

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

In the Matter of)	
)	
KENNETH JONES)	OAH No. 06-0246-NUR
_____)	Board Case NO. 2302-06-005

DECISION & ORDER

I. Introduction

The Division of Corporations, Business and Professional Licensing filed an accusation asserting that Kenneth Jones renewed his practical nurse license for the 2004-2006 licensing period based on a false certification that he had obtained the requisite number of continuing education credits and the required hours of nursing employment. Mr. Jones requested a hearing. The division moved for summary adjudication. A hearing on the motion was held on May 11, 2006. Mr. Jones appeared by telephone. Steven Winker represented the division. The administrative law judge found that there were no material issues of fact in dispute, and granted the motion. Because Mr. Jones obtained his most recent nursing license based on false information, the Alaska Board of Nursing should impose disciplinary sanctions to include affirming its decision to accept voluntary surrender of Mr. Jones's license, a formal reprimand, and a suspended fine of \$1,500.

II. Facts

The facts in this case are not in dispute.¹ The division, as part of a routine random audit, requested that Mr. Jones provide proof that he had completed 30 hours of continuing education and 320 hours of nursing employment during the period from October 1, 2002, through September 30, 2004, as Mr. Jones certified that he had done on his license renewal application for the 2004-2006 licensing period. Mr. Jones stipulated that he was unable to produce any evidence showing that he had completed any continuing education or employment hours during the relevant period. Mr. Jones had submitted information indicating that while he could not prove he had taken classes and been employed for enough hours to meet the continuing competence requirement, his intent when he completed his application for renewal was not fraudulent or deceptive. However, Mr. Jones declined to present a case at a hearing to disprove

¹ All stated facts were stipulated to by the parties on the record on May 11, 2006.

the division's assertions that the statements on his application were fraudulent or intended to be deceptive.

Mr. Jones submitted an application stating that he had met continuing competence requirements; there is no evidence in the record showing that Mr. Jones did meet such requirements; the division has asserted that Mr. Jones's application was fraudulent or intentionally deceptive, and Mr. Jones has not provided evidence to the contrary. Therefore, a finding that Mr. Jones did submit an application containing information that was fraudulent or intentionally deceptive is supported by a preponderance of the evidence.

On May 18, 2006, Mr. Jones voluntarily surrendered his practical nurse license. He has moved to Washington State, and at this time he has no intent to return to Alaska or to ever renew his Alaska license. On June 7, 2006, the board accepted Mr. Jones's voluntary surrender of his license.

III. Discussion

By filing an appeal form in this case, Mr. Jones did not intend to oppose the accusation that was filed against him, nor did he expect a hearing to dispute the facts alleged. Although he used the "Notice of Defense / Request for Hearing" form that was provided to him with the accusation, it appears that Mr. Jones's desire was not to contest the accusation, but merely to acknowledge responsibility and describe the circumstances surrounding his omissions. Mr. Jones provided a letter with the hearing request form, and later stated that it contained everything that he wanted to say. When he stipulated to the facts contained in the division's motion for summary adjudication, Mr. Jones made it clear that he was not denying anything in the accusation or the division's motion for summary adjudication. Mr. Jones stated that his intent was to "bow to the mercy of the court."²

In order to give effect to Mr. Jones's principal desire to make a written statement to the board, his letter of March 20, 2006, is attached as Exhibit A for the board's consideration.

The Board of Nursing has the duty to set minimum qualifications for licensing of practical nurses.³ In the exercise of that duty, the board has established minimum requirements for continuing competence of licensees.⁴ By statute, a nursing license may not be renewed unless the applicant has complied with the board's continuing competence requirements.⁵ The

² Record of hearing, May 11, 2006.

³ AS 08.68.100.

⁴ 12 AAC 64.610-640.

⁵ AS 08.68.276.

board may deny, suspend, or revoke the license of a person who has obtained a license to practice nursing by fraud or deceit.⁶ In addition, under AS 08.68.275 the board has the following broad disciplinary powers, which it may take singly or in combination:

- (1) permanently revoke a license or permit to practice;
- (2) suspend a license for a stated period of time;
- (3) censure a licensee;
- (4) issue a letter of reprimand;
- (5) impose limitations or conditions on the professional practice of a licensee;
- (6) impose peer review;
- (7) impose professional education requirements until a satisfactory degree of skill has been attained in those aspects of professional practice determined by the board to need improvement;
- (8) impose probation and require the licensee to report regularly to the board upon matters involving the basis for the probation;
- (9) accept a voluntary surrender of a license.

In imposing disciplinary actions, the board must seek consistency with prior cases; departures from previous decisions with similar facts must be explained in the order adopted by the board.⁷

In Exhibit N, the division has presented copies of memoranda of agreement documenting four cases with very similar circumstances. In each of these cases, the applicant had submitted a license application certifying completion of continuing competency requirements. In each case, a random audit was conducted and the applicant was unable to verify compliance with the requirements. In each case the board's disciplinary action was identical. The applicant was fined \$3000 with \$1500 suspended on condition of compliance with all terms of the agreement; the applicant was reprimanded with a letter substantially similar to that attached to this decision as Exhibit B; and a mandatory audit of the applicant's continuing competence compliance was conducted for the next two licensing periods. For cases where the applicant had still not met the requirements as of the time of the agreement, the license was suspended until such time as the applicant had met all requirements. Licenses were not suspended if the applicants had made up the missing credit or work hours after the application was submitted but before the agreement was entered into.

⁶ AS 8.68.270(1).
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Mr. Jones's situation varies from the four prior cases, and probably most other prior cases, in one significant respect. In all of the prior cases, it was the desire of the licensee to continue practicing in Alaska. All of the licensees were permitted to retain their licenses, so long as they paid their fine and met the continuing competence requirements. Mr. Jones does not wish to continue practicing in Alaska. He has voluntarily surrendered his license, and the board has accepted this surrender. Accepting a voluntary surrender in itself constitutes a more substantial penalty than any of the other licensees were subject to. Surrender of the license also negates the effect of mandatory audits and suspended fines. Further, it raises an issue of the board's ability to actually collect any fines imposed. The surrender does not affect the board's ability to reprimand Mr. Jones, as a reprimand in his file would be available to other licensing jurisdictions.

Taking into account these considerations, the principal disciplinary action in this case should be the acceptance of Mr. Jones's voluntary surrender of his license, an action the board has already taken. A fine of \$1500 should be suspended for so long as Mr. Jones remains unlicensed by the board, with payment of the fine a condition of issuance of any future license in Alaska. Mandatory audits would serve no purpose in this case, but would likely be imposed should Mr. Jones ever seek licensure again in this state. If Mr. Jones ever does seek to obtain another nursing license in this state, it should be noted at that time that the intent of this decision is to seek consistency, to the extent possible, with prior cases, but not to permanently exclude Mr. Jones from being licensed in Alaska, so long as he can demonstrate continuing competence. A letter of reprimand, consistent with previous cases, is appropriate.⁸

IV. Conclusion

Upon adoption of this decision as a final administrative order, the following disciplinary sanctions shall be imposed in this matter:

1. The Nursing Board affirms its decision of June 7, 2006, to accept Mr. Jones's voluntary dismissal of his nursing license.
2. A civil monetary penalty of \$1500 shall be imposed. The entire penalty shall be suspended for as long as Mr. Jones remains unlicensed in Alaska.

⁷ AS 8.68.275(f).

⁸ Prior case letters of reprimand are at Exhibit N, pages 5, 14, 23 and 32. A similar letter is attached to this decision as Exhibit B.

3. The board issues the letter of reprimand attached as Exhibit B.

DATED this 18th day of January, 2007.

By: Signed
DALE WHITNEY
Administrative Law Judge

Non-Adoption Options

2. The undersigned, on behalf of the Alaska Board of Nursing and 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 follows:

1. Mr. Kenneth Jones receives letter of reprimand.
2. A civil monetary penalty shall be imposed of \$1,500, with no portion suspended.
3. Mr. Jones be subject to a mandatory audit of his CE requirement compliance for at least two subsequent licensing periods.

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 7th day of March, 2007.

By: Signed
Signature
Catherine A. Giessel
Name
BON Chair
Title

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

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EXHIBIT B: REPRIMAND

The Board of Nursing issues Kenneth Jones this reprimand for his failure to complete the continued competency portion of the license renewal application both truthfully and accurately.

The purpose of the continued competency requirement is to ensure that nurses maintain the ability to safely and effectively apply nursing knowledge, principles, and concepts in the practice of registered or practical nursing as defined in AS 08.68.410.

To renew a nursing license for the 2004-2006 license period, AS 08.68.276 required Mr. Jones to comply with continuing competence requirements established by 12 AAC 44. These requirements include completion of two of the following three methods for maintaining continuing competency: 1) providing verification of 320 hours of nursing employment; 2) 30 contact hours of continuing education; or b) 30 hours of volunteer professional activities completed between October 1,2002 through September 30, 2004. The continuing competency requirement may also be met by one of the alternate methods described under 12 AAC 44.640.

The Board issues the renewal of nursing licenses based upon the applicant's affirmative certification in the renewal application that the continuing competency requirement has been met.

Subsequent to the renewal of his license for the 2004-2006 licensing period, Mr. Jones was informed that his renewal application was among the group randomly selected for audit to monitor compliance with the continuing competency requirements, and he was requested to provide documentation to verify completion of the hours indicated on his renewal application. In response to this audit, Mr. Jones admits being unable to provide documentation to verify completion of the continuing education contact hours and nursing employment hours claimed on his renewal application and required by AS 08.68 and 12 AAC 44 for the lawful renewal of this license.

The Board expects each Alaska licensed nurse to be aware of all laws and regulations pertaining to the practice of nursing in Alaska. The Board relies upon the honesty and integrity of each applicant to respond truthfully and accurately to the questions on the renewal application.

Mr. Jones is hereby reprimanded for his failure to verify successful completion of the minimum number of contact hours of continuing education and during the concluding license period as indicated on his 2002-2004 license renewal application.