MAINE BOARD OF PHARMACY

IN RE: Eric Johnson   ) DECISION AND ORDER: REINSTATEMENT

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 session on January 13, 2009 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 Eric Johnson’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 were President Lori A. McKeown, R. Ph., Mark L. Polli, R. Ph., Dana J. Hunter, Jr., R. Ph., and John Harris, public member. Andrew Black, Assistant Attorney General, presented the State’s case. Mr. Johnson was present but not represented by legal counsel. 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 1-8, including the second page of the June 16, 2007 Physician Health Program Treatment Plan Contract, were entered into evidence. Subsequent to the State’s opening statement, 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.

II. FINDINGS OF FACT

Eric Johnson, 33 years old and a resident of Presque Isle, Maine, was initially licensed as a pharmacist in Maine on July 28, 1999, after his graduation from the Massachusetts College of Pharmacy. He was employed by Wal-Mart Pharmacy in January 1999 where he worked in his
profession until his arrest on July 2, 2003. The arrest was brought about by the applicant’s theft of Hydrocodone from his employer’s pharmacies in Houlton and Skowhegan, Maine. The Board summarily suspended his license on July 8 which resulted in a Consent Agreement effective September 9, 2003. In that document, Eric Johnson agreed to the revocation of his license. Prior to his sentencing, Eric Johnson began substance abuse counseling which he successfully completed as an inpatient for 28 days at a facility located in Ft. Fairfield, Maine. He was discharged on December 12, 2003. Following his conviction on June 9, 2004, Mr. Johnson was incarcerated for 21 days, ordered to pay $7,000 in restitution, and placed on probation for a period of one year.

Subsequently, on February 8, 2005, in order to counter the lure and attraction that he continued to feel for illicit drugs, Eric Johnson entered into a program with Wellspring, a men’s halfway house for substance abusers located in Bangor, Maine. He completed the program on July 29, 2005 with a “positive prognosis.” During his almost 6 months stay, the applicant became involved with Alcoholics Anonymous and participated in counseling which continued following his discharge and return to Aroostook County.

He next obtained employment as a delivery truck driver in Aroostook. However, he suffered a relapse and began using Oxycodeone and Methadone, and joined a ring of users who stole property to support their opiate habits. The applicant was arrested on October 29, 2005 for unlawful possession of methadone, theft by receiving stolen property, and violation of a condition of release (bail) from jail. This behavior resulted in a jail sentence of 21 days, a fine, and probation which he successfully completed on February 23, 2007.

Eric Johnson, pursuant to a letter received by the Board on September 4, 2008, petitioned the Board for reinstatement of his license to practice pharmacy pursuant to 32 M.R.S. Sec. 13743. At this hearing, Eric Johnson testified that he is currently employed in a responsible job and occupies some of his free time by reading magazines related to the pharmacy profession. He has complied with the continuing education requirements for professional licensure.

Mr. Johnson stated that he last used illicit drugs on October 29, 2005. His only perceived "slip" occurred on January 13, 2008 when he consumed 2 beers. He is currently receiving counseling on at least a monthly basis from Philip Jurson, L.A.D.C. who supported his application with some conditions. Mr. Johnson also attends several AA sessions each week and participates in CADUCEUS meetings with other professionals in medical related fields who have concerns related to substance abuse. He has support from family members who reside nearby and has terminated his
relationships with drug users. Additionally, the applicant signed a contract with the Maine Medical Professional Health Program (PHP) on June 14, 2007, which commits him to abide by several of its terms for a period of 5 years, including attending self-help groups 3 times each week, counseling, urine and blood monitoring weekly for six months and 2 times a month thereafter. He also agreed to abstain from alcohol and any psycho-active (mood altering) drugs, unless prescribed by a qualified physician who has knowledge of his illness. Mr. Johnson further agreed to notify the PHP in the event that he ingests any medication including “over the counter medications.” Dr. David Simmons, Clinical Director of the PHP, testified that applicant Johnson has complied with those conditions with the above noted exception.

III. CONCLUSIONS OF LAW

The Board, by a vote of 4-0, concluded that Eric Johnson 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 are complied with. Therefore, the Board grants Eric Johnson’s application to take the Multi-State Pharmacy Jurisprudence Examination (MPJE) and orders him also to take the North American Pharmacist Licensure Examination (NAPLEX). He must receive a passing grade in both exams in order to be eligible for licensure as a pharmacist in Maine as long as he otherwise meets the other qualifications.\(^1\) The Board further concluded by a vote of 4-0, that if Mr. Johnson receives a passing score on the above tests and a license is issued, it shall be subject to the following conditions.

1. Eric Johnson shall completely abstain from the ingestion of alcohol and poppy seeds until further order from this Board.

2. Eric Johnson shall completely abstain forever from the use of drugs without a prescription by a physician with the exception of over the counter medications.

3. Eric Johnson shall comply with the terms of the June 14, 2007 contract with the Maine Medical Professional Health Program (PHP). He shall immediately report to the Board any amendments to that contract and any positive screening results including any ingestion of alcohol or illegal possession or consumption of those drugs governed by paragraph 3 above.

4. Eric Johnson shall participate in counseling on a monthly basis with counselor Philip Jurson.

\(^{1}\) The Board also determined that Eric Johnson is eligible to apply for a pharmacist technician’s registration.
Any less frequent counseling sessions, change in counselors, or termination of such counseling shall be immediately reported to this Board.

5. Eric Johnson shall immediately inform Kelly McLaughlin, Staff Development Specialist IV, of any employment as a pharmacist or pharmacist technician during the duration of the PHP contract. He shall also provide to this Board performance reports from the pharmacist in charge (PIC) and himself within 30 days after he becomes employed as a pharmacist.

6. Eric Johnson shall attend meetings of self-help groups at least three times weekly.

7. Eric Johnson shall not be eligible to work as a pharmacist for more than 24 hours per week until the Board grants a request for him to increase those hours which, in no event, shall be more than 40 hours per week until the year 2012.

8. Eric Johnson shall not be eligible to act as a pharmacist in charge until the year 2012.

9. Eric Johnson shall provide a copy of this decision to all employers, PIC’s, treating physicians, and counselors.

10. Eric Johnson shall be responsible for ensuring that the Maine Medical Professional Health Program provides a report to the Board by January 13, 2010, which documents his compliance with the PHP contract conditions.

Dated: February 10, 2009

John Harris, Vice 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.