

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

630 Camp Street, New Orleans, LA 70130
Mailing Address: Post Office Box 30250, New Orleans, LA 70190-0250

Telephone: (504) 524-6763
FAX: (504) 568-8893
Writer's Direct Dial:



(504) _____

**IN THE MATTER OF:
OLIVER HERCHEL BURNS, RTT
(Certificate No. LT0522)**

**APPLICATION FOR REINSTATEMENT
OF RESPIRATORY THERAPIST LICENSE**

00-A-003

This matter comes before the Louisiana State Board of Medical Examiners ("Board") pursuant to the application for reinstatement of the respiratory therapy license of Oliver Herchel Burns, RTT. The administrative hearing was conducted before a quorum of the Board consisting of Drs. Trenton L. James II, President; Elmo J. Laborde, Vice-President; Richard M. Nunnally, Secretary-Treasurer; Kweli J. Amusa, Member; and Melvin G. Bourgeois, Member. The complainant was represented by C. Byron Berry, Esq. At the direction of Dr. James, the hearing was conducted by Frederick S. Ellis, the Board's independent counsel. Respondent was present, unrepresented by counsel.

FINDINGS OF FACT

Applicant, Oliver H. Burns, was licensed by the Louisiana State Board of Medical Examiners ("Board") to practice Respiratory Therapy on March 24, 1988. He renewed his license each year until 1995, when he did not renew. His license expired on June 30, 1995.

In July, 1999, Mr. Burns again applied to the Board for a license to practice Respiratory Therapy in Louisiana. In his application, he revealed that he had been arrested for sexual battery in 1993, which charge was reduced to contributing to the delinquency of a minor. In 1997 he had been charged with simple battery and stalking.

A criminal records check shows that on May 13, 1993, Respondent was arrested and charged with Sexual Child Abuse, a felony. On October 19, 1993, he pled guilty to contributing to the Delinquency of a Minor, a misdemeanor, and was sentenced to one year in jail, suspended, and placed on two years unsupervised probation. He also paid a \$1,000.00 fine and various other costs and penalties.

On May 27, 1997, Mr. Burns was charged with Simple Battery and Stalking. These charges were subsequently dismissed by the district attorney's office.

It further appears that Mr. Burns failed to advise the Board of his arrest and guilty plea in 1993, in his 1994-1995 application for renewal.

Mr. Burns has stipulated to the truth of all of the above facts and circumstances.

(Burns, June 2000)

As a result of the foregoing conduct, Mr. Burns has been charged with a number of violations of the Louisiana Respiratory Therapy Practice Act, and of the Board's rules respecting Respiratory Therapists. All of the violations arise out of his failure to reveal his criminal history in his 1994-1995 renewal application, his allegedly bad moral character, unprofessional conduct, and his plea of guilty to contributing to the delinquency of a minor.

R.S. 37:3358A(1) proscribes obtaining a license by means of fraud, misrepresentation of a concealment of facts.

R.S. 37:3358A(2) provides that the Board may refuse to grant a license to an applicant found guilty of unprofessional conduct, as defined by the policies of the Board.

La. Adm. C. §45.5517 provides that the Board may refuse to issue a license if the applicant has been guilty of unprofessional conduct.

La. Adm. C. §45.5579 A(3) defines unprofessional conduct as "perjury, fraud, deceit, misrepresentation, or concealment of material facts in obtaining a license to practice respiratory therapy".

In La. Adm. C. §45.5519 A(4), unprofessional conduct is further defined as providing false sworn information to the Board.

CONCLUSIONS OF LAW

It is clear that, in failing to inform the Board of the criminal charges against him, and of the subsequent plea of guilty to contributing to the delinquency of a juvenile, Respondent was in violation of all of the above provisions, and is guilty of obtaining a license by misrepresentation or concealment of facts. He is further guilty of unprofessional conduct, as hereinabove defined.

R.S. 37:3558 A(3) provides that the Board may refuse to issue a respiratory therapy license to one who has been convicted of a crime in any court "if the acts for which he was convicted are found by the Board to have a direct bearing on whether he should be entrusted to serve the public in the capacity of a respiratory therapist ...".

R.S. 37:3354 C(1) and La. Adm. C. §45.2507A9(2) require that, in order to obtain a respiratory therapy license, an applicant shall be of good moral character.

The Board is of the opinion that a conviction or a plea of guilty to a crime involving improper conduct with a juvenile exhibits such moral delinquency as to disqualify an applicant for a license as a respiratory therapist.

By way of explanation, Mr. Burns testified that he was innocent of any improper involvement with the victim, who was his 14 year old niece. He testified that he entered the plea of guilty because he would do anything "to save his brother's marriage". He did not elaborate further on that subject. He gave as additional reasons that he did not think the plea of guilty to a misdemeanor would cost him his license, and that his wife was pregnant.

He further testified that he was under the impression that only a felony conviction was

reportable on the application form. He pointed out that, on the application presently under consideration, he had initially answered "no" to the question of whether he had ever been "charged with, convicted, or pled guilty or nolo contendere to violation of any State statute".

When he was told by Board personnel that he was required to reveal all charges or pleas, he then checked the "yes" column and gave the information about the charges against him and his ultimate plea.

Mr. Burns' testimony, as well as the documents in the record, establish that, at the time of his guilty plea, all of his rights were fully explained to, and understood by, Respondent. He admitted, in writing, to the crime to which he pled guilty, the factual basis of which was that he did "touch the private parts of a minor".

Under the circumstances, we cannot accept Mr. Burns' denial of his guilt, and he must live with the consequences of his guilty plea.

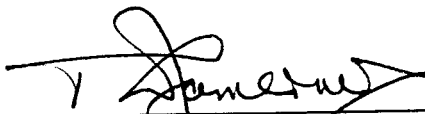
It is essential that, in the medical profession, and its adjuncts, the practitioners be of good moral character and reputation. The acts to which Mr. Burns entered a plea of guilty show him to be deficient in this vital area. He is clearly guilty of a crime which has a direct bearing on whether he should be entrusted to serve the public in the capacity of a respiratory therapist, and which demonstrates that he is not of good moral character.

Decision

We, therefore, find Mr. Burns guilty of the charges against him in the Administrative Complaint, and deny his application for re licensure.

NEW ORLEANS, LOUISIANA, this 8th day of June, 2000.

**LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS**



TRENTON L. JAMES, II, M.D.
PRESIDENT