

**State of New Hampshire
Office of Licensed Allied Health Professionals
Athletic Trainers Governing Board
Concord, New Hampshire**

In the Matter of:
Jennifer A. Gorsuch
(Application for Initial Licensure)

ORDER ON APPLICATION DENIAL

The New Hampshire Governing Board of Athletic Trainers (“Board”) received an incomplete application on July 18, 2011 from Ms. Jennifer A. Gorsuch (“Ms. Gorsuch” or “Applicant”) for initial licensure to practice as an athletic trainer in the State of New Hampshire. Ath 302.01(a). All lines on the application were not complete. Ath 302.01(b)(2). The application was returned to Ms. Gorsuch on July 19, 2011. Ath 302.01(b)(1). Ms. Gorsuch resubmitted her application on July 25, 2011. For the following reasons, at the Board’s regularly scheduled September meeting, the Board voted to **DENY** the Applicant’s request for licensure.

Background

A completed application form was received on July 25, 2011. Ath 302.02; Exhibit 1. On this application Ms. Gorsuch marked "No" to the question "Have you been found guilty or entered a plea of no contest to any felony or misdemeanor?" Ath 302.02(i)(1).

Between August 17, 2011 and August 30, 2011 the following conversations were documented which pertained to this matter:

1. On August 17, 2011, Ms. Gorsuch called the Office of Licensed Allied Health Professionals¹ (“Office”) at approximately 3:55 p.m. to check the status of her application. At that time she was informed that the Board had not received her Maine and New Hampshire criminal offender record reports. Ath 302.04(i). She was told that for that reason her file could not go before the Board. The Applicant stated "...how could I have missed this, wait, is this something that I have to do?" Traci Weber ("Weber"), the Board’s Executive Secretary, explained how to get the criminal offender record reports. Ms. Gorsuch questioned why she needed a criminal offender record report from Maine because she only lived and worked there in

¹ The staff for the Governing Board of Athletic Trainers is located within the Office of Licensed Allied Health Professionals. RSA 328-F:2, IV; RSA 328-F:3, III; Ath 102.02.

the summer. Ms. Weber stated she would check with her supervisor to make sure the Maine report was needed. Exhibit 2.

2. The following morning, on August 18, 2011, Ms. Gorsuch arrived at the Board's office at approximately 8:00 a.m. to purportedly drop off her criminal offender record report. She provided Weber with three (3) applications for a New Hampshire criminal offender record report and no documentation concerning a Maine criminal offender record report. Upon reviewing the documents, Weber notified the Applicant that the documents the Applicant was providing were merely applications for the report (from New Hampshire). Weber explained that the documents were not the criminal offender record reports but rather the applications for such reports. Weber also explained that the Applicant would have to provide the applications to a different state office to obtain the criminal offender record report. Weber further explained that none of the documents provided were for a Maine criminal background report; Weber provided the Applicant with the Maine.gov web site address. Ms. Gorsuch advised Weber that she needed Weber's assistance because she needed to have her file reviewed by the Board that very day.² Ms. Gorsuch further stated that she: "did see the requirement [for the criminal offender record reports] on the 'check sheet' but did not think it was something I had to do." Weber explained that the Applicant's file could not go before the Board that day because the Board meeting was already in session and her file was not complete. Ms. Gorsuch replied: "why do I have to have a Maine criminal background done when I haven't lived there, I have a summer home and I just stayed there a little while and worked there?" Weber showed the Applicant the letter the Office had sent her on July 26, 2011 which outlined what documents were missing from the Applicant's file. Exhibit 3. Weber also read Ms. Gorsuch the rule describing the required criminal offender record report (Ath 302.04(i)). Weber kept one of the applications for New Hampshire criminal offender record reports for Ms. Gorsuch's file. Exhibit 4.

3. Later that day, on August 18, 2011, a male individual (name unknown) telephoned Kerri Lafond ("Lafond"), Chair of the Athletic Trainers Governing Board. The caller telephoned Lafond, not at the Board's Office, but at her place of business. The caller identified himself as Ms. Gorsuch's boss and explained that he was calling to find out why Ms. Gorsuch had not received her license. The caller told Lafond that Ms. Gorsuch had been trying to get licensed

² The Governing Board of Athletic Trainers is a body comprised of volunteer members confirmed by Governor and Council who meet on a monthly basis to conduct board activity. The Board's regularly scheduled meetings occur on the third Thursday of the month. The August 2011 meeting was held on August 18.

from the Board for the past 2 months. He stated that Ms. Gorsuch had told him that the Office staff had told her that "she was all set" and that now she wasn't. The caller informed Lafond that he would be calling "anybody and everybody" to complain about the Office and the Board's proceedings. The caller expressed to Lafond that he "is beyond angry."

That same day, Lafond e-mailed Tina Kelly ("Kelley"), the Administrator of the Office of Licensed Allied Health Professionals, to document the caller's communication with her. Exhibit 5.

4. Shortly thereafter, Kelley emailed a response to Lafond detailing the circumstances surrounding Ms. Gorsuch's application for licensure. Exhibit 5.

5. On August 24, 2011, at approximately 10:00 a.m., Ms. Gorsuch called the Office and spoke with Melody Williams ("Williams"). Ms. Gorsuch requested information on where to go to get a Maine criminal offender record report. Williams provided her with the Maine.gov web site address. Exhibit 6.

6. Later that same day, on August 24, 2011, at approximately 12:30 p.m., Ms. Gorsuch again telephoned the Office requesting the non-Office/private phone number for Robert Fishwick (the Chair of the Board of Directors of Allied Health Professionals) stating that Kerri Lafond told her to contact Robert Fishwick and ask him about the residency laws of New Hampshire.

7. On August 30, 2011, Ms. Gorsuch came to the Board's office to hand deliver her Maine criminal offender record report. The Applicant also attempted to submit another application (not actual report) for the New Hampshire criminal offender record report including the fee. Weber explained to the Applicant that the Applicant was the one responsible for obtaining the report. Weber then stated to the Applicant that she recalled that the Applicant had previously submitted the report and went to retrieve the file. At that time, Weber discovered that the document that had been accepted on August 18, 2011 was merely an application for the report and not the report itself. Weber then provided Ms. Gorsuch directions to the State Police Office on Hazen Drive in Concord to submit the application and have the State Police complete the report.

8. Ms. Gorsuch then handed Weber the Applicant's Maine criminal offender record report. Exhibit 10. Ms. Gorsuch stated: "I am not going to try to fight this any more; I just want to get my license. But, when I went and got the criminal background done, I do have something on my background; it's a misdemeanor, for shoplifting. I thought it was expunged, but it's is not and I answered all the questions on the application." Weber told Ms. Gorsuch that her application form was complete and showed Ms. Gorsuch that she had answered "No" to all the questions

including the one on criminal convictions. Ms. Gorsuch then asked to have the application back so she could fix it or obtain a new application so that she could fill it out correctly. Weber stated that she could not have her application back at this point. Weber further clarified to Ms. Gorsuch that she would have to supply the Board with a written explanation as to why she did not mark "Yes" to the question regarding criminal convictions.

9. Based on a request from Kelley, Weber called the Maine Governor's Office and spoke with their Pardon Office. Without stating names or specifics, Weber queried how long an individual would have wait before their record could be expunged. The Pardon Office informed Weber that a law record will never go away and that a public record could be pardoned after 5 years.

10. To follow up on Weber's conversation two days prior, on September 1, 2011, the Office sent a letter to Ms. Gorsuch requesting the complete details as to why Ms. Gorsuch did not answer "Yes" to the question "Have you been found guilty or entered a plea of no contest to any felony or misdemeanor?" Exhibit 7. The letter also requested the Applicant provide documents supporting her explanation if available and a written explanation of the offense.

11. On September 1, 2011, Ms. Gorsuch hand-delivered a letter to the Office explaining the events that surrounded the shoplifting conviction. Exhibit 8. At that time, an Office staff member told Ms. Gorsuch that the letter also needed to include an explanation of why she did not tell the Board she had this conviction. The Applicant proceeded to hand write an explanation to attach to the original letter. Exhibit 9. In this hand-written letter, Ms. Gorsuch claimed that both she and her father were told that if she paid the fee and completed an online program related to shoplifting then the charges would be expunged. No documentation was ever provided to support Ms. Gorsuch's claims. Ms. Gorsuch further wrote "for every application I applied for I checked that I have never committed a crime."³

³ At this juncture, the Board notes that to be eligible for licensure as an Athletic Trainer in New Hampshire, an applicant must hold a currently valid certificate issued by the National Athletic Trainers Association Board of Certification, Inc. ("NATABOC"). RSA 326-G:4, III. The Board assumes, without deciding, that the NATABOC application requires its certificate applicants to respond to a similar question. It appears that the Applicant may have responded untruthfully to obtain this certification. The Board makes no specific findings on this subject at this time.

Relevant Law:

RSA 328-F:23:

- II. Misconduct sufficient to support disciplinary proceedings shall include:
 - (a) Knowingly or negligently providing inaccurate material information to the board or failing to provide complete and truthful material information upon inquiry by the board, including during the process of applying for a license, license renewal, and license reinstatement.

RSA 328-F:23:

- II. Misconduct sufficient to support disciplinary proceedings shall include:
 - (j) Violation of any provision of this chapter, of any governing board's practice act or rule adopted pursuant to RSA 541-A, or of any state or federal law reasonably related to the licensee's authority to practice or ability to practice safely.

RSA 326-G:4:

Applicants for initial licensure as athletic trainers shall:

- I. Demonstrate sufficient evidence of good professional character and reliability to satisfy the board that the applicant shall faithfully and conscientiously avoid professional misconduct and adhere to this chapter, RSA 328-F, and the board's rules.

Ath 404.02

Misconduct shall be:

- (a) Knowingly or negligently providing inaccurate material information to the board or failing to provide complete and truthful material information upon inquiry by the board, including during the process of applying for a license, license renewal, or license reinstatement.

Ath 404.02

Misconduct shall be:

- (b) Conviction without annulment in any jurisdiction of any criminal offense which:

...

- (3) Involves:
 - a. Injury to a victim;
 - b. The risk of such injury; or
 - c. Dishonesty;

Ath 404.02:

Misconduct shall be:

- (j) Violating:
 - (1) Any provision of RSA 328-F;
 - (2) Any provision of RSA 326-G;
 - (3) Any rule adopted by the board;

Findings of Fact and Rulings of Law:

- On July 25, 2011, Ms. Gorsuch provided the Board with a completed application that stated that she had never been found guilty or entered a plea of no contest to any felony or misdemeanor. Ms. Gorsuch made repeated attempts to evade providing the Board with her Maine criminal offender record report. The Maine criminal offender record report indisputably shows that Ms. Gorsuch had been found guilty of "theft by unauthorized taking or transfer" on September 19, 2007.
 - The Board thus finds that the Applicant has knowingly or negligently provided inaccurate material information to the board in the process of applying for a license in violation of RSA 328-F:23 (a).
 - The Board thus finds that the Applicant has also failed to provide complete and truthful material information upon inquiry by the board during the process of applying for a license in violation of RSA 328-F:23 (a).
 - The Board thus finds that the Applicant knowingly or negligently providing inaccurate material information to the board during the process of applying for a license in violation of Ath 404.02(a).
 - The Board thus finds that the Applicant failed to provide complete and truthful material information upon inquiry by the board during the process of applying for a license in violation of Ath 404.02(a).

- The Board thus finds that the Applicant has not demonstrated sufficient evidence of good professional character and reliability to satisfy the board that the applicant shall faithfully and conscientiously avoid professional misconduct and adhere to this chapter, RSA 328-F, and the board's rules in violation of RSA 326-G:4, I.
 - The Board thus finds that the Applicant has violated provisions of RSA 328-F, RSA 326-G, and the Board's administrative rules, which are "reasonably related to the licensee's authority to practice or ability to practice safely" in violation of RSA 328-F:23 (j) and Ath 404.04.
- The Applicant was found guilty of "theft by the unauthorized taking or transfer." This is a "conviction without annulment in any jurisdiction of any criminal offense which involves injury to a victim; the risk of such injury; or dishonesty." See Ath 404.02(b)(3).
 - The Board finds this in violation of RSA 328-F:23, II (j) and RSA 326-G:4, I and Ath 404.02(j).
- On the completed application provided on July 25, 2011, Ms. Gorsuch had signed her name under the statement:

I acknowledge that knowingly making a false statement on this application form is a misdemeanor under RSA 641:2, I. I certify that the information I have provided on all parts of the application form and in the documents that I have personally submitted to support my application is complete and accurate to the best of my knowledge and belief. I also certify that I have read the statute and the rules of the Board and promise that, if I am licensed, I will abide by them.

Ms. Gorsuch signed this oath despite knowing she had been convicted of a misdemeanor as evidenced by her letter provided to the Board on September 1, 2011 describing the incident. There is no evidence to support Ms. Gorsuch's claim that she believed the conviction had been expunged. The Board finds the Applicant's actions in violation of RSA 328-F:23 (a) and (j), RSA 326-G:4, Ath 404.02(a), Ath 404.02(b)(3), and Ath 404.02(j).

- The Board is concerned with the following alleged actions. One, the Applicant's untrue statement to the Office via telephone on August 24, 2011 representing that the Board's Chair advised her to contact the Board of Directors of Allied Health Professional's President. Two, the Applicant's untrue statement to the male caller that the Office told her that her application was complete. Three, the male caller's inappropriate telephone call to the Board's Chair on the Applicant's behalf. Without further information, the Board is not making specific findings against the Applicant as to these allegations.

Conclusion:

For the reasons stated above, the Applicant's application for licensure is **DENIED**.

THEREFORE IT IS ORDERED this Order on Application Denial ("Order") will become a 'final order' within fifteen (15) days of the effective date of this Order, as defined further below, unless prior to 4:00 p.m. on the fifteenth day of the effective date of this Order the Board receives a written request for a hearing; and

IT IS FURTHER ORDERED that receipt of a timely filed hearing request shall automatically temporarily stay this Order and a further order shall be issued in due course in which the Board establishes a date and time of the hearing, and specifies the issues to be heard; and

IT IS FURTHER ORDERED that any hearing held in response to this Order shall be a non-adjudicatory hearing conducted pursuant to RSA chapter 326-E; RSA chapter 328-F and RSA chapter 541-A. The Applicant may request to be heard on any relevant matter of law or fact, but evidentiary proceedings shall be conducted only to the extent the Applicant has identified disputed factual issues which require resolution. This non-adjudicatory hearing will be conducted in non-public session unless the Applicant makes a timely written request to conduct it in public session. Subsequent to such hearing, the Board will issue a 'final order' within the statutory amount of time; and

IT IS FURTHER ORDERED that by analogy to RSA 328-F:24, VII a 'final order' is a public document; and

IT IS FURTHER ORDERED that once a Board order is a 'final order' in accordance with either of the circumstances outlined above, the Applicant has thirty (30) days to file a


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request for reconsideration. Such motion shall comply with the Board's statutes, rules and RSA chapter 541.

IT IS FURTHER ORDERED that this Order shall take effect as an Order of the Board on the date it is signed by an authorized representative of the New Hampshire Governing Board of Respiratory Care Practitioners.

BY ORDER OF THE BOARD

October 20, 2011



Tina M. Kelley
Authorized Representative of the Board