

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE BOARD OF NURSING**

IN THE MATTER OF:)	
)	
ROSE PYATT)	OAH No. 13-1201-CNA
_____)	Board Case No. 2013-000361

DECISION

I. Introduction

Rose Pyatt applied to be a Certified Nurse Aide. Based on the information available at the time, the Alaska Board of Nursing (Board) denied her application because she had incorrectly answered a question about whether she had any prior misdemeanor convictions. Ms. Pyatt appealed that determination. A hearing was held and the record was left open for Ms. Pyatt to submit an additional letter from her doctor. That letter has now been received and the record is closed.

Because evidence not previously available to the Board shows that Ms. Pyatt did not make an intentional misrepresentation, her application should be approved and she should be certified as a Nurse Aide.

II. Facts

On September 22, 2003, when Ms. Pyatt was 19 years old, she was stopped by a police officer and cited for driving in violation of the conditions of her learner’s permit.¹ She was taken to the Homer jail where she waited in a cell for about 12 hours until her mother came to pick her up. Less than two months later, Ms. Pyatt was convicted of a misdemeanor and sentenced to serve five days in jail or, in the alternative, perform 40 hours of community work service²

Nine years later she submitted her application to be certified as a nurse aide.³ The application asks a series of questions including questions regarding the applicant’s mental illness and criminal background. In response to question four of the application, Ms. Pyatt revealed that she has had a history of bi-polar disorder since she was 16 years old.⁴ She was open regarding

¹ Exhibit B, page 1.
² *Id.* The investigative report stated that the community service was in addition to the unsuspended jail time, Exhibit A, page 8, but the actual sentence issued by the court says community service is an alternative to jail time.
³ Exhibit A, page 23.
⁴ Testimony of Ms. Pyatt.

her past and present treatment for the disorder.⁵ Because she has a history of mental illness, Ms. Pyatt is required, as part of the application process, to submit a letter from her doctor attesting to her suitability to be certified as a nurse aide. Ms. Pyatt’s doctor wrote the she “is an excellent candidate for her CNA program; and I have no concerns regarding her ability to safely practice as a Certified Nurse Aide.”⁶

Question two of the application asks whether the applicant has ever been convicted of a misdemeanor or felony. Ms. Pyatt answered “no.”⁷

Because of her “yes” answer to question four, Ms. Pyatt’s application was assigned for further investigation.⁸ That investigation revealed her 2003 misdemeanor conviction. The Board denied her application based on her failure to disclose this conviction.⁹

A hearing was held on October 10, 2013, during which Ms. Pyatt explained the circumstances surrounding her 2003 misdemeanor and why she failed to disclose it on her application. In his letter submitted after the hearing, Ms. Pyatt’s doctor confirmed that “it is not uncommon for memory issues to be reported at times” by individuals with bipolar disorder. In addition, the Division of Corporations, Business and Professional Licensing presented relevant court documents from her misdemeanor conviction.

III. Discussion

Ms. Pyatt’s application was denied based on the Board’s belief that she had attempted to obtain certification through fraud, deceit, or intentional misrepresentation.¹⁰ Each of these three grounds for denial requires the knowing intent to mislead or deceive.¹¹ In this case, the only issue in dispute is whether Ms. Pyatt knew she was providing an incorrect answer to question two on her application.¹²

There is no dispute that Ms. Pyatt was convicted of a misdemeanor traffic offense. While a misdemeanor conviction is a serious event in anyone’s life, it does not automatically follow

⁵ Exhibit A, page 24.

⁶ Exhibit A, page 25.

⁷ Exhibit A, page 24.

⁸ Testimony of Investigator Edward Riefler.

⁹ Exhibit A, page 5.

¹⁰ Exhibit A, page 5; *see* AS 08.63.334 (grounds for denial of certificate).

¹¹ *In re Taylor*, OAH No.10-0409-CNA (Board of Nursing 2011), page 6, available online at <http://aws.state.ak.us/officeofadminhearings/Documents/CNA/CNA100409%20appeal%20pending.pdf>; *In re Wermager*, OAH No. 04-0289-CNA (Board of Nursing 2005), pages 3 – 4, available online at <http://aws.state.ak.us/officeofadminhearings/Documents/CNA/CNA040289.pdf>

¹² When the Board finds an intentional misrepresentation, it generally allows certification subject to a fine and a reprimand. *In re Taylor*, OAH No. 10-0409-CNA, page 8.

that Ms. Pyatt would necessarily have recalled that the traffic incident resulted in a misdemeanor conviction nine years later while completing her application.

Ms. Pyatt testified credibly that she was more concerned with question four on the application, which asks about mental illness. When she saw that question, everything else went “blank.” Her bi-polar disorder is not something she likes to disclose to others, and she was concerned that her diagnosis would prevent her from being certified as a nurse aide. Ms. Pyatt explained that it wasn’t until Investigator Riefle called and asked her questions about the charges that she began to remember the incident leading to her conviction. Something he asked her triggered her memory, and she was able to recall that there had been a traffic incident. After reading through the division’s records, she now remembers that she had been convicted.

If she had actually served five days of jail time, it would be difficult to believe she did not remember this conviction when completing her application. However, Ms. Pyatt testified that she does not recall being in jail (other than while waiting for her mother to pick her up), and the documents submitted by the division show that she did not serve the five days of unsuspended jail time. The court order imposing the sentence says:

Performance of 40 hours community work service and proof filed with the court by December 28, 2003 will satisfy the unsuspended jail time.^{13]}

Ms. Pyatt did complete her community work service, and was not required to serve anything other than the time spent waiting for her mother.¹⁴

Ms. Pyatt was justifiably concerned that her current mental illness might prevent her from receiving her Nurse Aide certification. It is understandable that she focused more on question four than she did on question two. If she had wanted to hide anything from the Board, it is more likely she would have hidden her current diagnosis than a nine year old misdemeanor. Her diagnosis could potentially be hidden from the Board, while any background check would readily disclose the misdemeanor. The evidence in this case shows that she did not make a conscious or intentional decision to make a misrepresentation or misleading statement on her application.¹⁵

¹³ Exhibit B, page 1.

¹⁴ Exhibit B, page 2.

¹⁵ The investigative report originally reviewed by the Board notes that Ms. Pyatt had promised to send a letter describing the traffic and that as of April 25, the letter had not been received. This might have been viewed as an additional deceptive action. Investigator Riefle acknowledged during his testimony that the letter had been received, but was not forwarded to him. That letter was received by both the division and the Board on March 6, 2013. Exhibit A, page 19.

IV. Conclusion

The initial decision to deny Ms. Pyatt’s application was made before she had the opportunity to fully explain her actions. Based on Ms. Pyatt’s testimony and the other exhibits in the record, Ms. Pyatt has proven by a preponderance of the evidence that it is more likely true that her failure to disclose her prior misdemeanor was an unintentional omission. Accordingly, the Board’s original denial is reversed and Ms. Pyatt should be certified as a Nurse Aide.

DATED this 18th day of November, 2013.

Signed

Jeffrey A. Friedman
Administrative Law Judge

Adoption

The Board of Nursing 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 22nd day of January, 2014.

By: *Signed*

Signature
Beth Farnstrom, RN

Name
Board of Nursing Chair

Title

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