

MAINE BOARD OF PHARMACY

IN RE: Noah Farrington) DECISION AND ORDER
Complaint No. 2009-PHA-5984)

I. PROCEDURAL HISTORY

Pursuant to the authority found in 10 M.R.S. Sec. 8003.5-A, the Maine Board of Pharmacy (Board) met in public session on February 2, 2010 and March 4, 2010 at 9:00 a.m. at the offices of the Department of Professional and Financial Regulation (Department) in Gardiner, Maine. The purpose of the meeting was to conduct an adjudicatory hearing in accordance with the provisions of 5 M.R.S. Sec. 9051, *et seq.* to determine whether Noah Farrington’s appeal of the Board’s preliminary denial of his pharmacist’s license application should be granted and whether he violated any Board statutes and/or Rules as alleged in the Notice of Hearing. A quorum of the Board was in attendance during all stages of the proceedings. Those participating were Board President Lori A. McKeown, R. Ph., public member John Harris, public member William H. Sandstead, Esq., Courtney Oland, R. Ph., and Anne Theriault, R. Ph. Carrie Carney, Assistant Attorney General, presented the State’s case. Mr. Farrington was represented by John Clifford, Esq. James E. Smith, Esq., served as Presiding Officer. The Board first found that there were no conflicts of interest or bias to prevent any Board member from participating in this matter.

State’s Exhibits A-P and Respondent’s Exhibits 1-3, 4, 4A were entered into evidence. Subsequent to the parties’ opening statements, taking of testimony, submission of the exhibits, and the closing arguments, the Board deliberated and made the following conclusions of law and findings of fact by a preponderance of the evidence regarding the allegations.

II. FINDINGS OF FACT

Noah Farrington, 26 years of age and a resident of Auburn, Maine, first applied for licensure as a pharmacist in Maine on or about July 14, 2009. He had previously been awarded a pharmacy technician’s license on September 1, 2008 which expired on August 31, 2009. In his application, he was asked: “Have you ever been convicted by any court of any crime.”

Noah Farrington responded "Yes," and signed the certification that "the information on this application is true and accurate to the best of my knowledge and belief...I understand that the Maine Board of Pharmacy will rely upon this information for issuance of my license and that the information is truthful and factual." The application form also required him to provide an explanation for any criminal convictions. Noah Farrington appended his "Description of Criminal Conviction" to his application. That document recounted his recitation of events leading up to his conviction on June 19, 2009 for Operating Under the Influence (OUI-Class D) in Jay, Maine on April 19, 2008. However, Mr. Farrington neglected to mention his criminal convictions for Speeding on July 13, 2003, and Failing to Give Motor Vehicle Accident Information on August 24, 2005. The Board preliminarily denied the application on December 8, 2009, due to his failure to admit the convictions.

At this hearing, the applicant stated his explanations for the crimes. As regards the most recent OUI conviction, he testified that he had consumed alcoholic beverages at a friend's home and then chose to drive home to Jay, Maine. His car broke down and he apparently parked same in an acquaintance's driveway. The owners of the house where the car was parked called the police since they were not familiar with the car. Mr. Farrington decided to walk home and the police stopped him whereupon, after questioning, he admitted to having operated the vehicle and was arrested for OUI with a blood alcohol content of .19, more than twice the legal limit. In his written explanation to the Board, he stated that "I tremendously regret this incident and I will never put myself at risk for something like this to happen ever again. I definitely learned a valuable lesson from this situation..."

Noah Farrington also testified that he had failed to include on his license application the criminal speeding conviction for traveling at a speed of 65 m.p.h. in a 35 m.p.h. zone because he thought the violation was a non-criminal traffic violation. However, the Uniform Summons and Complaint clearly stated that he was accused of violating Title 29-A, Section 2074, Class E which is the criminal statute section for this charge. Additionally, the docket record reveals that the Filing Document clearly read "Criminal Complaint." Mr. Farrington admitted that he should have known that the charge was criminal in nature.

The applicant also gave his reasons regarding his failure to report the August 24, 2005 conviction for Failing to Give Motor Vehicle Accident Information, a Class E crime. He testified

that he backed up the vehicle he was driving and “felt a slight bump when I hit the van. The collision felt so gentle that my uncle and I did not think it was necessary to exit the vehicle.” He proceeded to leave the scene after which he was arrested, placed in handcuffs, and given a citation. Noah Farrington explained that he did not think that the charge was criminal, and that he “had honestly forgotten about it.”

The Board received correspondence from Noah Farrington on October 20, 2009 which was captioned “Actions Taken for Rehabilitation.” He stated therein that he had attended the Maine Driver Education and Evaluation Program (DEEP) and realized “how serious the offense of driving while intoxicated is and I will never risk the health of myself and others by ever doing it again.” He had met for 2 one hour sessions with a licensed alcohol and drug abuse counselor during the week ending September 12, 2008. She issued a “Clinical Substance Abuse Evaluation” which did not state any evident problem or negative findings regarding substance abuse.

Noah Farrington at this hearing testified that on September 13, 2009, he joined his younger brother and some of his brother’s friends at a bar in Auburn, Maine from approximately 11:00 p.m. until 1:00 a.m. He didn’t remember how much alcohol he had consumed, but estimated “maybe 3-4 beers,” and denied that he was intoxicated. After 1:00 a.m., he walked from the bar with his brother and between 3 and 6 individuals and was wearing sandals, shorts, and a blue/white striped polo shirt with no cap. He further testified that his brother and another individual were wearing similar shorts and polo shirts. Soon thereafter, his stated that his brother and at least one friend of his brother began vandalizing vehicles. Noah Farrington did nothing to stop them and remembers laughing, thinking that the activities were “funny at the time.”

Noah was questioned shortly thereafter near the scene by police officer Shaun Carll, who testified at this hearing that the applicant was visibly intoxicated. Noah Farrington was then arrested for Aggravated Criminal Mischief by the Auburn Police Department who believed they had probable cause to charge him with vandalizing the vehicles. He apparently did not tell the police that his brother and brother’s friend were involved although he has denied to the police his active participation in the crime spree. The applicant did not inform the Board in a timely manner of the above arrest.

Contrary to the above testimony, and subsequent to the February 2, 2010 hearing session, Mr. Farrington pled guilty to the crime of criminal mischief as a result of his activities in the early morning hours of September 13. He was also evaluated for substance abuse by Julie Quimby, Ph.

D. on February 10, 2010. She did not find evidence or suspicion of any substance abuse. However she also did not mention in her report Mr. Farrington's September 13 criminal activity in Auburn which was alcohol related. Noah Farrington was also evaluated by the Maine Medical Association Medical Professionals Health Program (MMPHP) to address whether he has a substance abuse problem and also to determine whether a contract with that program is warranted. The evaluation resulted in a February 23, 2010 recommendation that Noah Farrington "become an active participant in the MMPHP for the normal contract period of five (5) years." The Board was more persuaded by the MMPHP evaluation than that of psychologist Quimby.

III. CONCLUSIONS OF LAW AND SANCTIONS

The Board, utilizing its experience and training in the profession, and the evidence recited both above and found elsewhere in the record, concluded by the vote of 5-0 that Noah Farrington committed the following violations:

A. Noah Farrington's failed to disclose the following criminal convictions on his application for licensure as a pharmacist: Motor Vehicle Speeding 30+ mph Over Speed (Class E) in the Farmington District Court, Docket No. CR-03-41 on July 10, 2003; Failing to Give Motor Vehicle Accident Information (Class E) in the Farmington District Court, Docket No. CR-05-578 on August 24, 2005.

The failure to disclose these convictions on his application is a violation of the following statutes or rules:

- a. 10 M.R.S. § 8003(5-A)(A)(1), fraud, deceit or misrepresentation in obtaining a license;
- b. 10 M.R.S. § 8003(5-A)(A)(), violation of a Board rule, specifically Board Rule 02 392, Chapter 31 § 1(4), intentionally withholding or misrepresenting any information on an application.

The Board reasoned that Noah Farrington knew or should have known that the above charges were in fact criminal. The Board voted 5-0 to assess a **fine of \$200 and a Reprimand** for the above violations.

B. The Board further decided by the following votes that Noah Farrington failed to demonstrate that he is of good moral character and temperate habit, a requirement for licensure pursuant to 32 M.R.S. § 13732(1)(C), by his:

- a. Failure to demonstrate good moral character by neglecting to disclose the criminal

convictions listed in paragraph 1 on his application for licensure as a pharmacist; (4-1)

b. Failure to demonstrate temperate habit, evidenced by the following police contacts in which alcohol was involved:

i. On April 19, 2008, being arrested for Operating Under the Influence with a blood-alcohol level of .19%. This arrest led to a conviction for Operating Under the Influence. (5-0)

ii. On September 13, 2009, contact with members of the Auburn Police Department, who describe Noah Farrington as "visibly intoxicated." That contact led to Noah Farrington's arrest and conviction for Criminal Mischief. (5-0)

C. The Board further decided by the following votes that Noah Farrington failed to demonstrate that he is of good moral character and temperate habit, as shown by his habitual substance abuse that has resulted in or is foreseeably likely to result in Noah Farrington's performing duties in a manner that endangers the health or safety of the public, as evidenced by the conduct described in paragraph 2(b) above. (5-0)

The Board subsequently in its deliberations voiced its collective opinion that the application for licensure should be granted with probationary conditions although grounds exist for the denial of the application. Those conditions are as follow:

Noah Farrington is hereby placed on **Probation** for a period of five years. During that time, he shall:

- a. Obey all pharmacy statutes and Rules;
- b. Sign a contract with the Maine Medical Professional Health Program for a period not less than 5 years and comply with all terms therein;
- c. Provide a copy of this Decision and Order to all current and future employers;
- d. Not serve as the pharmacist in charge.
- e. Pay the above \$200 fine by July 1, 2010. The check or money order shall be made **payable to the Treasurer, State of Maine** and mailed to Kelly McLaughlin, Senior Consumer Assistant Specialist, Department of Professional and Financial Regulation, Office of Licensing and Registration, 35 State House Station, Augusta, Maine 04333-0035.

WHEREFORE, the appeal is Granted. So Ordered.

Dated: April 1, 2010



Lori McKeown, R. Ph., Chairman
Maine Board of Pharmacy

IV. APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. Sec. 10051.3 and 10 M.R.S. Sec. 8003(5)(G) and (5-A)(G), any party that appeals this Decision and Order must file a Petition for Review in the Maine Superior Court having jurisdiction within 30 days of receipt of this Order.

The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Pharmacy, all parties to the agency proceedings, and the Maine Attorney General.