

JUN 19 2019

DEPT OF INSURANCE  
BY MEK 6/19/19

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

**In the Matter of:**

**FOGARTY, MAUREEN A.**

**No. 19A-059-INS**

**Petitioner.**

**ORDER**

On June 18, 2019, the Office of Administrative Hearings, through Administrative Law Judge Velva Moses-Thompson, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Director of the Department of Insurance ("Interim Director") on June 18, 2019, a copy of which is attached and incorporated by this reference. The Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The Director adopts the Recommended Findings of Fact and Conclusions of Law with the following correction:
  - a. Finding of Fact paragraph 23 shall be changed to read: "At hearing, the Department presented the testimony of Mary Kosinski, and presented exhibits 1 and 3 through 15."
2. The Director denies **Maureen A. Fogarty's** application for an Arizona insurance producer license.

**NOTIFICATION OF RIGHTS**

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Petitioner may request a rehearing with respect to this order by filing a written motion with the Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis

1 for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary  
2 to request a rehearing before filing an appeal to Superior Court.

3 Petitioner may appeal the final decision of the Director to the Superior Court of  
4 Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal  
5 must notify the Office of Administrative Hearings of the appeal within ten days after filing  
6 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

7 DATED this 19<sup>th</sup> day of June, 2019.

8   
9  
10 Keith A. Schraad, Director  
Arizona Department of Insurance

11  
12 **COPY** of the foregoing mailed this  
20<sup>th</sup> day of June, 2019, to:

13 Maureen A. Fogarty  
14 7749 N. Via De Frontera  
15 Scottsdale, AZ 85258  
Petitioner

16 Office of Administrative Hearings  
17 1740 West Adams St., Lower Level  
Phoenix, Arizona 85007

18 **COPY** of the foregoing delivered, same date, to:

19 Mary Kosinski, Regulatory Legal Affairs Officer  
20 Catherine O'Neil, Consumer Legal Affairs Officer  
Steven Fromholtz, Assistant Director – Consumer Protection Division  
21 Aqueelah Currie, Licensing Supervisor  
Sharyn Kerr, Consumer Protection Division  
22 Arizona Department of Insurance  
100 North 15<sup>th</sup> Ave., Suite 102  
Phoenix, Arizona 85007-2624

23 **COPY** sent same date via electronic mail to:

24 Felicia DelSol  
25 [Felicia.DelSol@azoah.com](mailto:Felicia.DelSol@azoah.com)  
26 Office of Administrative Hearings

1 Susan Hack  
2 [Susan.hack@azag.gov](mailto:Susan.hack@azag.gov)  
3 Attorney General Paralegal

4 Deian Ousounov  
5 Assistant Attorney General  
6 [AdminLaw@azag.gov](mailto:AdminLaw@azag.gov)  
7 Attorney for the Department of Insurance

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9 Francine Martinez

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JUN 18 2019

DEPT. OF INSURANCE  
BY: MEK

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 19A-059-INS

Fogarty, Maureen

ADMINISTRATIVE LAW JUDGE  
DECISION

Petitioner

**HEARING:** May 29, 2019

**APPEARANCES:** Petitioner Maureen Fogarty appeared on behalf of herself.  
Assistant Attorney General Deian Ousounov appeared on behalf of the Arizona  
Department of Insurance.

**ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

**FINDINGS OF FACT**

1. On or about October 28, 1998, Petitioner was convicted for an attempted violation of the Uniform Controlled Substances Act, a class one misdemeanor, in the Superior Court of Washington, King County. See Exhibit 1 and 9. The conviction was based on arrest which occurred on or about April 8, 1998. See Exhibit 9. Petitioner was arrested because she called in a prescription for herself for tranxene. See id. Petitioner misrepresented herself as a person authorized to call in a prescription.<sup>1</sup> Petitioner was sentenced to probation which terminated on October 26, 1999. See id.

2. On or about June 15, 1999, the State of Washington Department of Health Nursing Care Quality Assurance Commission (Washington Board) entered an Ex Parte Order of Summary Action, In the Matter of the License to Practice Registered Nursing of Maureen Fogarty, R.N., Docket No. 99-05-A-1065RN (Washington Board Order 1999). The Washington Board Order 1999 summarily suspended Fogarty's Registered Nurse License No. 00123259.

3. On or about November 18, 1999, the Washington Board entered a Stipulated Findings of Fact, Conclusions of Law and Agreed Order in Washington

<sup>1</sup> See Ms. Fogarty's testimony at the Hearing Audio 19A-059-INS.DSS (HAUD) at 52:40 – 53:50.

1 Board Order 1999 which indefinitely suspended Petitioner's license to practice as a  
2 registered nurse.

3 4. On or about March 21, 2003, the Washington Board entered a Findings of  
4 Fact, Conclusions of Law and Order on Petition for Reinstatement in Washington Board  
5 Order 1999 which granted Fogarty's petition for reinstatement subject to probation.

6 5. On or about January 29, 2002, the Indiana State Board of Nursing  
7 (Indiana Board Order) filed Findings of Fact and Order in State of Indiana v. Maureen  
8 A. Fogarty, Cause No. 2001 NB 025 (Indiana Board Order 2002). The Indiana Board  
9 Order 2002 indefinitely suspended Fogarty's Registered Nurse License No. 28128594.

10 6. On or about June 9, 2004, the Indiana Board filed Findings of Fact,  
11 Conclusions of Law and Order in Cause No. 2001 NB 025 (Indiana Board Order 2004).  
12 The Indiana Board Order 2004 reinstated Fogarty's license as a registered nurse on  
13 indefinite probation. On or about October 6, 2006, the Indiana Board filed a Final Order  
14 in Cause No. 2001 NB 0025 (Indiana Board Order 20§06). The Indiana Board Order  
15 2006 withdrew the probation on Fogarty's nursing license.

16 7. On or about September 4, 2013, the Board of Registered Nursing,  
17 Department of Consumer Affairs, State of California, filed a Decision and Order, In the  
18 Matter of Maureen Anne Fogarty, Case No. 2013-1006 (California Board Order). The  
19 California Board Order adopted a Stipulated Surrender of License and Order accepting  
20 the voluntary surrender of Fogarty's Registered Nurse License No. 785041 as an  
21 imposition of discipline against her. See Exhibit 10.

22 8. On or about April 12, 2012, the Kentucky Board of Nursing (Kentucky  
23 Board) issued an Agreed Order for Voluntary Surrender, Case # 2012-1109, In Re:  
24 Maureen Anne Fogarty (Kentucky Board Order 2012). The Kentucky Board Order 2012  
25 accepted the voluntary surrender of Fogarty's Registered Nurse License No. 1102313.

26 9. On or about March 19, 2019, the Kentucky Board entered an Agreed  
27 Order, Case #2108-RS019, In Re Maureen Anne Fogarty (Kentucky Board Order  
28 2019). The Kentucky Board Order 2019 reinstated Fogarty's nursing license in a  
29 probationary status and ordered Ms. Fogarty to pay a civil penalty of \$600.00.  
30

1           10. On or about April 24, 2014, Petitioner filed a registered nurse application  
2 with the Arizona State Board of Nursing. See Exhibit 9.

3           11. On May 14, 2015, the Board issued a notice denying the April 24, 2014  
4 application. See Exhibit 9. Pursuant to the order, Petitioner is not eligible to reapply for  
5 licensure as a registered nurse for at a minimum, five years from the effective date of  
6 the May 14, 2015 order. The Board also revoked any temporary license issued to  
7 Petitioner. See *id.*

8           12. On or about April 25, 2016, Petitioner was convicted of Solicitation to  
9 Commit taking Identity of Another, a class six undesignated felony, in the Superior  
10 Court of Arizona, Maricopa County. See Exhibit 5. The conviction was based upon  
11 conduct which occurred in March of 2015, when Petitioner caused a letter to be forged  
12 by her friend which was purportedly from a medical doctor. See Exhibit 9, pg. 4.  
13 Petitioner was subject to random drug screen from the nursing board which tested  
14 positive for cocaine. The false letter alleged that the medical doctor used cocaine in a  
15 nasal procedure performed the day before the drug test. Ms. Forgarty submitted the  
16 false letter to the nursing board. See *id.* Petitioner was sentenced to two years of  
17 supervised probation. On August 15, 2017, the Court terminated Petitioner's probation  
18 and designated the offense a misdemeanor. See Exhibit 6.

19           13. On or about September 17, 2018, Petitioner filed an application to set  
20 aside the April 24, 2016 conviction.

21           14. On January 17, 2019, the Court denied Petitioner's application to set  
22 aside the April 24, 2016 conviction due to the nature of the offense, the fact that  
23 Petitioner had just completed probation, and Petitioner's prior conviction for a fraud  
24 related offense from Washington in 1998.

25           15. On or about February 16, 2019, Petitioner filed an application for an  
26 Individual Producer License (Application) with a line of authority in accident and health  
27 or sickness insurance. See Exhibit 1.

28           16. Petitioner did not disclose the 1998 misdemeanor conviction.  
29  
30

1 17. Petitioner did not disclose the 2015 Arizona Board Order, the California  
2 Board Order, the 2012 Kentucky Order, and the Indiana Orders from 2002, 2004, and  
3 2006, on the application.

4 18. Petitioner answered "Yes" to the question which asked, "Have you ever  
5 been convicted of a misdemeanor, had a judgment withheld or deferred or are you  
6 currently charged with committing a misdemeanor?"

7 19. Petitioner answered "No" to the question which asked, "Have you ever  
8 been named or involved as a party in an administrative proceeding, including FINRA  
9 sanction or arbitration proceeding regarding any professional or occupation license or  
10 registration? 'Involved' also means being named as a party to an administrative or  
11 arbitration proceeding, which is related to a professional or occupational license, or  
12 registration. 'Involved' also means having a license or registration application denied or  
13 the act of withdrawing an application to avoid a denial. INCLUDE any business so  
14 named because of your actions in your capacity as an owner, partner, officer or  
15 director, or member or manager of a Limited Liability Company. You may EXCLUDE  
16 terminations due solely to noncompliance with continuing education requirements or  
17 failure to pay a renewal fee. If you answer yes, you must attach to this application: a) a  
18 written statement identifying the type of license and explaining the circumstances of  
19 each incident, b) a copy of the Notice of Hearing or to her document that states the  
20 charges and allegations, and c) a copy of the official document, which demonstrates the  
21 resolution of the charges or any final judgment."

22 20. On or about March 25, 2019, the Department notified Petitioner that her  
23 application was denied.

24 21. On or about April 3, 2019, Petitioner filed an appeal regarding the denial.

25 22. The matter was referred to the Office of Administrative Hearings for an  
26 evidentiary hearing.

27 23. At hearing, the Department presented the testimony of  
28 \_\_\_\_\_, and presented exhibits 1 and 3 through 15. Ms. Fogarty testified  
29 on her own behalf.

30 24. Ms. Fogarty asserted that she was not trying to hide anything because her  
past criminal history and professional license discipline history are public record.

1 Ms. Fogarty testified that her misdemeanor conviction from the state of Washington had  
2 been expunged. Ms. Fogarty stated that a judge in Washington told her that she was  
3 not required to report the conviction because it had been expunged. Ms. Fogarty stated  
4 that she had evidence that her criminal history in Washington had been expunged, but  
5 Ms. Fogarty did not bring any written evidence of the expungement to the hearing. Ms.  
6 Fogarty argued that no deceit was intended. Ms. Fogarty testified that she is currently  
7 being monitored by the nursing board.<sup>2</sup> Ms. Fogarty testified that she did not report her  
8 professional license discipline history on the application because the application was for  
9 insurance producer's license.

10 25. Ms. Fogarty asserted that she is accountable and more safe than most  
11 people. Ms. Fogarty testified that she is specifically requested by physicians and is  
12 highly respected.

### 13 CONCLUSIONS OF LAW

14 1. Ms. Fogarty bears the burden of persuasion. See Arizona Revised  
15 Statutes (A.R.S.) § 41-1092.07(G)(1).

16 2. The standard of proof on all issues in this matter is that of a preponderance  
17 of the evidence. Arizona Administrative Code § R2-19-119.

18 3. A preponderance of the evidence is:

19 The greater weight of the evidence, not necessarily established  
20 by the greater number of witnesses testifying to a fact but by  
21 evidence that has the most convincing force; superior  
22 evidentiary weight that, though not sufficient to free the mind  
23 wholly from all reasonable doubt, is still sufficient to incline a  
24 fair and impartial mind to one side of the issue rather than the  
25 other.

26 BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

27 4. The preponderance of the evidence shows that Ms. Fogarty provided  
28 misleading and incomplete information on the license application, which is a violation of  
29 A.R.S. § 20-295(A)(1).  
30

<sup>2</sup> See Ms. Fogarty's closing argument at HAUD 57:15 to 58:23.

1           5.     The preponderance of the evidence shows that Ms. Fogarty used fraudulent  
2 and dishonest practices in the conduct of business in Arizona and elsewhere, which is a  
3 violation of A.R.S. § 20-295(A)(8).

4           6.     The preponderance of the evidence shows that the Arizona State Board of  
5 Nursing denied Ms. Fogarty's registered nurse license application, which is a violation of  
6 A.R.S. § 20-295(A)(9).

7           7.     The preponderance of the evidence shows that Ms. Fogarty's license to  
8 practice registered nursing was suspended in the Washington and Indiana, which is a  
9 violation of A.R.S. § 20-295(A)(9).

10           8.     Consequently, the Department's Director has discretion to deny  
11 Ms. Fogarty's application based on A.R.S. § 20-295(A).

12           9.     Ms. Fogarty has failed to demonstrate by a preponderance of the  
13 evidence that the Department's decision to deny her application should be overturned.

14           10.    Ms. Fogarty's appeal should be dismissed.

15                                        **ORDER**

16           **IT IS ORDERED** that Maureen A. Fogarty's appeal is dismissed.

17           *In the event of certification of the Administrative Law Judge Decision by the Director of*  
18 *the Office of Administrative Hearings, the effective date of the Order is five days after*  
19 *the date of that certification.*

20           Done this day, June 18, 2019.

21    /s/ Velva Moses-Thompson  
22    Administrative Law Judge

23           Transmitted electronically to:

24           Keith A. Schraad, Director  
25           Arizona Department of Insurance  
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