

BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE BOARD OF DENTAL EXAMINERS

In the Matter of: )  
 )  
DEBORAH LYNN WILSON, )  
 )  
Respondent. ) OAH No. 07-0199-DEN  
 ) Board No. 1252-07-001

**DECISION AND ORDER**

**I. Introduction**

Deborah Lynn Wilson is appealing the board's denial of her application for licensure by examination as a dental hygienist.<sup>1</sup> This is her first application for an Alaska license. At the time she filed her application she was licensed in California, Arizona, and West Virginia. While her application was pending in Alaska she applied for and was denied a license in Oregon; Oregon found she had falsified her sworn application. The Alaska board denied her application for a license based on Ms. Wilson's having falsified her application for an Oregon license.

As permitted by statute, Ms. Wilson requested a hearing. A three-hour hearing took place on April 25, 2006. The Division of Corporations, Business and Professional Licensing of the Department of Commerce, Community and Economic Development (division) defended the preliminary decision of the board to deny the application. The division was represented by assistant attorney general Jenna Conley. Ms. Wilson participated telephonically and represented herself.

The record developed at the hearing consists of testimony from Ms. Wilson, two division witnesses, division exhibits A through D, and Ms. Wilson's exhibits consisting of her written personal statement pages 10 through 27 and Wilson exhibits A through E attached to her personal statement.<sup>2</sup> All exhibits were admitted at the hearing without objection. Ms. Wilson relied upon her personal statement pages 1 through 10 as her prehearing brief and offered it at hearing as her opening statement.

<sup>1</sup> Ms. Wilson also applied for a license to administer local anesthesia. This license is contingent upon the issuance of her dental hygiene license. Exhibit A, p. 61. Because one is dependent upon another, this decision addresses only the application for dental hygiene.

<sup>2</sup> Division exhibit B and Wilson personal statement pages 16-23 are confidential and not part of the public record.

Under the facts presented, denial of Ms. Wilson's application for licensure as a dental hygienist is appropriate because she attempted to obtain a license to practice dental hygiene in Oregon by fraud, deceit or intentional misrepresentation.

## II. Facts

### A. Pre Application

Ms. Wilson apparently is an accomplished woman. She graduated from Cypress College in Dental Hygiene in 1995.<sup>3</sup> She reports that she has published two articles in professional journals, was a presenter at national and state dental hygiene conventions, won awards for her student research and received commendations for public service and valor.<sup>4</sup> However, in 1997 Ms. Wilson's life changed.

On October 29, 1997, Ms. Wilson's boyfriend brought her to an inpatient rehabilitation program for cocaine dependency.<sup>5</sup> She was doing reasonably well with the detoxification phase when, on November 6, 1997, she left against medical advice.<sup>6</sup> A few days later she was re-admitted because she started using again.<sup>7</sup> On November 11, 1997, she was discharged to a sober living facility.<sup>8</sup> The record does not reveal if she ever followed through and stayed at a sober living facility as recommended by the rehabilitation program.

Nine months later, on August 20, 1998, Ms. Wilson was arrested for Possession of a Controlled Substance in California. She was ordered to a diversion program.<sup>9</sup> On December 1, 1998, Ms. Wilson was arrested for two counts felony possession of a controlled substance and two misdemeanors counts: one count under the influence of a controlled substance and one count possession of pipe paraphernalia.<sup>10</sup> All four counts were dismissed on December 15, 1998.<sup>11</sup>

Less than a year later, on September 18, 1999, Ms. Wilson was arrested and charged with two misdemeanors: one charge of under the influence of a controlled substance and one a charge

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<sup>3</sup> Wilson Personal Statement pp. 10, 11.

<sup>4</sup> *Id.*

<sup>5</sup> Wilson Personal Statement pp. 16 - 23.

<sup>6</sup> The exact dates of treatment are estimated from the records provided. The medical record discussing her original admittance to the program provides an admittance date of October 29, 1997 and a discharge date of November 6, 1997. Wilson Personal Statement p. 16. That same record has a notation indicating that it was dictated and transcribed on December 5, 1997. *Id.* Another record stating that Ms. Wilson has been "re-admitted" has not admittance date but has a hand written discharge date of November 11, 1997. Wilson Personal Statement p. 19. That same record has a notation indicating that it was dictated and transcribed on November 12, 1997. *Id.*

<sup>7</sup> Wilson Personal Statement pp. 19, 20.

<sup>8</sup> Wilson Personal Statement p. 19.

<sup>9</sup> Exhibit A, pp. 164, 178.

<sup>10</sup> Exhibit A, p. 164; Wilson Exhibit C.

of public intoxication drugs/alcohol.<sup>12</sup> Ms. Wilson made a plea bargain; in exchange for dropping the under the influence of a controlled substance charge, Ms. Wilson plead *nolo contendere* to the public intoxication charge.<sup>13</sup> She was found guilty and sentenced to three years probation, 120 days jail time and a \$640.00 fine.<sup>14</sup> The terms of probation required Ms. Wilson cooperate with the probation officer in any drug treatment program and required Ms. Wilson to submit to periodic drug tests.<sup>15</sup> She was placed on probation October 3, 2000. On August 7, 2001, the probation department requested Ms. Wilson's probation be revoked because she failed to complete probation.<sup>16</sup> A bench warrant was issued. The next entry in the court's records indicates that Ms. Wilson appeared in court on July 10, 2003 and requested her probation be terminated. Ms. Wilson presented the court with a letter that was reviewed by the judge in chambers and resulted in the bench warrant being recalled.<sup>17</sup> One month later a petition and order under California Penal Code § 1203.4 was filed.<sup>18</sup>

California Penal Code § 1203.4 provides a mechanism for the court to remove the disability associated with an offense upon successful completion of probation or any other situation which the court determines is appropriate. Section 1203.4 of the California Penal Code contains two exceptions where the disability associated with the offense is not removed. The disability remains for any subsequent criminal prosecution for any offense, or as in the instant case, when applying for licensure.<sup>19</sup>

Ms. Wilson's 1203.4 petition was granted on August 20, 2003.<sup>20</sup> The court ordered that the plea and "finding of guilt be set aside and vacated and a plea of not guilty be entered; and that the complaint be, and is hereby dismissed."<sup>21</sup>

Prior to her 1998 arrest Ms. Wilson had two run-ins with the law. In 1988 she was arrested for Driving Under the Influence (DUI) and Reckless driving in Oregon.<sup>22</sup> The matter

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<sup>11</sup> Exhibit A, p. 164; Wilson Exhibit C.

<sup>12</sup> Ms. Wilson was arrested on September 18, 1999 and charges filed on September 22, 1999. Exhibit A, p. 26.

<sup>13</sup> Exhibit A, pp. 31, 32.

<sup>14</sup> *Id.*

<sup>15</sup> Exhibit A, p. 32.

<sup>16</sup> Exhibit A, p. 33.

<sup>17</sup> *Id.* The record in the instant matter does not contain a copy of the letter presented or a summary of its contents.

<sup>18</sup> *Id.*

<sup>19</sup> California Penal Code § 1203.4 (a).

<sup>20</sup> Exhibit A, p. 34.

<sup>21</sup> *Id.*

<sup>22</sup> Exhibit A, pp. 164, 178.

was resolved by paying a fine.<sup>23</sup> In 1989 she was arrested in California, again, for DUI.<sup>24</sup> This time Ms. Wilson was required to spend one day in Jail and was placed on probation.<sup>25</sup>

*B. Post Application*

On November 8, 2004, Ms. Wilson filed her application for a Dental Hygiene License by Examination (04 application) and for a local anesthesia license.<sup>26</sup> She answered in the affirmative question 9(f), “[h]ave you been convicted of a felony or other crime?”<sup>27</sup> As required by the application she reported her 1989 DUI in California and her 1999 public intoxication conviction (mistakenly dating it as 1998).<sup>28</sup> Ms. Wilson identified both incidents as having been resolved by “classes/fines.” A month later, Ms. Wilson informed the division that she made an error on her 04 application when she failed to report her 1988 Oregon DUI and wanted to correct the oversight.<sup>29</sup>

After filing her 04 application and several weeks before informing the division that she had forgotten to report her Oregon DUI, Ms. Wilson completed a Professional Background Information Services (PBIS) questionnaire.<sup>30</sup> The questionnaire requires the applicant provide a detailed history of his or her life and asks numerous questions. In response to the question “[a]re you currently or have you ever used alcohol, illegal drugs, or controlled substances (Schedule I thru V) on a daily basis or in a manner which may affect your practice of dental hygiene?” Ms. Wilson answered “Yes.”<sup>31</sup> She also answered “yes” when asked if she had “ever been arrested for, convicted of, or entered a plea of *nolo contendere* for a felony or a misdemeanor of moral turpitude?”<sup>32</sup> Ms. Wilson provided PBIS with an explanation of her “yes” answers.

She explained that:

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<sup>23</sup> Exhibit A, pp. 164, 178.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Exhibit A, pp. 126 - 128.

<sup>27</sup> Exhibit A, p. 127.

<sup>28</sup> Ms. Wilson’s public intoxication arrest and subsequent conviction occurred in 1999. Through out the record Ms. Wilson and the division often refer to the public intoxication arrest as occurring in 1998. However, Ms. Wilson has one public intoxication charge and conviction. Therefore, when a document references the 1998 public intoxication charge, it is in error and should reflect that the arrest occurred in 1999.

<sup>29</sup> Exhibit A, p. 129.

<sup>30</sup> Exhibit A, pp. 173 -184. Ms. Wilson completed the questionnaire on November 12, 2004. She had her signature Notarized on November 16, 2004. The completed questionnaire was received by PBIS on November 18, 2004. As explained on its web site, <http://www.pbisonline.com/pbis/Policies.htm>, “PBIS was created to provide a time and effort saving method of storing primary source verified credentials (static) and background information (dynamic) for easy access by authorized entities.”

<sup>31</sup> Exhibit A, p. 177.

<sup>32</sup> Exhibit A, p. 179.

Some years ago, I realized I was involved in a vicious cycle of violence that seemed impossible to end. During two periods of extreme crisis, I made several inappropriate decisions...It was only after realizing that resorting to self medication with drugs and alcohol would not solve my problems, that I accepted the professional advice given to me to check myself into a sequestered battered women's shelter to begin my rehabilitation and self discovery process... Years later now, I have permanently removed myself from this dangerous environment, and replaced my previous decision making process with a more appropriate method based on a strong will to triumph over adversity, and religious devotion...In conclusion I never used alcohol or drugs in a manner that adversely affected my patients. I quit working during my illness and while seeking and completing a rehabilitation program. Once healthy, I went back to school and began working again....<sup>33</sup>

As part of her explanation she identified the following arrests, characterizing them as successfully resolved "in the manner prescribed by the respective court without defaulting on the agreed conditions:"<sup>34</sup>

| Arrest  | Date               | Resolution     |
|---|--------------------|----------------|
| Oregon DUI and Reckless Driving               | April 2, 1988      | Fine           |
| California DUI                                | December 3, 1989   | Jail/Probation |
| California Possession of controlled substance | August 20, 1998    | diversion      |
| California Public Intoxication                | September 18, 1999 | Jail/Probation |

Ms. Wilson did not list her two felony and two misdemeanor charges on her PBIS questionnaire; however PBIS located the charges and included them in its report to the division.<sup>35</sup> PBIS forwarded its report to the division on January 19, 2005.

On March 14, 2005, Ms. Wilson applied to Oregon for a license to practice Dental Hygiene.<sup>36</sup> On her Oregon application, in response to the question had she "ever used or possessed a controlled substance in a manner that violated a federal, state, or local law?" she falsely answered "No."<sup>37</sup> In response to the question was she "ever been convicted of any offense, misdemeanor, or felony which could have resulted in your imprisonment in a state,

<sup>33</sup> Exhibit A, p. 178.

<sup>34</sup> *Id.*

<sup>35</sup> Exhibit A, p. 164; Wilson Exhibit C.

<sup>36</sup> *See generally* Exhibit D.

<sup>37</sup> Exhibit A, p. 4.

local, or federal institution?” she answered “yes.”<sup>38</sup> She listed her two DUI arrests, but did not list her public intoxication conviction.<sup>39</sup>

By letter dated May 13, 2005, Ms. Wilson was informed that the Alaska Board of Dental Examiners reviewed and approved her 04 application for a Dental Hygiene license pending her taking and passing the Alaska Jurisprudence examination.<sup>40</sup> Ms. Wilson completed her jurisprudence examination by mail and it was received by the division in early May 2006. Because it had been over a year since Ms. Wilson completed her 04 application the division asked her update her application.<sup>41</sup>

By the time she filed her new application on June 8, 2006 (06 application),<sup>42</sup> Oregon had denied her application to practice as a dental hygienist because she falsely answered “no” to the question had she ever taken any illegal drug and because she failed to inform the board of her public intoxication conviction.<sup>43</sup> Ms. Wilson reported the Oregon denial on her 06 application. Had Ms. Wilson failed to report the denial, the division would have discovered the denial and the basis for the denial when it requested a report from the American Association of Dental Examiner’s Clearing House (AADE).<sup>44</sup>

### III. Discussion

#### A. Legal Framework

A dental hygienist is a health care provider.<sup>45</sup> “The role of a dental hygienist is to assist members of the dental profession in providing oral health care to the public.”<sup>46</sup> The functions they perform are like those of a nurse. They often see the patient before the dentist, performing an initial evaluation, making chart notes, and taking a patient’s history. A dental hygienist is left

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<sup>38</sup> Exhibit A, p. 4.

<sup>39</sup> Exhibit D, p. 1.

<sup>40</sup> Exhibit A, p. 61.

<sup>41</sup> Exhibit A, p. 53.

<sup>42</sup> Exhibit A, p. 39, 40.

<sup>43</sup> The Oregon board’s notice of proposed denial was issued November 10, 2005. Having received no response from Ms. Wilson, the Oregon board issued its default order on March 10, 2006. Exhibit D.

<sup>44</sup> Exhibit A, pp.89-92. The AADE was founded in 1882. It is comprised of state and regional dental boards. Its mission is “[t]o serve as a resource by providing a national forum for exchange, development and dissemination of information to assist dental regulatory boards with their obligation to protect the public.” [www.aadexam.org](http://www.aadexam.org).

<sup>45</sup> “[H]ealth care provider” means ...; a dental hygienist licensed under AS 08.32;....’ AS 09.55.560(2); *See also* AS 18.23.070(3).

<sup>46</sup> AS 08.32.110(a).

alone with patients to perform a variety of procedures including invasive procedures such as periodontal soft tissue curettage.<sup>47</sup>

The board exercises broad discretion in determining whether to grant the application for licensure.<sup>48</sup>

The government regulates many activities and occupations. The rationale for this system of regulation is that the public is exposed to an unacceptable risk of harm if the activity or occupation is performed incompetently, recklessly, dishonestly, or with intent to injure. Under these regulatory schemes, a person must obtain a license to pursue the regulated activity or occupation, and the government possesses the power to revoke [or deny] the license of someone whose conduct demonstrates his or her unfitness to continue in that activity or occupation.<sup>49</sup>

The board sets the minimum qualifications, academic and otherwise, for applicants.<sup>50</sup> When granting or denying a license the board balances the interest of an individual in pursuing his or her chosen profession with its obligation to assure competency of licensees and its obligation to protect the public's health, safety, and welfare.<sup>51</sup> The board has promulgated regulations to guide it in its licensing function. For example, by regulation a finding by the board that an applicant is of unacceptable moral character may outweigh the individual's desire to practice dental hygiene.<sup>52</sup> Similarly, by regulation, a finding by the board that an applicant has attempted to obtain or has obtained a license by deceit, fraud, or intentional misrepresentation may outweigh an individual's desire to practice dental hygiene.<sup>53</sup>

It is important to note that the board is not required to deny a license when one of these conditions applies; rather, the board exercises its discretion considering each application or action for discipline on a case by case basis. The board may, depending on the circumstances,

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<sup>47</sup> AS 08.32.110(a).

<sup>48</sup> AS 08.39.070(a)(1) ("The board shall...issue licenses to those applicants *it finds* qualified;...") (emphasis added).

<sup>49</sup> *State v. Zerkel*, 900 P.2d 744, 753 (Alaska App. 1995).

<sup>50</sup> AS 08.01.070(6).

<sup>51</sup> *See Allison v. State*, 583 P.2d 813, 816 (Alaska 1978) ("Title 8 contains many chapters which contemplate protection of the public's health and safety and assure competency of those providing the service regulated.")

<sup>52</sup> AS 08.39.070(a)(1); 12 AAC 28.910.

<sup>53</sup> *See* AS 08.32.160, Grounds for discipline, suspension or revocation of a license. AS 08.32.160 is the statutory statement of the board's policy regarding unacceptable behavior for a dental hygienist. While the statute contemplates actions by a licensee, *i.e.* after a license has been issued, the behavior identified is equally applicable to an applicant for a license. If a behavior is grounds for revocation of a license after it has been issued, it follows that the same behavior is grounds for denial of an application for a license. The APA differentiates between pre-licensing and post licensing actions by who carries the burden of proof. AS 44.62.460(e). Therefore, when applying AS 08.32.160 to an application for licensure as a dental hygienist the applicant has the burden of proving that it is more likely than not that they did not engage in or perform one of proscribed behaviors listed at AS 08.32.160.

select from a range of actions including probation or the placing limitations or conditions on a license.<sup>54</sup>

Neither the division nor Ms. Wilson have placed any evidence in the record about this board's past practice on this point. The only information in the record on which to base the board's decision whether to exercise its discretion to grant Ms. Wilson a license is the board's previous denial of her request and any facts brought out at hearing that may persuade the board to reverse its prior decision.

*B. Arguments of the Parties.*

Ms. Wilson argues that the board should approve her application on its own merits; that she was truthful and forthcoming on her Alaska application; and that the board should disregard the Oregon board's denial. Ms. Wilson admits that she was not truthful with the Oregon board regarding her prior drug usage but that this error in judgment should not keep her from obtaining a license in Alaska. She urges the board to focus on all she has overcome and her years of sobriety. She also argues that the Oregon board's finding that she failed to reveal a conviction is wrong, because she did not believe she needed to report her public intoxication conviction after the judge vacated it; had she known she was required to list it she would have. She believes that "a bad decision does not make a bad person; it only makes a bad decision."<sup>55</sup> Finally she asserts that she has demonstrated she has the ability to exercise good judgment because she only returned to the practice of dental hygiene after she was in recovery and knew she could practice safely.

The division argues that the board properly exercised its discretion when it based its denial of Ms. Wilson's application on her Oregon board's denial<sup>56</sup>

*C. The Board's Decision.*

Based on her 04 application, the board was willing to accept that Ms. Wilson had learned from her prior mistakes and was open to granting her a license upon passing her jurisprudence exam.<sup>57</sup> However, once the board became aware of Ms. Wilson's intentional misrepresentation<sup>58</sup>

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<sup>54</sup> AS 08.01.075.

<sup>55</sup> Wilson Hearing Testimony.

<sup>56</sup> The division also argues that Ms. Wilson's 04 and 06 applications were not truthful because she failed to reveal that she had been treated for mental illness or addiction within the 5 years prior to her date of application. However, this was not mentioned by the board as a basis for denial of her application. Because Ms. Wilson's appeal is denied on other grounds, it is not necessary to address this argument.

<sup>57</sup> Exhibit A, pp. 56 - 93.



to the Oregon board regarding her past drug and criminal histories it correctly considered whether Ms. Wilson's actions in Oregon weighed against her being granted a license to practice dental hygiene in Alaska.

Ms. Wilson believes she was acting reasonably when she failed to disclose her public intoxication conviction in Oregon. She also believes that since she disclosed it on her Alaska applications, the board should either disregard the Oregon board's finding on this point or give it little if any weight. Regardless of the legal implications of her § 1203.4 motion, her objective actions do not support her subjective belief that her omission was "reasonable." Specifically, just months prior to completing her Oregon application Ms. Wilson reported her public intoxication conviction on both her Alaska application and on her PBIS questionnaire. The Alaska application simply asks whether the applicant has "ever been convicted of a felony or other crime?" In response she identifies her public intoxication conviction. Her testimony that she believed she was not "convicted" and that she was reasonable in not reporting the conviction to the Oregon board is disingenuous.

Ms. Wilson intentionally falsified her sworn Oregon application when she denied ever having used or possessed a controlled substance in a manner that violated the law. Falsification of a sworn application is an action that reflects a person's moral character. When an applicant has intentionally falsified a sworn application in another state for purposes of obtaining a license, the board may conclude, as it did here, that the applicant is of unacceptable moral character and deny the application.

Moreover a proceeding in Alaska is not the proper forum to challenge the Oregon board's decision. The board may consider the means by which an applicant has obtained or has attempted to obtain licensure in Alaska or other states.<sup>59</sup> Accordingly, the Oregon board's findings and conclusions regarding falsification are appropriately considered and relied upon by the board.

A licensing board, and through that board, the public, must be able to trust an applicant on matters pertaining to the application process. Throughout a licensee's relationship with a licensing agency the licensee is called upon to self report activities and complete renewal forms.<sup>60</sup> An applicant's lack of candor impedes the board's ability to fulfill its obligation to

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<sup>58</sup> Wilson Hearing Testimony. Ms. Wilson admits she falsely answered "no" to the question had she "ever used or possessed a controlled substance in a manner that violated a federal, state, or local law?"

<sup>59</sup> AS 08.32.160 does not limit the board to an applicant or licensee's actions within the state. *See also* AS 08.36.234, Licensure by credentials.

<sup>60</sup> *See e.g.*, AS 08.01.100.

protect the public's health, safety, and welfare which outweighs an applicant's desire to practice dental hygiene.

Ms. Wilson argues that she was honest with the Alaska board and it should judge her application in isolation. The board cannot disregard information or actions that would place the public at risk. Ms. Wilson breached the public's trust when she lacked candor on her Oregon application. Whether the act occurred in Alaska or elsewhere, the fact remains that Ms. Wilson intentionally misrepresented facts in an attempt to obtain a dental hygiene license.

In conclusion, Ms. Wilson has failed to establish by a preponderance of the evidence that she is of fit moral character and that granting her a license to practice dental hygiene would not expose the public to an unacceptable risk of harm.

*D. Alternatives to Denial of Licensure.*

The board has the discretion to place limits or conditions on a license when it finds deficiencies in competence, experience, education or health.<sup>61</sup> However, here, Ms. Wilson's deficiencies do not fall in any of these four categories. If the board finds that her dishonesty makes her unqualified to be a dental hygienist, its remedy is to deny her application.

**IV. Conclusion**

Because Ms. Wilson attempted to obtain a license to practice dental hygiene by fraud deceit on intentional misrepresentation, her application for licensure as a dental hygienist is denied.

**V. Order**

IT IS HEREBY ORDERED that DEBORAH L. WILSON's application for a dental hygiene license by examination for is DENIED.

DATED this 7<sup>th</sup> day of August, 2007.

By: \_\_\_\_\_  
Rebecca L. Pauli  
Administrative Law Judge

<sup>61</sup> 08.32.165(a).

### Adoption

On behalf of the Alaska State Board of Dental Examiners, the undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 14 day of Sept., 2007.

By: \_\_\_\_\_

Signature

David L. Eichler, DMD

Name

Chair - AK. Dental Board

Title