

State of Iowa
Board of Pharmacy

RiverPoint Business Park
400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688
<http://www.iowa.gov/ibpe>

Telephone: (515) 281-5944 Facsimile: (515) 281-4609

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TELECONFERENCE MINUTES
December 10, 2014

The special meeting of the Iowa Board of Pharmacy was held on Wednesday, December 10, 2014, at 11:00 a.m., via teleconference pursuant to the provisions of Iowa Code section 21.8. An in-person meeting was impractical due to the travel distances of members of the Board, the limited agenda, and the need for immediate action. Chairperson Maier called the meeting to order at 11:00 a.m.

MEMBERS PRESENT

Edward L. Maier, Chair
James Miller, Vice-Chair
LaDonna Gratias
Sharon K. Meyer
Edward J. McKenna

MEMBERS ABSENT

Susan M. Frey
Judith M. Trumpy

STAFF PRESENT

Lloyd Jessen, Executive Director
Meghan Gavin, Esq., Assistant Attorney General
Therese Witkowski, Executive Officer
Debbie Jorgenson, Administrative Assistant
Becky Hall, Secretary
Andrew Funk, Compliance Officer
Jim Wolfe, Compliance Officer

I. Closed Session.

Motion (McKenna/Gratias) to go into closed session in accordance with Iowa Code Section 21.5(1)(a) to review records required by state or federal law to be kept

confidential, such as medical, mental health, or substance abuse records relating to non-licensee disciplinary issues; 21.5(1)(d) to discuss whether to initiate licensee disciplinary investigations or formal charges; and 21.5(1)(f) to discuss the decision to be rendered in a contested case. Roll call vote. Yes: Gratias, Maier, McKenna, Meyer, Miller; No: None; Abstain: None; Absent: Frey, Trumpy. Passed: 5-0-0-2.

Motion (Gratias/McKenna) to go into open session. Roll call vote. Yes: Gratias, Maier, McKenna, Meyer, Miller; No: None; Abstain: None; Absent: Frey, Trumpy. Passed: 5-0-0-2.

In open session, the following actions were taken:

A. Licensure by Consent Agreement.

Motion (Miller/Gratias) to approve Licensure by Consent Agreement for Andrew Naylor. Passed: 4-0-1-2. Abstain: McKenna; Absent: Frey, Trumpy. A copy of the Licensure by Consent Agreement is attached as Addendum A.

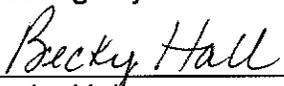
B. Notice of Intent to Deny.

Motion (Miller/Gratias) to draft Notice of Intent to Deny, Notice to be held and issued if and when the board office receives a new or renewal Application for an Iowa Pharmacy License from Bauder Pharmacy. Passed: 5-0-0-2. Absent: Frey, Trumpy. [On December 15, 2014, Bauder Pharmacy submitted an application for renewal of its pharmacy license no. 222. The Notice of Intent to Deny was served on Bauder Pharmacy on December 16, 2014.] A copy of the Notice of Intent to Deny is attached as Addendum B.

C. Draft Statement of Charges.

Motion (Miller/McKenna) to draft new Statement of Charges and Notice of Hearing in case 2012-174. Passed: 5-0-0-2. Absent: Frey, Trumpy.

Meeting adjourned at 11:23 a.m. on December 10, 2014.


Becky Hall
Recording Secretary


Lloyd K. Jessen
Executive Director


Edward L. Maier
Board Chair

APPROVED THIS 6th DAY OF January, 2015.

ADDENDUM A

LICENSURE BY CONSENT AGREEMENT

**ANDREW NAYLOR
AURELIA, IOWA**

BEFORE THE IOWA BOARD OF PHARMACY

In the Matter of the Application)	
)	
For Pharmacist Licensure of)	LICENSURE BY
)	CONSENT AGREEMENT
)	
ANDREW NAYLOR,)	
Applicant.)	

COMES NOW the Iowa Board of Pharmacy ("Board") and Andrew Naylor ("Applicant"), and, pursuant to Iowa Code section 17A.10 (2013), enter into this Licensure by Consent Agreement ("Agreement").

1. Applicant's School of Pharmacy indicated on its Certification of Pharmacy Education that derogatory information was contained in Applicant's file with the school.

2. The Board has the authority to deny an application for licensure on any ground for which a license may be revoked or suspended. *See* Iowa Code section 147.4.

3. The Board has the authority to revoke or suspend, or otherwise discipline, a license for violation of any rules adopted by the Board under Iowa Code chapter 155A. *See* Iowa Code section 155A.12(1). The Board has the authority to discipline a licensee for inability to practice with reasonable skill and safety by reason of mental or physical impairment or chemical abuse. *See* 657 IAC 36.1(4)"m".

4. **THEREFORE, IT IS HEREBY ORDERED** that the Applicant shall be issued an Iowa pharmacist license, which shall be placed on **PROBATION** for a period of one (1) year. The following requirements are applicable throughout the probationary term:

- a. Applicant shall obey all federal and state laws and regulations related to the practice of pharmacy.
- b. Applicant shall abstain from using alcohol. Applicant shall abstain from using controlled substances and prescription drugs for which Applicant does not have a valid prescription.
- c. Applicant shall provide witnessed blood, hair, or urine specimens on demand by the Board or its agents. Applicant shall provide such witnessed blood, hair, or urine specimens on the same day of notice from the Board or the Board's chemical screening program requesting that Applicant provide a specimen. The specimens shall be used for alcohol and drug screening to verify compliance with the preceding paragraph. All costs related to the analysis of such specimens shall be paid by Applicant.

- d. To facilitate performance of the preceding paragraph, Applicant shall participate in the Board's chemical screening program. Applicant shall complete enrollment in the Board's chemical screen program within fifteen (15) days of license issuance. Applicant agrees to comply with all requirements of the chemical screening program and shall be responsible for all costs associated with the program. Applicant consents to disclosure to the Board, by the chemical screening program, of all medical information, including test results, generated by Applicant's contact with the chemical screening program.
- e. Applicant shall comply with all treatment recommendations of physicians and other health care providers. Applicant shall promptly provide, upon request of an agent of the Board, copies of, or access to, his medical records.
- f. Applicant shall not serve as a pharmacist-in-charge during the probationary period.
- g. Applicant must provide a copy of this Licensure by Consent Agreement to his current employer. Applicant must provide a copy of this Licensure by Consent Agreement to any prospective future employers prior to accepting an offer of employment during the probationary period. Employers shall send written notification to the Board that they received a copy of the Licensure by Consent Agreement within ten (10) days of receipt.
- h. Applicant shall make personal appearances before the Board or Board committee upon request. The Board shall give Applicant reasonable notice of the date, time, and location for such appearances.
- i. Applicant shall submit quarterly reports to the Board describing his progress and compliance with these probationary terms and conditions. Said quarterly reports are due on March 5, June 5, September 5, and December 5 of each calendar year during the probationary period.
- j. Applicant's supervising pharmacist-in-charge shall submit quarterly reports to the Board describing his work performance and compliance with these probationary terms and conditions. Said quarterly reports are due on March 5, June 5, September 5, and December 5 of each calendar year during the probationary period.

5. Applicant shall fully and promptly comply with this Agreement. In the event the Applicant violates or fails to comply with the terms and provisions of this Agreement, the Board may initiate appropriate action to revoke or suspend Applicant's license or to impose other licensee discipline in accordance with Iowa Code section 272C.3(2)(a).

6. This Agreement does not constitute disciplinary action. This Agreement, however, shall be part of the Applicant's permanent record and shall be considered by the Board in determining

the nature and severity of any disciplinary action to be imposed in the event of any future violations. Applicant acknowledges and understands that this Agreement may be reported to the National Association of Boards of Pharmacy's Disciplinary Clearinghouse, in accordance with the reporting requirements of the clearinghouse.

7. Applicant acknowledges that this Agreement is subject to the approval of a majority of the full Board. If the Board fails to approve this Agreement, it shall be of no force or effect to either party.

8. By entering into this Agreement, the Applicant voluntarily waives any right to a contested case hearing regarding this matter. Once entered, this Agreement shall have the force and effect of a Board order entered following a contested case hearing.

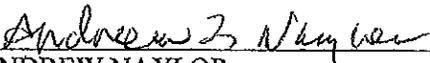
9. Applicant acknowledges that he has read this Agreement in its entirety, that he understands its content, and that he executed this Agreement freely and voluntarily.

10. Applicant acknowledges that he has the right to be represented by counsel on this matter.

11. Applicant agrees that the State's counsel may present this Agreement to the Board *ex parte*.

12. Applicant understands that this Consent Agreement is a public record available for inspection and copying in accordance with Iowa Code chapter 22.

This Licensure by Consent Agreement is voluntarily submitted by Applicant to the Board for its consideration on the 28 day of November, 2014.



ANDREW NAYLOR
Applicant

This Licensure by Consent Agreement is approved by the Iowa Board of Pharmacy on the 10th day of December, 2014.



EDWARD MAIHER, Chairperson
Iowa Board of Pharmacy

Copy to:

Laura Steffensmeier
Assistant Attorney General
2nd Floor, Hoover Building
Des Moines, IA 50319

ADDENDUM B

NOTICE OF INTENT TO DENY

**BAUDER PHARMACY, INC.
PHARMACY LICENSE NO. 222
DES MOINES, IOWA**

**BEFORE THE BOARD OF PHARMACY
OF THE STATE OF IOWA**

IN THE MATTER OF)	
)	NOTICE OF INTENT
Pharmacy License of)	TO DENY
BAUDER PHARMACY, INC.)	
License No. 222)	

TO: Bauder Pharmacy, Attention Pharmacist-in-Charge, Kim R. Robertson

YOU ARE HEREBY NOTIFIED that on December 10, 2014, the Iowa Board of Pharmacy met and voted to deny the issuance of a new or renewal pharmacy license to Bauder Pharmacy. Bauder Pharmacy shall cease doing business as a pharmacy in Iowa effective January 1, 2015. The intent to deny license is based upon the following:

LEGAL GROUNDS

Bauder Pharmacy was issued Iowa general pharmacy license number 222 on December 5, 2013. This license will expire on December 31, 2014. Pursuant to the authority of Iowa Code section 155A.15(2)(c), the Board may refuse to issue a new license to Bauder's pharmacy or renew its existing license. This refusal is based upon Bauder Pharmacy's continuing noncompliance with Board disciplinary orders, Iowa pharmacy law, and Board administrative rules. In addition to this Notice of Intent to Deny, the Board may also initiate further disciplinary action to revoke or suspend Bauder's pharmacy license or to impose other licensee discipline as authorized by Iowa Code chapter 272C and 155A and Iowa Administrative Code 657 chapter 36.

FACTUAL CIRCUMSTANCES

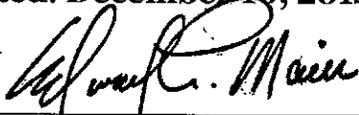
On October 28, 2014, the Board approved a Settlement Agreement and Final Order (Case No. 2012-52) (Board Order) for Bauder Pharmacy Inc., pharmacy license number 222. Paragraph 6(a) of the Order required Mark Graziano to divest himself of his ownership interest in Bauder Pharmacy no later than November 27, 2014. Upon proof of divestment, Bauder Pharmacy was to file an application for a new pharmacy license in the name of the new pharmacy owners. The Board Order provided that if Bauder Pharmacy failed to comply with this provision, the Board could refuse to issue a renewal of Bauder's pharmacy license. In addition, the Board Order required Bauder Pharmacy to construct a secure, physical barrier separating the pharmacy department from the remainder of the business. This barrier was to be in place no later than

November 27, 2014. On December 5, 2014, two Board compliance officers inspected Bauder Pharmacy and determined that no physical barrier had been constructed. Pharmacist in charge Kim Robertson indicated to the compliance officers that she did not agree that a barrier was needed. Bauder Pharmacy's consultant, Thomas Crabb, failed to work with Board compliance officers and Kim Robertson to ensure compliance with the Board Order. Furthermore, no proof of ownership divestment by Mark Graziano was provided to the Board. As of December 10, 2014, Bauder Pharmacy has not filed an application for a new pharmacy license in the name of new owners.

NOTICE OF APPEAL RIGHTS

Pursuant to the provisions of Iowa Administrative Code rule 657-36.16 you may appeal the Board's Notice of Intent to Deny by serving a notice of appeal and request for hearing upon the board not more than thirty days following the date of service of this notice. The request for hearing shall specifically describe the facts to be contested and determined at the hearing. The hearing shall be held pursuant to the process outlined at Iowa Administrative Code rules 657-35.19 and 657-36.8. If an appeal is not filed within this time period, this Notice of Intent to Deny licensure will become final.

Dated: December 10, 2014



**Edward L. Maier, Chairperson
Iowa Board of Pharmacy**

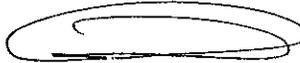
PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon Respondent to the above cause by:

- | | |
|---|---|
| <input checked="" type="checkbox"/> personal service | <input type="checkbox"/> first class mail |
| <input type="checkbox"/> certified mail, return receipt requested | <input type="checkbox"/> Facsimile |
| Article Number _____ | <input type="checkbox"/> other _____ |

on the 16 day of December, 2014.

I declare that the statements above are true to the best of my information, knowledge and belief.



Andrew Funk, R.Ph.
Compliance Officer