

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL FROM THE ALASKA BOARD OF SOCIAL WORK EXAMINERS**

In the Matter of:)

B F)

) OAH No. 13-1555-CSW
) Board Case No.
)

FINAL DECISION

I. Introduction

B F applied for licensure as a master social worker. The Alaska Board of Social Work Examiners denied his application. Mr. F requested a hearing, and the matter was referred to the Office of Administrative Hearings. A hearing was held on January 17, 2014. Mr. F appeared by telephone. In addition to his own testimony, he called one witness, his supervisor D X. The Division of Corporations, Business and Professional Licensing (division) was represented by Assistant Attorney General Todd Araujo. The division did not call any witnesses.

The Board initially decided to deny the application for two primary reasons: 1) that given Mr. F's prior misdemeanor convictions, he has not proven his fitness to be licensed; and 2) that Mr. F's disclosure of his prior convictions omitted several convictions, and therefore his application provided false or misleading information. A third reason, that Mr. F was not of good moral character, was abandoned by the division during the hearing.

Because the Board now has a more complete record than was available for its original decision, the Board has the discretion to either grant or deny his license application. After careful consideration, the Board will grant Mr. F's application if he enters into a consent agreement with the Board as described below.

II. Facts

Mr. F was raised in an Alaska Native Village.¹ Both his parents were alcoholics, and his mother eventually died from alcohol related disease. He characterized the community in which he grew up as dysfunctional. Like many members of his community, Mr. F turned to substance abuse at a young age.² His drinking was a factor in multiple misdemeanor arrests and

¹ The factual findings regarding Mr. F's background come from his testimony and a letter he submitted to the board (Rec. at 20). This information was not disputed by the division.

² He has only abused alcohol.

convictions. On February 7, 2011, however, Mr. F made a conscious decision to turn his life around. He was about to turn 30, and he wanted to make something of himself. He wanted to get married, get an education, have children, and begin a career. He stopped drinking on that date.

Mr. F has been sober now for over three years. He earned his MSW degree from the University of State A with a 3.95 GPA, and has been licensed to practice Social Work in State A since July 2013. Since September 2013, he has been working for a program as a Clinician I.³ He is an excellent employee who works well with the Alaska Native and American Indian population the program is designed to serve.⁴

In his application to this Board, Mr. F correctly answered yes to the two questions regarding criminal convictions and alcohol abuse. Question six asks “Have you been convicted of a criminal offense other than a minor traffic violation?” Question seven asks “Are you now or have you been, within the past 5 years, addicted to or excessively used or misused alcohol, narcotics, barbiturates, or habit-forming drugs?”⁵

Mr. F provided a list of seven misdemeanor convictions, including four for driving while intoxicated, two for disorderly conduct, and one for battery.⁶ The division’s investigation found three additional misdemeanor convictions that should have been disclosed, one each for driving without a license, theft, and disturbing the peace.⁷ Mr. F’s criminal convictions, other than minor traffic offenses,⁸ are all misdemeanors:

Alaska

1XX-99-00000	Disorderly Conduct	
1XX-98-00000	Driving while Intoxicated	
1XX-98-00000	Driving without a License	(not disclosed)
1XX-99-00000	Disorderly Conduct	
1XX-99-00000	4 th Degree Theft	(not disclosed)

State A

2000-XX-0000000	Operating under the Influence
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³ Testimony of Mr. X.

⁴ *Id.*

⁵ Rec. at 11.

⁶ Rec. at 155 – 156

⁷ Rec. at 28.

⁸ Mr. F also has two State A convictions for transporting an open container in a motor vehicle. Mr. F testified that he had been advised that under State A law these convictions were considered traffic violations, and the division conceded at the hearing that they did not need to be disclosed.

2002-XX-0000000-XX	Operating under the Influence	
2008-XX-0000000-XX	Operating under the Influence	
2009-XX-0000000-XX	Disturbing the Peace	(not disclosed)
2010-XX-000000	Misdemeanor Battery causing harm	

These convictions all stem from Mr. F’s abuse of alcohol.

III. Discussion

A. Fitness to Practice Social Work

The first basis for denying Mr. F’s application was that he is “unfit” for a license. The Board relied on AS 08.95.110.⁹ This statute says that a license “shall” be issued to a person who is “fit to practice social work as determined by the board,” and who meets the other applicable requirements.¹⁰ Similarly, the Board’s regulation says that it will

deny an application for a license under AS 08.95.110 if the board finds that the applicant’s history of felony or misdemeanor convictions make the applicant unfit for the license. The board will consider the number and recency of any convictions and the relationship those convictions may have to licensure under AS 08.95.110.^[11]

However, these two provisions only apply to applicants seeking licensure by examination. After Mr. F received his State A license, and before the Board acted on his application, he converted his application to an application by credentials.¹² Because of that change, Mr. F’s application is actually governed by AS 08.95.120. That statute does not include a “fitness to practice” requirement. Instead, AS 08.95.120 requires the applicant to hold a current license to practice in another jurisdiction.¹³ That license must not be subject to an unresolved complaint or disciplinary action,¹⁴ and the applicant must not have had his or her license revoked suspended, or surrendered in Alaska or another jurisdiction.¹⁵ A person who is licensed in another jurisdiction who meets all of the other requirements of this statute is presumed to be fit to practice social work. Accordingly, neither AS 08.95.120 nor AS 08.95.110 provides a basis for denying Mr. F’s application.

⁹ Rec. at 1.
¹⁰ AS 08.95.110(a)(4).
¹¹ 12 AAC 18.140(a).
¹² Rec. 9; 12 – 13; 177
¹³ AS 08.95.120(a)(1).
¹⁴ AS 08.95.120(a)(2).
¹⁵ AS 08.95.120(a)(4).

However, the Board does have the authority to *impose discipline* for misdemeanor convictions that reflect negatively on the ability to practice competently and professionally.¹⁶ The Board may deny a license to an applicant who would be subject to immediate license revocation or suspension based on matters for which a licensee could be disciplined.¹⁷ Although it cited to an inapplicable statute, Mr. F was aware of the factual basis for the Board's denial decision. He was aware that his application was being denied because of the Board's belief that his prior convictions made him unfit to practice competently and professionally. Thus, he was on notice of the basis for the Board's action, and can be denied a license if the Board determines that his prior convictions make him unfit to practice competently and professionally.

In regard whether Mr. F's prior convictions make him unfit, the convictions for driving while intoxicated are self-explanatory. The other convictions are also largely alcohol-related. The 1999 disorderly conduct and theft convictions followed an incident in which Mr. F, highly intoxicated, failed to pay a cab fare. The 2009 disturbing the peace conviction occurred when Mr. F was cited for playing loud music in his apartment at night. Lastly, the 2010 misdemeanor battery charge followed an altercation outside a bar, in which Mr. F, again highly intoxicated, punched a man who, he testified, had made racially abusive remarks to a companion.

Notwithstanding these convictions, there is ample evidence to support Mr. F's position that he can now practice competently and professionally. Two of his three professional references rated his knowledge and experience as Excellent, although the third rated his knowledge and experience as only Fair.¹⁸ His current supervisor in Alaska described him as an excellent employee who works well with the Alaska Native population because he understands their cultural heritage.

Through his testimony, Mr. F was able to express his own commitment to helping his community. As he noted, the National Association of Social Workers' Code of Ethics has a cultural competency requirement. Social workers need to understand their clients' cultures and provide services in a way that is sensitive to that culture.¹⁹ Because he grew up in a

¹⁶ AS 08.95.050(7).

¹⁷ *In Re Feraco*, OAH No. 11-0203-CSW (Board of Social Examiners 2012), at 6, *citing In re Hill*, OAH No. 10-0250-GUI (Big Game Commercial Services Board 2011), at 23.

¹⁸ Rec. at 14 – 19.

¹⁹ Code of Ethics, 1.05(b). The Board has adopted the 1999 version of this code. 12 AAC 18.150. Mr. F specifically referred to section 1.05(c) of the Code of Ethics, but that section was not added until 2008, and is, therefore, not applicable here.

dysfunctional village, and has personally struggled with addiction, Mr. F is in an excellent position to understand both the strengths and the weaknesses that many of his clients share.

Mr. F has demonstrated his ability to overcome his addiction. His testimony was credible, and sincere. There is no reason to doubt his desire and ability to serve Alaskan Natives, and help others make the same positive choices he has made. Indeed, as he progresses with his career he will be in a position to not only show that the Alaska Native community can help its own members, but also show that Alaskan Natives have much to offer to all Alaskans. Both within and outside the Alaska Native community, a licensee's ability to overcome substance abuse and other obstacles to personal and professional success can serve as a positive and influential example to clients faced with similar difficulties.

At the same time, Mr. F has been sober for less than four years. Prior to February of 2011, he engaged in a variety of alcohol related criminal activity. Most of his convictions involve actions that put both himself and others at risk of being injured. One, the 2010 battery, resulted in actual injury.

As indicated by question seven on the application, the Board looks closely at whether someone was addicted to or excessively using alcohol or certain other substances within the past five years.²⁰ This does not preclude the granting of a license to someone who has been sober for only four years, but it is the applicant's burden to show that licensure is appropriate, and when the sobriety has been for less than five years, the Board examines each applicant's circumstances closely.

B. Misleading or Incomplete Answers on Application

The Board has the discretion to deny an application if the applicant provided false or misleading statements or information.²¹ Mr. F readily admitted there were convictions that he should have included when he submitted his application. He also testified that he should have done more to verify the accuracy of his memory. Incomplete answers to the questions on the application can be misleading.

Two of the undisclosed convictions concerned conduct occurring in tandem with two of the disclosed convictions. One, the 1998 Alaska offense for driving without a license, occurred

²⁰ Rec. at 11.

²¹ 12 AAC 18.140(c). This provision applies to applications for licensure by credentials as well as applications for licensure by examination.

at the same time as Mr. F's driving while intoxicated violation.²² The second, the 1999 4th degree theft conviction, occurred at the same time as the disorderly conduct offense.²³ In both of these instances, Mr. F disclosed one of the convictions, but forgot the second.

The third undisclosed conviction was the 2009 State A conviction for disturbing the peace. Mr. F testified that he was working nights, and he came home late and turned his music on loud while he was taking a shower. A police officer later came to the door and handed him a ticket. This is consistent with the court record for this incident.²⁴

All of these additional misdemeanors should have been disclosed. However, it was evident from Mr. F's testimony that his failure to do so was through carelessness rather than an attempt to mislead the Board.

C. Should Mr. F Receive a License?

At the time of the Board's initial action, it had limited information available to it. Specifically, it did not have the opportunity to hear Mr. F's more complete explanation for his past conduct or for the material missing from his application. In addition, seven more months have passed since Mr. F's application was denied. There has been no indication of any addiction problems during that time.

Mr. F was open and candid about his past problems. He accepted responsibility for his past convictions and for not doing more to verify the completeness of his application. Although he did not disclose all of his misdemeanor convictions, he disclosed most of them, and there was enough information provided to give the Board a clear picture of his substance abuse problem. His explanation for not including all of the convictions was credible. He did not intentionally fail to include those convictions. There was no intent to hide anything from or mislead the Board.

It is also clear that Mr. F has made commendable strides in overcoming his addiction. His past experience will be an asset he can use to help his clients, and there is no indication that he presents any risk to those clients.

The Board should seek to be consistent when denying applications.²⁵ The Board has on three recent occasions entered into consent agreements granting an application and maintaining

²² Rec. at 42 – 45.

²³ Rec. at 46 – 49.

²⁴ Rec. at 87 (“R/O could hear loud music upon arriving at apartment 18”).

²⁵ See AS 08.01.075(f) (Board required to seek consistency when imposing discipline).

licensure for an applicant and two licensees who had failed to disclose prior convictions involving alcohol abuse.²⁶ In other two other cases involving non-disclosure of convictions involving substance abuse, the Board denied an application and accepted the surrender of a license.²⁷ There is not enough information about most of these prior Board actions to directly compare them to Mr. F's situation, but they do indicate that non-disclosure of substance abuse convictions is considered a case-by-case basis. One prior Board decision, however, *In re Wales*, resulted in a published decision that contains a more complete factual discussion and provides guidance regarding the factors that may affect the Board's action in such cases.²⁸

Ms. Wales, like Mr. F, had a history of alcohol abuse. She attended her first Alcoholics Anonymous meeting on December 21, 2002, and as of the time of the Board's action had not used alcohol since that day.²⁹ Ms. Wales earned her master's degree in social work in 2006, and applied for a social work license in Arizona.³⁰ On April 6, 2007, she entered into a consent agreement with the Arizona Board of Behavioral Health Examiners in which she acknowledged that her application failed to disclose two DUI arrests, and failed to disclose her alcohol abuse issues. She was granted a license subject to a variety of probationary terms.³¹

In 2009, Ms. Wales applied for licensure in Alaska. She disclosed the information about her Arizona probation, and disclosed a prior DUI conviction, but failed to disclose a 1995 Anchorage DUI conviction.³²

Ms. Wales had very positive professional references, and her supervisor noted that her prior substance abuse problems would help Ms. Wales assist her clients coping with similar problems.³³ The Board recognized that her prior substance abuse, standing alone, would likely not preclude granting her a license.³⁴ Of greater concern, however, was the extent of her misstatements and omissions.

Ms. Wales had lied to a police officer on September 15, 2002, and failed to disclose her 1995 conviction. This failure occurred even after being put on notice of the importance of full

²⁶ Rec. at 203.

²⁷ Rec. at 203 (Licensee Ryan; Applicant Wales).

²⁸ OAH No. 09-0552-CSW (Board of Social Work Examiners 2010), available on line at <http://aws.state.ak.us/officeofadminhearings/Documents/CSW/CSW090552.pdf>.

²⁹ *In re Wales*, page 2.

³⁰ *In re Wales*, page 3.

³¹ *Id.*

³² *In re Wales*, pages 4 – 5.

³³ *In re Wales*, page 5 – 6.

³⁴ *In re Wales*, page 7.

disclosure when she was granted her probationary license in Arizona.³⁵ The Board denied her application, stating

Ms. Wales is currently providing valuable services to the community and, most importantly, the evidence shows without doubt that Ms. Wales cares deeply about her work and about her clients. However, despite the remarkable progress in her life, Ms. Wales has not demonstrated that she has yet reached the point where she can be completely relied on to fully disclose, openly acknowledge, and honestly deal with any serious unforeseen problems that may arise in the future. The ability to do these things, even during periods of stress, is an essential element of fitness to practice for any professional in a position of public trust.^[36]

The most significant difference between the present case and the situation in *In re Wales* is that Ms. Wales had experienced difficulties with her Arizona license for failing to include requested information, and then, two years later, failed to include requested information with her Alaska application. This was a strong indication that Ms. Wales had not yet learned the importance of fully disclosing all negative information when required to do so.

This case is unlike *In Re Wales*. Two of the undisclosed convictions in Mr. F's case involved conduct concurrent with disclosed convictions, and the third was for an unremarkable and easily forgotten citation for disturbing the peace. As discussed above, at the hearing Mr. F was open, candid, and fully accepted responsibility for the non-disclosures, and the evidence does not suggest that he intended to mislead the Board. By contrast, Ms. Wales had failed to disclose a matter to the Alaska Board that only two years previously she had failed to disclose in Arizona, leading to probationary admission there. With that background, the Board was understandably unwilling to rely on Ms. Wales' capacity for self-reporting. No such impediment exists in this case. Rather, Mr. F's situation appears more akin, in particular, to Applicant Clausen, whose application was granted, with probationary status and reporting requirements.³⁷ In that case, as in the two cases involving licensees, the applicant had disclosed some negative information, but failed to disclose other information indicative of a prior potential serious substance abuse problems. That is the same failure that Mr. F has admitted to. The prior

³⁵ *In re Wales*, page 8.

³⁶ *In re Wales*, page 9.

³⁷ Rec. at 203 (Clausen, 2012). The Board's decision to maintain licensure in two other cases also appears, from the limited information provided, to support granting Mr. F's application. *Id.* (Copeland, 2010; & Simpson, 2012). Copeland entered into a consent agreement in 2010, and surrendered his or her license in 2012 after failing to comply with that agreement.

individuals were placed on probation, reprimanded, and fined. Mr. F should receive similar consideration.

IV. Conclusion

Mr. F has a history of alcohol abuse and failed to disclose several misdemeanor convictions on his application. That history and failure do not preclude him from receiving a license, subject to the following conditions.

Mr. F shall be offered the opportunity to enter into a consent agreement with the Board. The agreement will contain the following provisions:³⁸

1. The Board will grant Mr. F a license to practice social work in Alaska, and authorize Mr. F to use the title Master Social Worker;
2. The Division of Corporations, Business and Professional Licensing reviews Mr. F's Alaska criminal record and confirms there have been no additional misdemeanor convictions since September 1, 2013;
3. Mr. F shall accept, without appeal, a reprimand for failing to fully disclose all of his misdemeanor convictions on his application;
4. Mr. F shall pay a civil for of \$1,000. This amount shall be paid by cash, certified check or money order and may be paid monthly in amounts of at least \$100 per month over a ten month period;
5. For the next two years, Mr. F shall obtain counseling at his own expense from a licensed professional approved by the Board with experience in treatment of alcohol addiction. Counseling will occur at a frequency recommended by his counselor. His counselor shall submit a report with the Division of Corporations, Business and Professional Licensing at the end of each three month period confirming Mr. F's attendance and appropriate participation in the counseling sessions;
6. Mr. F's acknowledgement that the Board may impose discipline, including suspension or revocation of his license, for failure to comply with the consent agreement, subject to Mr. F's right to request a hearing on the question of whether he did fail to comply with the terms of the agreement.

³⁸ AS 08.01.075(a) (Board's disciplinary authority).

If Mr. F does not wish to accept the terms of this consent agreement, then his application shall be denied, and he may reapply for a license at any time. The decision not to accept the terms of this consent agreement will not be viewed negatively in the future if he does reapply. The division shall provide Mr. F with a copy of the consent agreement no later than September 22, 2014, and no later than October 13, 2014 Mr. F shall notify the Board, in writing, of his decision regarding acceptance of the consent agreement.

DATED May 1, 2014

By: Signed
Andrew M. Hemenway
Administrative Law Judge

NOTICE OF FINAL DECISION

The Board of Social Work Examiners met on September 11, 2014 and pursuant to AS 4.64.060 (e)(3) revised the proposed decision as requested in the division's proposal for action (page 1 items 1-3 and adopted the proposed decision as revised. A copy of the board's final decision is attached to this notice.

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 October 6, 2014

By: Signed
Andrew M. Hemenway
Administrative Law Judge

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