

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

IN THE MATTER OF:	)	
	)	
AMIE CROW	)	OAH No. 14-0979-NUR
<hr style="width:100%; border: 0.5px solid black;"/>	)	Board Case No. 2011-000856

**DECISION**

**I. Introduction**

Amie Crow is a registered nurse who applied for and received her Alaska license in 2011. The Division of Corporations, Business and Professional Licensing (Division) filed an accusation on May 22, 2014 seeking to have the Board of Nursing (Board) professionally discipline Ms. Crow. The request for discipline was based upon Ms. Crow’s allegedly fraudulently and/or deceitfully obtaining her license by failing to disclose a criminal conviction upon her application for a nursing license. Ms. Crow requested a hearing challenging the request for discipline.

Ms. Crow was represented by Ronald Offret. The Division was represented by Assistant Attorney General Robert Auth. The hearing was held on October 3, 2014. Ms. Crow appeared in person and testified on her own behalf. Lisa Maroney, Madeline Henderson, and Jasmin Bautista testified, in person, on behalf of the Board.

The evidence demonstrates that Ms. Crow has a criminal conviction which she intentionally did not mention on her application for a nursing license. Consistent with its treatment of similar cases, the Board hereby disciplines Ms. Crow by fining her \$500, payable within 120 days, and publicly reprimands her.

**II. Facts**

Ms. Crow is a registered nurse who has been licensed in Utah since 2001.<sup>1</sup> The Division received her signed and completed application for licensure by endorsement as a registered nurse in Alaska on April 28, 2011.<sup>2</sup> Her nursing application contains the question “[h]ave you **ever**

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<sup>1</sup> Ex. A (Agency Record), p. 40.  
<sup>2</sup> Ex. A (Agency Record), pp. 39 – 44.

been convicted of a misdemeanor or felony (convictions include ‘suspended impositions of sentence’)?”<sup>3</sup> Ms. Crow checked the “No” box in response to that question.<sup>4</sup>

Ms. Crow has a misdemeanor criminal conviction for Wanton Endangerment in the Second Degree from the State of Kentucky from 1995. That conviction arose from her husband placing their three year old daughter unattended in a motor vehicle for a time out, for a very brief period of time, despite Ms. Crow telling him not to do it.<sup>5</sup> Ms. Crow and her husband were both arrested and charged with Wanton Endangerment in the First Degree.<sup>6</sup> Ms. Crow spent the night in jail.<sup>7</sup> The charge against Ms. Crow was subsequently reduced to Wanton Endangerment in the Second Degree. Ms. Crow pleaded guilty and was sentenced to a jail sentence of 360 days, 350 of which were suspended, with 10 days to serve in jail. She was scheduled to begin serving her time on October 13, 1995.<sup>8</sup> Ms. Crow testified that she was not involved in the court proceedings, that everything was handled in the judge’s chambers by her husband and the lawyer.<sup>9</sup>

Ms. Crow testified that she was driving to Alaska to arrive at her job in May 2011. At the Canadian border, she was asked if she had been convicted of a crime. She answered no, at which point she was asked about the Kentucky case. She was allowed to drive through Canada to Alaska. She immediately went to Board of Nursing office, which was closed when she arrived. She went the next day to the office and met with Ms. Henderson at the office, informed her of what she learned about the Kentucky case. She further testified that an unidentified man came out, performed some type of records check, and said she was “clean.”<sup>10</sup>

Ms. Crow was emailed by the Division on May 4, 2011 requesting that she provide new fingerprints because her fingerprints with the application were unclear.<sup>11</sup> Madeline Henderson, a licensing examiner then spoke with Ms. Crow about coming in to submit new fingerprints on May 4, 2011 and was told by Ms. Crow that she would submit the new fingerprints the next day. Ms. Crow came in the next day, May 5, 2011, and provided new fingerprints.<sup>12</sup> Ms. Crow

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<sup>3</sup> Ex. A (Agency Record), p. 40 (emphasis in original).

<sup>4</sup> *Id.*

<sup>5</sup> Ex. A (Agency Record), p. 62; Ms. Crow’s testimony (1:35:43 – 1:36:54).

<sup>6</sup> Ex. A (Agency Record), p. 57.

<sup>7</sup> Ms. Crow’s testimony (2:05:22 – 2:05:42).

<sup>8</sup> Ex. A (Agency Record), pp. 58 – 59.

<sup>9</sup> Ms. Crow’s testimony (1:39:00 – 1:39:30).

<sup>10</sup> Ms. Crow’s testimony (1:30:16 – 1:33:20).

<sup>11</sup> Ex. A (Agency Record), pp. 69 – 70.

<sup>12</sup> Ex. 8; Ms. Henderson’s testimony (0:39:50 – 49:04)

believes that she provided the new fingerprints the day after she first visited the office to inform the Board about her Kentucky criminal case.<sup>13</sup>

Lisa Maroney, the licensing supervisor, reviewed Ms. Crow's application for completeness and approved it, despite the criminal background check not having been completed, based upon the "no" answer to the criminal conviction question. A registered nurse's application is not allowed to be delayed while waiting for the background check to be completed.<sup>14</sup> Ms. Crow's registered nurse's license was issued effective May 6, 2011.<sup>15</sup>

Ms. Henderson recalled meeting with Ms. Crow before the license was issued, but did not remember whether Ms. Crow's Kentucky criminal case was discussed prior to the license's issuance.<sup>16</sup>

The Division had a criminal background check conducted on Ms. Crow. The Division received a report on May 12, 2011 that found Ms. Crow had been arrested on August 25, 1995 in Kentucky and charged with Wanton Endangerment in the First Degree.<sup>17</sup> The Division notified Ms. Crow about the criminal charges. Ms. Crow responded by sending the Division a signed undated letter, faxed on July 6, 2011,<sup>18</sup> which acknowledged having been charged with an offense, being denied her "own" (presumably separate) trial, spending "a couple of Friday and Saturday nights in Jail," and the charges having been dropped to a class C misdemeanor."<sup>19</sup> Ms. Crow subsequently had her Kentucky criminal conviction judicially expunged on March 12, 2012.<sup>20</sup>

At hearing, Ms. Crow presented a somewhat different version of events, testifying that she had not pleaded guilty to the criminal charge, and denying that she had originally been convicted:

Mr. Auth:       And even though you got an expungement of a conviction, you're denying you were ever convicted?

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<sup>13</sup> Ms. Crow's testimony (1:33:40)

<sup>14</sup> Ms. Maroney's testimony (0:14:18 – 0:19:40); Ex. A (Agency Record), pp. 9 – 10.

<sup>15</sup> Ex. A (Agency Record), p. 38.

<sup>16</sup> Ms. Henderson's testimony (0:47:52 – 0:49:04).

<sup>17</sup> Ex. A (Agency Record), pp. 45 – 48.

<sup>18</sup> Ms. Crow's testimony (2:43:25 – 2:43:56).

<sup>19</sup> Ex. A (Agency Record), pp. 62 – 63. This letter was apparently first sent to the Division without a signature. The Division then emailed Ms. Crow requesting that she provide a signed copy. Ex. A (Agency Record), pp. 65 – 66.

<sup>20</sup> Ex. 1.

Ms. Crow: I don't know if I'm only denying . . . I'm pretty much saying I don't agree.

Mr. Auth: Were you ever convicted in Kentucky of wanton endangerment?

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

Mr. Auth: Which is what, yes or no?

Ms. Crow: I don't believe I was. No.<sup>21</sup>

She further testified that she never served time in jail other than the night she was arrested.<sup>22</sup> Her testimony regarding the July 6, 2011 faxed signed letter varied. At one point, she said that it was her statement but that her husband told her what to write, because she did not remember events, including that she did not remember spending time in jail.<sup>23</sup> Later, in the hearing, she stated that she wrote the letter.<sup>24</sup>

Ms. Crow testified that when she answered no to the criminal conviction question on the application, she thought it was the correct answer, and that she thought the Kentucky case had been dismissed.<sup>25</sup>

### III. Discussion

#### A. *Legal Standard and Burden of Proof*

Alaska Statute 08.68.270 provides:

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;<sup>26</sup>

Reckless Endangerment is defined by regulation, 12 AAC 44.705(a) as being a crime “substantially related to the qualifications, functions, or duties of a . . . registered nurse . . .”<sup>27</sup> A conviction in another jurisdiction for an offense with similar elements is treated the same for licensing purposes.<sup>28</sup>

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<sup>21</sup> Ms. Crow's testimony (1:49:53 – 1:49:1:49:30).

<sup>22</sup> Ms. Crow's testimony (2:05:30 – 2:05:41).

<sup>23</sup> Ms. Crow's testimony (2:06:20 -2:11:04).

<sup>24</sup> Ms. Crow's testimony: “when I wrote this.” (2:46:10)

<sup>25</sup> Ms. Crow's testimony (1:28:25 – 1:30:09)

<sup>26</sup> AS 08.68.270.

<sup>27</sup> 12 AAC 44.705(a)(20).

<sup>28</sup> 12 AAC 44.705(b).

The Board is not required to suspend or revoke a license when it concludes that a license was obtained through fraud or deceit or a licensee was convicted of a specified crime. The Board may instead select from a range of actions including fines, reprimands, probation or the placing of limitations or conditions on a license.<sup>29</sup>

Ms. Crow has challenged the Division's seeking to suspend or revoke her license or impose other sanctions. Therefore, the burden of proof is on the division to establish by a preponderance of the evidence that Ms. Crow's actions constitute a basis for imposing sanctions against her.<sup>30</sup>

*B. Failure to Disclose Conviction*

It is undisputed that Ms. Crow did not disclose her 1995 Kentucky conviction on her license application. The Division argued that Ms. Crow's failure to disclose her 1995 Kentucky conviction resulted in her obtaining a license by fraud or deceit. Ms. Crow argued that she thought she provided a correct answer on her application, *i.e.*, it was an innocent mistake and was not fraudulent or deceitful. Her hearing testimony also provided an additional factual defense, being that she corrected her mistake by immediately going to see the licensing staff and informing them of the Kentucky conviction on May 4, 2011, which was before her license was approved on May 6, 2011.

If Ms. Crow's testimony is accepted at face value, then the Division would not have met its burden of proof. However, Ms. Crow was not a credible witness. In her hearing testimony, she denied ever having been convicted and that she served jail time other than the night she was arrested. This is despite the court records showing her conviction and sentencing to serve 10 days of jail time, and her own letter that stated she had spent some jail time. Ms. Crow's unwillingness to accept an established fact, being that she was convicted of Wanton Endangerment in the Second Degree, renders Ms. Crow's testimony not credible. If Ms. Crow had simply testified that she did not remember the 1995 conviction, she would have been more credible, although it is highly improbable that she would not remember being convicted for and serving jail time for her husband leaving their young child in an unattended vehicle. It is also highly unlikely that the Division would have continued to process her application and approve it

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<sup>29</sup> The Board's disciplinary powers derive from AS 08.68.275 and AS 08.01.075.

<sup>30</sup> Ms. Crow is a "respondent" as defined in AS 44.62.640(b)(5) and, as an already licensed nurse, she does not have the burden of proof. *See* AS 44.62.460(e); *see also State, ABC Board v. Decker*, 700 P.2d 483 (Alaska 1985). *Cf. In re Herwick*, OAH No. 08-0244-NUR (January 2009).

on May 6, 2011, if Ms. Crow had come in and told them about her criminal conviction on May 4, 2011.

In order to establish whether fraud or deceit was committed, the division must establish that Ms. Crow either intended to provide an incorrect answer on her application or had doubts as to the accuracy of her answer.<sup>31</sup> Given Ms. Crow's lack of credibility, the Division has met this test, satisfying its burden of proof, and demonstrated that she intentionally did not disclose her criminal conviction on her application.<sup>32</sup> She is therefore subject to sanctioning by the Board.

*C. Conviction of a "Substantially Related" Crime*

The conviction for a crime "substantially related to the qualifications, functions or duties of the licensee" is grounds for professional discipline by the Board.<sup>33</sup> Reckless Endangerment is specifically listed as a "substantially related" crime.<sup>34</sup> The Kentucky crime for which Ms. Crow was convicted, Wanton Endangerment in the Second Degree, is a Class A misdemeanor. The Kentucky statute provides that "[a] person is guilty of wanton endangerment in the second degree when he wantonly engages in conduct which creates a substantial danger of physical injury to another person."<sup>35</sup> The Alaska crime of Reckless Endangerment is also a Class A misdemeanor, and is virtually identical to Kentucky Wanton Endangerment: "[a] person commits the crime of reckless endangerment if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person."<sup>36</sup> Ms. Crow's Kentucky

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<sup>31</sup> "An incorrect answer on an application is only fraudulent deceitful or an intentional misrepresentation if the applicant knew it was wrong or had doubts about the accuracy of the answer." *In re Susan Taylor*, OAH No. 10-0409-CNA at 4 (December 2010) *aff'd Taylor v. Alaska Board of Nursing*, 3AN-11-0763CI at 10 (July 5, 2012). Although this standard was stated by the board of nursing in the context of an initial application for licensure as a certified nurse aide because the statutory language contains the same proscription on obtaining a license through fraud or deceit, it is reasonable to apply this same test to Ms. Crow's situation. *Compare* AS 08.68.270 ("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. . . .") *with* AS 08.68.334 ("the board may deny a certification to . . . a person who (1) has obtained or attempted to obtain certification as a nurse aide by fraud, deceit, or intentional misrepresentation. . . .").

<sup>32</sup> The Division made an alternate argument, to wit, that failure to list criminal convictions on an application violated 12 AAC 44.305(a)(1)(D) regardless of whether the failure was intentional or not. It appears that the Division's argument is overstated, inasmuch as 12 AAC 44.305 contains a list of what the application should contain. And in this case, Ms. Crow completed the Board's form application which contains those elements. Regardless, it is not necessary to address this argument inasmuch as the decision finds Ms. Crow's answer was intentional.

<sup>33</sup> AS 08.68.270(2).

<sup>34</sup> 12 AAC 44.705(a)(20).

<sup>35</sup> 50 Kentucky Revised Statutes 508.070.

<sup>36</sup> AS 11.41.250.

conviction is therefore one which has elements similar to the Alaska crime of Reckless Endangerment.<sup>37</sup>

Ms. Crow's Kentucky conviction was judicially expunged in 2012. This means it legally ceased to exist:

Upon the entry of an order to expunge the records . . . the proceedings in the case shall be deemed never to have occurred; the court and other agencies shall cause records to be deleted or removed from their computer systems so that the matter shall not appear on official state performed background checks; the persons and the court may properly reply that no record exists with respect to the persons upon any inquiry in the matter; and the person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.<sup>38</sup>

The Division did not initiate this discipline action until May 2014. At that time, regardless of the nature of Ms. Crow's Kentucky conviction, that conviction no longer existed. If this discipline action had been initiated prior to the expungement, then it would have a legal basis to seek discipline. However, since the conviction was expunged in March 2012, two years before this action was initiated, this no-longer-existent conviction cannot form a basis for current discipline by the Board.

#### *D. Sanctions*

The Board has a choice of sanctions before it. It could suspend or revoke Ms. Crow's license, or impose a variety of lesser sanctions, including fines, reprimands, or probation. The Board has, on a number of occasions, imposed sanctions for failing to disclose criminal convictions. Those sanctions have, from a survey of the Nursing Board's online discipline database, almost uniformly consisted of a \$500 fine, payable within 120 days, and a reprimand.<sup>39</sup> The Board "shall seek consistency in the application of disciplinary sanctions."<sup>40</sup>

The Division argued that the sanction should be more severe than \$500 fine and public reprimand because Ms. Crow has been convicted of an enumerated crime, specifically Reckless

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<sup>37</sup> 12 AAC 44.705(b).

<sup>38</sup> 40 Kentucky Revised Statutes 431.078(5).

<sup>39</sup> Board of Nursing's online discipline database is located at [http://commerce.state.ak.us/dnn/Portals/5/pub/Falsification\\_of\\_Application\\_RN\\_LPN.pdf](http://commerce.state.ak.us/dnn/Portals/5/pub/Falsification_of_Application_RN_LPN.pdf). Some of the more recent cases include: *In re Morris*, Case No. 2300-08-04; *In re Wegner*, Case No. 2300-07-026; *In re Sizemore*, Case No. 2350-07-001; *In re Cochran*, Case No. 2300-07-027.

<sup>40</sup> AS 08.68.275(f).

Endangerment. However, as shown above, that would be a separate ground for discipline which is not legally sustainable due to the expungement of the conviction.<sup>41</sup>

The Division also cited to three prior Board cases in support of its argument that a more severe sanction should be imposed. Licenses were denied or revoked in the cases of *In re Medley*,<sup>42</sup> *In re Platt*,<sup>43</sup> and *In re Macato*.<sup>44</sup> *Medley* involved a felony conviction for criminally negligent homicide for withdrawing life support from a patient at her husband's request without obtaining a physician's authorization. *Platt* involved two felony convictions for a recent and extensive history of forging checks (14 from one person, 14 from another, and 10 from another) and a shoplifting conviction. *Macato* involved a felony conviction for sexual assault of a 15-year-old minor by a 33-year-old man. In contrast, Ms. Crow's case involves a nearly 20-year-old misdemeanor conviction where the only information regarding the underlying offense is that she was prosecuted for her husband placing the child in the car unattended, and there is no subsequent criminal behavior.

On the spectrum of behavior, Ms. Crow presents on the low end rather than the high end exemplified by *Medley*, *Platt*, and *Macato*. In short, the Division has not shown that the Board should depart from its standard practice of imposing a \$500 fine, payable within 120 days, and a public reprimand for obtaining a registered nursing license by fraud or deceit by failing to notify the Board that the applicant has a criminal conviction.

#### **IV. Conclusion**

Ms. Crow had a 1995 criminal conviction in Kentucky. However, she intentionally answered "No" to the question, contained on her 2011 application for licensure as a registered nurse, by endorsement, asking whether she had any criminal convictions. Her application was granted. She therefore obtained her registered nursing license by fraud or deceit. As a result, she

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<sup>41</sup> In addition, the Board's discipline database shows the identical sanction of a \$500 fine payable within 120 days and a reprimand has been imposed for failure to disclose other enumerated crimes listed in 12 AAC 44.705(a): theft, drug, assault, and abuse/neglect of a minor child. See *In re Patzke* (theft), Case No. 2300-08-006; *In re Spring* (violation of Controlled Substances Act), Case No. 2300-08-005; *In re Williams* (Larceny); *In re Eeningenburg* (Possession of Cocaine – automatic pardon), Case No. 2300-08-031); *In re Hall* (Theft), Case No. 2010-001203; *In re Sanner* (1989 Abandonment or Abuse of a Child), Case No. 2011-000147; *In re Wright* (1999 Assault), Case No. 2011-000183.

<sup>42</sup> Case Nos. 2300-93-008 and 2300-96-004 (Board of Nursing 2000).

<sup>43</sup> 169 P.3d 595 (Alaska 2007).

<sup>44</sup> Case No. 2306-01-014 (Board of Nursing 2003).



is sanctioned by the Board. She is fined \$500, payable within 120 days, and publicly reprimanded.

DATED this 24<sup>th</sup> day of October, 2014.

By: Signed  
Lawrence A. Pederson  
Administrative Law Judge

### Adoption

On behalf of the Alaska Board of Nursing, 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 28<sup>th</sup> day of January, 2015.

By: Signed  
Signature  
Denise C. Valentine, ANP-C  
Name  
Board of Nursing Chair  
Title

*This is a fact specific holding based on the elapsed time since the original application and the institution of disciplinary sanctions.*

Signed  
Denise C. Valentine, ANP-C 1/28/2015

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