

BEFORE THE IOWA BOARD OF PHARMACY

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RE:	)	CASE NO: 2006-104
Pharmacist License of	)	DIA NO: 15PHB021
	)	
KEVIN J. O'ROURKE	)	FINDINGS OF FACT,
License No. 15064	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

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On November 3, 2015, a hearing was held before the Iowa Board of Pharmacy (Board) on the Reinstatement Application filed by Kevin J. O'Rourke (Respondent). The following members of the Board presided at the hearing: James Miller, Chairperson; Edward Maier; Edward McKenna; Sharon Meyer; Jason Hansel; and LaDonna Gratias. Assistant Attorney General Meghan Gavin represented the state. Respondent appeared and was self-represented. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2015), and was recorded by a certified court reporter. After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The administrative law judge was instructed to prepare the written decision for Board approval, in conformance with the Board's deliberations.

THE RECORD

The record includes the Notice of Hearing; testimony of Respondent; State Exhibits 1-9 (See Exhibit Index for description) and Respondent Exhibits A-F.

FINDINGS OF FACT

1. On July 1, 1977, the Board issued Respondent license number 15064 to engage in the practice of pharmacy, subject to the laws of the state of Iowa and the rules of the Board.

On October 25, 1990, the Board issued Findings of Fact, Conclusions of Law, Decision and Order that placed Respondent's license on probation for three (3) years, subject to terms and conditions. This discipline was based on findings that Respondent diverted Schedule II controlled substances from the pharmacy where he worked and illegally used the controlled substances while working as a pharmacist. Respondent was

required to abstain from the use of controlled substances unless properly prescribed, to continue under psychiatric care and to continue to obtain counseling, to attend aftercare support groups, and to have random urine screenings. (State Exhibits 1, 2, 6)

2. On March 13, 2007, the Board filed a second Statement of Charges asserting that Respondent had violated Minnesota law while practicing in that state as a pharmacist, was professionally incompetent, and was unable to practice pharmacy with reasonable skill and safety due to chemical abuse. The Statement of Charges alleged that Respondent opened capsules of Adderall (a controlled substance) and removed the active ingredient prior to dispensing the capsules to patients. Respondent had surrendered his Minnesota license on August 11, 2006. On June 5, 2007, the Iowa Board accepted Respondent's voluntary surrender of his Iowa license. The Order Accepting Surrender of Pharmacist License stated that the surrender shall be considered a revoked license with respect to any future request for reinstatement. (State Exhibits 3, 4)

3. On May 3, 2011, Respondent filed his first request to reinstate his Iowa pharmacist license following the voluntary surrender. The Board denied that request following an evidentiary hearing. (State Exhibit 6).

4. On September 12, 2013, Respondent filed his second request to reinstate his Iowa pharmacist license. Once again, the Board denied Respondent's reinstatement request following an evidentiary hearing. The Board concluded that Respondent had not presented sufficient evidence to establish that he was currently able to practice pharmacy safely. Respondent had not submitted a current substance abuse evaluation and the most recent documentary evidence concerning Respondent's substance abuse was from his treatment program in 2006. (State Exhibit 7)

5. On September 10, 2015, Respondent filed his third reinstatement request. (Notice of Hearing). At hearing, Respondent submitted the following documentation:

a) A written report from a substance abuse evaluation that was completed on August 7, 2015. The evaluation report concluded that Respondent does not currently meet the criteria for a substance abuse disorder. The evaluator did not recommend any treatment for Respondent. (State Exhibit 8)

b) A letter from Respondent's family physician for the past five years. The letter was dated October 13, 2015 and states that Respondent has not shown any narcotic seeking behavior and has not had any further instances of substance abuse, to the best of his physician's knowledge. Respondent's physician asked the Board to consider allowing Respondent to return to the practice of pharmacy. (Respondent Exhibit B)

c) Verification of Respondent's attendance at Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings during the past four months. (Respondent Exhibits C-F)

6. Respondent has been employed in construction since 2006. The work is seasonal, and Respondent is currently laid off. If Respondent is allowed to return to the practice of pharmacy, he hopes to eventually gain employment as a relief pharmacist in the Iowa City area. In preparation for returning to the profession, Respondent has completed approximately 120 hours of continuing education in the last eighteen months. Respondent has been attending AA and NA and has been working through the 12 steps. Respondent testified that he last used controlled substances, not properly prescribed, in June 2006. Respondent further testified that he has had an occasional beer since that time but that he stopped drinking alcohol on June 27, 2015. Respondent reports that he receives support for maintaining his sobriety from his church, his family, and his fellow members of AA. (Respondent testimony)

#### CONCLUSIONS OF LAW

657 Iowa Administrative Code 36.13 provides, in relevant part:

**657-36.13(17A,124B,147,155A,272C) Reinstatement.** Any person whose license to practice pharmacy...has been revoked or suspended shall meet the following eligibility requirements for reinstatement:

**36.13(1) Prerequisites.** The individual shall satisfy all terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms or conditions upon which reinstatement might occur, or if the license...was voluntarily surrendered, an initial application for

reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

**36.13(2) Pharmacist license revoked or surrendered-examinations required.** A person whose license to practice pharmacy was revoked or voluntarily surrendered must successfully pass the North American Pharmacist Licensure Examination (NAPLEX) or an equivalent examination as determined by NABP and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition.

**36.13(3) Proceedings.** The respondent shall initiate all proceedings for reinstatement by filing with the board an application for reinstatement of the license...Such application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or relinquished. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board...

**36.13(4) Burden of Proof.** An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license... to be reinstated. The burden of proof to establish such facts shall be on the respondent.

**36.13(5) Order.** An order for reinstatement shall be based upon a decision that incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657-Chapter 14.

The Board's rules establish a heavy burden on a person seeking reinstatement of a revoked or surrendered license. The applicant for reinstatement must present persuasive evidence that the issues leading to the loss of the license have been fully resolved and that it is in the public interest for the license to be reinstated. Upon reviewing the record, the Board was persuaded that Respondent has resolved the issues that led to the surrender of his license and is now ready to begin the process to return to the practice pharmacy. Due to the length of time (over 9 years) that Respondent has been away from pharmacy practice, the Board has determined that Respondent will be required to complete a 500 hour internship, under supervision, prior to being allowed to sit for the NAPLEX and MPJE examinations. During this time, Respondent will be monitored by the Board. Upon successful completion of the supervised internship and

successful completion of the NAPLEX and MPJE examinations, Respondent's license will be reinstated on probation, subject to terms and conditions.

#### DECISION AND ORDER

IT IS THEREFORE ORDERED that prior to reinstatement of his license, Respondent Kevin J. O'Rourke must first comply with the following requirements:

A. Respondent must register as an intern, pay any applicable fee, and successfully complete a 500 hour internship at an Iowa site(s) approved by the Board. The 500 hour internship must be completed within one (1) year of the issuance of this Decision and Order. During the internship, Respondent shall be required to:

- Notify all prospective preceptor(s) and any pharmacist-in-charge of the terms, conditions, and restrictions imposed on Respondent by this Reinstatement Order. Notification shall be made no later than the time of interview. Within fifteen (15) days of starting a new internship, Respondent shall cause his preceptor(s) and the pharmacist-in-charge to report to the Board in writing, acknowledging that the preceptor and pharmacist-in-charge have read this Decision and Order of the Board and understand it.
- Ensure that his preceptor(s) file a quarterly written report with the Board concerning Respondent's performance and progress as a pharmacist-intern. The first report shall be due three (3) months after Respondent begins the internship;
- Abstain from the use of alcohol and from the use of controlled substances not properly prescribed by a licensed treating health provider;
- Attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) on a weekly basis and obtain written verification of attendance;
- Participate in the Board's Impaired Pharmacy Professional Recovery Program (IPRN);
- File written, sworn quarterly reports with the Board no later than March 5, June 5, September 5, and December 5 of each year of Respondent's internship. The quarterly reports shall include Respondent's current place of employment, home address, home telephone number or work

telephone number, written verification of his weekly attendance at AA or NA, and a list of Respondent's current prescriptions;

- Provide witnessed blood, hair or urine specimens on demand by the Board or its agents. Respondent shall participate in the Board's approved alcohol and drug screening program (NTS) and will be responsible for any costs of compliance with that program. All costs related to participation in the NTS program and all costs relating to the collection and analysis of such specimens shall be paid by Respondent.

Upon completion of the 500 hour internship, Respondent may apply to take the licensing examinations (NAPLEX and MPJE).

B. Respondent must take and pass the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE), Iowa Edition, as required by Iowa Code section 657 IAC 36.13(2). Respondent must successfully complete the examinations within one (1) year of completing his internship.

Upon timely completion of the required examinations, Respondent's pharmacist license no. 15064 will be REINSTATED and shall immediately be placed on PROBATION for a term of five (5) years. IT IS FURTHER ORDERED that Respondent's probation will be subject to the following terms and conditions:

A. Respondent shall notify all prospective pharmacy or pharmacy-related employers, including any pharmacist-in-charge, of the terms, conditions, and restrictions imposed on Respondent by this Reinstatement Order. Notification shall be made no later than the time of interview. Within fifteen (15) days of undertaking new employment as a pharmacist or in a pharmacy-related business, Respondent shall cause his pharmacy employer and any pharmacist-in-charge to report to the Board in writing, acknowledging that the pharmacy employer and pharmacist-in-charge have read this document and understand it.

B. Respondent shall not consume alcohol and shall not use any controlled substances or prescription drug in any form unless the controlled substance or prescription drug has been authorized and prescribed for him by a licensed, treating physician or other qualified health care provider. Respondent shall

inform any treating physician or other treating health care provider of his medical and substance abuse history, including his history of drug diversion.

C. Respondent shall provide witnessed blood, hair or urine specimens on demand by the Board or its agents. Respondent shall participate in the Board's approved alcohol and drug screening program (NTS) and will be responsible for any costs of compliance with that program. All costs related to participation in the NTS program and all costs relating to the collection and analysis of such specimens shall be paid by Respondent.

D. Respondent shall continue regular weekly attendance at Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) and shall provide documentation of attendance in his quarterly reports to the Board.

E. Respondent shall file written, sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of his probation. The reports shall be filed no later than March 5, June 5, September 5, and December 5 of each year of Respondent's probation. The quarterly reports shall include Respondent's current place of employment, home address, home telephone number or work telephone number, written verification of attendance at weekly AA/NA meetings, and a current list of all of Respondent's prescribed medications.

F. Respondent shall not supervise any registered pharmacist-intern and shall not perform any of the duties of a pharmacy preceptor.

G. Respondent shall not own or manage a pharmacy, nor serve as the pharmacist in charge of a pharmacy.

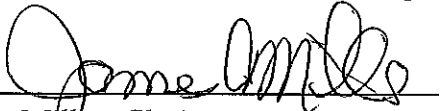
H. During probation, Respondent shall inform the Board in writing within ten (10) days of any change of home address, employment status, place of employment, home telephone number or work telephone number.

I. Respondent shall obey all federal and state laws and regulations related to the practice of pharmacy and the distribution of controlled substances.

J. Respondent shall appear informally before the Board or a Board committee upon request for the purpose of reviewing his performance as a pharmacist during the probationary period. The Board shall give Respondent reasonable notice of the date, time, and location for such appearances.

K. Should Respondent violate or fail to comply with any of the terms or conditions of probation, the Board may initiate action to revoke or suspend Respondent's Iowa pharmacist license or to impose other licensee discipline as authorized by Iowa Code chapters 272C and 155A and 657 IAC 36.

Dated this 12<sup>th</sup> day of January, 2016.

A handwritten signature in cursive script, appearing to read "James Miller", written over a horizontal line.

James Miller, Chairperson  
Iowa Board of Pharmacy

cc: Meghan Gavin, Assistant Attorney General

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.