

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE STATE BOARD OF SOCIAL WORK EXAMINERS**

In the Matter of)	
)	
KATHLEEN WALES)	OAH No. 09-0552-CSW
)	Agency No. 0850-09-002

DECISION

I. Introduction

Kathleen Wales applied for licensure as a clinical social worker by examination. At a regular meeting on August 29, 2009, the Alaska Board of Social Work Examiners denied the application. Ms. Wales requested a hearing, and the matter was referred to the Office of Administrative Hearings. A hearing was held on March 9, 2010. Ms. Wales appeared by telephone with counsel, Christy Lee. Assistant Attorney General Dan Branch represented the Division of Corporations, Business and Professional Licensing (“the division”).

This case involves Ms. Wales’ past use of alcohol, her resulting criminal record, and the degree to which she has disclosed this information to the board. Because Ms. Wales provided misleading information on her application and has not met her burden of proving her fitness to practice, the board’s decision is affirmed.

II. Facts

In 1995 Ms. Wales was arrested and convicted for driving while intoxicated in Anchorage. Ms. Wales was found guilty and sentenced to 45 days in jail with 40 days suspended, fines, a 90-day suspension of her driver’s license, a \$600 fine with the \$300 suspended, and probation for three years.¹ Ms. Wales was arrested for driving while intoxicated in Arizona in October of 2001 and in October of 2002, but the charges were dismissed in those cases and there was no conviction.²

On September 15, 2002, Ms. Wales was in Pima County, Arizona, riding a motorcycle on uneven ground through a construction zone when she was stopped on suspicion of driving while intoxicated. Ms. Wales provided the investigating officer with a false name because, according

¹ Exhibits 11-12.
² Exhibit A, page 14.

to her testimony, “I was scared at the time I was pulled over.” Although she did not deny being under the influence at the time, Ms. Wales testified that she wasn’t speeding as she drove through the construction zone: “No, I wasn’t. I was pretty aware of the, that I was in a construction zone, so I was trying to be really mindful of that, and also pay attention to the road, so I was not excessively speeding whatsoever.” Ms. Wales did not explain, nor does the record indicate, why her driver’s license was in a suspended or revoked status at the time.

This incident resulted in criminal charges in two different cases. The first case was a misdemeanor charge of making a false report to law enforcement, for which Ms. Wales was convicted and paid a fine. In a separate case arising from the same incident, an Arizona grand jury indicted Ms. Wales for two counts of aggravated driving under the influence while her driver’s license was revoked or suspended, which is a class four felony in Arizona.

At a hearing on October 3, 2003, Ms. Wales pleaded guilty to reduced charges of Driving Under the Influence of Intoxicating Liquor, Drugs, or Vapor Releasing Substance, a class one misdemeanor, and to a charge of Endangerment, a class six felony. The court found the felony charge to be “non-dangerous,” meaning that the offense did not involve “the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional knowing infliction of serious physical injury on another person.” With no weapons involved and no injury accidents resulting from Ms. Wales’ conduct, the court suspended imposition of sentence, and Ms. Wales was placed on probation for three years.³ As a condition of probation, Ms. Wales was ordered to serve ten days in jail, with nine days suspended and credit for the one day she had already served. Ms. Wales was ordered to participate in any counseling deemed appropriate by her probation officer, and to take Antabuse if medically able to. Her driver’s license was suspended for ninety days, and upon reinstatement Ms. Wales was directed to install an ignition interlock device for a period of one year.

Nearly a year before she was sentenced Ms. Wales went to her first Alcoholics Anonymous meeting, on December 21, 2002. Around that time she also sought psychotherapy from Ginger Marcus, who testified at the hearing. Ms. Wales pursued therapy and began attending A.A. on her own volition, before receiving any order from a court to do so. Ms. Wales’ testimony, the testimony of her counselor, her subsequent academic and professional accomplishments, and the end of her involvement with the criminal justice system all provide strong and credible evidence that Ms. Wales has not used alcohol since that day.

³ Exhibit 4.
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Ms. Marcus testified that Ms. Wales attended therapy once per week, and that Ms. Wales greatly improved her communication skills, developed and stayed on a program of health and fitness, and reached out to develop a new circle of friends. Ms. Marcus testified that by 2005 the therapy moved away from alcoholism treatment and continued on a weekly basis as relapse prevention therapy.

On April 15, 2005, Ms. Wales went back before the court and moved to terminate probation, set aside the judgment, and restore her civil rights. Ms. Wales' motion was granted, with the exception that her right to bear firearms was not restored. The judgment of guilty was set aside, and the charges were dismissed. The conviction could still be considered for sentencing purposes in any subsequent conviction, and it could still be considered in certain enforcement actions by the Arizona Department of Transportation.⁴

In May of 2006 Ms. Wales graduated with a master's degree in social work from the University of Arizona. On June 19, 2006, Ms. Wales filed an application with the Arizona Board of Behavioral Health Examiners for a license as a Licensed Master Social Worker in that state. The license was apparently initially denied, and on October 13, 2006, Arizona's Social Work Credentialing Committee opened a complaint against her.

On April 6, 2007, Ms. Wales entered into a Consent Agreement and Order with the Arizona board to settle the administrative complaint. Among other findings of fact, the consent agreement stipulated that Ms. Wales "failed to disclose two DUI-related arrests on her LMSW application", that she "also failed to disclose alcohol abuse/dependency issues through at least January 2002 on her LMSW application", and that she "has an extensive history of alcohol abuse/dependency problems." The agreement concluded that Ms. Wales had violated Arizona statutes regarding use of fraud or deceit in establishing qualifications. The order placed Ms. Wales on probation for a period on the conditions that she attend therapy for 24 months with a health professional who had expertise in treating adult children of alcoholics, and that she engage in a 12-step program and participate in Alcoholics Anonymous on a weekly basis for at least 24 months. Ms. Wales was also ordered to complete a three semester credit hour graduate level ethics course, and to abstain from alcohol and all mood altering drugs not prescribed for proper therapeutic purposes.

⁴ Exhibit 5.
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Ms. Wales went to work for Peninsula Community Health Services – Cottonwood Behavioral Health in Kenai on April 14, 2008.⁵ When Ms. Wales moved to Alaska, she and Ms. Marcus had planned to discontinue Ms. Wales’ weekly therapy sessions. Because the consent agreement with the Arizona board required continuing therapy, Ms. Wales obtained the approval of the board to continue therapy with Ms. Marcus on a weekly basis by telephone. Ms. Marcus testified that because Ms. Wales had already met the objectives of therapy, continuation of sessions was “ridiculous,” but Ms. Wales complied with the agreement she had reached with the Arizona board. On February 10, 2009, the Arizona board released Ms. Wales from the consent agreement, as Ms. Wales had complied with all terms. Ms. Wales is now licensed in Arizona as a Licensed Master Social Worker. The evidence does not indicate that, to this day, the Arizona board has been made aware that Ms. Wales was convicted of driving while intoxicated in Alaska in 1995.

On May 13, 2009, Ms. Wales submitted an application to the division for licensure in Alaska as a clinical social worker by examination. The application form requires written explanation when affirmative answers are given to questions in a “professional fitness” section of the form. Ms. Wales answered some of the questions yes and provided explanations as follows:

1. Have you ever been disciplined by any state board for any violation of the Social Work Practice Act or unethical conduct?

On my application for LMSW in Arizona, I did not write down 2 of the DUI arrests and only mentioned the DUI conviction. Consequently, the Arizona Board of Behavioral Health Examiners created a Consent Agreement for me to sign. This agreement stated that I was on probation 24 months for this action. The Consent Agreement is enclosed with this paperwork. I was up for review after 12 months of probation and was released of the conditions of the probation April of 2009. I am no longer on probation. This documentation is also included.

3. Have you ever had a license to practice social work revoked, suspended, restricted, or limited?

Please refer to the above. The LMSW license was issued in July of 2007. I was able to work under the full scope of my LMSW as long as the consent agreement terms were met. These terms were fully met. I was released from the conditions of Consent Agreement after the 12 month review.

4. Have you ever been investigated by a licensing authority or professional association even if no disciplinary action resulted?

⁵ Exhibit 1, page 2.
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The answer to this pertains to circumstances described in Response #1 and Response #3. Supporting documentation is the Consent Agreement which is enclosed.

6. Have you ever been convicted of a criminal offense other than a minor traffic violation?

I was convicted of a DUI 6 years ago in 2003. Supporting documentation is enclosed.

Ms. Wales answered “no” to questions asking “are you now or have you been within the last 5 years, addicted to or excessively used or misused alcohol, narcotics, barbiturates, or habit-forming drugs” and “are you now or within the past 5 years been treated or hospitalized for emotional or mental illness, drug addiction, or alcoholism.”

On June 13, 2009, Ms. Wales sent a letter to the board supplementing her initial application as follows:

I need to include the following court documents to my application for licensure. I had a DUI arrest on September 15, 2002 which was ultimately dismissed (or thrown out without conviction.) However, there was a separate charge connected with this dismissed case. I was charged with ‘False Report to Law Enforcement’ and had to pay a fine. I have found this paperwork and I am including this to my application.

I understand my application is currently in the process of completion and that you are still receiving information from my supervisors and employers as well. Please add this information to my file.

Please contact me if you have any questions.

Ms. Wales did not disclose the 1995 Anchorage conviction for which she had served five days in jail. Asked at the hearing why she did not disclose this conviction, Ms. Wales testified, “that was, I guess, about fifteen years ago, and I, I really forgot about it. I, there was, it was during the time that I was fishing, actually, I came to Alaska to commercial fish, and it was, uh, an interesting time, and I really did not remember.”

With her current work, Ms. Wales has earned the respect of her supervisors and colleagues. Ms. Wales submitted an affidavit from her current supervisor, W. Glen Johnson, Director of Behavioral Health at Peninsula Community Health Services – Cottonwood Behavioral Health in Kenai. Mr. Johnson holds a M.A. in clinical psychology and a M.B.A. in finance, and has worked in the behavioral health field for thirty-six years. Mr. Johnson has supervised Ms. Wales for about one year.

Mr. Johnson’s affidavit shows that he is fully aware of Ms. Wales’ criminal history, and does not consider it a detriment to her professional fitness. To the contrary, he states that “due to Katie’s history, she is able to bring a special perspective to her clients. Katie has the ability to

understand the struggles of other persons coping with similar issues.” Mr. Johnson praises Ms. Wales’ ability, notes in particular her leadership and problem-solving skills, and recognizes extraordinary commitment to her clients. Mr. Johnson reports that because of her dedication to her clients and her job, the staff at Birchwood Center has nominated Ms. Wales for an award for outstanding professional service in the mental health field.

Ms. Wales submitted three professional references with her application as required, one from a coworker, one from a coworker and former supervisor and mentor, and one from a clinical supervisor and colleague. All three of these individuals are master’s degree social workers. Each of these individuals considers Ms. Wales to be of good moral character, and they unanimously recommend her for licensure. These recommendations include the following comments:

She has demonstrated the highest levels of professionalism with her clientele. She has a strong working knowledge of social work theory balanced with practical application. She has high ethical standards & her character is unquestionable.

* * * * *

Ms. Wales was an ACS grant recipient. She demonstrated the highest standards as an MSW intern and MSW employee. Ms. Wales was so respected by physicians and multidisciplinary staff that a position was created for her.

* * * * *

Katie meets her clients according to their values, tailors individual treatment with a sound theoretical foundation, seeks knowledge, communicates respect...Highly competent & experienced practitioner...goes above and beyond for her clients and her colleagues.

II. Discussion

The following rules apply to this case:

Alaska Statute 08.95.110. License requirements.

(a) The board shall issue a license to practice clinical social work to a person who...(3) is of good moral character [and] (4) is in good professional standing and is fit to practice social work as determined by the board....

12 Alaska Administrative Code 18.140. Reasons for application denial

(a) The board will, in its discretion, deny an application for a license under AS 08.95.110 if the board finds that the applicant's history of felony or misdemeanor convictions make the applicant unfit for the license. The board will consider the number and recency of any convictions and the relationship those convictions may have to licensure under AS 08.95.110.

* * * * *

(c) The board will deny an application for licensure under AS 08.95 if the board determines that the applicant provided false or misleading statements or information on the application that relates to the applicant's qualifications for licensure under AS 08.95.

The respondent carries the burden of proof by a preponderance of the evidence when a license has been initially denied.⁶ The board exercises a broad degree of discretion in determining whether an applicant is fit to practice social work. This case is somewhat complicated by the number of facts to be considered, and by the necessity of considering these facts both singly and in combination to determine what they reveal about Ms. Wales' current fitness to practice.

While Ms. Wales' previous use of alcohol is a matter of obvious concern, there is no reason to question Ms. Wales' success at overcoming her alcohol abuse. The evidence supports Ms. Wales' testimony that she has remained sober since 2002. Ms. Wales makes a point that is well-taken: the perspective and understanding she brings from her own experiences provide her with unique and valuable tools to assist those battling their own addictions. The accomplishments Ms. Wales has achieved since attaining sobriety speak for themselves, and deserve commendation. If this case were purely about Ms. Wales' past use of alcohol and the resulting criminal cases, Ms. Wales would have presented a strong case for licensure, possibly with reasonable conditions designed to safeguard against the danger of relapse.

Of greater concern in this case is an aggregation of misstatements, false statements and omissions, any of which in isolation might be explained away but, when considered cumulatively, cannot be dismissed. These are as follows:

1. When she was arrested for driving while intoxicated on September 15, 2002, Ms. Wales provided the officer with a false name. Ms. Wales testified that she did this because she was "scared at the time I was pulled over," without further explanation. It is difficult to see what Ms. Wales had to be frightened of at the time, other than the likelihood of being held accountable for driving with a revoked license while intoxicated. While she pleaded guilty and paid her fine, Ms. Wales has not presented evidence showing that she accepts what an extraordinary breach of honesty and ethical conduct this event represents.

2. Ms. Wales did not disclose her 1995 conviction to the board, and apparently has still not disclosed it to the Arizona board. Even for events that happened fifteen years ago during interesting times, Ms. Wales's testimony that she simply forgot she had been in court several

⁶ AS 44.62.460(e).

times, had been in jail for five days, and had been on probation for three years presents an unsolved puzzle. This omission becomes even more difficult to understand when considered in the context of the lengthy process Ms. Wales went through with the Arizona board as it considered her criminal history. When she applied for licensure in Alaska Ms. Wales was certainly on notice about the importance of disclosing all convictions, and she had had ample time to carefully consider her past and take whatever steps might be necessary to gather information, even forgotten information, that could be of potential interest to the board.

In a case involving a subjective mental state, it is impossible to determine with certainty whether a person intentionally withheld information or whether the information was genuinely forgotten. Given the complexity of the mind it is conceivable that, with no deceptive intent, a person might have suppressed memories of a painful past left behind. But a criminal conviction and five days spent in jail with three years of probation, even fifteen years ago, is important information. It is the kind of information that one would expect to be disclosed, explained, and candidly and openly discussed in some detail by someone possessing the requisite fitness to practice.

3. Unlike the Alaska application, the Arizona application asks for information about arrests even when no conviction resulted. In her 2006 application to the Arizona board, more than three years after achieving sobriety, Ms. Wales failed to disclose two separate arrests for Driving Under the Influence that did not result in convictions, and she failed to disclose that she had suffered alcohol dependency issues up to January of 2002. Ms. Wales entered into a consent agreement admitting that this conduct violated statutory prohibitions against use of fraud or deceit in establishing qualifications. While attending an ethics class was one requirement of the consent agreement, the emphasis on therapy, participation in Alcoholics Anonymous, and abstention from alcohol and drug use suggest that the Arizona board was principally concerned with Ms. Wales' past use of alcohol. Ms. Wales emphasizes that she successfully completed all the terms imposed on her by the consent agreement and has since been fully licensed without restriction by the Arizona board. These facts do not entirely mitigate her admission that she provided fraudulent or deceptive information to the Arizona board in the first place.

4. When she applied for licensure in Alaska, Ms. Wales denied that she had been treated for emotional or mental illness, drug addiction, or alcoholism during the previous five years. At this time, it had only been a matter of months since Ms. Wales had ended therapy for relapse prevention with Ms. Marcus. Ms. Wales argues, and Ms. Marcus confirmed, that according to

some schools the latest thinking is that in some cases alcoholics who have achieved sobriety are not properly considered alcoholics anymore, as their alcoholism is in remission, and that this is the case for Ms. Wales. Therefore, the argument goes, Ms. Wales was receiving treatment for “relapse prevention,” not for “alcoholism.” This might all be true, and the more recent therapy required by the Arizona board might have been entirely unnecessary. But the point is fine enough that an applicant interested in full disclosure, who had been recently disciplined by another board for failure to disclose information, could be expected to err on the side of caution and disclose the therapy, possibly with an explanation, and let the board decide whether this therapy merited further consideration.

When granting a license in a profession involving public trust to a person with a history of drug or alcohol abuse, the possibility of relapse is always a concern. Nobody can be sure of a future without the unexpected trauma or extreme external circumstances that might precipitate relapse. This does not mean that former alcoholics or drug users should always be denied licenses. But it is necessary that such applicants inspire confidence that in the face of unforeseen problems in the future, the applicant will appreciate the seriousness of the problems, fully disclose them, and completely cooperate with efforts of colleagues or the board to investigate and resolve them. When a person has not fully acknowledged and addressed problems of the past, it is difficult to feel confident they will fully acknowledge and address unforeseen problems in the future.

Ms. Wales has clearly overcome a number of significant obstacles in her life. She has achieved academic success and she has inspired confidence and admiration in her coworkers and supervisors. Ms. Wales is currently providing valuable services to the community and, most importantly, the evidence shows without doubt that Ms. Wales cares deeply about her work and about her clients. However, despite the remarkable progress in her life, Ms. Wales has not demonstrated that she has yet reached the point where she can be completely relied on to fully disclose, openly acknowledge, and honestly deal with any serious unforeseen problems that may arise in the future. The ability to do these things, even during periods of stress, is an essential element of fitness to practice for any professional in a position of public trust.

IV. Conclusion

Ms. Wales should not be permanently precluded from licensure, and this decision should not be regarded as necessarily determinative in a future application. At this point, however, Ms.

Wales has not met her burden of demonstrating her fitness to practice social work. The application of Kathleen C. Wales for licensure as a clinical social worker by examination is denied.

DATED this 16th day of April, 2010.

By: Signed _____
Dale Whitney
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 44.62.500. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 23rd day of July, 2010.

By: Signed _____
Signature
Darrell Allman _____
Name
Chair, Board of Social Work Examiners
Title

[This document has been modified to conform to technical standards for publication.]