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

In the Matter of:	)	
	)	
DAVID W. REYNOLDS,	)	
	)	
Applicant.	)	OAH No. 05-0554-MED
	)	Board No. 2858-05-0001

DECISION

I. Introduction

David W. Reynolds submitted an application for a license as a mobile intensive care paramedic under the provisions of AS 08.64. At its meeting on April 21, 2005, the Alaska State Medical Board voted to deny the application, relying on AS 08.64.326(a)(9), (11) and (13).[1] Subsequently, by mail ballot, the board cited AS 08.64.326(a)(1), 12 AAC 40.310(b)(1), and 12 AAC 40.360(1) as additional grounds for denial of the license.[2] The board notified Mr. Reynolds of its decision, including all grounds, in a letter dated June 6, 2005.[3]

Mr. Reynolds requested a hearing. The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a hearing on November 29, 2005. Following the hearing the case was reassigned to another administrative law judge who reviewed the recording of the hearing and prepared this proposed decision.

Based on the record and the testimony at the hearing, the administrative law judge recommends that the board deny the application.

II. Facts

David W. Reynolds graduated from high school in 1983 and received training as a paramedic in Denver, Colorado, in 1982-85.[4] His initial paramedic license[5] was issued in

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1 R. 11-12.
2 R. 2-16.
3 R. 20-21 (Ex. C).
4 R. 250; Reynolds testimony.
5 The term "paramedic license" is used to describe out-of-state licenses or certifications substantially equivalent to a mobile intensive care paramedic license under Alaska law. The specific nomenclature varies with the state of issuance.

Colorado (lapsed in 2001),[6] and he was subsequently licensed as a paramedic in Missouri (lapsed in January, 1993)[7] and Wyoming (issued in 1991, expired in December, 1993).[8]

In 1999, Mr. Reynolds moved to Maine,[9] where he obtained another paramedic license (issued September 30, 1999).[10] In the summer of 2000, as he had in prior years since 1988, Mr. Reynolds worked in support of federal forest fire-fighting missions in the West.[11] In the fall of 2000, he was investigated by the Bureau of Land Management for allegedly taking about $3,000 worth of equipment and medical supplies without authorization while on two of those assignments, in Utah and Colorado, where he had worked as an administrator supervising a team of emergency medical technicians (but did not himself act as an emergency medical technician).[12] When interviewed by an investigator on October 18, 2000, Mr. Reynolds admitting taking without authorization miscellaneous medical supplies (a variety of inexpensive over the counter bandages, medicine, and similar items)[13] and "illegally removing" a hand-held radio.[14] Mr. Reynolds returned the radio and some of the medical supplies, and provided a written statement acknowledging that taking the radio was "obviously inappropriate."[15] Thereafter, the United States filed a civil complaint for the value of the other items allegedly taken.

On October 25, 2000, Mr. Reynolds admitted himself to a hospital for treatment or evaluation of stress; he was discharged on October 30, 2000, with a diagnosis of bipolar disorder.[16] At the time he was discharged, Mr. Reynolds was under the impression (from billing codes and an informal conversation while hospitalized)[17] that he had been diagnosed with bipolar disorder, but had not been formally notified of such a diagnosis. In March, 2001, Mr. Reynolds

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6 R. 235, 250.

7 R. 233.

8 R. 234.

9 Applicant's Hearing Memorandum, Ex. 1 at p. 2.

10 R. 114.

11 R. 123; Reynolds testimony.

12 R. 123-135; Reynolds testimony.

13 Typical of the items included on Mr. Reynolds's inventory of the items he had taken are such things as moleskin (9), Ace bandages (8), hand lotion (5), Deep Woods Off (9) , 1" Telfa pads (30), Band Aid blister blocks (30), sun block (11), Ibuprofen (1 bottle), knuckle bandages (68), Tylenol (2 bottles), Zantac (2 bottles), nail clippers (4), and an oral thermometer (1). R. 141-144 (Ex. M, pp. 19-22).

14 R. 133. Mr. Reynolds objected that the investigator's report is hearsay. However, Mr. Reynolds's out of court statement is admissible as a prior inconsistent statement (as compared with his hearing testimony) and as an admission. *See* Evidence Rule 801(d)(1), (2).

15 R. 139.

16 Applicant's Hearing Memorandum, Ex. 1 at p. 1.

17 Reynolds testimony.

consented to a civil judgment in the amount of $1,776.21 in satisfaction of the federal government's claim for reimbursement for items allegedly taken and not returned.[18] By consenting to the judgment, Mr. Reynolds facilitated resolution of his own claim for unpaid compensation from his summer job.[19]

A disciplinary complaint alleging that Mr. Reynolds "had been the subject of legal action by the Federal government based upon...theft or misappropriation of Federal government property" was filed with the Maine licensing authority on September 5, 2001.[20] On July 23, 2003, the Maine board's investigator filed a report concerning the case.[21] At that time, Mr. Reynolds was working in an administrative capacity at Franklin Memorial Hospital in Maine. Towards the end of 2003, Mr. Reynolds lost his job as a result of unsatisfactory job performance. He found a new job as a paramedic in New Hampshire, and on January 26, 2004, Mr. Reynolds obtained a paramedic license in New Hampshire.[22]

Mr. Reynolds was working in New Hampshire when in June, 2004, before the Maine board had taken action on the pending disciplinary complaint, Mr. Reynolds's Maine license expired on its scheduled expiration date.[23] In September, 2004, Mr. Reynolds obtained a job as a mobile intensive care paramedic in Alaska, working out of Bethel. He started work on a limited basis, pending Alaska licensure as a mobile intensive care paramedic. On September 23, 2004, while still an active licensee in New Hampshire, Mr. Reynolds submitted his application for an Alaska mobile intensive care paramedic license.[24] His application did not disclose the existence or status of the Maine investigation, which Mr. Reynolds believed had terminated when his license expired.

Over the course of the next six months, Mr. Reynolds continued working in Alaska on a limited basis, as the verification forms necessary for action on his application for a mobile intensive care paramedic trickled in from the various states in which he had previously been licensed.[25] The last state to provide verification was Maine. The Maine board's verification,

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18 R. 245-246.

19 Reynolds testimony. The consent judgment allowed the government's claim to be paid out of sums due to Mr. Reynolds from the federal government. R. 70-71.

20 R. 116.

21 R. 119-122.

22 R. 113.

23 R. 55; Reynolds testimony.

24 R. 250.

25 R. 256, 257, 259.

submitted on March 17, 2005, included information regarding the 2000 federal investigation and the Maine board's licensing investigation.[26]

III. Discussion

Under AS 08.64.240(b), the board may deny an application "for the same reasons that it may impose disciplinary sanctions under AS 08.64.326." In this case, the board initially denied the application on the grounds that: (A) there are reasons to impose a disciplinary sanction under AS 08.84.326(a)(9), (11) and (13); (B) Mr. Reynolds is disqualified, pursuant to 12 AAC 40.310(b)(1); and (C) Mr. Reynolds engaged in fraud or deceit to obtain his license, which is grounds for denial of a license under 12 AAC 40.360(1).

Mr. Reynolds disputes all these grounds, and argues that if any of them apply, he should be issued a conditional or otherwise restricted license.

A. Reasons for a Disciplinary Sanction Exist

1. AS 08.64.326(a)(9)

Alaska Statute 08.64.326(a)(9) provides that the board may impose a disciplinary sanction if a licensee "engaged in professional misconduct." The board has defined professional misconduct, generally, as "an act or omission by an applicant...that does not conform to the generally accepted standards of practice for the profession."[27] In addition, the board has identified a variety of specific acts that constituted professional misconduct, including knowingly submitting false or misleading material information, or omitting material information, to the board.[28]

(a) Misappropriation of Employer's Property

Mr. Reynolds does not deny that knowingly taking an employer's equipment or medical supplies without authorization while working as a paramedic is professional misconduct. However, he asserts that the radio came into his unauthorized possession inadvertently, and he did not knowingly take it without authorization, and that the medical supplies were of little value. Furthermore, he argues that the radio and medical supplies came into his possession when he was working as an administrator, not as a licensee.

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26 R. 55 (ex. E)

27 12 AAC 40.967.

28 *See* 12 AAC 40.967(1)-(27), *esp.* (1), (2), (26).

(i) Nature of Misappropriation

Mr. Reynolds testified that he owned a radio of the same make and model as his employer's radio, and that he inadvertently packed both of them in his belongings when he returned to Maine at the conclusion of his time in Colorado. He adds that the medical supplies he retained in his possession were of no significant value, and that the federal government gave them away after he returned them.

Mr. Reynolds's testimony that he took the radio by mistake is inconsistent with his written statement provided to the federal investigator (taking the radio was "obviously inappropriate") and his admission ("illegally removing" a radio). The preponderance of the evidence is that Mr. Reynolds's knowingly misappropriated the radio. The medical supplies taken do not appear to have had any significant value.

(ii) Nature of Employment

Knowingly taking an employer's property without authorization may be considered unprofessional conduct within the scope of the general definition as set out in 12 AAC 40.967. While it was not shown at the hearing that status as a licensee was a requirement of Mr. Reynolds's position, the relationship between Mr. Reynolds's status as a licensee and his position as an administrator is so close as to warrant application of the generally accepted standards of the profession of mobile intensive care paramedic to Mr. Reynolds's actions within the scope of his federal employment as a supervisor of emergency medical technicians. Accordingly, Mr. Reynolds's knowing misappropriation of the radio while employed as an administrator to supervise emergency medical technicians was a violation of the generally accepted standards of his profession.

(iii) Out of State Conduct

By regulation, conduct within the scope of 12 AAC 40.967(1)-(27) "that occurred in another licensing jurisdiction and is related to an applicant's...qualifications to practice" constitutes professional misconduct.[29] Mr. Reynolds's conduct, however, does not fall within the scope of any of the specific provisions of 12 AAC 40.967(1)-(27). Arguably, by specifying that its consideration of conduct in another state occurs under the specific provisions of 12 AAC 40.967(1)-(27), the board has, by implication, declined to adopt a violation of the general rubric of "unprofessional conduct" that occurred in another state as grounds for denial of an application

[29] 12 AAC 40.967(28).

in Alaska. To the extent that the board's authority to deny a license for unprofessional conduct occurring in another state is limited to conduct falling within the specific provisions of 12 AAC 40.967(1)-(27), the misappropriation of property is not a reason for denial of Mr. Reynolds's application.

(b) False or Misleading Information

The preponderance of the evidence is that Mr. Reynolds knowingly submitting false or misleading information in his application.[30] Given such conduct, the board would have reason to impose a disciplinary sanction on a licensee under AS 08.64.326(a)(9), pursuant to 12 AAC 40.967(1) and (2). Accordingly, the board has discretion to deny Mr. Reynolds's application under AS 08.64.240 based on a violation of AS 08.64.326(a)(9), even if a misappropriation of property in another state is not grounds for imposition of a disciplinary sanction in Alaska.

2. AS 08.64.326(a)(11)

Alaska Statute 08.64.326(a)(11) provides that the board may impose a disciplinary sanction if a licensee "has violated any code of ethics adopted by regulation by the board." The board has adopted by regulation the *EMT Code of Ethics of the National Association of EMT's* (3d Ed.) as the code of ethics for mobile intensive care paramedics.[31]

Mr. Reynolds argued that no specific provision of the code of ethics applies. The division did not provide a copy of the code of ethics as part of the record,[32] but it argued that a general provision of the code stating that an emergency medical technician "understands and upholds the law and performs the duties of citizenship" applies.

This general provision cited by the division imparts little of substance. Except insofar as Mr. Reynolds may have misappropriated property or misrepresented facts on his application, conduct that is more appropriately addressed under AS 08.64.326(a)(1) and (9), the allegations of a violation of the code of ethics are superfluous.

3. AS 08.64.326(a)(13)

Alaska Statute 08.64.326(a)(13) provides that the board may impose a disciplinary sanction if the licensee "has had a license...surrendered while under investigation for an alleged violation."

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30 *Infra*, at pages 11-12.

31 12 AAC 40.955(e).

32 A 1978 version of the code may be accessed online, at www.naemt.org.

It is undisputed that Mr. Reynolds's Maine license expired of its own terms, and was not surrendered. For these reasons, the board would lack authority to impose a disciplinary sanction on a licensee pursuant to AS 08.64.326(a)(13), and it may not deny Mr. Reynolds's application on that ground.

B. Mr. Reynolds is Disqualified Under 12 AAC 40.310(b)(1)

Alaska Statute 08.64.107 provides that the board must "adopt regulations regarding the licensure of...mobile intensive care paramedics..., including the (1) educational and other qualifications." Pursuant to its authority under this statute, the board promulgated 12 AAC 40.310(b)(1), which provides that "[a]n applicant for licensure who is currently licensed in another state...(1) may not be the subject of an unresolved investigation, complaint review procedure, or disciplinary proceeding...in another state."

12 AAC 40.310(b)(1) states a distinct legal requirement for licensure, not a discretionary ground upon which an otherwise qualified applicant may be denied a license. Accordingly, if Mr. Reynolds falls within the ambit of the regulation, he is disqualified as a matter of law and the board lacks discretion to grant his application.

It is undisputed that when he submitted his Alaska application, Mr. Reynolds was an active licensee in New Hampshire, and that the Maine investigation had terminated. Mr. Reynolds argues that because the Maine investigation was closed, he was not the subject of an unresolved investigation, and that 12 AAC 40.310(b)(1) therefore did not disqualify him.[33]

Mr. Reynolds's argument is without merit. 12 AAC 40.310(b)(1) does not disqualify only applicants who are the subject of an active, ongoing investigation at the time of application: it disqualifies applicants who are "the subject of an unresolved investigation" at the time the board takes action. That is precisely Mr. Reynolds's situation. Mr. Reynolds did not submit any evidence to show the final disposition of the Maine investigation, which was apparently administratively closed when his license expired. The preponderance of the evidence is that when he submitted his application, Mr. Reynolds was licensed in New Hampshire and he was the subject of an unresolved investigation in Maine: the investigation there may have been closed (terminated) when his license expired, but it there is no evidence that it has ever been resolved (dismissed by investigator as unfounded, or presented to the licensing authority for final action). Because Mr. Reynolds did not prove at the hearing that his New Hampshire license has lapsed or

[33] Applicant's Hearing Brief at 4.

expired and that the Maine investigation has been resolved (not just administratively closed), his disqualification continues. Mr. Reynolds may submit a new application after the New Hampshire license lapses or expires, or after the Maine investigation has been finally resolved (not simply terminated without resolution), but for purposes of this application he is disqualified as a matter of law.

C. Mr. Reynolds Engaged in an Intentional Misrepresentation.

Alaska Statute 08.64.326(a)(1) provides that the board may impose a disciplinary sanction if a licensee "secured a license through deceit, fraud, or intentional misrepresentation." The board has also provided, in 12 AAC 40.360(1), that an application may be denied for "fraud or deceit in obtaining a license."

The division argues that Mr. Reynolds's responses to three of the questions on the application form were intentional misrepresentations, warranting denial of the application under AS 08.64.240(b) and under 12 AAC 40.360(1). Specifically, it contends that: (a) in response to question three, he failed to reveal that he had been discharged from his employment as a paramedic on at least one occasion; (b) in response to question five he failed to reveal the existence of the Maine investigation; and (c) in response to question nine he failed to reveal that he had been diagnosed, evaluated for, or treated for bipolar disorder.

1. A License May Be Denied for Pre-Licensing Misconduct

Mr. Reynolds argues that AS 08.64.240(b) does not authorize denial of a license for an alleged violation of AS 08.64.326(a)(1), because the latter statute is predicated upon a successful intentional misrepresentation; it authorizes a disciplinary sanction only if a license has been issued, and Mr. Reynolds's application was denied.

Mr. Reynolds's argument focuses on AS 08.64.326, but the relevant statute is AS 08.64.240(b). The latter statute provides that the board may deny a license "for the same reasons that it may impose disciplinary sanctions." This enabling language presumes status as a licensee: plainly, the board can only impose a disciplinary sanction on a licensee. To read AS 08.64.240(b) as Mr. Reynolds does would render it meaningless and ineffectual: the board could not deny a license for any of the reasons set forth in AS 08.64.326(a), because it can only impose disciplinary sanctions on a licensee. [34]

[34] Indeed, Mr. Reynolds made a similar argument with respect to AS 08.64.326(a)(9). Prehearing Brief at 3.

A "reason" for denial of licensure under AS 08.64.240(b) is any conduct for which a licensee could be disciplined under AS 08.64.326(a). It is undisputed, even by Mr. Reynolds, that a licensee may be disciplined for making intentional misrepresentations in an application, pursuant to AS 08.64.326(a)(1). Under AS 08.64.240(b), that same conduct is grounds for denial of a license: the board does not need to first issue the license, and then impose discipline. In any event, 12 AAC 40.360(1) separately and independently provides that fraud or deceit in the application is grounds for denial. Mr. Reynolds's argument is without merit.

2. *Some of Mr. Reynolds's Responses Were False and Misleading*

(a) Question Three

Mr. Reynolds answered "no" to the question, "Have your privileges or employment ever been denied, reduced, restricted, removed, or otherwise disciplined by any hospital, clinic, fire department, ambulance transport company, or other health care organization?"

The division asserts that this response was false, because Mr. Reynolds had been discharged from employment at a hospital or other health care organization on at least one occasion within the two years prior to his application. Mr. Reynolds argues that the question does not require disclosure of an involuntary termination of employment: it does not specify loss of employment as the subject of inquiry.[35]

An individual may leave or be discharged from employment for any number of reasons that have nothing to do with actual or potential grounds for disciplinary proceedings. Question three does not specifically ask about involuntary termination or discharge from employment. To the extent it asks for information regarding employment, it does so in the context of professional discipline ("otherwise disciplined"). Read reasonably, and keeping in mind the purpose of the application, the question seeks disclosure of a change in employment status (*e.g.*, job reassignment, change of duties, suspension, or termination) that is related to actual or potential grounds for a disciplinary proceeding. The question does not require disclosure of a voluntary or involuntary change in employment status that is unrelated to an actual or potential ground for professional discipline.

Mr. Reynolds testified at the hearing that he was twice involuntarily discharged, once from employment as a paramedic, and once from employment at a hospital in an administrative capacity. In the first instance, he testified the termination (which occurred within ten days after

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[35] Prehearing Brief at 2.

he was hired) was the result of a confrontation with a co-worker; in the second instance, he testified the termination was the result of his supervisor's dissatisfaction with his job performance. The division offered no evidence or testimony to challenge Mr. Reynolds's characterization of the circumstances of his termination.

The preponderance of the evidence is that Mr. Reynolds was discharged from employment for unsatisfactory performance or other grounds unrelated to actual or potential professional discipline. Therefore, Mr. Reynolds's response to question three was neither false nor misleading.

(b) Question Five

Mr. Reynolds answered "no" to the question, "Have you ever been the subject of an investigation by any licensing jurisdiction or are you currently under investigation by any licensing jurisdiction?"

It is undisputed that Mr. Reynolds had been the subject of an investigation by the Maine licensing jurisdiction, and that the investigation ended and no disciplinary action was taken because his license expired before he submitted his Alaska application.

The division argues that Mr. Reynolds's response was false for two reasons: first, Mr. Reynolds had been the subject of an investigation by the Maine board; second, that disciplinary proceeding was unresolved at the time he submitted his application, because a case closure due to license expiration does not resolve a pending investigation.

Mr. Reynolds argues that the question was compound,[36] and that it therefore did not require him to disclose a prior investigation, and that he "correctly answered that he was not currently under investigation" because the investigation had been closed.[37]

The question, while compound, calls for an affirmative answer if either of the two independent clauses is satisfied. Mr. Reynolds's answer was false and misleading even though the Maine investigation was closed at the time he applied, because he had been the subject of an investigation there.

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[36] Prehearing Brief at 2.

[37] Prehearing Brief at 2-3.

(c) Question Nine

Mr. Reynolds answered "no" to the question, "Within the past five years, have you experienced, been diagnosed with, been evaluated for, or treated for bipolar disorder...or other psychotic disorder?"

The discharge report establishes that Mr. Reynolds was diagnosed with bipolar disorder after his hospitalization in October, 2000.[38] Mr. Reynolds again notes that the question is compound, and he argues that "Question 9 was correctly answered because he was not being treated for any of the listed diseases."[39]

Mr. Reynolds's argument is without merit. As is the case for question five and the other questions, question nine is compound, but it calls for an affirmative answer if any of the components is true. If the individual has been diagnosed with bipolar disorder, the only correct answer to the question is "yes," regardless of whether the diagnosis was correct and regardless of whether treatment was provided. Mr. Reynolds's answer to the question was false and misleading.

3. The Responses Were Intentionally Deceptive

Mr. Reynolds asserts that, to the extent his responses were false or misleading, he did not intend to deceive the board.

(a) Question Three

Because his answer to question three was not false or misleading, and his understanding of the question was reasonable, the preponderance of the evidence is that Mr. Reynolds's response to question three was not intended to deceive the board.

(b) Question Five

Mr. Reynolds argues that he misunderstood the question because it was compound,[40] and that he believed he could truthfully answer "no" because the Maine investigation had been closed, and "he was not currently under investigation".[41]

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[38] Mr. Reynolds objected that the report is inadmissible hearsay, and may not be used as a basis for finding a fact in the absence of corroborating admissible evidence. *See* AS 44.62.460(d). However, the report is not hearsay: it was not offered to prove the truth of the matter asserted (*i.e.*, that Mr. Reynolds was, in fact, suffering from bipolar disorder). *See* Evidence Rule 801(c). Rather, the report is of independent significance (*i.e.*, the diagnosis was not disclosed). What is more, even as hearsay the record is admissible. *See* Evidence Rule 803(4).

[39] Prehearing Brief at 3.

[40] Prehearing Brief at 2.

[41] Prehearing Brief at 2-3.

Mr. Reynolds's argument is unpersuasive. As previously observed, even though the question is compound, it calls for a single answer: the correct answer is "yes" if either of the two clauses is true, and "no" only if both clauses are false. To the extent that an illogical thinker would not perceive this, the question, like all of the other questions, must be read reasonably in light of the purposes of the application. It is self-evident that the purpose of the questions is to provide the board with information relevant to the decision to grant or deny an application. In that light, it is unreasonable to read the question as permitting a "no" answer when one of the two clauses is true, as that response would deprive the board of relevant information.

Mr. Reynolds was aware, at the time he applied for an Alaska license, that he had in the past been the subject of a disciplinary investigation in Maine. The question cannot reasonably be read to mean that only current, ongoing investigations must be disclosed. Reading question five as Mr. Reynolds claims to have read it is at best strained, at worst non-sensical: his reading is in itself an indication of an intent to deceive the board regarding facts material to eligibility for a license. Mr. Reynolds's testimony regarding this particular matter, and others, was carefully couched and evasive, rather than candid and responsive, and was at times inconsistent with his prior admissions or statements; his credibility as a witness was low. The preponderance of the evidence is that in answering "no", Mr. Reynolds intended to deceive the board regarding the prior existence of a Maine investigation.

(c) Question 9

Mr. Reynolds argues that at the time he submitted his application, he did not know that he had been diagnosed for bipolar disorder, because the formal diagnosis was contained in medical records prepared after his discharge and was not provided to him prior to the date he submitted his application. Because he did not know of the formal diagnosis, he cannot have intended to mislead the board, Mr. Reynolds argues.

Mr. Reynolds wrote to a federal agent on November 3, 2003, that he had just been discharged from a hospital, and that "my discharge diagnosis, current medication and therapy are for bipolar manic depression."[42] He testified at the hearing that he based his statements in the letter on the billing codes and on an informal conversation while hospitalized, but that he was unaware until preparing for the hearing of his physician's formal post-discharge diagnosis.

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[42] R. 137.

In light of Mr. Reynolds's statement to the federal officer, his admitted knowledge of the billing codes, his informal conversation while hospitalized, and his low credibility as a witness, the preponderance of the evidence is that Mr. Reynolds answered "no" in an attempt to deceive the board regarding his prior mental health history.

C. Denial of the Application is Warranted

Because Mr. Reynolds is disqualified as a matter of law pursuant to 12 AAC 40.310(b)(1), the board need not consider whether it should, in its discretion, deny a license on any other grounds. It is appropriate to do so, however, in order to address all of the issues raised in this case.

The facts as found by the administrative law judge establish that the board has discretion to deny a license under AS 08.64.240(b) because Mr. Reynolds knowingly provided false and misleading information in his application, which is grounds for a disciplinary sanction under AS 08.64.326(a)(1) and for denial of the application under 12 AAC 40.360(1). The existence of grounds for discretionary denial of a license does not in itself disqualify an applicant. Following an administrative hearing the board makes an individualized determination based on the entire record. In making a decision, the board should seek to maintain consistency with its prior decisions.[43] To maintain consistency, different outcomes should be supported by differences in the particular facts of the individual case.[44] The applicant has the burden of proof with respect to any specific factual findings relevant to an application, but the board may consider the record as a whole in determining what weight to give to any of those findings, and may exercise its discretion accordingly. In making its decision, the board should consider any relevant facts, including: (1) the nature and circumstances of the conduct at issue; (2) the applicant's age, character and professional record, if any; (3) any other relevant information;[45] and (4) its actions in prior similar cases.

(1) Nature and Circumstances of the Conduct

Mr. Reynolds argues that the amount of property he was alleged to have taken was relatively small in comparison to cases involving much more serious financial wrongdoing by

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43 *Cf.* AS 08.01.075(f) (requiring the Board to "seek consistency in the application of disciplinary sanctions."

44 *Id.*

45 *See generally*, 12 AAC 40.055(b), 12 AAC 40.967.

financial or business professionals.[46] He suggests that because in those cases the disciplinary sanction imposed was suspension, rather than revocation, the relatively small amount of property at issue in this case does not warrant "permanent denial" of his application.

This argument compares apples and oranges. The cases cited do not involve medical professionals in general or this board in particular. What is more, they concern the imposition of a disciplinary sanction for the underlying conduct, not consideration of an application in light of the failure to disclose adverse information. These are fundamentally different issues, and the failure to disclose an investigation may, depending on the circumstances, warrant denial of an application even if the underlying conduct would not have resulted in suspension or revocation.

In that regard, Mr. Reynolds's argument is revealing. He suggests that the board should not (or may not) deny a license absent a showing that the applicant would be subject to civil liability for fraud.[47] However, the professional obligations of a licensee are not limited to avoiding liability for fraud. Intentional deception in the application process is a serious violation of professional standards.

(2) Applicant's Age, Experience, Character and Professional Record

Mr. Reynolds was 39 years old at the time he applied for licensure in Alaska, and had been working in the field for about twenty years. He was familiar with the standards of conduct expected of a paramedic and knew, or should have known, that information of the nature requested was an important factor to be considered by the board in determining whether to grant a license. In light of his age and experience, Mr. Reynolds's failure to disclose the information was particularly blameworthy.

Mr. Reynolds did not submit any independent testimony to establish his character or the quality of his professional record. In the absence of any such information, the existence of intentional deception in the application process stands unrebutted as grounds for denial of his application.

(3) Other Relevant Circumstances

Mr. Reynolds has not acknowledged the importance to the board of the information sought in the questions at issue. His testimony at the hearing was not forthcoming and candid regarding the allegations at issue in the Maine investigation, and his stated reasons for answering

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[46] Applicant's Hearing Brief at 3, *citing* Wendte v. State, Board of Real Estate, 70 P.3d 1089 (Alaska 2003); State, Division of Insurance v. Schnell, 8 P.3d 351 (Alaska 2000).

[47] Prehearing Brief at 1-2.

the questions as he did reflect an unreasonably narrow view of the both the questions and his own obligation to disclose relevant information. Mr. Reynolds has not accepted responsibility for his failure to bring relevant information to the attention of the board.

(4) Other Cases

The administrative law judge takes official notice of the board's prior actions as compiled by board staff.[48] Review of those actions indicates that the board has on many occasions since August, 1997, considered license applications from individuals who failed to disclose a prior investigation. Most of the cases have been resolved by issuance of an unrestricted license, with imposition of a civil fine and a reprimand,[49] although some have resulted in the final denial of the application.[50] The specific facts of those cases are not part of the record in this case, and thus they shed little light on the appropriate exercise of discretion under the facts of this particular case.

In addition to those cases, the board has on three occasions since 1997 issued a written decision following an administrative hearing in cases where the applicant had intentionally failed to disclose a prior investigation or disciplinary action. In all three cases, the board granted the

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[48] *See* 2 AAC 64.300(a); Evidence Rule 803(8). The board's prior actions are summarized at www.dced.state.ak.us/occ/pmed.htm (links to "Board Actions Before August 1997" and "Board Actions After August 1997") (accessed December 26, 2006). Either party may, in a request for proposed action, seek the opportunity to present evidence to refute the information set forth in the summary.

[49] Seventeen cases appear to fit this category: In Re Engel, No. 2850-96-011 (December 4, 1997); In Re Regan, No. 2850-98-04 (April 23, 1998); In Re Croy, No. 2850-97-011 (July 20, 1998); In Re E. Cole (August 26, 1998); In Re Ruben (October 2, 1998); In Re DaSilva, No. 2850-00-002 (April 27, 2000); In Re Pulliam, No. 2850-00-002 (May 4, 2000) (censure; extenuating circumstances); In Re Roneu, No. 2850-00-13 (October 27, 2000) (2 undisclosed investigations; applicant declined license); In Re Hopson (January 19, 2001); In Re Allen, No. 2850-01-006 (April 9, 2001); In Re Carter, No. 2850-01-003 (April 9, 2001); In Re Azure, No. 2856-02-001 (October 24, 2002); In Re May, No. 2856-02-001 (April 3, 2003) (license subsequently surrendered, April 21, 2005); In Re Lamore, No. 2856-04-001 (April 1, 2004); In Re Frankham, No. 2850-04-002 (July 15, 2004); In Re Yost, No. 2800-05-003 (April 21, 2005); In Re Strobbe, No. 2852-05-001 (January 12, 2006). In other cases, the board has granted an application notwithstanding the failure to disclose criminal charges or a disciplinary action. *See, e.g.*, In Re Shortridge, No. 2806-01-006 (August 2, 2001 (failure to disclose criminal charges); In Re B. Cole, No. 2850-01-009 (August 2, 2001) (failure to disclose disciplinary action by hospital); In Re Wise, No. 2800-05-008 (April 21, 2005 (failure to disclose suspension from medical school); In Re Kohchet, No. 2850-05-006 (October 21, 2005) (failure to disclose two probationary actions during residency); In Re Hussain, No. 2850-06-002 (April 6, 2006) (failure to disclose probation during residency); In Re Diamante, No. 2850-06-006 (November 13, 2006) (failure to disclose probation during medical school).

[50] Two cases appear to fit this category: In Re St. John (October 26, 2001) (failure to disclose multiple investigations and disciplinary actions, including probation in California); In Re Muir, No. 2860-04-006 (July 15, 2004) (failure to disclose multiple complaints and investigations or resignation while under investigation). In other cases, a license has been surrendered or revoked following failure to disclose adverse information. *See, e.g.*, In Re Jones, No. 2800-02-18 (April 1, 2004); In Re Willis, No. 2800-03-037 (August 7, 2003) (surrender).

application, issued a reprimand, and imposed a fine. In Re Lucero[51] involved an applicant who failed to disclose an emergency suspension of privileges at a hospital, asserting that the suspension was employment-related, rather than a matter of professional discipline. The applicant maintained that position throughout the proceedings; the board found that the suspension of privileges (though unrelated to patient care) was disciplinary in nature. The applicant in In Re Denney[52] intentionally failed to disclose a licensing investigation that had been resolved in her favor, in an attempt to deceive the board. The applicant accepted responsibility for her deception. Finally, in In Re Steinhilber,[53] the applicant intentionally failed to disclose an investigation in one state and a restriction on privileges at a hospital in another state, in an attempt to deceive the board. The investigation had been resolved in the applicant's favor; the restriction on privileges was not related to patient care. The applicant did not accept responsibility for the misrepresentations, asserting they were oversights.

These three written decisions involved cases in which an investigation had been resolved in the applicant's favor (Denney, Steinhilber) or none of the underlying conduct involved patient care (Lucero). In two cases (Lucero, Steinhilber), the applicant did not accept responsibility for the failure to disclose the information. No prior case has been identified in which a license was granted when, as in this case, (1) there was an unresolved investigation in another state, and (2) the applicant failed to accept responsibility for the failure to disclose the investigation.

IV. Conclusion

The division initially recommended denial of the application and did not alter that recommendation following the hearing.

At the time the board denied Mr. Reynolds's application, Mr. Reynolds was disqualified from licensure as a matter of law under 12 AAC 40.310(b)(1), because he was licensed in another state and he was the subject of an unresolved investigation by another licensing jurisdiction. Based on the record, it appears that he remains disqualified as a matter of law at this time, because he is currently licensed in New Hampshire and the Maine investigation has not been resolved.

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[51] In Re Lucero, No. 2850-98-12 (April 16, 1999) (application initially granted with conditions; same result following administrative hearing; applicant declined license).

[52] In Re Denney, No. 2850-97-003 (August 26, 1998) (application initially denied; granted after hearing).

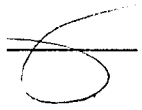
[53] In Re Steinhilber, No. 2850-97-019 (August 27, 1998) (application initially denied; granted following administrative hearing).

In addition, the board has discretion to deny Mr. Reynolds a license under AS 08.64.240(b), on the ground that he engaged in conduct that would warrant a disciplinary sanction against a licensee under AS 08.64.326(a)(1) and AS 08.64.326(a)(9), and Mr. Reynolds has not shown that denial of an application under the facts of this case would be unreasonable in light of the board's past practice in other cases.

The administrative law judge recommends that the board deny the application on the grounds that (1) Mr. Reynolds is disqualified as a matter of law, pursuant to 12 AAC 40.310(b)(1); and (2) in light of all of the circumstances, denial of the license is appropriate under AS 08.64.240(b), for the reasons set out in AS 08.64.236(a)(1) and (9), and 12 AAC 40.360(1).

DATED December 29, 2006.

By:
Andrew M. Hemenway
Administrative Law Judge



Adoption

On behalf of the Alaska State Medical Board, 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 25th day of January, 2007.

By: _____
Signature

David M. Head, MD
Name

Chair, Alaska State Medical Board
Title

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:
Robert Spitzfaden, Atty
David Brower, AAG

_____
Signature Date 1/30/07