

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
FROM THE BOARD OF PHYSICAL THERAPY & OCCUPATIONAL THERAPY**

In the Matter of: )  
 )  
 SEANNA E. BRYSON )  
 )  
 ) OAH No. 12-0009-POT  
 ) Board Case No. 2012-000039  
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**DECISION**

**I. Introduction**

Seanna Bryson applied to be licensed as a physical therapy assistant. In her application, Ms. Bryson disclosed that she had prior criminal convictions. When asked to provide details about those convictions, she initially only disclosed some of her convictions. The board concluded that the failure to fully disclose all convictions when first asked to do so was a material misrepresentation, and her license application was denied.

A hearing was held on April 17, 2012. The Division of Corporations, Business and Professional Licensing (division) introduced Exhibits A – Y, which were all admitted. Ms. Bryson introduced Exhibit 1, which was admitted. Testimony was taken from Licensing Examiner Connie Petz, Investigator Jennifer Wirawan, and Ms. Bryson.

After consideration of the additional evidence presented at the hearing, and after considering this board’s prior disciplinary actions, the board has determined that Ms. Bryson should be granted a license conditioned on her acceptance of a civil fine and a period of probation.

**II. Facts**

Ms. Bryson’s application for licensure was received by the division on August 22, 2011.<sup>1</sup> In that application, she was asked

4. Have you ever been convicted of any criminal offence(s) other than minor traffic violations (convictions include suspended imposition of sentences)?
5. Have you ever been convicted of a violation of any federal or state narcotic laws?<sup>[2]</sup>

Ms. Bryson *truthfully answered yes* to both of these questions. Because she answered yes, she was asked to “explain in full on a separate signed statement and enclose applicable legal

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<sup>1</sup> Exhibit A.

<sup>2</sup> Exhibit A, page 4.

documentation.”<sup>3</sup> Ms. Bryson enclosed a statement with her application<sup>4</sup> acknowledging that she had “received felony drug charges from the State of Washington.”<sup>5</sup> Her statement goes on to explain why that occurred and why she believes she has been rehabilitated and will not reoffend. This disclosure was truthful and did not contain any misrepresentations.

Ms. Petz is the licensing examiner who was handling Ms. Bryson’s application.<sup>6</sup> On August 30, 2011, Ms. Petz wrote to Ms. Bryson, asking for additional information about each of her yes answers.<sup>7</sup> Ms. Bryson responded on September 7, 2011.<sup>8</sup> She acknowledged two convictions, and attached the related court documents. The first conviction was from an arrest on June 19, 2006.<sup>9</sup> She was convicted on one count of possession of cocaine on December 11, 2006,<sup>10</sup> and sentenced to serve six months in jail.<sup>11</sup> The second conviction resulted from an arrest on August 8, 2006.<sup>12</sup> She was convicted on one count of possession of cocaine on December 11, 2006,<sup>13</sup> and sentenced to serve six months in jail, consecutive to the first conviction.<sup>14</sup>

There were in fact three other convictions that were not listed in Ms. Bryson’s September 7, 2011 letter. She was convicted on October 23, 2006 for possession of methamphetamine,<sup>15</sup> and sentenced to 60 days in jail.<sup>16</sup> She was convicted on November 20, 2006 for possession of methamphetamine,<sup>17</sup> and sentenced to 60 days in jail.<sup>18</sup> She was also convicted of criminal attempt on September 4, 2007.<sup>19</sup> Ms. Bryson’s convictions are summarized in the following chart:

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<sup>3</sup> *Id.*  
<sup>4</sup> Ms. Petz testified that this statement, Exhibit B, came with the application.  
<sup>5</sup> Exhibit B.  
<sup>6</sup> Testimony of Ms. Petz.  
<sup>7</sup> Exhibit C.  
<sup>8</sup> Exhibit F; Testimony of Ms. Petz. Exhibit F is dated September 5, but was faxed to the division on September 7.  
<sup>9</sup> Exhibit F, page 16.  
<sup>10</sup> Exhibit F, page 17.  
<sup>11</sup> Exhibit F, page 21.  
<sup>12</sup> Exhibit F, page 4.  
<sup>13</sup> Exhibit F, page 6.  
<sup>14</sup> Exhibit F, page 10.  
<sup>15</sup> Exhibit P, page 1.  
<sup>16</sup> Exhibit P, page 6.  
<sup>17</sup> Exhibit Q, page 1.  
<sup>18</sup> Exhibit Q, page 6.  
<sup>19</sup> Exhibit M, page 2. It is unclear whether this was a felony or a misdemeanor conviction, but the application instructed her to disclose all convictions other than minor traffic offenses.

<b>Offense</b>	<b>Date</b>	<b>Conviction</b>	<b>Sentence</b>
Possession of Cocaine	6/19/06	12/11/06	6 months
Possession of Methamphetamine	7/4/06	11/20/06	60 days
Possession of Cocaine	8/8/06	12/11/06	6 months
Possession of Methamphetamine	9/7/06	10/23/06	60 days
Criminal Attempt	2/1/07	9/4/07	Unknown

Ms. Bryson disclosed her additional convictions to Ms. Wirawan on October 13, 2011, and e-mailed copies of the court documents to her.<sup>20</sup> However, this disclosure only occurred after Ms. Wirawan had discovered the additional convictions through her own investigation.

The State Physical Therapy and Occupational Therapy Board met on November 18, 2011, to consider Ms. Bryson's application.<sup>21</sup> Ms. Wirawan read to the board Ms. Bryson's October 13, 2011 letter in which Ms. Bryson apologized for not initially providing information about all 5 of her prior convictions.<sup>22</sup> In that letter, Ms. Bryson also stated

I realized that in fact, when I applied for licensure in Washington State I had only listed the two charges, and through that application process, I found that indeed two more of the charges had gone on to my record. I had completely forgotten that we had discovered this during this process.<sup>[23]</sup>

It is not clear from the testimony whether the board was informed that Ms. Bryson had provided Ms. Wirawan the full court files for each of the convictions on October 13, 2011.<sup>24</sup>

Although she delayed providing all of the information concerning her convictions, she did provide this information prior to the board's meeting to consider her application. The board denied Ms. Bryson's license, stating

the Board has determined the applicant failed to fully disclose criminal convictions that she had already learned was a violation when she failed to disclose similar information on her Washington application in 2009. During the application process she actively withheld information from the Alaska Board.

<sup>20</sup> Exhibit E; Exhibit X, page 2. In its closing argument, the division argues that Ms. Bryson did not submit the court documents until January 24, 2012. Exhibit X is a copy of e-mails sent to and from Ms. Bryson. It shows that these documents were first submitted to Ms. Wirawan on October 13, 2011, and resubmitted on January 24, 2012. Ms. Wirawan testified that she received those documents on October 13 after her telephone conversation with Ms. Bryson asking about those additional convictions.

<sup>21</sup> Exhibit K, page 3 (draft minutes of board meeting). The final version of the board minutes are available online at [http://www.dced.state.ak.us/occ/pub/PHY\\_Minutes\\_2011\\_11.pdf](http://www.dced.state.ak.us/occ/pub/PHY_Minutes_2011_11.pdf) (Accessed May 1, 2012).

<sup>22</sup> Testimony of Ms. Wirawan.

<sup>23</sup> Exhibit E.

<sup>24</sup> See Exhibit X (e-mail transmission with PDF attachments).

The board also determined that when she applied to the state of Alaska and again omitted her convictions and misrepresented to the board she has violated 08.84.120(a)(1) and has attempted to obtain a license by fraud or material misrepresentation.<sup>[25]</sup>

The board's determination was mailed to Ms. Bryson on November 28, 2011.<sup>26</sup> This determination is considered the statement of issues pursuant to AS 44.62.370.

### **III. Discussion**

#### **A. Ms. Bryson made a material misrepresentation during the application process**

The board has discretion to refuse to issue a license to an applicant who has “attempted to obtain a license by fraud or material misrepresentation[.]”<sup>27</sup> The first question to be addressed is whether Ms. Bryson misrepresented her criminal record. As noted above, she properly disclosed in her application that she had prior criminal convictions. While the application instructions asked her to also include “applicable legal documentation,” there is no explanation of what sort of legal documentation the division considers “applicable.” The letter she included with her application, Exhibit B, is a sufficient explanation to avoid any finding of a misrepresentation as of the date of Ms. Bryson's application.

On August 30, 2011, however, the division did clarify the type of documentation it required. Ms. Bryson was told that she must provide “the initial charging documents and the final court documents related to the criminal offenses.”<sup>28</sup> Ms. Bryson responded with Exhibit F, which only provided information concerning two of the criminal convictions. She failed to disclose her other three convictions. Had the division's investigation ended on September 7, 2011, when Exhibit F was received, the board might never have learned the full extent of Ms. Bryson's criminal history. Thus, she did misrepresent her criminal history by omitting requested information.

This raises the second question for consideration: whether the failure to fully disclose all of her criminal convictions was a *material* misrepresentation. The board has the discretion to deny a license to a person who has a prior conviction that “affects the person's ability to practice competently and safely.”<sup>29</sup> The board cannot determine whether a particular conviction would

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<sup>25</sup> *Id.*  
<sup>26</sup> Exhibit K.  
<sup>27</sup> AS 08.84.120(a)(1).  
<sup>28</sup> Exhibit C, page 1.  
<sup>29</sup> AS 08.84.120(a)(3).

affect the applicant's ability to practice if it is not made aware of the conviction. Ms. Bryson's September 7 disclosure misrepresented the number of prior convictions by omitting three of those convictions.<sup>30</sup> This was a material misrepresentation as the omission impaired the board's ability to evaluate whether the convictions would affect Ms. Bryson's ability to practice competently and safely.

Some licensing statutes specifically limit a board's discretion to grant or deny a license to those instances where the misrepresentation was intentional.<sup>31</sup> It is not necessary to determine whether this board is subject to a similar restriction. As discussed below, Ms. Bryson knew she was withholding information that she had been asked to provide.

In explaining why she did not initially disclose all of her convictions, Ms. Bryson first stated that she thought only two of the convictions would show up on her record and, therefore, did not disclose the others.<sup>32</sup> At the same time, however, she noted that she had previously been told that there were four convictions on her record; something she learned when applying for her Washington license.<sup>33</sup> She stated that she had "completely forgotten" having learned that information earlier.<sup>34</sup>

During the hearing, Ms. Bryson testified that she called the county to get information about her convictions to send to the division. At the time, she thought there might be four convictions, but when the county clerk said they could only find two, those were the only records she forwarded to the division on September 5, 2011.<sup>35</sup>

Ms. Bryson was not asked to disclose only those convictions which would show up on her record. Nor was she asked to disclose only those for which she could readily obtain court records. It is more likely true than not true that Ms. Bryson knew she had additional convictions beyond those she disclosed on September 5, 2011. Even if she did not recall the specific dates or details of the convictions, and even though she could not initially obtain records for all of them, she could have, and should have disclosed to the division that these additional convictions existed.

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<sup>30</sup> She also omitted a misdemeanor driving under the influence conviction. Exhibit M, page 8.

<sup>31</sup> *E.g.*, AS 08.20.170(a)(1) (Board of Chiropractic Examiners); AS 08.36.315(1) (Board of Dental Examiners); AS 08.64.326(a)(1) (State Medical Board).

<sup>32</sup> Exhibit E.

<sup>33</sup> *Id.*

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

<sup>35</sup> *See* Exhibit F.

## B. Board action

The board has the discretion to grant or deny licensure in this situation. It is not limited to only those two choices, however. The board has the option of offering Ms. Bryson a license conditioned on her agreement to accept a disciplinary sanction.<sup>36</sup> In deciding whether that is an appropriate option here, it is helpful to consider how the board has treated prior instances of misrepresentation.<sup>37</sup>

In 2005, the board considered an application in which an applicant had falsely answered a question about prior disciplinary action.<sup>38</sup> The board voted to grant a license subject to a reprimand.<sup>39</sup>

In 2008, the board denied a Physical Therapy Assistant license to an applicant. The applicant had failed to disclose she had been licensed in Oregon and had been placed on probation in that state.<sup>40</sup> In addition, the applicant's professional reference was not favorable, and there were indications that the applicant had been too rough with patients.<sup>41</sup> The board voted to deny licensure because of the misrepresentation and the adverse references.<sup>42</sup>

In 2011, the board considered a licensee who had failed to disclose a DUI conviction in both his 2008 and his 2010 license renewal applications. The board imposed a \$1000 fine and placed him on probation for three years for "falsification of renewal applications in 2008 and 2010."<sup>43</sup>

Although not all of the details of these prior discipline actions are available, Ms. Bryson's situation seems closest to the 2005 and 2011 board actions. Unlike the 2008 discipline, there is no allegation related to patient care. Thus, rather than simply deny her license, the board should offer to grant Ms. Bryson a license conditioned on her acceptance of disciplinary sanctions. The appropriate sanction here would be a two year period of probation and a \$500 civil fine.<sup>44</sup> The purpose of probation is to allow the licensee to "report regularly to the board on matters related

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<sup>36</sup> See *In re Sykes*, OAH No. 08-0475-MED (State Medical Board 2009) page 9; *In re Taylor*, OAH No. 10-0409-NUR (Board of Nursing 2011), page 8 (appeal pending).

<sup>37</sup> The board is required to seek consistency in imposing discipline. AS 08.01.075(f). It should similarly seek to be consistent in the consideration of license applications.

<sup>38</sup> [http://www.dced.state.ak.us/occ/pub/pphy\\_OCTOBER\\_2005.pdf](http://www.dced.state.ak.us/occ/pub/pphy_OCTOBER_2005.pdf) (accessed May 3, 2012).

<sup>39</sup> *Id.*

<sup>40</sup> [http://www.dced.state.ak.us/occ/pub/PT\\_November\\_2008\\_minutes.pdf](http://www.dced.state.ak.us/occ/pub/PT_November_2008_minutes.pdf) (accessed May 2, 2012).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> [http://www.dced.state.ak.us/occ/pub/PHY\\_Disciplinary\\_Actions.pdf](http://www.dced.state.ak.us/occ/pub/PHY_Disciplinary_Actions.pdf) (accessed May 2, 2012).

<sup>44</sup> See AS 08.01.075(a)(7) & (8).

to the grounds for probation[.]”<sup>45</sup> In this case, there is evidence that Ms. Bryson had previously misused illegal and prescription drugs. In order to assure the board that this prior problem has not re-occurred, Ms. Bryson will, within 60 days of the board’s adoption of this decision, undergo (at her own expense) a substance abuse screening by a counselor or treatment center approved by the division. She must submit evidence of this screening and compliance with all recommendations of the screening report within 30 days of the screening, and every three months thereafter until the end of her probationary period.

The civil fine and probationary period will deter Ms. Bryson and other applicants from failing to fully and accurately answer all questions on the license applications and renewal applications. It will also place other licensing agencies on notice of a potential concern if Ms. Bryson applies for a license in another jurisdiction. The amount of the civil fine has been reduced from what might otherwise be imposed because she did initially disclose that criminal convictions existed and because she did ultimately disclose all of her criminal history prior to the board’s consideration of her application, although only because of the investigator’s persistence. The probation requirement will provide assurance that Ms. Bryson truly has reformed and is no longer misusing drugs. If Ms. Bryson declines to accept this discipline, then the prior denial would remain in place. She would be free to re-apply for a license, but would need to accurately complete the application, including disclosure of all of the convictions and that this board has previously denied her a license.

#### **IV. Conclusion**

Ms. Bryson made several very bad mistakes in 2006 and early 2007. Unfortunately, she compounded her earlier mistakes when she applied for a physical therapy assistant license. She failed to fully disclose her criminal history when she applied for that license. The board depends on complete and accurate answers on applications in order to fulfill its duties. It cannot ignore Ms. Bryson’s failure to provide complete and accurate responses during the investigation even though she ultimately did provide all of the requested information. Accordingly, the board issues the following order:

The board will approve Ms. Bryson’s application and license her as a Physical Therapy Assistant subject to Ms. Bryson’s acceptance of the following conditions:

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<sup>45</sup> AS 08.01.075(a)(7).

1. Ms. Bryson will pay a civil fine in the amount of \$500 within six months of this decision. This amount shall be paid to the “State of Alaska” and delivered to the Division of Corporations, Business and Professional Licensing, and may be paid in installments.

2. Ms. Bryson will, within 60 days of the board’s adoption of this decision, undergo (at her own expense) a substance abuse screening by a counselor or treatment center approved by the Division of Corporations, Business and Professional Licensing. She must submit to the division proof of this screening and compliance with all recommendations of the screening report within 30 days of the screening, and every three months thereafter until the end of her probationary period (a total of four reports per year, including the original report, for two years).<sup>46</sup>

3. Ms. Bryson’s license may be revoked pursuant to AS 44.62.360 if she does not timely comply with these conditions.

In the alternative, Ms. Bryson may refuse to accept these conditions. If she does not submit her signed acceptance of the conditions within 30 days of the board’s decision, her application for licensure is denied.

DATED this 17<sup>th</sup> day of May, 2012.

By: Signed  
Jeffrey A. Friedman  
Administrative Law Judge

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<sup>46</sup> Depending on the recommendations, she might complete all of the recommendations prior to the end of her probationary period. If that occurs, the division is delegated the authority to, in its discretion, waive future reports.



## Non-Adoption Options

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B. The State Physical Therapy and Occupational Therapy Board, in accordance with AS 44.64.060(e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as set forth below, and adopts the proposed decision as revised:

Paragraph 2 on page 8 of the decision is revised to say

2. Ms. Bryson will, within 60 days of the board's adoption of this decision, undergo (at her own expense) a substance abuse screening by a counselor or treatment center approved by the Division of Corporations, Business and Professional Licensing. She must submit to the division proof of this screening and submit to random blood and urine tests four times per year to be submitted to the Division of Corporations, Business and Professional Licensing directly from the testing agency, and submit compliance with all recommendations of the screening report within 30 days of the screening, and every three months thereafter (a total of four reports per year, including the original report) for two years.

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 27<sup>th</sup> day of September, 2012.

By: Signed  
Signature  
Kathleen R. Lind  
Name  
Chairman of Physical Therapy & Occupational  
Therapy Board  
Title

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