foreign educated applicant if denial is warranted by the CES report; and
- (e) successfully complete an English proficiency examination recognized by CGFNS.

5. The CGNFS-CES report on the applicant's practical nursing school in China shows that the applicant's education is not the equivalent of a practical nursing education obtained in the United States. On this basis alone, BON properly denied her application for RN. Beyond this, however, as a matter of the public health, safety, and welfare, Sundman's education in China does not demonstrate that it is the equivalent of the training required in the United States which ensures, among other things, adequate clinical skills to ensure that the applicant can safely practice her profession. Her additional training as an RN in California is not sufficient to prove that she has the equivalent education and training required to ensure that the public health, safety, and welfare is protected. Under the facts adduced at hearing in this case, there is no basis for finding that BON's determination was in error either in fact or law.

IV. RECOMMENDED ORDER

For the foregoing reasons, the Board should affirm the denial of Sundman's license application for a license as a registered nurse.

DATED this 25th day of October, 2010.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.