

BEFORE THE BOARD OF PHARMACY EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE DENIAL)	DIA NO: 07PHB006
OF THE PHARMACY TECHNICIAN)	
REGISTRATION APPLICATION OF:)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
DONALD MATTHEW NELSON,)	DECISION AND ORDER
Respondent		

TO: DONALD MATTHEW NELSON

On or about September 13, 2006, the Iowa Board of Pharmacy Examiners (Board) denied the pharmacy technician registration application filed by Donald Matthew Nelson (Respondent) based on his previous misdemeanor convictions. Respondent requested a hearing, and a Notice of Hearing was issued. The hearing was held on June 5, 2007 at 1:00 p.m. in the conference room at 400 SW 8th Street, Des Moines, Iowa. The following members of the Board presided at the hearing: Paul Abramowitz, Chairperson; Lemar Olson; Susan Frey; Margaret Whitworth; Barbara O'Roake; and Dee Ann Wedemeyer-Oleson. Respondent appeared and was self-represented. Assistant Attorney General Scott Galenbeck represented the state. The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code sections 155A.40(3) and 21.5(1)(a).

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 Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

THE RECORD

The record includes the Notices of Hearing; the testimony of the witnesses; and the following exhibits:

State Exhibit A:	Minutes of Board Action Denying Respondent's Application
State Exhibit B:	Request for Hearing and Application

Respondent Exhibit 1: Letter dated 4/7/06 (ASAC to
Johnson County District Court)
Respondent Exhibit 2: Certificate of Completion,
Drinking Driver Program, 3/25/06

FINDINGS OF FACT

1. On July 30, 2006, Respondent submitted an Initial Application For Pharmacy Technician Registration to the Board. Respondent answered "yes" to the question asking if he had ever been charged, convicted, found guilty of, or entered a plea of guilty or no contest to a felony or misdemeanor crime (other than minor traffic violations with fines under \$100). On an attached sheet, Respondent provided written explanations for the following misdemeanor convictions:

a. OWI/Possession of Drug Paraphernalia, 7/8/05

Respondent met friends for drinks after working third shift at Walgreens. While driving home, Respondent fell asleep at the wheel, and his car went off the road and into a field. The police were called, and Respondent admitted that he had too much to drink. During their investigation, the police discovered a small amount of marijuana in a box in Respondent's car. Respondent claims that the marijuana belonged to a friend and denies using marijuana that night, but admits that he had used marijuana in the recent past. The marijuana possession charge was dropped to possession of paraphernalia.

b. Consumption/Intoxication and Disorderly Conduct,
3/21/98

Respondent explained these convictions resulted from his verbal confrontation with a bouncer while leaving a bar.

Respondent further stated that he has not used marijuana since July 2005, that he no longer drinks alcohol to excess, and that he no longer drinks and drives. Respondent abstained from alcohol entirely for six months after the July 2005 OWI conviction and reported that he now only occasionally drinks beer with friends. (State Exhibit B)

2. On September 13, 2006, the Board approved a motion denying Respondent's application for a pharmacy technician registration. (State Exhibit A)

3. Respondent has been employed by Walgreens since August 2003 and is currently the Assistant Manager of a Walgreens in Marion, Iowa. The Assistant Manager position requires registration as a pharmacy technician so that the Assistant Manager can help out in the pharmacy area when the pharmacy is busy. Mike Fuller is a District Pharmacy Manager for Walgreens who formerly supervised Respondent. Mr. Fuller supports Respondent's application for registration as a pharmacy technician and described Respondent as very honest and good with customers. (Testimony of Respondent; Mike Fuller; State Exhibit B)

4. Respondent acknowledged that he has made mistakes and has exercised poor judgment in the past. He participated in Intensive and Extended Outpatient Treatment at Area Substance Abuse Council (ASAC) in Cedar Rapids beginning on November 22, 2005 and successfully completed the program on April 5, 2006. Respondent also submitted verification of his completion of a 12 Hour Drinking Driver Program on March 24-25, 2006. (Testimony of Respondent; Respondent Exhibits 1, 2)

CONCLUSIONS OF LAW

A person who is or desires to be a pharmacy technician in this state shall apply to the board for registration. The application must be submitted on a form prescribed by the board. A pharmacy technician must be registered pursuant to rules adopted by the board. Iowa Code section 155A.6(6)(2007).

The board may deny...a pharmacy technician registration for any violation of the laws of this state...relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of this chapter or chapter 124, 124A, 126, 147, or 205, or any rule of the board. Iowa Code section 155A.6(7)(2007). See also, 657 IAC 3.29.

The board shall adopt rules in accordance with chapter 17A on matters pertaining to pharmacy technician registration...Iowa Code section 155A.6(8)(2007).

The board has promulgated rules relating to pharmacy technicians at 657 Iowa Administrative Code chapter 3.

Respondent's alcohol and drug related convictions provided a legal basis for the Board's decision to deny his application for registration as a pharmacy technician. Iowa Code section 155A.6(7); 657 IAC 3.29. Convictions for driving while intoxicated, possession of illegal drug paraphernalia, public intoxication, and disorderly conduct reflect poorly on Respondent's fitness as a registered pharmacy technician. In addition, Respondent has admitted relatively recent use of marijuana. Nevertheless, based on the presentation at hearing, the Board was persuaded that Respondent has taken important steps to address his substance abuse issues and appears sincere in his resolve to avoid similar problems in the future. Respondent's misdemeanor convictions will not preclude his registration as a pharmacy technician provided he fully complies with all of the conditions imposed by this Order. These conditions are necessary to ensure protection of the public.

DECISION AND ORDER

IT IS THEREFORE ORDERED that within sixty (60) days of the date of issuance of this Decision and Order, Respondent Donald Matthew Nelson shall complete a Substance Abuse Assessment by a program or evaluator pre-approved by Board staff. Respondent shall sign any written releases necessary to allow the program/evaluator to provide a written report of the assessment to the Board. Upon satisfactory completion of the Substance Abuse Assessment and submission of a written assessment report, Respondent will be issued a Pharmacy Technician Registration. Respondent's Pharmacy Technician Registration will immediately be placed on probation for a period of one (1) year, subject to the following terms and conditions:

- A. Respondent shall fully comply with any recommendations made by the program/evaluator conducting the Substance Abuse Assessment, including but not limited to: abstinence from alcohol, completion of any recommended additional substance abuse treatment and/or aftercare, and participation in structured recovery support groups such as Alcoholics Anonymous (AA). The probation requirements based on the evaluator's recommendations, if any, will be

provided to Respondent in writing as an addendum to this Decision and Order.

B. Respondent shall file written, sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of his probation. The first report shall be due not later than the 5th of the third month following issuance of the probationary pharmacy technician registration, and thereafter not later than the fifth day of each third month for the duration of Respondent's one-year probation. The quarterly reports shall include Respondent's current place of employment, home address, home telephone number or work telephone number, and any further information deemed necessary by the Board from time to time.

C. Respondent's employer shall provide the Board with written quarterly reports attesting to his attendance at work and the quality of his work performance. The due dates for the reports shall coincide with the due dates for Respondent's quarterly reports. It shall be Respondent's responsibility to ensure that his employer is informed of the due dates for the reports.

D. Respondent shall make personal appearances before the Board or a Board committee upon request. The Board shall give Respondent reasonable notice of the date, time, and location for such appearances.

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

F. 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.

G. Respondent shall notify all prospective pharmacy or pharmacy-related employers of this Decision and Order. Within fifteen (15) days of undertaking new employment as a registered pharmacy technician, Respondent shall cause his employer to report to the Board in writing, acknowledging

that the employer has read this document and understands it.

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

Dated this 3rd day of July, 2007.



Paul Abramowitz, Chairperson
Iowa Board of Pharmacy

cc: Scott Galenbeck, 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.