

State of Iowa
Board of Pharmacy

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BOARD MEMBERS

LADONNA GRATIAS
EDWARD MCKENNA
EDWARD MAIER

JAMES MILLER

Board Chair

ANDREW FUNK

Executive Director

BOARD MEMBERS

JASON HANSEL
KAY JESSEN
SHARON MEYER

TELECONFERENCE MINUTES
September 28, 2016

The special meeting of the Iowa Board of Pharmacy was held on Wednesday, September 28, 2016, at 10:00 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 Miller called the meeting to order at 10:05 a.m.

MEMBERS PRESENT

James Miller, Chair
Sharon K. Meyer, Vice-Chair
LaDonna Gratiias
Edward McKenna

MEMBERS ABSENT

Jason Hansel
Kay Jessen
Edward L. Maier

SPEAKERS

Kimberly Robertson, Bauder Pharmacy Inc.

STAFF PRESENT

Andrew Funk, Executive Director
Meghan Gavin, Esq., Assistant Attorney General
Terry Witkowski, Executive Officer
Becky Hall, Secretary
Curt Gerhold, Compliance Officer
Jennifer O'Toole, Compliance Officer
Jim Wolfe, Compliance Officer

Request

Request to Assume the Responsibilities of Pharmacist in Charge at Bauder Pharmacy Inc. – Kimberly R. Robertson, Pharmacist License No. 15845, Des Moines.

Motion by Edward McKenna, seconded by LaDonna Gratias, to lift the restriction from Ms. Robinson's probation that prohibited her from serving as pharmacist in charge at Bauder Pharmacy. Motion approved unanimously by roll call vote.

Meghan Gavin left the room.

Closed Session

At 10:18 a.m., on a motion by Edward McKenna, seconded by Sharon Meyer, the Board voted unanimously by roll call vote to move into closed session pursuant to Iowa Code section 21.5(1)(f), to discuss the decision to be rendered in a contested case conducted according to the provisions of Chapter 17A.

At 10:23 a.m., while still in closed session, motion by Edward McKenna, seconded by Sharon Meyer, to move into open session. Motion approved unanimously by roll call vote.

In open session the following action was taken:

Motion by LaDonna Gratias, seconded by Edward McKenna, to approve the Findings of Fact, Conclusions of Law, Decision and Order for Beau Tousignant. Motion approved unanimously by roll call vote. A copy of the Findings of Fact, Conclusions of Law, Decision and Order is attached as Addendum A.

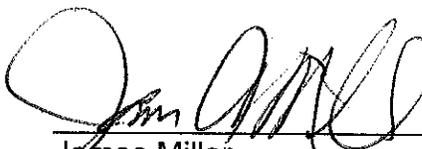
Motion by Edward McKenna, seconded by LaDonna Gratias, to adjourn the meeting at 10:25 a.m. Motion approved unanimously by roll call vote.



Becky Hall
Recording Secretary



Andrew Funk
Executive Director



James Miller
Board Chair

APPROVED THIS 1st DAY OF November, 20 16

ADDENDUM A
FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER
BEAU TOUSIGNANT
URBAN DALE, IOWA

BEFORE THE IOWA BOARD OF PHARMACY

RE:
Application for Pharmacy Support
Person Registration of:
BEAU TOUSIGNANT,
Applicant

DIA NO: 16PHB016

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

On August 30, 2016, a hearing was held before the Iowa Board of Pharmacy (Board) on the appeal filed by Beau Tousignant (Applicant) from the Board's Notice of Intent to Deny his application for an Iowa pharmacy support person registration. The following members of the Board presided at the hearing: James Miller, Chairperson; Edward Maier; Edward McKenna; Sharon Meyer; Jason Hansel; LaDonna Gratiyas; and Kay Jessen. Assistant Attorney General Laura Steffensmeier represented the state. The Applicant appeared before the Board and was self-represented. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was open 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 Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with the Board's deliberations.

THE RECORD

The record includes the testimony of the Applicant and State Exhibits 1-8 (See Exhibit Index for description).

FINDINGS OF FACT

Beau Tousignant has been employed at the Walgreen's store at 4600 86th Street in Urbandale, Iowa since December 2015 and has been promoted to "shift lead." He is employed at least 40 hours a week and works a variable schedule. Mr. Tousignant hopes to become a Store Manager in Training and to eventually become a store manager. (Tousignant testimony; State Exhibit 3)

On March 11, 2016, Beau Tousignant submitted an application to the Iowa Board of Pharmacy (Board) for a pharmacy support person registration. Mr. Tousignant answered "Yes" to the question on the application that asked:

Have you 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*)?

If the answer to this question is "yes," applicants were asked to "explain on a separate sheet." On a separate sheet of paper, Mr. Tousignant listed the following: Assault: 2009, Possession of Marijuana: 2011, and Misuse of Fireworks: 2008. (State Exhibit 3) Mr. Tousignant signed the application on February 15, 2016. His signature appears immediately below the following statement:

I hereby swear under penalty of perjury that the information provided in this application is true and correct. I understand that failure to provide complete and truthful information may constitute grounds for denial, revocation, or other disciplinary sanctions against my pharmacy support person registration.

(State Exhibit 3)

After receiving the application, Board staff conducted a search of Iowa Courts Online, which revealed that Mr. Tousignant had the following additional criminal charges and/or convictions that he did not report on his application:

- Criminal Mischief-5th Degree; offense date 3/16/09; convicted 10/22/09 (these charges had the same offense date and conviction date as the reckless use of explosives, which he did disclose);
- Driving while license denied or revoked; offense date 11/21/12; convicted 7/7/13;
- Operating under the influence-1st offense, offense date 4/16/15, charges dismissed on 9/2/15;
- Eluding, Operating while under the influence (OWI)-1st offense, offense dated 11/1/15; received deferred judgment for eluding on 4/5/16 and convicted for OWI-1st Offense on 4/5/16. (these charges were pending when Mr. Tousignant submitted his application)

(State Exhibits 3, 4)

On May 16, 2016, the Board issued its Preliminary Notice of Intent to Deny License to Beau Tousignant. The denial was based on Mr. Tousignant's criminal conviction for the possession of a controlled substance (marijuana) on March 30, 2011 and on his failure to disclose several criminal charges and convictions on his application. (State Exhibit 5)

Beau Tousignant filed a written appeal and his store manager, Jerrod Bauer, also submitted a letter of support. Mr. Bauer is familiar with Mr. Tousignant's criminal history, and they discussed his application for registration before it was submitted to the Board. Mr. Bauer had advised Mr. Tousignant to "put everything on the application," and he did not believe that Mr. Tousignant had intentionally withheld information from the Board. (State Exhibits 6, 7)

Mr. Tousignant testified that it was his belief that he only had to report convictions and did not have to report pending or dismissed charges. In addition, Mr. Tousignant thought that a conviction for driving while denied or revoked was a "minor traffic violation" that did not need to be reported. In fact, Mr. Tousignant disclosed at hearing that he has had several additional convictions for driving while suspended or revoked that apparently were not reported on Iowa Courts Online. (State Exhibits 6, 7; Tousignant testimony)

In his appeal letter and in his testimony at hearing, Mr. Tousignant denied that he was trying to conceal his criminal history from the Board. Mr. Tousignant explained the circumstances of his most recent conviction and deferred judgment to the Board. He testified that he had a few drinks on Halloween night and was driving to get something to eat when a police officer came up behind him. Mr. Tousignant is not sure what he was thinking when he did not stop for the officer, but stated that he was experiencing an episode of anxiety. Since this incident, he has participated in counseling sessions to address his anxiety. (Tousignant testimony)

Beau Tousignant completed a substance abuse evaluation following his arrest but was not required to obtain any alcohol or drug treatment. Following his OWI conviction, Mr. Tousignant was placed on two years of probation, which will end in June 2018. Under the terms of his probation, he is required to see his probation officer once a month, to remain employed, and to abide by all laws. He was also required to attend an OWI course at DMACC, which he will be attending in September, although he does not currently have a driver's license. Mr. Tousignant further testified that he is no longer consuming alcoholic beverages. (Tousignant testimony)

CONCLUSIONS OF LAW

The legislature has authorized the Board to establish a registration program for pharmacy support persons who work in a licensed pharmacy and who are not licensed pharmacists or registered pharmacy technicians. The purposes of the registration program are identification, tracking, and disciplinary action for violation of federal drug laws or regulations, state drug or pharmacy laws, or board rules. The registration does not include any determination of competency of the registered individual and does not require continuing education for renewal.¹ A person registered with the board as a pharmacy support person may assist pharmacists by performing routine clerical and support functions but may not perform any professional duties or any technical or dispensing duties.² Applicants for registration must apply to the board for registration on a form prescribed by the board.³

The Board may deny, suspend, or revoke the registration of a pharmacy support person for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapters 155A, 124, 124A, 124B, 126, 147, 205, or 272C, or any rule of the Board.⁴ Pursuant to the Board's rules, the Board has the authority to impose disciplinary sanctions for the following acts or offenses:

a. Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth in making application... for a registration to practice as a...pharmacy support person. It includes false representations of material fact, whether by word or conduct, by false or misleading allegations, or by concealment of that which should have been concealed when making application,...

...

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.

¹ Iowa Code section 155A.6B(1)(2015).

² Iowa Code section 155A.6B(2)(2015); 657 IAC Chapter 5.

³ Iowa Code section 155A.6B(3)(2015).

⁴ Iowa Code section 155A.6B(5)(2015); 657 IAC 5.24.

There is no question that the pharmacy support person application requires the applicant to disclose all criminal charges, regardless of whether the charge resulted in a conviction. The only exception is for "minor traffic violations with fines under \$100." Convictions for driving while a license is suspended or revoked must be reported. These convictions cannot reasonably be characterized as "minor" and they do not fall under the category of a "minor traffic violation."

The Board had a sound legal basis to deny this application based on Beau Tousignant's conviction for possession of marijuana and based on his failure to disclose several convictions and pending charges, some very recent, on his application. The Board does not believe that Mr. Tousignant could have forgotten about the charges for eluding and OWI, which were recent and which resulted in a deferred judgment and conviction shortly after the application was submitted to the Board.

After hearing Mr. Tousignant's testimony and reviewing the entire record, the Board was persuaded to grant Mr. Tousignant's application for registration as a pharmacy support person with a citation and warning for his violations of 657 IAC 36.1(4)"j." The Board believes that Mr. Tousignant is motivated and committed to maintaining the positive changes that he has made in his life. The Board is requiring Mr. Tousignant to provide a copy of this Decision and Order to the store manager and pharmacist-in-charge of any pharmacy where he is employed.

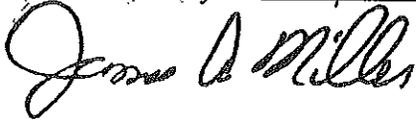
DECISION AND ORDER

IT IS THEREFORE ORDERED that the application for a pharmacy support person registration filed by Beau Tousignant is hereby GRANTED. IT IS FURTHER ORDERED that Mr. Tousignant is hereby CITED for violating 657 IAC 36.1(4)"j" by failing to fully disclose his criminal history on his application and is hereby WARNED that any further violations will result in disciplinary action against his registration.

IT IS FURTHER ORDERED that Beau Tousignant shall provide a copy of this Decision and Order to his current store manager and to the pharmacist-in-charge. Mr. Tousignant must obtain a signed written statement from the store manager and from the pharmacist-in-charge, which verifies that they have reviewed the Decision and Order. Mr. Tousignant must then submit these signed statements to the Pharmacy Board's Executive Director Andrew Funk, within thirty (30) days of the date of issuance of this Order.

IT IS FURTHER ORDERED that if Beau Tousignant's pharmacy employer designates a new store manager or a new pharmacist-in-charge or if Mr. Tousignant obtains employment with another pharmacy, he must also provide a written statement from those store managers or pharmacists-in-charge to verify that they have reviewed the Decision and Order. The signed written statements shall be submitted to the Board's Executive Director within 30 days of the change in personnel or the change in employment. This notification requirement will continue until Mr. Tousignant's pharmacy support registration has been renewed by the Board.

Dated this 28th day of September, 2016.



James Miller, Chairperson
Iowa Board of Pharmacy

cc: Laura Steffensmeier, 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.