MAINE BOARD OF PHARMACY

IN RE: Glenwood Shaw  

REINSTATEMENT DECISION AND ORDER

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S. Secs. 13743(2) and 10 M.R.S. Sec. 8003.5-A, the Maine Board of Pharmacy (Board) met in public session¹ on August 19, 2008 and September 9, 2008 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 to grant Glenwood Shaw’s application for reinstatement of his pharmacist’s license. A quorum of the Board was in attendance during all stages of the proceeding. Participating and voting Board members on the first day of hearing were President Lori A. McKeown, R. Ph., Mark L. Polli, R. Ph., Dana J. Hunter, Jr., R. Ph., and Richard Hachey, R. Ph. On the second day, John Harris, public member, deliberated in place of Richard Hachey.² Andrew Black, Assistant Attorney General, presented the State's case. Mr. Shaw was represented by Tina Schneider, Esq. James E. Smith, Esq., served as Presiding Officer. The parties agreed with the Board that there were no conflicts of interest or bias to prevent any Board member from participating in this matter.

State's Exhibits 1-3 and Applicant’s Exhibits A-P³ were entered into evidence. Subsequent to the opening statements, taking of testimony, submission of the exhibits, and the closing arguments, the Board deliberated and made the following findings of fact and conclusions of law by a preponderance of the evidence regarding the application.

¹ Dr. Johnson’s testimony was taken in executive session pursuant to 1 M.R.S. Sec. 405.
² The second day was held to decide whether the law mandated Mr. Shaw to take the North American Pharmacist Licensure Examination, whether the Board otherwise had discretion, and to finalize language in the Board’s decision.
³ Applicant’s exhibits C,D,F,H,O, and P are medical and substance abuse treatment records. They are sealed as confidential and privileged and will not be released without a court order.
II. FINDINGS OF FACT

Glenwood Shaw was initially licensed as a pharmacist in Maine on May 6, 1999. On or about September 7, 2004, he was employed by New England Life Care in Portland, Maine. At that time, he diverted morphine for his personal use. His license was then summarily suspended by the Board. Subsequently, a Consent Agreement, effective November 5, 2004, was entered into among the parties. In that document, Mr. Shaw admitted to various violations of state and federal law. As a result, his pharmacist’s license was revoked and he was ordered to reimburse the Board for its investigative costs.

Glenwood Shaw, by letter dated December 26, 2007, petitioned the Board for reinstatement of his license to practice pharmacy pursuant to 32 M.R.S. Sec. 13743. The application was submitted more than 2 years following the revocation of his license. The petition resulted in this hearing, at which Mr. Shaw’s substance abuse history was revealed as follows. Mr. Shaw began abusing narcotics five or six years ago to cope with migraine headaches. He obtained the drugs by stealing leftover doses at a home care IV pharmacy where he was employed. In September 2004, he attempted suicide by self-medicating with morphine, potassium chloride, and Reglan. He then was admitted to a detoxification center for a few days and began attending Alcoholics Anonymous meetings. He began treating with his alcohol and drug abuse counselor in early 2005 and was also attending Narcotics Anonymous meetings by the end of that year. In early December 2005, Mr. Shaw relapsed and started drinking alcohol and subsequently using heroin and cocaine. This activity resulted in his arrest in Portland on December 15, at which time he was admitted to Mercy Hospital Recovery Center until December 18. He then entered the Plymouth House treatment center and completed its two week inpatient treatment program on January 24, 2006. Subsequently, the pending criminal charges stemming from his December 15 arrest were dismissed.

Mr. Shaw has not suffered a relapse during the past 2 years. His psychiatrist, Dr. Johnson, testified that Mr. Shaw has been receiving psychiatric treatment since October 2004. His primary diagnosis is depression and narcotic abuse. Glenwood Shaw initially received treatment every 2-3 weeks depending on his condition. He is currently prescribed two drugs for anxiety and depression and treats with his psychiatrist once every 2-3 months. He “seems to be doing fairly well” according to Dr. Johnson and would benefit from continuing sessions every 2-3 months for the next 6 months and then every six months to once a year if appropriate. Dr. Johnson recommended that
if the applicant was permitted to resume the practice of pharmacy, he should receive regular sessions of therapy from his substance abuse counselor, participate in random urine drug screens, and submit quarterly reports to the Board of his treatment.

The petitioner has also been treating with substance abuse counselor David Bigelow, L.A.D.C. since January 2005. Mr. Bigelow testified that the goals of his treatment are for Mr. Shaw to continue his recovery by leading a clean and sober life and to be aware of which circumstances trigger his isolation and depression which can lead to a relapse. Mr. Bigelow was not of the opinion that the applicant was a seeker of drugs and that he had been thoughtful and not deceitful regarding his treatment sessions. Counselor Bigelow would not place any restrictions on where Glenwood Shaw could be employed as a pharmacist but recommended that he continue attending counseling sessions and Narcotics Anonymous meetings 3-5 times per week.

Mr. Shaw is also treating with his primary physician, Dr. Rasha Hanafy who sees him on a regular basis and monitors his health. She had been administering urine drug screens in the past which were not witnessed. These did not result in any positive findings except for those drugs which had been prescribed. None of the above three health professionals has spoken with one another or shared records regarding the petitioner.

Currently, Glenwood Shaw is employed on a part-time basis as the front desk manager at local motel. He has become comfortable dealing with the public and appears committed to following the path to living without illegal substances. Of significance is the fact that prior to 2004, Mr. Shaw practiced as a pharmacist in a variety of settings and had no Board complaints issued against him.

III.

CONCLUSIONS OF LAW

The Board, by a vote of 4-0, concluded that Glenwood Shaw has been rehabilitated to the extent that he has earned the public's trust, and reinstating his license to practice pharmacy would not pose a threat of harm to the public if the following conditions were complied with. Therefore, the Board grants Glenwood Shaw's application to take the Multi-State Pharmacy Jurisprudence Examination and orders him also to take the North American Pharmacist Licensure Examination.
(NAPLEX)\(^4\) in order to be licensed as a pharmacist in Maine. The Board further concluded by a vote of 3-1, that if Mr. Shaw receives a passing score on the above tests and a license is issued, it shall be subject to the following conditions.


2. Glenwood Shaw shall completely abstain from the ingestion of alcohol.

3. Glenwood Shaw shall completely abstain from the use of drugs without a prescription by a physician with the exception of over the counter medications.

4. Glenwood Shaw shall, for six months on a once per month basis, provide random, witnessed, urine screenings for the presence of alcohol and drugs. If the screening reveals no positive results, the urine screening would then be required once per quarter. Any positive screening results shall be reported to the Board immediately, as shall any ingestion of alcohol or consumption of those drugs governed by paragraph 3 above.

5. Glenwood Shaw shall participate in counseling on a monthly basis by David Bigelow and every other month with Dr. Johnson.

6. Mr. Shaw shall also quarterly submit to the Board a complete history of his medical and counseling appointments, and at each counseling session provide a list to each provider of the over the counter and prescription drugs that he has used or intends to use.

7. Glenwood Shaw shall appear in person before the Board six months after he receives his pharmacist’s license with a copy of the documents listed in paragraph 5 above and a performance report from his pharmacist in charge (PIC).

8. Glenwood Shaw shall attend meetings of Alcoholics Anonymous or Narcotics Anonymous four times weekly.

9. Glenwood Shaw shall not be eligible to work as a pharmacist more than 24 hours per week for six months minimum; after 6 months not more than 40 hours per week.

10. Glenwood Shaw shall not be eligible to act as a pharmacist in charge.

11. Glenwood Shaw shall agree to provide a copy of this decision to all employers, PIC’s, treating physicians and counselors.

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\(^4\) The Board voted 4-0 that it had the legal authority to exercise its discretion to vote on whether the law mandated the applicant to take the NAPLEX examination. The Board then voted 3-1 that the law, pursuant to 32 M.R.S. Sec. 1373-1, mandated Mr. Shaw and those at least with similar factual and disciplinary histories, including revocation for incompetence, to pass the NAPLEX. In the event that the law was interpreted to give the Board discretion to waive the exam, the Board still would require by the same 3-1 vote that the applicant take that exam.
12. Glenwood Shaw shall provide a report to the Board by March 1, 2009 which documents his compliance with the above conditions.

Dated: October 14, 2008

Lori A. McKeown, President
Maine Board of Pharmacy

IV. **APPEAL RIGHTS**

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3, any party that decides to appeal this Decision and Order must file a Petition for Review within 30 days of the date of receipt of this Order with the Superior Court having jurisdiction. 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.