

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

|   |   |                        |
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| In the Matter of                        | ) |                        |
|   | ) |                        |
| DIXIE DEACON                            | ) | OAH No. 14-2118-NUR    |
| <hr style="width:40%; margin-left:0;"/> | ) | Agency No. 2014-001614 |

**DECISION**

**I. Introduction**

The Division of Corporations, Business and Professional Licensing (“Division”) filed a five-count Accusation against Dixie Deacon, a registered nurse. The Accusation arose out of Ms. Deacon’s inability to verify that she had satisfied her continuing competency requirements, after being requested to do so by the Board of Nursing (“Board”) during an audit of Ms. Deacon’s 2012-2014 license renewal application (“Renewal Application”).

The Division did not prove that Ms. Deacon “willfully or repeatedly” failed to satisfy the continuing competency requirements. However, the Division did prove that Ms. Deacon failed to document that she had completed 30 contact hours of continuing education. Therefore, Ms. Deacon has not satisfied the continuing competency requirements. Accordingly, the Board imposes disciplinary sanctions consisting of a \$1,500 civil fine, a reprimand, and a mandatory audit for the next two license renewal periods for which Ms. Deacon seeks license renewal after the date the Board adopts this order. This disciplinary action is imposed for Ms. Deacon’s violation of 12 AAC 02.960(e) (Count I) and her violation of AS 08.68.276 and 12 AAC 44.600 *et seq.* (Count IV).

The Division did not prove that Ms. Deacon attempted to obtain her renewal license by fraud or deceit when she certified that she had 30 contact hours of continuing education, that she failed to cooperate with the Division during its audit, or that she engaged in unprofessional conduct. Accordingly, Counts II, III, and V are dismissed.

**II. Facts**

Nurse licenses are subject to a biennial renewal process. As a condition of license renewal, during the preceding licensing period licensees must have satisfied two out of three continuing competency requirements: (1) 320 hours of nursing employment; (2) 30 contact hours of continuing education in nursing; or (3) 30 hours of uncompensated professional activities.<sup>1</sup> At issue here is Ms. Deacon’s failure to submit documentation proving that she had

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<sup>1</sup> See AS 08.68.276; 12 AAC 44.600-.640.

completed 30 contact hours of continuing education during the preceding licensing period after her Renewal Application was selected for a random audit.

Dixie Deacon has been a registered nurse in the State of Alaska since 1993.<sup>2</sup> She applied to renew her Registered Nurse’s License for the December 1, 2012-November 2014 licensing period when she was living in Israel.<sup>3</sup> The Division received her Renewal Application on or about October 23, 2012.<sup>4</sup>

On her Renewal Application, Ms. Deacon certified that she had completed 320 hours of nursing employment between December 1, 2010 and November 20, 2012 (“Relevant Time Period”).<sup>5</sup> Ms. Deacon also certified on her Renewal Application that she had completed 30 contact hours of continuing education in nursing that met the criteria described in 12 AAC 44.610 during the Relevant Time Period.<sup>6</sup>

The Board renewed Ms. Deacon’s license on October 25, 2013, relying on her statement of compliance with the continued competency requirements and other information provided in her renewal application.<sup>7</sup> Subsequently, Ms. Deacon’s Renewal Application was randomly selected for audit to monitor compliance with the continuing competency requirements in accordance with 12 AAC 02.960.<sup>8</sup> The Division sent Ms. Deacon a letter, dated February 11, 2013, to her address of record informing Ms. Deacon that her license had been randomly selected for an audit of the continuing competency requirements.<sup>9</sup> This letter instructed Ms. Deacon to respond with the required documents substantiating her completion of the continued competency requirements no later than March 15, 2013.<sup>10</sup> The Board did not receive a response to this letter from Ms. Deacon within the designated time frame.<sup>11</sup>

At the hearing, Ms. Deacon testified that she had been living outside the United States since May of 2012, and further testified that her mail was not being forwarded to her.<sup>12</sup> Ms.

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<sup>2</sup> See Ex. F, at p. 1.

<sup>3</sup> Testimony of Ms. Deacon; *see also* Ex. Y.

<sup>4</sup> Ex. F, at pp. 1-2.

<sup>5</sup> Ex. F, at p. 2.

<sup>6</sup> Ex. F, at p. 2.

<sup>7</sup> Ex. F, at p. 2.

<sup>8</sup> Ex. F, at p. 2. Five percent (5%) of the licensees are randomly selected for an audit. *See* Testimony of Dr. Sanger.

<sup>9</sup> Ex. F, at p.2; Ex. V.

<sup>10</sup> Ex. V.

<sup>11</sup> Ex. T.

<sup>12</sup> Testimony of Ms. Deacon.

Deacon explained that she did not have mail forwarded to her while she was living abroad because she did not have a permanent address.<sup>13</sup>

When Ms. Deacon did not respond to the Board's February letter, the Board sent a certified letter on June 28, 2013, informing Ms. Deacon that she must submit documentation within 15 days verifying her completion of the continuing competency activities which she had certified as having completed in her Renewal Application.<sup>14</sup> The return receipt accompanying the certified letter was signed by someone other than Ms. Deacon.<sup>15</sup>

Ms. Deacon contacted the Board on July 11, 2015.<sup>16</sup> At that time, she informed the Board that she had been out of the country for the past year and a half, and had just learned that her license was under audit with regard to her continuing competency requirements.<sup>17</sup> Ms. Deacon requested, and was granted, a thirty-day extension to gather the necessary documentation requested in the audit.<sup>18</sup>

On or about August 12, 2013, Ms. Deacon submitted records showing that she had completed 320 hours of nursing employment<sup>19</sup> and 18 hours of continuing education during the Relevant Time Period.<sup>20</sup> Ms. Deacon subsequently submitted another certificate of completion for a two additional continuing education courses during the Relevant Time Period.<sup>21</sup> Altogether, this documentation verified that Ms. Deacon had completed 21 of the required 30 hours of continuing education during the Relevant Time Period.<sup>22</sup> Ms. Deacon submitted no additional documentation to substantiate that she had completed the requisite additional nine contact hours of continuing education during the Relevant Time Period.<sup>23</sup>

In the materials she submitted in response to the audit request, Ms. Deacon noted that the Alaska Native Health Consortium (ANHC), her last employer, had switched to a new computer

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<sup>13</sup> Testimony of Ms. Deacon.

<sup>14</sup> Ex. T.

<sup>15</sup> Testimony of Ms. Deacon; *see also* Exhibit U.

<sup>16</sup> Ex. S.

<sup>17</sup> Ex. S.

<sup>18</sup> Ex. S.

<sup>19</sup> *See* Ex. R.

<sup>20</sup> *See* Ex. F, p. 3; *see also* Ex. Q.

<sup>21</sup> *See* Ex. Z. These two courses represented three hours of continuing education during the Relevant Time Period in addition to the documents Ms. Deacon had earlier submitted to the Board substantiating 18 hours of continuing education, for a total of 21 hours of verified continuing education courses.

<sup>22</sup> *See* Ex. Z & Ex. Q.

<sup>23</sup> While Ms. Deacon did submit a "student progress report" showing that she had taken additional continuing education courses, certain courses were not accepted by the Board as credit towards the 30contact hour requirement because those courses did not meet criteria. *Compare* Ex. Q. at p. 4 *with* Testimony of Dr. Sanders; *see also* 12 AAC 44.610.

system and that her records had been lost.<sup>24</sup> In her correspondence with the Board, Ms. Deacon stated that she was sure she had “completed at least 10 credits” that were not documented, and had completed at least 4 credits while abroad, but did not have the supporting documentation.<sup>25</sup>

On November 14, 2014, the Division filed a five-count Accusation against Ms. Deacon.<sup>26</sup> Count I alleged that Ms. Deacon had failed to submit sufficient documentation to verify completion of her continuing competency activities within 30 days of notification by the Division in violation of 12 AAC 02.960(e). Count II alleged that Ms. Deacon had failed to cooperate with the Division during the audit of her continuing competency activities in violation of 12 AAC 44.660(a). Count III alleged that Ms. Deacon’s failure to cooperate with an official investigation by the Board’s representative, including her failure to provide requested information in a timely manner, was unprofessional conduct as defined by 12 AAC 44.770(31). Count IV alleged that Ms. Deacon had not demonstrated completion of 30 contact hours of continuing education or completion of 30 hours of uncompensated professional activity or completion of one of the methods of continued competency described in 12 AAC 44.640. Count V alleged that Ms. Deacon’s certification on her 2012-2014 renewal application that she completed 30 contact hours of continuing education was false and a violation of AS 08.68.270(1).

With regard to Counts I, II, and IV, the Accusation alleged that Ms. Deacon had “willfully and repeatedly” violated a provision of AS 08.68 so as to justify the suspension or revocation of her license. The Accusation requested that the Board of Nursing revoke, suspend, or impose other disciplinary sanctions against Ms. Deacon’s Registered Nurse’s License.

Ms. Deacon requested a hearing on November 25, 2014 to address the charges contained in the Accusation. Accordingly, the case was referred to the Office of Administrative Hearings for a hearing, which took place on July 30, 2015. Ms. Deacon attended in person and represented herself; she also testified on her own behalf. Charles Ward appeared telephonically on behalf of the Division and also testified on the Division’s behalf. Dr. Nancy Sanders, who is the Executive Administrator for the Board of Nursing, also testified as a witness for the Division.

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<sup>24</sup> Ex. P; *see also* Testimony of Ms. Deacon.

<sup>25</sup> Ex. P.

<sup>26</sup> *See* Ex. F.

### III. Discussion

#### A. Count I: Ms. Deacon failed to promptly submit sufficient documentation

Under 12 AAC 02.960(e), Ms. Deacon had 30 days after receiving notice to submit documentation verifying her compliance with continuing competency activities claimed on the statement submitted with the Renewal Application. The Board sent the first audit notice on February 11, 2013, which informed Ms. Deacon that she must submit documentation related to the continuing competency requirement by March 15, 2013. It is undisputed that Ms. Deacon did not respond to the Board's first letter within the 30-day time frame. Therefore, the Division has proven a violation of 12 AAC 02.960(e).

However, Ms. Deacon credibly testified that she was living abroad and did not learn about that notice until she returned to the United States during the summer of 2013.<sup>27</sup> She explained that she was living in different places while she was abroad, so she did not have her mail forwarded.<sup>28</sup> Ms. Deacon also testified that the June 28, 2013 certified letter from the Board, which required her to verify her continuing competency within 15 days, was not signed by her.<sup>29</sup> The certified mail receipt, signed by "Dana," corroborated Ms. Deacon's testimony.<sup>30</sup>

Once Ms. Deacon learned about the audit, she promptly contacted the Board on July 11, 2013, explained her lack of response to the prior letters due to her absence from the United States, requested a 30-day extension to respond to the audit, and took steps to provide the Board with the documentation it had requested within the timeframe of that 30-day extension.<sup>31</sup> Consequently, the Division has not established by a preponderance of the evidence that she failed to cooperate "willfully or repeatedly."<sup>32</sup> To the contrary, Ms. Deacon sent documentation to the Board within the thirty-day extension period granted by the Board, thus demonstrating that as soon as she learned her license was in audit status, she took appropriate action.

#### B. Count II: Ms. Deacon's failure to cooperate with the Board's audit

Ms. Deacon's testimony and other evidence in the record established that she immediately began cooperating with the Board's audit after she returned to Alaska from abroad and learned about the audit.<sup>33</sup> She promptly contacted the Board on July 11, 2013, and asked

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<sup>27</sup> Testimony of Ms. Deacon.

<sup>28</sup> Testimony of Ms. Deacon.

<sup>29</sup> Testimony of Ms. Deacon; *see also* Ex. U (certified mail receipt).

<sup>30</sup> Ex. U.

<sup>31</sup> Ex. S; *see also* Ex. Q & R.

<sup>32</sup> Ms. Deacon requested a thirty-day extension on July 11, 2013.

<sup>33</sup> *See infra*, at pp. 5-6; *see also* Ex. S.

for a thirty-day extension to allow her to gather the documentation the Board had requested.<sup>34</sup> On August 8, 2013, she wrote a letter to the Board and enclosed the continuing education documentation she had been able to obtain.<sup>35</sup> She later provided two other continuing education certificates that her former employer located after Ms. Deacon's August letter to the Board.<sup>36</sup> Thus, the Accusation's claim that Ms. Deacon failed to cooperate with the audit is not substantiated by the evidence. Simply because, at the end of the day, Ms. Deacon was unable to produce documentation verifying 30 continuing credit hours does not mean that she failed to cooperate with the Board, much less that she failed to cooperate "willfully or repeatedly" as alleged in Count II of the Accusation. Because the evidence shows that Ms. Deacon cooperated with the Board's audit as soon as she learned about it, Count II of the Accusation is dismissed.

**C. Count III: Ms. Deacon's failure to cooperate with the Division's investigation**

Count III of the Accusation alleges that Ms. Deacon engaged in unprofessional conduct under 12 AAC 44.770(31) by failing to cooperate with an official investigation, including failing to timely provide the requested information.<sup>37</sup> The only evidence in the record to support Count III is Ms. Deacon's failure to promptly respond to the Board's February 11, 2013 letter.<sup>38</sup> However, Ms. Deacon has credibly testified that her lack of a timely response was solely due to the fact she had not received either letter in a timely manner because she was living abroad. Other evidence in the record shows that once Ms. Deacon learned that her Renewal Application was being audited upon her return to Alaska, she immediately took steps to obtain the information requested by the Board.<sup>39</sup>

Although Ms. Deacon ultimately lacked documents that would have substantiated that she had completed 9 additional credit hours, she credibly testified that she took appropriate steps to cooperate with the investigation by contacting her former employer to obtain her education file promptly after she learned about the audit. Her conduct contradicts the allegation that she

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<sup>34</sup> Ex. S.

<sup>35</sup> Ex. P.

<sup>36</sup> Ex. Z; *see also* Testimony of Ms. Deacon. Ms. Deacon also provided a certificate showing that she had completed 30 contact hours of continuing education on March 24, 2015; however, these hours fell outside the Relevant Time Period and thus are not relevant for purposes of this proceeding. *See* Ex. Z, at p. 4.

<sup>37</sup> Ex. F, at p. 6.

<sup>38</sup> Ms. Deacon responded to the June 28, 2013 letter within 15 days by promptly requesting an extension for 30 days to gather her continuing competency documentation on July 11, 2013. This extension was granted. *See* Ex. S. Ms. Deacon subsequently sent documentation related to her contact hours of continuing education to the Board; the Board received her letter dated August 8, 2013 with such documentation on August 12, 2013. *See* Ex. P.

<sup>39</sup> *See* Ex. S & Ex. P.

engaged in unprofessional conduct by failing to cooperate with the investigation in a timely manner. Accordingly, Count III is dismissed.

**D. Count IV: Ms. Deacon's failure to demonstrate she has completed the continuing competency activities outlined in 12 AAC 44.610**

Count IV alleges that Ms. Deacon failed to demonstrate that she completed the continuing competency activities outlined in 12 AAC 44.610 and that this non-compliance was done "willfully and repeatedly" so as to justify the revocation or suspension of her license. However, the Division only alleged that Ms. Deacon on a single occasion had failed to meet the continuing competency requirements for license renewal. Because it did not allege a repeated failure to meet those requirements, there is no basis for license suspension under AS 08.68.270(8).<sup>40</sup>

The preponderance of evidence at the hearing was that Ms. Deacon believed she had completed 30 contact hours of continuing education at the time she filled out her renewal application and mailed it to the Board from Israel.<sup>41</sup> Ms. Deacon testified that she had completed the full 30 hours of her continuing education requirement, and that the missing 9 hours consisted of continuing education programs she had taken at the ANHC.<sup>42</sup> Ms. Deacon testified that she had signed in whenever she took continuing education courses at ANHC, although she was never given certificates for any of the courses. According to Ms. Deacon, her other former employers had kept detailed records of in-house continuing education courses that she had completed, so she had assumed that ANHC was keeping similar records.<sup>43</sup>

After she learned of the audit, Ms. Deacon contacted the internal medicine clinic manager, human resources, and the Education Coordinator at ANHC to obtain her records.<sup>44</sup> While she was able to obtain some records related to in-house continuing education courses she had taken at ANHC, Ms. Deacon was advised that other records may have been archived when a new computer system was installed sometime after she left ANHC's employment in June of

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<sup>40</sup> See AS 08.68.270(8).

<sup>41</sup> Testimony of Ms. Deacon.

<sup>42</sup> Testimony of Ms. Deacon.

<sup>43</sup> Testimony of Ms. Deacon. In addition, Ms. Deacon also mentioned in a letter sent to the Board that she had taken four additional credit hours of continuing education while she was abroad, but had not located the documentation to verify that training. *See* Ex. P.

<sup>44</sup> Testimony of Ms. Deacon.

2011.<sup>45</sup> Ms. Deacon credibly testified that staff at ANHC told her that it would be too time-consuming for the staff to search through these archived files.<sup>46</sup>

Ms. Deacon noted that two courses she had taken while employed at ANHC were not in her ANHC education file.<sup>47</sup> Since Ms. Deacon was eventually able to produce certificates for these two courses, this substantiated her testimony that her continuing education file at ANHC was incomplete.<sup>48</sup>

Although the Division proved by a preponderance of the evidence that Ms. Deacon was unable to produce *documentation* to substantiate that she had satisfied the continuing education requirement, the evidence establishes that there was no willful conduct here because there was no consciousness of wrongdoing and no intent to deceive.<sup>49</sup> Thus, neither suspension nor revocation of Ms. Deacon's license would be appropriate under these facts.

The Division has, however, shown Ms. Deacon failed to produce documents that would verify she had completed the continuing education requirement, in compliance with 12 AAC 44.660. Although Ms. Deacon testified that she had taken 30 contact hours of continuing education, she never submitted documentation for 10 of those credit hours. Ultimately, it is the responsibility of the licensee to produce documentation verifying completion of the continuing education requirements when requested to do so in an audit.<sup>50</sup> Division regulations require a licensee to maintain and keep documents verifying continuing competence requirements for the later of four years or, if audited, until the licensee is notified that the audit has been completed.<sup>51</sup> Consequently, the failure of Ms. Deacon's former employer to accurately keep track of her continuing education hours is not a valid defense here.

Ms. Deacon, when she submitted her renewal application, confirmed that if she was selected for a continued competency audit, she would submit proof of completion of the continued competency described in the renewal application: *i.e.*, 320 hours of nursing

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<sup>45</sup> Testimony of Ms. Deacon; *see* Ex. Z, at pp. 2-3.

<sup>46</sup> Testimony of Ms. Deacon.

<sup>47</sup> Testimony of Ms. Deacon.

<sup>48</sup> *See* Ex. Q, at p. 22 & Ex. Z, at pp. 2-3.

<sup>49</sup> Ms. Deacon could also have satisfied the continuing competency requirement by demonstrating completion of 30 hours of uncompensated professional activities. *See* 12 AAC 44.620. Ms. Deacon arguably may have satisfied this requirement through her volunteer work abroad. *See* Ex. P. However, the Board requires that the licensee provide dates along with the number of hours worked as documentation of completing 30 hours of uncompensated professional activities. *See* Testimony of Dr. Sanders. Because Ms. Deacon did not provide the requisite documentation, she was not able to use her volunteer work as proof of compliance with the continuing competency requirement. *See* Ex. P; *see also* Testimony of Dr. Sanders.

<sup>50</sup> Testimony of Dr. Sanders; *see also* 12 AAC 44.660.

<sup>51</sup> 12 AAC 02.960(f).



employment and 30 contact hours of continuing education.<sup>52</sup> Because Ms. Deacon only was able to provide proof with regard to 21 contact hours of continuing education, Ms. Deacon failed to comply with 12 AAC 44.610. Accordingly, the allegation in Count IV that Ms. Deacon failed to satisfy the continuing competency requirement of 30 contact hours of continuing education in 12 AAC 44.610 is substantiated.<sup>53</sup>

**E. Count V: Ms. Deacon’s certification on her Renewal Application is false and violates AS 08.68.270(1)**

Count V alleges that Ms. Deacon’s certification of her compliance with the continuing competency requirements on her Renewal Application was false. Ms. Deacon testified that she completed approximately 10 additional hours of continuing education when she was employed at the ANHC during the Relevant Time period.<sup>54</sup> In addition, she told the Board that she had completed at least an additional four credits while living abroad, but had not been able to locate that documentation.<sup>55</sup> Ms. Deacon’s testimony that a change in computer systems had led to the documentation for the additional 10 contact hours of continuing education being lost or archived during that process was credible.<sup>56</sup>

The term “false” can imply that Ms. Deacon’s certification was “intentionally untrue” or “made so as to deceive.”<sup>57</sup> However, the term “false” can also mean that something is not true by mistake or accident.<sup>58</sup> Count V alleges a violation of AS 08.69.270(1), which would permit the Board to revoke or suspend Ms. Deacon’s nursing license if it proves that she obtained a license to practice nursing by fraud or deceit.<sup>59</sup> Therefore, it follows that the Division in Count V is alleging that Ms. Deacon’s certificate was intentionally untrue or made so as to deceive.

The evidence in the record does not substantiate this allegation. At the time she completed her Renewal Application, Ms. Deacon believed she had satisfied the continuing competency requirement because she had 30 contact hours of continuing education. Ms. Deacon’s testimony that she had assumed, based on past experience, that she could readily obtain

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<sup>52</sup> Ex. F, at p. 2. Ms. Deacon did produce documentation demonstrating that she had 320 hours of nursing employment during the Relevant Time Period, so that is not at issue here. *See* Ex. R.

<sup>53</sup> Ex. F, at pp. 6-7.

<sup>54</sup> Testimony of Ms. Deacon; *see also* Ex. P.

<sup>55</sup> Ex. P.

<sup>56</sup> Testimony of Ms. Deacon.

<sup>57</sup> *See* Black’s Law Dictionary, 9<sup>th</sup> Ed. (2009).

<sup>58</sup> *See* Black’s Law Dictionary, 9<sup>th</sup> Ed. (2009).

<sup>59</sup> Ex. F, at pp. 7-8.

the documentation needed to verify her statement of completion of the requisite credit hours from her former employer if she was audited was credible.<sup>60</sup>

Ms. Deacon's certification on her Renewal Application turned out to be factually inaccurate, or false by mistake or accident, because she could not subsequently *substantiate* her statement by producing the requisite documentation during the audit. However, the evidence does not establish that Ms. Deacon intentionally or knowingly made false statements when she filled out her Renewal Application. Accordingly, Count V is dismissed.

#### **IV. Appropriate Sanction**

In assessing discipline for violations of the statutes and regulations it administers, the Board is required to "seek consistency."<sup>61</sup> The Board may depart from what it has done in the past, but only if it explains any significant departure in its decision.<sup>62</sup>

Some prior decisions from lower courts or administrative boards have taken the view that, in "seek[ing] consistency" as required by law, boards and commissions need not consider the settlements they have approved, and may confine their comparison solely to prior fully-adjudicated cases.<sup>63</sup> However, a recent order of the Alaska Supreme Court directing a board to consider prior settlements as part of a consistency evaluation casts doubt on whether that is the correct approach.<sup>64</sup> The discussion below will address comparable cases of both types.

In addition, the Board, on October 1, 2012, adopted guidelines for civil fines against licensees who do not meet the continuing competency requirements of Article 6 of the regulations applicable to the Board of Nursing.<sup>65</sup> These guidelines recommend a \$2,000 fine for registered nurses who have violated the continuing competency regulations, license suspension until satisfactory documentation of the deficient continuing education credits are received, and a letter of reprimand.<sup>66</sup> The current guidelines also impose future mandatory audits for the next

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<sup>60</sup> Testimony of Ms. Deacon.

<sup>61</sup> AS 08.01.075(f).

<sup>62</sup> *Id.*

<sup>63</sup> *See, e.g., Hawthorne v. State, Board of Nursing*, No. 3AN-04-10154 CI (Alaska Superior Ct., Gleason, J, 2006) (holding that "the term 'decision' as set forth in AS 08.01.075(f) applies only to contested cases").

<sup>64</sup> *State, Board of Dental Examiners v. Ness*, No. S-13129 (Alaska 2010) (published at <http://aws.state.ak.us/officeofadminhearings/Documents/DEN/DEN040250%20Supreme%20&%20Superior%20Ct%20dec.pdf>) (remanding case to Dental Board to consider nine prior cases, some of them settlement approvals, in the comparison required by AS 08.01.075(f)).

<sup>65</sup> *See* 12 AAC 44.600-.660 (Article 6. Continuing Competency); *see also* [https://www.Commerce.alaska.gov/web/Portals/5/pub/Discipline\\_Guidelines.pdf](https://www.Commerce.alaska.gov/web/Portals/5/pub/Discipline_Guidelines.pdf).

<sup>66</sup> Here, Ms. Deacon has already presented satisfactory documentation that she has completed additional hours of continuing education and thus no longer is deficient. *See* Ex. Z, at p. 3.

two license renewal periods on the offending licensee.<sup>67</sup> Unlike the prior guidelines, which addressed “falsifications on the application” due to continuing competency violations, the new guidelines merely address the failure to comply with the continuing competency requirements and do not focus on the intent of the applicant.<sup>68</sup> Because these guidelines have not been adopted as regulations, they are not mandatory, but may be considered.<sup>69</sup>

1. *Comparison with prior contested cases*

The Board has addressed non-compliance with continuing competency requirements in two prior contested cases involving a registered nurse – *In re Jones*<sup>70</sup> and *In re Stavale*.<sup>71</sup> *Jones* and *Stavale* involved renewal applications during the 2004-2006 licensing period, well before the current guidelines were adopted.

In *Jones*, the licensee had certified that he had completed 30 hours of continuing education and 320 hours of nursing employment between October 1, 2002 and September 20, 2004. When requested to provide proof of his compliance with the continuing competency requirement, Mr. Jones was unable to produce any evidence to show that he had completed either requirement. Mr. Jones declined to present a case at a hearing to disprove the Division’s assertions that his statements on his renewal application were fraudulent or intended to deceive. Mr. Jones--who had moved out of state--voluntarily surrendered his license. A civil fine of \$1,500 was imposed but suspended so long as Mr. Jones remained unlicensed in Alaska, and a letter of reprimand was issued. A mandatory audit was not imposed, but the door was left open to impose such a sanction if Mr. Jones sought licensure again in Alaska.

In *Stavale*, the licensee believed he had satisfied the continuing competency requirement by obtaining sufficient continuing education credits.<sup>72</sup> Mr. Stavale was found to have actually engaged in the activities necessary to meet the continuing competency requirements, but was unable to supply the requisite documentation.<sup>73</sup> Because the respondent in *Stavale* had not acted

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<sup>67</sup> See [https://www.Commerce.alaska.gov/web/Portals/5/pub/Discipline\\_Guidelines.pdf](https://www.Commerce.alaska.gov/web/Portals/5/pub/Discipline_Guidelines.pdf).

<sup>68</sup> See [https://www.Commerce.alaska.gov/web/Portals/5/pub/Discipline\\_Guidelines.pdf](https://www.Commerce.alaska.gov/web/Portals/5/pub/Discipline_Guidelines.pdf). The 2012 guidelines do not differentiate between intentional falsifications on an application as opposed to statements of compliance which turn out to be inaccurate because the applicant could not produce the requisite documentation during an audit.

<sup>69</sup> See *Webster’s Ninth Collegiate Dictionary*, (1983) (defining a guideline as an indication or an outline -- as by a government -- of policy or conduct).

<sup>70</sup> *In re Kenneth Jones*, OAH No. 06-0246-NUR.

<sup>71</sup> *In re Richard L. Stavale*, OAH No. 07-0278-NUR.

<sup>72</sup> *Id.*, at 9.

<sup>73</sup> *Id.*, at 8.

with fraudulent intent,<sup>74</sup> he was disciplined by imposing a civil fine of \$1,500, was given a written reprimand, and was subject to mandatory audits of his continuing competency requirements for two license renewal periods.

## 2. *Comparison with prior consent agreements*

The Board has also addressed non-compliance with continuing competency requirements in numerous consent agreements involving registered nurses. In these cases, the fine assessed in the consent agreement has varied from case to case.<sup>75</sup> The other sanctions that accompanied these fines have been remarkably consistent: a reprimand, mandatory audit for two renewal periods, and documentation to verify completion of additional continuing education contact hours.<sup>76</sup>

## 3. *Determining an appropriate sanction for Ms. Deacon*

Ms. Deacon's case is very similar to the *Stavale* case in several respects: Ms. Deacon was living abroad at the time she completed her Renewal Application and thus did not have any records at her disposal; she believed she had completed the requisite amount of continuing education hours when she submitted her Renewal Application; she was able to produce documentation verifying that she had completed most of the continuing education hours she had claimed; and she ultimately failed to provide documentation verifying that she had completed all 30 contact continuing education hours.

Based on a review of previous disciplinary actions imposed in reported cases and in consent agreements, and the Board's 2012 disciplinary guidelines, Ms. Deacon should pay a fine of \$1,500 and receive a reprimand. Because Ms. Deacon's certification was not fraudulent or deceitful and she provided credible reasons why she was unable to obtain the documentation to verify that certification, the suggested \$2,000 fine in the guideline should be reduced to \$1,500. In addition, Ms. Deacon should receive a letter of reprimand, and be subject to mandatory audits for the next two license renewal periods.

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<sup>74</sup> There was a finding that Mr. Stavale's certification that he had acquired 30 hours of continuing education was "false." However, the decision further noted that the evidence established that Mr. Stavale believed he had satisfied the continuing competency requirement by obtaining sufficient continuing education credits. In fact, he had not done so and thus his "false certification was unintentional, and therefor neither fraudulent nor deceitful." *See id.*, at 13-14.

<sup>75</sup> *See, e.g., Karen T. Hebert*, no. 2011-001218 (fine of \$2,910 with \$1,500 suspended); *Diana L. Hawkins*, no. 2011-001232 (fine of \$2,300 with \$1,500 suspended); *Pamela Arthur*, no. 2011-00138 (\$2,350 fine with \$1,500 suspended); *Florence N. Davies*, no. 2011-001210 (\$2,800 fine with \$1,500 suspended); *Stelina Hegngi*, no. 2012-000504 (\$3,000 fine with \$1,500 suspended); *Carol Kampen*, 2011-001234, no. 2011-001234 (\$2,100 fine with \$1,500 suspended); *Kelly Keays*, no. 2011-001250 (\$2,540 fine with \$1,500 suspended); *Carol McRae*, no. 2012-000522 (\$3,000 fine with \$1,500 suspended).

<sup>76</sup> *Id.*

## V. Conclusion

Ms. Deacon did not engage in conduct that, by statute, constitutes grounds for license revocation, suspension, or denial. Moreover, revocation or suspension of Ms. Deacon's license would not be consistent with prior contested cases or prior consent agreements. Furthermore, Ms. Deacon's conduct does not warrant revocation or suspension of her license under the Board's 2012 disciplinary guidelines. Under these circumstances, neither revocation nor suspension of Ms. Deacon's license is appropriate.

However, the Board has authority to impose disciplinary sanctions under 12 AAC 44.710(a) because Ms. Deacon has violated 12 AAC 44.640 (Count I) and AS 08.68.276 and 12 AAC 44.600 *et seq.* (Count IV). Because Ms. Deacon did not act with fraudulent intent, a reprimand, civil fine of \$1,500, and mandatory audits for two years will reflect the seriousness of the offense and will deter future false certification by ensuring proper documentation. A fine of \$1,500 also would be consistent with the *Stavale* case, which has facts similar to this case.

## VI. Order

A. Dixie Deacon is reprimanded as set forth in Attachment A.

B. A civil fine of \$1,500 is imposed on Ms. Deacon, with none suspended. The fine shall be paid within 90 days after the date the board adopts the Order. The civil fine shall be paid in the form of a cashier's check, money order, or personal check payable to the State of Alaska and shall be delivered to the Board of Nursing.

C. Ms. Deacon's license renewal application shall be subject to a mandatory audit for two renewal periods for which Ms. Deacon seeks license renewal following the date the Board adopts this order. The Board will not issue a renewed license in those renewal periods unless documentation in compliance with continuing competency requirements satisfactory to the board or its designees has been submitted.

DATED: November 24, 2015

By: Signed \_\_\_\_\_  
Kathleen A. Frederick  
Administrative Law Judge

**Attachment A**  
**Reprimand**

The Board of Nursing (“Board”) issues this reprimand to Dixie Deacon because she was unable to verify the truthfulness of her certification as required by AS 02.960(e) and was unable to demonstrate that she had completed the continued competency requirements of 12 AAC 44.610.

The purpose of the continued competency requirements is to ensure that registered nurses maintain the ability to safely and effectively apply nursing knowledge, principles, and concepts applicable to the practice of registered nursing as defined in AS 08.68.850(9). To obtain renewal of her registered nurse license for the period from December 1, 2012 – November 30, 2014, Ms. Deacon was required to meet the continuing competency requirements established by the Board under 12 AAC 44. The Board issues the renewal licenses based upon an applicant’s affirmative certification in the renewal application that the continuing competency requirement was met.

Under 12 AAC 02.960(f), Ms. Deacon is required to maintain evidence to establish meeting continuing competency requirements and to make that evidence available on request. Satisfactory documentation would provide independent verification of each claimed continuing competency activity and contain the verification elements listed in 12 AAC 01.960(e)(1)-(15).

Additionally, the 2012-2014 license renewal application submitted by Ms. Deacon contains a notice that license renewal applications are subject to a random audit, and, if selected for audit, she would be required to submit documentation in a timely manner to verify that the continued competency requirements were satisfied as claimed on the renewal application.

Subsequent to the renewal of her registered nurse license, Ms. Deacon was informed that her renewal application was among the group randomly selected for audit to monitor compliance with the continuing competency requirement. She did not submit documentation to support all of the continuing education credits claimed on her renewal application.

Ms. Deacon’s certification on the renewal application was false, in that she had the obligation to demonstrate her certification was true by producing verifying documentation but she was unable to do so. The Board expects each Alaska licensed registered nurse to be aware of all laws and regulations pertaining to the practice of nursing in Alaska, including those relating to documentation of continuing competency requirements. The Board relies on each licensee to obtain and provide to the Board upon request accurate documentation of all continuing competency credits claimed on the renewal application and thereafter.

Ms. Deacon is hereby reprimanded for her false certification that she had obtained sufficient continuing education credits to satisfy the continuing competency requirements and could provide documentation to that effect if audited.

## 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 20<sup>th</sup> day of January, 2016.

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