

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

In the Matter of)	
)	
CHERI RAY)	OAH No. 18-1259-NUR
_____)	Agency No. 2018-000760

DECISION

I. Introduction

Cheri Ray surrendered her nursing license in 2010 after pleading guilty to embezzling from her employer. Having served her six-month prison term, completed three years of supervised probation, paid most of her restitution, and successfully and uneventfully held health-care related employment since her release, Ms. Ray has petitioned the Board for reinstatement of her license. The Board denied her application, and Ms. Ray requested a hearing to contest that denial. Following a full hearing and based on the evidence presented, this decision concludes that the Board of Nursing should grant Ms. Ray’s application for reinstatement, but should impose a two-year period of probation upon reinstatement.

II. Facts and Procedure

A. Pre-Alaska nursing career

Ms. Ray was first licensed as a practical nurse by the state of New York in 1992.¹ When she and her then-husband moved to Louisiana pursuant to his military career, Ms. Ray obtained a Louisiana practical nursing license in 1997, and practiced there until the couple relocated to Alaska.²

Ms. Ray’s most recent Louisiana license renewal occurred while the couple was preparing to move to Alaska. She submitted her application for a one year renewal in April 2001.³ In July of that year, the family moved to Alaska.⁴

B. Alaska nursing career and conviction

In September 2001 Ms. Ray was hired as an Office Manager by Alaska Kidney Consultants in Anchorage. At some later point, she began working as their bookkeeper.⁵ She obtained her Alaska practical nursing license in June 2003,⁶ and continued working at Alaska Kidney Consultants.

¹ R. 36.
² R. 34; Ex. E; Ray testimony.
³ R. 263.
⁴ R. 36; Ex. F.
⁵ R. 34, 41.
⁶ R. 31; R. 34.

The following year, Ms. Ray began stealing from her employer. From 2004 through 2006, Ms. Ray embezzled more than \$75,000 from Alaska Kidney Consultants. She accomplished this theft through a series of calculated illegal acts, including obtaining a company credit card in her name, issuing herself duplicate paychecks, transferring money from the company account to her own, paying personal bills with company funds, and using the company ATM card to withdraw cash for personal use.⁷ She used the stolen funds to purchase a new truck, airline tickets, and household items, and to pay personal bills.⁸ She would later blame her actions on a stressful family situation, involving a mentally and physically abusive husband.⁹

The hearing record is sparse as to the exact circumstances under which Ms. Ray's crime was discovered. However, it appears that by early 2008 she was actively working towards paying restitution, despite not having yet been adjudicated or sentenced.

In February 2008, Ms. Ray went to work as an LPN for the Alaska Department of Corrections in the Anchorage Jail. During this time, she worked overtime shifts to begin paying restitution.¹⁰ In the meantime, in 2009, she moved out of her husband's home and filed for divorce.¹¹ She remained in her position with DOC until a felony information was filed against her in federal court in January 2010, apparently disqualifying her from continued state employment.¹²

Ms. Ray then applied and was hired for an LPN position with Anchorage-based Health North Family Medicine. Dr. Ron Hall, who owns Health North, was aware of Ms. Ray's pending charges "since [her] first interview with him," but hired her nonetheless.¹³ Ms. Ray worked as an LPN for Health North from February 2010 until her guilty plea and license surrender in May 2010.¹⁴ As discussed below, she would continue working there until going to prison, and again upon her release.

⁷ Ex. C, p. 6.

⁸ Ex. C, p. 6.

⁹ See Ex. 3; Ex. R. 282.

¹⁰ Ex. 3, pp. 7-8; Ray's Post-Hearing Brief, pp. 10-11. At sentencing, her defense attorney commented that she had never had a case in which "such a high percentage of restitution has been paid as of sentencing." Ex. 3, p. 9.

¹¹ R. 91; Ex. 3, p. 6.

¹² R. 90.

¹³ Ex. 3, p. 11. As discussed further below, there is disputed evidence about what precisely Dr. Hall knew when he hired Ms. Ray. It is undisputed that Ms. Ray disclosed something of her legal situation during the application process, but there was conflicting testimony about the scope of that disclosure. Dr. Hall vaguely recalled the disclosure as involving a one-time deposit-related theft, while Ms. Ray insists that she made a full disclosure of the scope of the charges against her. Dr. Hall testified that he was unaware of a larger-scale scheme as opposed to a one-time theft, but also testified that those details did not change his glowing view of Ms. Ray's current fitness to resume practicing nursing.

¹⁴ R. 89.

C. *Conviction and license surrender*

On May 5, 2010, Ms. Ray entered a guilty plea and was convicted of felony embezzlement from a health care benefit plan. Two days later, and on the advice of counsel, Ms. Ray signed an agreement to voluntarily surrender her Alaska practical nursing license.¹⁵ The voluntary surrender expressly stated that, in order to obtain reinstatement, Ms. Ray would be required to prove to the board that she was “competent to resume practice,” and was “able to do so with skill and safety.”¹⁶

In the meantime, Ms. Ray continued to work at Health North Family Medicine in non-nursing capacities until her sentencing. At the May 2010 sentencing hearing, her attorney noted support from her current and most recent employers, pointing out that “the nurse supervisor in the jail, as well as her current employer, are both supportive of her – even knowing what she did to the Kidney Consultants – to try to get her license back at some time in the future.”¹⁷ Ms. Ray described herself as “very ashamed” of her crime, and said she would “be regretful and embarrassed for the rest of [her] life” for the harm she had caused her former employers. She also reported that both her former DOC supervisor and her current employer had expressed willingness to hire her as a nurse if or when she got her license back.¹⁸

U.S. District Judge Ralph Beistline sentenced Ms. Ray to six months in prison and three years of supervised release thereafter, and ordered her to pay restitution of roughly \$70,000. Judge Beistline found that Ms. Ray had engaged in “clear, calculated theft” which “violated a trust” inured to her “as a professional person.”¹⁹ He noted that Ms. Ray’s crime “wasn’t a one-time event,” but a three-year long, “premeditated” one.²⁰ He also noted that defendants charged with embezzlement “always [have] a story, and frequently it’s a very sympathetic story,” but also that:

There’s no justification. You know, you either steal or you don’t steal; either you’re honest or you’re not honest. That’s what it’s about.²¹

At the same time, however, Judge Beistline accepted and acknowledged that Ms. Ray’s crime was influenced by “significant domestic issues, emotional pressures that [she] was under,” and found that those factors justified a more lenient sentence.²² In that finding, Judge Beistline found that Ms. Ray had demonstrated “significant remorse” and “significant cooperation,” and expressed his view that she

¹⁵ R. 12-14.

¹⁶ R. 13. The Board adopted Ms. Ray’s Surrender Agreement on Board July 21, 2010. R. 14.

¹⁷ Ex. 3, p. 9.

¹⁸ Ex. 3.

¹⁹ Ex. 3, p. 12.

²⁰ Ex. 3, pp. 12-13.

²¹ Ex. 3, p. 13.

²² Ex. 3, p. 14.

was “not likely to reoffend.”²³ He summarized his view of her sentence and her likely future thereafter as follows:

You faced your demons responsibly and that’s why I think it’s highly likely that you’re going to do well, get with your life, serve – you know, you did the crime you do the time, pay back your restitution, get on with your life, get your license back, and live a healthy life, be a good parent, and enjoy life as a law-abiding citizen instead of a crook.²⁴

D. Post-Conviction Activities

Ms. Ray served six months in federal prison. Following her release, she was rehired by Health North Family Medicine. She began as the Anchorage Office clinic manager, and was later promoted to her current position of Practice Manager, the position she holds today.²⁵

By all appearances, Ms. Ray has flourished in her employment with Health North. She interacts with patients daily on “administrative issues,” and colleagues describe her as “wonderful” in those interactions.²⁶ Clinic APRN Maureen Brown described Ms. Ray as “compassionate, knowledgeable [and] interested in patient care.” Ms. Brown offered glowing reviews of Ms. Ray’s people skills, saying that “people enjoy coming to her; they feel that she listens to them” and that “her interactions are wonderful and people love her.” Ms. Brown tied this to Ms. Ray’s nursing abilities, observing that “there are certain characteristics in this profession that you can’t learn,” and opining that Ms. Ray has insightful “soft skills” in that regard.

Ms. Brown testified that she discusses patient care issues with Ms. Ray, whom she described as having “a tremendous amount of learning knowledge.”²⁷ Ms. Brown testified that she is “always impressed with [Ms. Ray’s] knowledge in the field and her ability to deal with persons and problems much as you would if you were a nurse,” while taking pains to clarify that Ms. Ray has made it clear that she is not a nurse, is not practicing nursing, and is not holding herself out as a nurse.

As to Ms. Ray’s responsibilities at the clinic, Ms. Brown testified that, despite “not easily giving [her] trust away” and being fully aware of her crime, she “has come to trust Cheri with everything in the clinic,” and finds that she “has performed admirably on every level” during her lengthy tenure at Health

²³ Ex. 3, p. 15.

²⁴ Ex. 3, p. 15.

²⁵ Hall testimony. At one point, Ms. Ray was terminated from Health North because her conviction of a barrier crime prevented her from working in any capacity in programs receiving federal funding. At that time, Dr. Hall’s then-business partner hired her to work for another of his businesses. Health North then hired her back once the practice elected to opt out of the federally funded programs.

²⁶ Brown testimony

²⁷ Brown testimony.

North. Ms. Brown testified she would be “proud” to work with Ms. Ray in a nursing capacity in the event Ms. Ray’s license is reinstated.

Clinic Director Dr. Hall shares Ms. Brown’s enthusiasm for Ms. Ray’s skills, trustworthiness, and potential. He testified that Ms. Ray has been an excellent and extremely professional clinic manager. Dr. Hall also testified that he considers Ms. Ray “very competent” in terms of nursing-related knowledge and experience, and that he would hire her as an LPN if her license is reinstated.

Admittedly, there is some question about whether Dr. Hall’s testimony was fully informed. While he testified that he was aware of the details of Ms. Ray’s crime, when asked to describe those details he suggested that the crime was a single-time event involving a bank deposit. When confronted with fuller details of the crime, he denied being aware that Ms. Ray had engaged in a continuous pattern of theft over the course of several years and using multiple methods to steal from her employer. (Ms. Ray, on the other hand, insists that she gave Dr. Hall the full details of her crime). It is possible Dr. Hall once knew and later forgot those details. In a more concerning scenario, it is also possible that Ms. Ray minimized her crime in her disclosures to Dr. Hall. However, even when provided with the fuller details, Dr. Hall reiterated that he would still “without question” employ Ms. Ray. He described her as “very competent,” testified that in her work she has “never given [him] a reason to distrust her even in the least,” and indicated that he “would trust her to care for a close family member.”²⁸

On a personal level, Ms. Ray obtained a divorce and has “tried to rebuild.”²⁹ At her sentencing in 2010, she said she was “trying [her] best to turn [her] life around.”³⁰ At the hearing in this matter, she testified that she is “ashamed” of her crime, and of having “made terrible mistakes for all the wrong reasons.”³¹ She testified that she has “tried really hard in the nine years since [her] conviction to stay in the medical field” despite not being able to practice as a nurse, and has also worked to keep her knowledge and skills up to date through continuing education.³² She has also continued to pay restitution to Alaska Kidney Consultants, as ordered in her federal court sentencing. As of the date of the hearing, she had paid nearly \$60,000, and anticipated paying off the remainder by the end of the calendar year.³³

In addition to roughly nine years of continuous, successful, and uneventful employment, Ms. Ray has also engaged in standard continuing education classes, as well as a broader LPN refresher

²⁸ Hall testimony.

²⁹ Ray testimony.

³⁰ Ex. C, p. 12.

³¹ Ray testimony.

³² Ray testimony.

³³ Ray testimony; Ex. V.

course. In late 2015, Ms. Ray applied for and was accepted into the LPN Refresher Course at South Dakota State University.³⁴ Ms. Ray successfully completed the 95-hour theory portion of the course in late 2016.³⁵ She satisfied the clinical component by completing a 100-hour clinical preceptorship at the Alaska Native Medical Center.³⁶

E. 2017 reinstatement request and Board's denial

Ms. Ray initially applied for reinstatement of her Alaska nursing license in June 2015.³⁷ At that time, she was informed that, due to the length of time she had been without a license, she would be ineligible for reinstatement until she had completed a board-approved skills refresher course.³⁸ Accordingly, she applied for the LPN refresher course, successfully completing it in late 2016.

In the meantime, in January 2016, New York's Office of Professional Discipline filed charges against Ms. Ray's New York nursing license based on her criminal conviction.³⁹ After a hearing in that matter, the New York licensing board entered an order suspending Ms. Ray's license for two years, with a two-year probationary period to follow.⁴⁰

Ms. Ray applied for reinstatement of her Alaska license a second time in October 2017.⁴¹ She submitted a written letter describing her criminal conviction and sentence, expressing her shame and regret for her actions, and describing her efforts to pay restitution.⁴² In the letter, Ms. Ray described her crime as rooted in the abusive relationship that she ended through divorce, and described the loss of her license and career as "a deep physical and emotional void."⁴³ The Board denied Ms. Ray's application in November 2018 based on her conviction of felony theft.⁴⁴ It is that denial that is under review in this case.

F. Hearing

Ms. Ray requested a hearing to challenge the Board's decision. During the prehearing phase, the Division filed an Amended Statement of Issues, raising an additional issue – relating to Ms. Ray's Louisiana licensure – as an alleged ground for non-renewal. Briefly, the Division became aware that

³⁴ R. 63.
³⁵ R. 61.
³⁶ R. 229-231.
³⁷ R. 85-87.
³⁸ Ray testimony; R. 77.
³⁹ Ex. C, pp. 11-12.
⁴⁰ Ex. E (R. 214-215).
⁴¹ R. 276-282.
⁴² R. 282.
⁴³ R. 282.
⁴⁴ R. 341-342.

Ms. Ray's Louisiana license had technically been revoked, and contended that Ms. Ray had failed to disclose that revocation on her Alaska reinstatement application.

The hearing was held on May 14, 2019. The Division was represented by Assistant Attorney General Ashley Brown; Ms. Ray was represented by Donna Meyers, Esq. Division Investigator Shyla Consalo testified for the Division. Ms. Ray testified on her own behalf, and also presented testimony from Dr. Hall and ANP Brown. All exhibits were admitted by stipulation. The parties agreed to submit post-hearing briefs by June 10, after which the record would close. After a short extension, the record ultimately closed on June 12, 2019.

III. Discussion

A. Procedural Framework

A licensee whose license has been revoked or who has surrendered their license may apply for reinstatement of the license. If the Board denies that application, the Alaska Administrative Procedure Act allows the applicant to initiate a hearing to determine whether a license should be granted.⁴⁵ The hearing process is intended to allow a fuller exploration of the grounds for granting or denying the license.⁴⁶

As the petitioner, Ms. Ray has the burden of proving by a preponderance of the evidence that she is competent to resume practice with skill and safety.⁴⁷ The Division argues that Ms. Ray is not competent to practice because the underlying facts of her conviction make her untrustworthy.⁴⁸ The Division also argues that Ms. Ray failed to disclose licensing action related to her Louisiana license, and should also be precluded from reinstatement based on that failure.⁴⁹

B. Does Ms. Ray possess the necessary skill and safety to resume practice?

Ms. Ray presented uncontested evidence that she possesses sufficient technical skills and education to safely resume practice. She has completed both the theoretical and clinical components of the South Dakota State University nursing refresher course.⁵⁰ Ms. Ray also provided evidence that she has separately completed more than the required number of continuing education credits that would otherwise be required for continued licensure.⁵¹

⁴⁵ AS 44.62.390; *Matter of Herwick*, OAH No. 08-0244-NUR (Board of Nursing January 2009).

⁴⁶ *Matter of Kimble*, OAH No. 06-0032-NUR, p. 8 (Board of Nursing 2006).

⁴⁷ AS 08.68.275(e)

⁴⁸ Division's Post-Hearing brief, pp. 5-6.

⁴⁹ Division's Post-Hearing brief, pp. 6-7.

⁵⁰ Ex. I-N; Ray testimony.

⁵¹ Ex. S; Ray testimony.

Ms. Ray also presented testimony from both Dr. Hall and APRN Brown about her technical knowledge. Both practitioners testified that Ms. Ray participates in discussions about patient care, and is well informed and knowledgeable. Dr. Hall testified that he would hire Ms. Ray as an LPN “without question.” He finds her “very knowledgeable about patient care and needs,” and would trust her to care for a close family member. Ms. Brown testified that Ms. Ray is “wonderful about interacting with patients” about administrative matters. Ms. Brown praised Ms. Ray’s compassion, knowledge, and interest in patient care, and affirmed she would have no patient safety concerns whatsoever about Ms. Ray.

Based on the essentially uncontroverted evidence about her successful completion of a refresher course and other continuing education credits and about her general knowledge of patient care, Ms. Ray has met her burden of showing that she is technically competent to resume practice.⁵²

C. Are there disqualifying conditions that preclude Ms. Ray’s ability to resume practice?

The Division argues that, while Ms. Ray may have the technical skill to resume her nursing career, the Board should nonetheless find her sufficiently untrustworthy to warrant licensure. Specifically, the Division argues (1) that Ms. Ray failed to report discipline related to her Louisiana nursing license, and (2) that Ms. Ray’s felony conviction for a crime of dishonesty should continue to bar licensure, at least until more time has passed.

1. Does Ms. Ray’s failure to disclose the Louisiana revocation warrant denial of her request for reinstatement?

The Board has discretion to deny a license of a person who has obtained or attempted to obtain a license by fraud or deceit.⁵³ In its amended statement of issues, the Division argued that Ms. Ray’s licensure should not be reinstated because she failed to disclose licensing action in another state. Specifically, Ms. Ray never disclosed on any Alaska nursing application that her Louisiana license had been subject to disciplinary action. However, the totality of evidence on this issue supports the finding that Ms. Ray was not aware of the Louisiana licensing action, and therefore did not commit an actionable offense in failing to disclose events of which she was unaware.

Ms. Ray last renewed her Louisiana license in 2001, shortly before relocating to Alaska. Believed it would expire on its own terms at the end of 2001, she took no steps to renew it again once

⁵² If any of Ms. Ray’s required ongoing continuing education credits have lapsed during the course of this appeal, the Division should work cooperatively with Ms. Ray to resolve issues regarding these requirements. See Ray Post-Hearing Brief, p. 9, fn. 14.

⁵³ AS 08.68.270(1).

she had moved.⁵⁴ Since leaving Louisiana, she has consistently disclosed the license as having voluntarily lapsed.⁵⁵

Unbeknownst to Ms. Ray, however, the 2001 renewal was not successful because the check she wrote for the \$80 renewal fee was returned for insufficient funding.⁵⁶ But mail from the Louisiana nursing board to Ms. Ray about the unpaid fee was not delivered due to the family having since relocated.⁵⁷ And Ms. Ray, unaware of the issue, having no intent to practice under a Louisiana license, and believing the license was about to lapse, had taken no steps to ensure that mail (which she was not expecting) would reach her.

The Louisiana Board, meanwhile, entered a disciplinary sanction against Ms. Ray's license due to her failure to pay the fine for delayed payment. The Board eventually suspended Ms. Ray's license in November 2009, and ultimately revoked it in a default proceeding in 2011 due to the criminal conviction.⁵⁸ Ms. Ray, however, was wholly unaware of all of these events, having been under the reasonable impression that her license had expired on its own terms at the end of 2001.⁵⁹

The events relating to the Louisiana license did not come to light until the division's investigator began seeking records pertaining to Ms. Ray's reinstatement application. Ms. Ray has consistently denied being aware of the Louisiana license events, and, since becoming aware of them, has taken steps with the Louisiana board to clear her licensing history there.⁶⁰

The Division nonetheless urges that the Board should deny reinstatement based on a failure to disclose discipline against the Louisiana license.⁶¹ The evidence does not support such a stance. Ms. Ray gave a credible account of the circumstances giving rise to her Louisiana licensure situation. At the time she left Louisiana, she had no plans to return there, and chose (or believed she had chosen) to let her license lapse at the end of that year. The belief that the license would expire on its own terms at the end of the year was reasonable. And Ms. Ray's testimony about that belief is supported by her having disclosed the Louisiana license as expired in her 2002 and 2003 applications for licensure in Alaska.⁶²

⁵⁴ Ray testimony.

⁵⁵ See R. 32, 36.

⁵⁶ R. 263.

⁵⁷ R. 269; Ray testimony

⁵⁸ Ex. E.

⁵⁹ R. 32; R. 281; Ray testimony.

⁶⁰ R. 281; Ray testimony.

⁶¹ R. 231. R. 235.

⁶² R. 32 (2003); R. 36 (2002).

Further, on her application for reinstatement, Ms. Ray disclosed the discipline against her New York license taken as a result of her criminal conduct and license surrender in Alaska.⁶³

The totality of the evidence does not support the conclusion that Ms. Ray knew or should have known about the Louisiana license situation, and it is inconceivable that Ms. Ray was intending to conceal such information from the Board. Indeed, at the hearing, the Division's investigator candidly testified she was aware of no evidence that the omission was anything but inadvertent. This inadvertent omission from her application of events about which Ms. Ray was genuinely unaware does not meet the legal standard to serve as a barrier to reinstatement of her Alaska license.

2. Does Ms. Ray's 2010 felony conviction warrant denial of her request for reinstatement?

The Division more substantial argument is that Ms. Ray's conviction should continue to serve as a bar to licensure. The Board has discretion to deny a license of a person who has been convicted of a felony or another crime, such as theft, which the Board deems to be substantially related to the qualifications, functions, or duties of the license.⁶⁴ The Board may also deny a license to a person who has committed unprofessional conduct, including misappropriation of funds.⁶⁵

Mr. Ray admits she has a felony conviction, and admits that her conduct was serious and unprofessional.⁶⁶ However, she urges that, since the Board has not adopted a bright line regulatory rule prohibiting reinstatement after certain crimes, the Board's decision must take into consideration "all of the evidence, including what Ms. Ray has done with her life following her conviction."⁶⁷ The Division does not take issue with this analysis, but argues that Ms. Ray has not met her burden of proving that she is more likely than not competent to resume practice with a sufficient level of honesty required by the profession.⁶⁸

The Division correctly notes that honesty is a critical element of nursing competence. However, the Board considers allegations of dishonesty and its impact on licensure on a case by case basis. In that analysis, it is useful to consider circumstances under which a denial due to a history of dishonesty has been upheld. In *Matter of Kimble*, the Board denied the application of an applicant who had submitted falsified and forged information in an application years earlier. In her new application and on appeal, Ms. Kimble failed to provide satisfactory evidence of rehabilitation in light of the pervasive nature of

⁶³ R. 276.

⁶⁴ AS 08.68.270(2); 2 AAC 44.705(a)(14).

⁶⁵ AS 08.68.270(7); 12 AAC 44.770(22).

⁶⁶ See AS 08.68.270(7); 12 AAC 44.770(22).

⁶⁷ Ray Prehearing Brief, p. 5.

⁶⁸ Division's Closing Brief, pp. 5-6.

her intentional misrepresentations and fraudulent statements to the Board and to employers, and her continued failure even years later to acknowledge the gravity of having submitted the earlier fraudulent applicant.⁶⁹

Ms. Ray's situation is distinguishable in several key aspects. Ms. Kimble's earlier fraud was directed towards the Board in an attempt to obtain licensure for which she was not otherwise qualified, a clear violation of AS 08.68.270(1)'s prohibition against obtaining a license by fraud or deceit. Ms. Ray's fraudulent conduct – while serious, dishonest and felonious – was a financial crime not directly implicating her underlying qualifications for licensure or ability to competently care for patients. And while Ms. Kimble continued to fail to appreciate the gravity of her fraudulent conduct even years later, Ms. Ray has taken responsibility for her crime, served prison time, paid restitution, and repeatedly expressed remorse and shame for her actions.

Ms. Ray testified, and has said elsewhere, that her ill-advised crime was driven by an abusive life situation from which she has since extracted herself. She presented evidence that she has held steady employment in a position of responsibility for nearly a decade. And she presented credibly testimony from her employer and another nursing professional about their perceptions of her trustworthiness.

Ms. Brown testified that her opinion of Ms. Ray's trustworthiness is based on six years of working together daily, during which she has "come to trust [Ms. Ray] with everything in the clinic," despite being someone who does not "easily give my trust away." Ms. Brown testified that Ms. Ray has "performed admirably on every level," earning the trust of her coworkers, and that she would be "proud" to work with Ms. Ray in a nursing capacity.⁷⁰

Dr. Hall testified that, in her capacity as clinic manager, Ms. Ray has "never given [him] a reason to distrust in her even in the least."⁷¹ The Division urges that Dr. Hall's judgment is inherently questionable, in that he "chose to hire respondent with full knowledge of, and shortly after, her indictment for embezzlement from her last employer."⁷² While Dr. Hall undisputedly took a personal and financial risk in hiring Ms. Ray while she was under indictment, it was that risk which has enabled Ms. Ray to achieve stability "after she returned to the private sector" and to pay the majority of her restitution. The Board should not discount Dr. Hall's testimony simply because he took a leap of faith that some others might not take. The evidence in the record is that Ms. Ray's performance at Health

⁶⁹ *Matter of Kimble*, OAH No. 06-0032-NUR (Board of Nursing 2007).

⁷⁰ Brown testimony.

⁷¹ Hall testimony.

⁷² Division's Closing Brief, p. 3.

North has been exemplary, with no indicia of a lack of trustworthiness that would implicate her ability to soundly practice nursing.

This situation is likewise distinguishable from professional misconduct involving patient care. In *Matter of Herwick*, petitioner voluntarily surrendered his license after unprofessional conduct that “hastened the death of a terminally ill patient,” and then applied for reinstatement just two years later.⁷³ The application was denied, citing a lack of persuasive evidence that Mr. Herwick would not make the same patient care mistakes that led to his original surrender.

Unlike Mr. Herwick, Ms. Ray is seeking reinstatement nearly a decade after she lost her license, and nearly 15 years after her criminal conduct. While Ms. Ray’s crime was dishonest and unprofessional, it was not related to patient care. There is no evidence that Ms. Ray is likely to reoffend, and plenty of reason to think she won’t – having extracted herself from an abusive relationship, having served federal prison time for her act, and having successfully held positions of trust for 8½ years since her release from prison. And there is ample evidence that Ms. Ray is a caring, thoughtful medical professional, informed about patient care issues and skilled in patient interactions.

At base, Ms. Ray’s appeal is about whether or when a licensee has showed sufficient redemption, or redemptive potential, to warrant reinstatement of a license revoked or surrendered for unprofessional conduct not relating to patient care. While her crime was egregious and dishonest, it is well in the past. The federal judge who sentenced her to prison found her unlikely to reoffend. Her record since her release has borne this out. Her colleagues from the ensuing years have nothing but praise for her skills, abilities, and character.

It is more likely than not that Ms. Ray can resume practice with skill and safety. That being said, honesty is paramount in the nursing profession, and it is reasonable to continue monitoring Ms. Ray to be sure that she has made the transition back to full licensure successfully. An appropriate resolution to the concerns raised by the Division is to grant Ms. Ray’s application for reinstatement of her license, but place her license on probation for the first two years.

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⁷³ *Matter of Herwick*, OAH No. 08-0244-NUR (Board of Nursing 2009).

IV. Conclusion

Ms. Ray has met her burden of proving that her application for reinstatement of her practical nursing license should be granted, with a two-year period of probation imposed. Ms. Ray and the Division shall provide the Board with proposed terms of that probation, as well as a proposed schedule for completion of any remaining/expired continuing education credits if necessary, within thirty days of the effective date of this Decision.

Dated: July 10, 2019

Signed _____

Cheryl Mandala

Administrative Law Judge

Adoption

Pursuant to AS 44.64.060(e)(1) and (e)(3), the ALASKA BOARD OF NURSING hereby adopts the Administrative Law Judge's proposed decision with the following modifications to the enforcement action:

- (1) The Board imposes a two-year period of probation, the terms of which are as follows:

A. Duration of Probation. Respondent's license shall be on probation for two (2) years from the effective date of reinstatement. If Respondent fully complies with all of the terms and conditions of this license probation, the probationary period will end as conditioned under the Board's order. The two (2) year probationary period will not be reduced by the following periods:

- (1) Any absence from the state in excess of 30 continuous days.
- (2) Any absence from the state in excess of 60 aggregate days in a single year.
- (3) Any period during which Respondent is not a resident of the State of Alaska.
- (4) Any period in which Respondent does not hold an active license in Alaska.
- (5) Any period in which Respondent's license is suspended.

It will be Respondent's duty to inform the Probation Monitor in writing in advance of any absence from Alaska and/or any move from Alaska to another licensing jurisdiction.

B. Violation of Agreement. If Respondent fails to comply with any term or condition of probation, the Division may immediately suspend Respondent's license, without an additional order from the Board or without a prior hearing, for a violation of probation. In Respondent's license is suspended under this paragraph, as provided above, she will be entitled to a hearing regarding the issue of the suspension within thirty (30) days of the notice of suspension, with a decision by the Board within thirty (30) days after the hearing ends. If Respondent's license is suspended, she will continue to be responsible for all license requirements pursuant to AS 08.68.

C. Respondent Address. It is the responsibility of respondent to keep the Probation Monitor advised, in writing, at all times of her current mailing address, physical address, email address, telephone number, current employment and any change in employment.

D. Compliance with Laws. Respondent shall obey all federal and state laws governing her license.

E. Authorization. Within 10 calendar days of a request by the Probation Monitor, Respondent will sign all authorizations necessary for the release of information required by the terms of probation.

F. Noncooperation by Reporting Persons. If any of the persons required by the terms of probation to report to the Board fails or refuses to do so, and after adequate notice to Respondent to correct the problem, the Board may terminate probation and invoke other sanctions as it determines appropriate.

All costs are the responsibility of the Respondent.

G. Address of the Board. All required reports or other communication concerning compliance with probation shall be addressed to:

Probation Monitor for Board of Nursing
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
Phone (907) 269-8174; Fax (907) 269-8195

H. Absence from Community of Residence. While under license probation, Respondent shall notify the Probation Monitor in writing in advance of each and every expected absence from community of residence in excess of seven (7) days. Absences from the State of Alaska must be reported pursuant to Paragraph 'A' and 'B' above.

I. Periodic Interview with the Board. While under license probation and upon the request of the Board, its Executive Administrator, or Probation Monitor, Respondent shall report in person to the Board, Board of Nursing's Executive Administrator, or Probation Monitor to allow a review of her compliance with this probation. Respondent shall be excused from attending any interview only at the discretion of the person requesting the interview.

J. Quarterly Reports. Quarterly reports are due for each year of probation and the entire length of probation as follows:

<u>Period Covered</u>	<u>Due Date(s)</u>
January 1 - March 31	between April 1 and April 7
April 1 - June 30	between July 1 and July 7
July 1 - September 30	between October 1 and October 7
October 1- December 31	between January 1 and January 7

Failure to submit complete and timely reports shall constitute a violation of probation.

K. Self-Evaluation Report. While under license probation, Respondent shall submit quarterly reports, as specified in paragraph “J”, to the Probation Monitor regarding her method(s) of handling stress, mental and physical health, professional responsibilities and activities, and personal activities.

L. Employment Must Be Supervised. While under license probation, Respondent may not be employed in her licensed profession unless supervised by a physician, physician’s assistant, advanced nurse practitioner, or registered nurse licensed in Alaska. The supervisor shall be provided a copy of the terms of probation within 10 calendar days of the effective date of reinstatement. This does not require that Respondent be under constant, direct observation by her supervisor.

In the event respondent changes employment during the term of her probation, within ten days of such change she shall (1) notify the probation monitor of that change and (2) provide her new supervisor with a copy of the terms of her probation.

M. Employer Reports. While employed in her licensed profession, within 10 calendar days of the effective date of reinstatement, and for the duration of probation, Respondent must provide her employer with a copy of the terms of probation and understands that the Probation Monitor will be free to discuss with Respondent’s employer the subject matter of the terms of probation. Respondent’s supervisor shall report quarterly, as stated in Paragraph ‘I’, to the Probation Monitor as to Respondent’s employment performance and attendance. The report shall include a statement of whether Respondent is suspected of violating any condition of this license probation.

All costs are the responsibility of the Respondent.

- (2) This Decision is effective immediately.
- (3) Within thirty (30) days hereafter, respondent shall complete at least ten (10) additional hours of Ethics CME credits.

As so modified, the Board adopts this decision as final under the authority of AS 44.64.060(e). 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 distribution of this decision.

DATED this 8th day of August 2019.

By: Signed
Signature
Danette M. Schloeder
Name
Board Chair
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]