

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AMIE CROW,)
)
 Appellant,)
 v.)
)
 DEPARTMENT OF COMMUNITY)
 AND ECONOMIC DEVELOPMENT,)
 DIVISION OF OCCUPATIONAL)
 LICENSING, BOARD OF NURSING,)
 OFFICE OF ADMINISTRATIVE)
 HEARINGS)
)
 Appellee.)
 _____)

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Case No. 3AN-15-05305 CI

Opinion on Administrative Appeal.

I. Statement of Facts.

This appeal concerns the decision of the Alaska Department of Community & Economic Development, Division of Occupational Licensing, and Board of Nursing, Office of Administrative Hearings (“Division”) to uphold a \$500 fine, payable within 120 days, and a public reprimand that the Board of Nursing (“Board”) levied on Ms. Amie Crow (“Crow”), for obtaining her registered nursing license by fraud or deceit.

After a hearing on October 3, 2014 at which Board and Crow and were present and given the opportunity to argue and present evidence, the following facts were found by the Administrative Law Judge Lawrence A. Pederson (“ALJ”):

This case involves whether appellant Amie Crow’s failed to disclose a prior criminal conviction on her 2011 application for a nursing license.¹

The issue revolves around a 1995 criminal conviction for wanton endangerment in the second degree in Kentucky. In 1995, while she and her husband lived in Kentucky, they were both arrested and charged with wanton endangerment in the first degree, for placing their three year old daughter unattended in a motor vehicle in a

¹ Exc. 251

restaurant parking lot.² Her charge was later reduced to wanton endangerment in the second degree, a misdemeanor in Kentucky.³ Crow pled guilty and was handed a sentence of 360 days, with 350 suspended and 10 days in custody.⁴ This conviction was later expunged from her record.⁵

In April 2011, while living in Utah, Crow applied for a licensure by endorsement as a registered nurse in Alaska.⁶ The current dispute is over her answer to a question on the nursing application that read “Have you ever been convicted of a misdemeanor or a felony (convictions include “suspended impositions of sentence”)?”⁷ Crow checked the “no” box in response to that question.⁸

In May 2011, while her application was pending, Crow drove from Utah to Alaska. At the U.S./Canadian border she was stopped, and asked for identification. She was arrested at the border as an FBI check indicated that she had a 1995 Kentucky criminal conviction.⁹ She was allowed to continue through Canada after the arrest. She claims she drove directly to the Board of Nursing’s offices on her arrival in Anchorage, on May 4, 2011, however they were unable to see her that day.¹⁰ She returned to the office, on May 5, 2011, on that day she met with licensing reviewer Madeline Henderson. Crow asserts she notified Ms. Henderson that a Canadian Border Agent told her the FBI background check identified a 1995 Kentucky conviction that she believed was dismissed. Crow testified that she informed Henderson when she completed the nursing license application she did not believe she had been convicted of any crime, as she was under the impression the 1995 accusations were dismissed and she had no conviction.¹¹ Henderson testified that she did recall speaking with Crow about the incident at the border but did remember discussing that Crow needed to submit a new set of fingerprints on May 4, 2011 and Crow did come in the next day and

² Exc. 252

³ *Id.*

⁴ *Id.*

⁵ Exc. 218, 253

⁶ Exc. 164-168, 251

⁷ Exc. 165, 251-52

⁸ Exc. 163, 253

⁹ Tr. 83-84

¹⁰ Tr. 84

¹¹ Tr. 81-82

provided finger prints.¹² Henderson did not recall discussing Crow's Kentucky criminal case.¹³

On May 6, 2011, licensing supervisor Lisa Maroney with the Division, reviewed Crow's application for completeness and approved it, based on Crow's "no" answer to the question regarding criminal convictions.¹⁴ A required criminal background check on Crow was not completed at the time; a registered nurse's application is not allowed to be delayed while waiting for the background check to be completed.¹⁵ The criminal background check was completed on May 12, 2011, and the Division received the results on May 16, 2011; the check revealed Crow had been arrested on August 25, 1995 in Kentucky and charged with wanton endangerment in the first degree.¹⁶

The Division notified Crow about the criminal charges in Kentucky.¹⁷ Crow responded to the Division in a signed and dated letter that was faxed on July 6, 2011; the letter acknowledged she had been previously charged with an offense but argued she was denied her own trial but had to spend several nights in jail as the charges were lowered to a misdemeanor.¹⁸

On September 29, 2011, a Division investigator wrote to Crow, alleging that she falsified her application because she failed to disclose that she had 1995 conviction for wanton endangerment.¹⁹ On December 7, 2011 the Division sent Crow a proposed consent agreement, where she would admit she falsely answered "no" to the question about the conviction on the application and she had in fact been convicted of wanton endangerment in the second degree, and that she would pay fine of \$500 while also receive a reprimand.²⁰ Through her attorney, Crow informed the Division investigator that she would not accept the consent agreement

On March 12, 2012 Crow's Kentucky criminal conviction was judicially expunged.²¹ Through Crow's attorney, the Division was informed about the

¹² Exc. 252

¹³ Exc. 253

¹⁴ Exc. 134-35. 253

¹⁵ Exc. 253; 12 AAC 44.319(c)

¹⁶ Exc. 64-67, 253

¹⁷ Exc. 253

¹⁸ Exc. 81-82, 253

¹⁹ Exc. 90

²⁰ Exc. 131, 197-202

²¹ Exc. 218, 253

expungement on November 21, 2012.²²

II. Jurisdiction of the Superior Court.

Under AS § 22.10.020(d), this court has jurisdiction “in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law...”²³ Accordingly, this court has jurisdiction to review this administrative appeal.

III. Standard of Review.

When reviewing the merits of an agency's decision, [the court] appl[ies] one of four different standards of review: (1) the ‘substantial evidence’ test applies to questions of fact; (2) the ‘reasonable basis’ test applies to questions of law involving agency expertise; (3) the ‘substitution of judgment’ test applies to questions of law where no [agency] expertise is involved; and (4) the ‘reasonable and not arbitrary’ test applies to questions about agency regulations and the agency's interpretation of those regulations.”²⁴ The issues raised in this appeal concern the disciplinary statutes and regulations which authorize the Board to exercise its discretion in sanctioning Crow. The Court will apply the reasonable basis test.

IV. Discussion.

a. Appellant's Arguments.

Crow argues the ALJ erred when he held that Crow intentionally, fraudulently, deceitfully obtained her Alaska license. The ALJ erred when he held that Crow's testimony lacked credibility. The ALJ also erred when he held that Crow's conviction was substantially related to the Qualifications, Duties' and Functions of Nursing License. The ALJ erred when he upheld that the Board of Nursing Could Sanction Crow, and the board erred when it sanctioned Crow.

²² Exc. 131

²³ AS 22.10.020(d).

²⁴ *Lakloey, Inc. v. Univ. of Alaska*, 157 P.3d 1041, 1045 (Alaska 2007) (internal quotations and citation omitted).

b. Appellee's Arguments.

The Division argues that there was substantial evidence to support the Board's findings Crow violated AS 08.68.270(1). Even if this court finds the first argument unpersuasive, the Board's decision can be affirmed on alternative grounds, as the Crow also violated AS 08.68.270(2). If the court finds that appellant did not violate AS 08.68.270(2), the expunged conviction is not a defense to appellant's violation of AS 08.68.270(1).

c. Applicable statutes and Administrative Code.

"The board may deny, suspend, or revoke the license of a person who (1) has obtained or attempted to obtain a license to practice nursing by fraud or deceit;(2) has been convicted of a felony or other crime if the felony or other crime is substantially related to the qualifications, functions, or duties of the licensee."²⁵

"Crimes that are substantially related to the qualifications, functions, or duties of a certified nurse aide, registered nurse, or practical nurse include

(1) murder;(2) manslaughter;(3) criminally negligent homicide;(4) assault;(5) sexual assault;(6) sexual abuse of a minor;(7) unlawful exploitation of a minor, including possession or distribution of child pornography;(8) incest;(9) indecent exposure;(10) robbery;(11) extortion;(12) stalking;(13) kidnapping;(14) theft;(15) burglary;(16) forgery;(17) endangering the welfare of a child;(18) endangering the welfare of a vulnerable adult;(19) unlawful distribution or possession for distribution of a controlled substance; for purposes of this paragraph, "controlled substance" has the meaning given in AS 11.71.900;(20) reckless endangerment.

(b) Convictions of an offense in another jurisdiction with elements similar to an offense listed in (a) of this section are substantially related to the qualifications, functions, or duties of a certified nurse aide, registered nurse, or practical nurse."²⁶

²⁵ AS 08.68.270

²⁶ 12 AAC 44.705

d. Application of law to facts.

i. ALJ Pederson did not err when he held Crow intentionally, fraudulently and deceitfully obtained her Alaska nursing license

Sufficient evidence was presented at the hearing to support the Board's finding that Crow violated AS 08.68.270(1). The Board is authorized to deny, suspend, or revoke the license of a person who has obtained a license to practice nursing by fraud or deceit.

To establish whether fraud or deceit was committed, the Board was required to establish the appellant either intended to provide an incorrect answer on her application or had any doubts as to the accuracy of her answer.²⁷ Fraudulent intent is a question of fact that can be proven by circumstantial evidence.²⁸ Crow argues that she was not aware that she was convicted of a crime or was mistaken to the nature of her offense.

The ALJ found that it would be "highly improbable" Crow would not remember being convicted for a crime that she admitted to serving time in jail for, this Court is inclined to agree. The ALJ further found it was unlikely Crow informed the Division about her criminal conviction May 5, 2011.

The ALJ correctly found that the Board was required to establish Crow either intended to provide an incorrect answer on her application or had doubts as to the accuracy of her answer. Crow repeatedly denied at the hearing that she was ever convicted of crime even after being shown court records establishing conviction and the amount of jail time she served in that case. Court documents were presented to Crow at the hearing that established that she pled guilty of wanton endangerment in the second degree and she was sentenced to 360 days in jail with 350 days suspended.²⁹ When presented with these records at the hearing Crow testified she "never pled guilty and I never pled no contest. I never stood before a judge, I had not trial. How,-- I think that was an error too."³⁰

²⁷ *Lightle v. State, Real Estate Comm.*, 146 P.2d 980, 983-84(Alaska 2006)

²⁸ *Gabaig v. Gabaig*, 717 P.2d 835, 838 (Alaska 1986)

²⁹ Tr. 77-78

³⁰ Tr. 104

When asked about the 2012 expungement at the hearing, Crow's exchange went as follows:

Q: And even though you got an expungement of a conviction, you are denying you were convicted?

A: I don't know that I'm denying it, I'm saying—I'm pretty much saying I don't agree.

Q: Were you ever convicted in Kentucky of wanton endangerment?

A: I don't know how to answer that other than the way I've already answered it to you.

Q: Which is what, yes or no?

A: I don't believe I was. No.³¹

The ALJ found she lacked credibility for failing to accept an "established fact," of Kentucky criminal conviction made her testimony less than credible.³² Due to Crow's lack of credibility, the ALJ found the Division had met its burden of proof and demonstrated Crow intentionally did not disclose her criminal conviction her application.³³

Henderson testified at the hearing if the appellant had disclosed her criminal conviction on May 5, 2011, she would have appellant's "no" answer to "yes" on question regarding the criminal conviction question, and there would have been her practice to ask for documents related to the conviction.³⁴ This would have delayed the issuance of Crow's license. Licensee supervisor Maroney testified that she relied on appellant's "no" response on criminal conviction question and issued Crow's license on May 6, 2011.³⁵ The Board presented sufficient circumstantial evidence, which allowed the ALJ to come to the conclusion Crow intended to lie or had doubts to the accuracy to the answers she provided to the Board.

Crow had a 1995 criminal conviction when she intentionally selected "No" to a question on her application for licensure. Testimony was presented that her application was granted, relying on this misstatement of fact by Crow. Her application was then

³¹ Tr. 99

³² Exc. 255

³³ Exc. 256

³⁴ Tr. 51

³⁵ Tr. 32-34

granted prior to the discovery of the criminal conviction in a background check. The ALJ did not err when he determined Crow obtained her registered nursing license by fraud or deceit.

ii. ALJ did not err when he held Crow testimony lacked credibility

Since the Administrative Law Judge had an opportunity to observe the witnesses when they testified, this Court must give great weight to ALJ's evaluation of the witnesses' credibility and demeanor.³⁶ The ALJ found Crow's testimony less than credible, as she refused to accept an established fact that she had indeed been convicted of a crime and had served time in jail for the offense. Again it is undisputed that Crow was convicted of wanton endangerment in the second degree in Kentucky in 1995. Further it is undisputed that she failed to disclose this conviction on her application for licensure in 2011.

The ALJ found Crow was not a credible witness, as Kentucky court records showed a 1995 conviction and a sentence that required her to serve ten days in jail. Crow even submitted a signed letter to the licensing board where she admitted to spending some time in jail. This further undermines her repeated denials of ever being convicted of a crime at the hearing and her claims that she had never been in custody other than the day she was arrested crossing the U.S.-Canadian border.

The ALJ found Crow's testimony at the hearing was not credible. She denied on her application that she was convicted of a crime, and then repeatedly denied at the hearing that she had ever been convicted. Crow was even shown court records that established she had been convicted and was sentenced to serve time in jail, and she in her own letter stated she spent some time in jail. The ALJ found this as an unwillingness to accept an established fact, this was enough for him to find Crow's testimony lacked credibility. This allowed the ALJ to properly find the Board had met its burden of proof and demonstrated Crow intentionally did not disclose her criminal conviction on her licensing application.

³⁶ See *Helmuth v. Univ. of Alaska Fairbanks*, 908 P.2d 1017, 1023 (Alaska 1995)

iii. The Nursing Board Did not err when it Sanctioned Crow

Appellant's argument that the expungement eliminated the Board's authority to sanction her for an incorrect answer on her application fails. There is no legal authority that supports the contention that the 2012 expungement would cure a lie as to an answer provided in 2011 on her application. When she applied for licensure she had been convicted of crime. Her answer at the time it was given was untruthful. The fact that the conviction was expunged during the next calendar year does not make the answer truthful at the time it was submitted.

V. Decision.

Having reviewed the record in this case, this Court finds there is substantial evidence to support the finding of the Administrative Law Judge that Crow obtained her license by fraud or deceit. The Administrative Law Judge's affirmation of a sanction of a \$500 fine, paid over 120 days and a public reprimand was appropriate.

Accordingly, the decision of the Division is AFFIRMED.


IT IS SO ORDERED.

10/21/15
Date



Michael R. Spaan
Superior Court Judge

I certify that on 10/22/15
a copy of the above was mailed
to each of the following at their
addresses of record.



A. Vigil – Administrative Assistant *webb*
Ruth
of Admin Hrgs