

Before the Iowa Plumbing and Mechanical Systems Board

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In the Matter of:	)	Case No. PM2010-0049, 0051
	)	DIA No: 13PMB006
	)	
Patrick T. O'Connor,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Respondent.	)	<b>DECISION and ORDER</b>

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This matter concerns a statement of charges filed against respondent Patrick O'Connor on July 16, 2013. He was charged with fraud in procuring a license. The case was set for hearing before the Iowa Plumbing and Mechanical Systems Board (the Board) on November 20, 2013. The following Board members were present for the hearing: Ron Masters, Jim Cooper, Blas Hernandez, Robert Kunkel, Sue Pleva, and Rodney Schultz. Jeffrey Farrell, an administrative law judge from the Iowa Department of Inspections and Appeals, assisted the Board. Assistant Attorney General September Lau represented the public interest. Respondent represented himself. Respondent requested and was granted a confidential hearing pursuant to Iowa Code section 272C.6(1).

**THE RECORD**

The State's exhibits 1-25 were admitted. The State called Daniel Hostetler and Rick Farrell as witnesses. Respondent's exhibits A-F were admitted. Respondent testified.

**FINDINGS OF FACT**

**Background:** The Iowa legislature passed the Iowa Plumber, Mechanical Professional, and Contractor Licensing Act (the Act) passed in 2007. The Act created a comprehensive regulatory scheme to regulate individuals who work in the trades of plumbing, HVAC, refrigeration, and hydronics (referred to as "the four trades"). The Act required individuals who wanted to work in the four trades to be licensed, which in turn, required an examination to demonstrate proficiency. The Act allowed for a waiver period during which individuals currently working in the four trades could qualify for a license without taking the exam. An applicant had to show five or more years of work experience to show continuous professional competency consistent with that expected of an individual who passes the applicable licensing examination.<sup>1</sup> The waiver period closed on December 31, 2009, but only allowed the Board to consider work experience prior to July 1, 2008.<sup>2</sup>

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<sup>1</sup> Iowa Code section 105.18(4)(b).

<sup>2</sup> 641 IAC 29.6(1)(c) (2009). See Exhibit 22.

**Respondent's applications and licensing with the Board:** In or around May of 2009, respondent Patrick O'Conner was working as an HVAC technician for Farrell's Heating & Cooling (Farrell's) in Sioux City, Iowa. Rick Farrell, the owner and operator of Farrell's decided to facilitate the licensing of his employees by offering to file and pay for application processing. He asked all employees, including respondent, to complete a paper application and turn it in to a company secretary. Respondent completed a form as requested. The company secretary inputted the data into the Board's electronic application system and paid for the cost of the license. The secretary inputted the information as provided by respondent, and did not modify or amend the data. (Hostetler, Farrell testimony; Exhibits 4, 8-9).

Respondent's written license application sought licensure at the journeyman level in each of the four trades. On June 4, 2009, the Board approved respondent's application as requested. (Hostetler testimony; Exhibits 4, 21, 23).

On December 1, 2009, the Board received a letter from respondent in which he requested application forms for a masters level license in each of the four trades. He stated that he did not realize that he qualified for masters license at the time he originally applied. The Board provided a form, and respondent completed and filed the application on December 14, 2009. Respondent personally filed this application and paid the fee. The Board approved his application and issued a license at the masters level in all four trades. (Exhibits 4, 10-12).

The Board received complaints on August 20, 2010, and October 15, 2010 alleging that respondent submitted a fraudulent application for licensure because he did not have the requisite five years of experience to be awarded a journeyman license during the waiver period. The Board assigned Dan Hostetler to conduct the investigation. (Exhibit 4; Hostetler testimony).

**Respondent's work experience:** Mr. Hostetler reviewed the job experience listed on respondent's applications and interviewed the employers. Respondent worked for Farrell's from November 15, 2005 to December of 2009, although he can only count the time before July 1, 2008 as experience toward the examination waiver. Respondent worked as a heating and cooling technician for Farrell's, so there is no question that this employment counts toward HVAC and refrigeration licensing. Farrell's does not perform work in the other two trades. Mr. Hostetler determined that respondent could claim between two and a half and three years of experience in HVAC and refrigeration through his employment with Farrell's. (Hostetler, Farrell testimony; Exhibits 4-5).

Prior to Farrell's, respondent worked at **Bierschbach Equipment** from May 17, 2005 to November 5, 2005 (6 months). He claimed on his first Board application that he performed building maintenance and AC repair on trucks and rental equipment. On the

second application, he stated that he did HVAC work (without mentioning AC repair). Mr. Hostetler interviewed Doug Kroger, the manager at Bierschbach. Mr. Kroger stated that respondent worked as a delivery driver and loaded stock in the warehouse. Mr. Kroger stated that respondent did not work any of the four trades while working at Bierschbach, other than changing filters in the building air conditioner. (Hostetler testimony; Exhibit 4, App. 17; Exhibits 9, 11).

Prior to Bierschbach, respondent worked at **Artic Ice Company** from April 1, 2004 to April 10, 2005. He claimed on his applications that he performed maintenance and repair on freezers and ice makers. Mr. Hostetler interviewed Max Delaney, the manager of Artic Ice. Mr. Delaney stated that respondent was strictly a truck driver who delivered ice. Mr. Delaney stated that respondent did not work on ice makers or freezers. (Hostetler testimony; Exhibit 4, App. 17; Exhibits 9, 11).

Prior to Artic Ice, respondent was self-employed with **O'Connor Trucking** from May 12, 2000 to March 1, 2004. He claimed that he drove his own truck and performed maintenance and repair refrigeration units. His claim was not supported by other evidence in the record. For example, respondent claimed he performed refrigeration work for Goldsmith Truck Line while operating his own business. Mr. Hostetler contacted the owners of Goldsmith, and neither remembered respondent's name. Mr. Hostetler reviewed respondent's resume that he provided to Farrell's during his application for a job there. Respondent described his truck driving business experience as driving "over 1 million miles" during the four year period. He did not reference repair of refrigeration equipment. Respondent told Mr. Hostetler that he could not obtain tax records and customer invoices from O-Connor Trucking to support his claim because his records were lost during the foreclosure of his home. (Hostetler testimony; Exhibit 4, App. 17, 22; Exhibits 9, 11, 14).

Respondent was enrolled in a HVAC program at Western Iowa Tech from January of 2005 through December of 2005. He claimed to have worked part-time for his instructor, **Norm Lias**, from January to June during this period. Mr. Lias told Mr. Hostetler that he recalled respondent because he was a good student, and had asked him to help with his side business. Mr. Lias' business involved all four trades. Respondent worked for approximately six months before Mr. Lias closed his business due to health concerns. (Hostetler testimony; Exhibit 4, App. 23).

Respondent testified that he has consistently worked in the four trades since 2002, but did not want to get his customers involved in the support of his case. He provided some reference letters, but they did not prove up his case. For example, respondent provided a letter from the sales manager at Plumbing & Heating Wholesale, Inc., who reported that respondent opened an account in December of 2010 (presumably to buy parts). However, the letter also stated that respondent worked for Farrell's for at least five years, which is not accurate. Respondent also provided a letter from Steve Frank, a sales

manager at Briggs, Inc., another supplier. Mr. Hostetler interviewed Mr. Frank, who reported that he has known respondent since approximately 2001, but did not recall respondent making any purchases until he worked for Farrell's. (Respondent testimony; Exhibits A-B, D, F; Exhibit 4, App. 21).

### CONCLUSIONS OF LAW

**Regulatory framework:** The Board was created for the purpose to regulate the practice of plumbing, HVAC, refrigeration and hydronics (referenced as "the four trades").<sup>3</sup> The board regulates the practice, in part, through the licensing of contractors and professionals within each of the four trades. The Board is authorized to deny an application for license if failing to meet the minimum standards, or to suspend or revoke a license for grounds set forth in the statute.

In order to be licensed as a master in any of the trades, an applicant must typically pass the state master licensing examination.<sup>4</sup> A masters license is needed to engage in the business of designing, installing, or repairing equipment in the four trades.<sup>5</sup> However, as referenced in the findings of fact, the Board could waive the written exam requirement during the waiver period for persons who could meet one of two exceptions. Respondent sought a waiver under the second exception, which allows licensure if:

[t]he applicant can demonstrate to the satisfaction of the board that the applicant has five or more years of experience prior to July 1, 2008 in the [applicable trade,] which experience is of a nature that the board deems to be sufficient to demonstrate continuous professional competency consistent with that expected of an individual who passes the applicable licensing examination[.]”<sup>6</sup>

The Board adopted a rule providing guidance to what it would be sufficient to meet the waiver exception for prior experience. The Board's rule required the applicant's five years of experience to be between July 2, 1998, and July 1, 2008.<sup>7</sup> The rule further required the last two years of the applicant's experience to be between July 2, 2003, and July 1, 2008. The rule meets the Board's intent to require some recent experience in the field, which was important to show "continuous professional competency."

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<sup>3</sup> Iowa Code section 105.22.

<sup>4</sup> Iowa Code section 105.18(2)(c)(2).

<sup>5</sup> Iowa Code section 105.10; 105.18(2)(d).

<sup>6</sup> Iowa Code section 105.18(4)(b).

<sup>7</sup> 641 IAC 29.6(1)(c)(2).

**Count I – Fraud in procuring a license:** The board may suspend or revoke a license if a licensee used fraud in procuring the license.<sup>8</sup> The term “fraud” is not defined by the statute, but the Board’s regulations defined fraud to include:

[f]alse representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license[.]<sup>9</sup>

Respondent misrepresented his experience when seeking out licensure in all four trades on both applications he filed with the Board. First, respondent presented almost no evidence to show experience in plumbing and hydronics. The only possible countable experience in those areas was the six months he worked with Mr. Lias. He clearly did not have five years of work experience in those fields.

Respondent had experience in HVAC and refrigeration, but not enough to meet the five year standard. He had two years and seven months countable experience with Farrell’s, and six months experience with Mr. Lias. Respondent misrepresented his experience with other employers. He stated that he worked with refrigeration with Bierschbach and Artic Ice, but in actuality, he worked in the warehouse and as a delivery driver. He can only prove a total of three years, two months experience in HVAC and refrigeration.

Respondent’s evidence was generalized and did not overcome the more specific, detailed evidence presented by the Board. Respondent argued that he did good work and he has no records of complaints with the Better Business Bureau. The quality of respondent’s work is not in question – even Mr. Farrell testified that respondent did good work. The question before the Board concerns whether respondent misrepresented his experience in order to obtain a license. The weight of the evidence shows that he did.

### **SANCTION**

Revocation is the only rational sanction in this case. If respondent had been completely upfront and honest on his application, the Board would not have granted a license. The Board cannot reward fraud when used to obtain a license that otherwise would not have been approved. Respondent’s licenses in the four trades must be revoked.

The Board would consider future applications from respondent if he follows the requirements set by statute and the Board’s regulations. The record shows that respondent has done some good work in the field. However, he is no different than many others who were in the same position when the Act went into place. Respondent overstated his experience to avoid taking the examinations required by the Act. Many

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<sup>8</sup> Iowa Code section 105.22(1).

<sup>9</sup> 657 IAC 36.1(4)(ac).

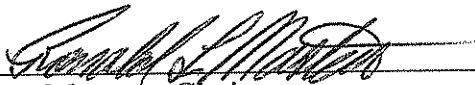
others were honest and did as the Act required. The Board could take further remedial measures, but will allow him to work in any of the trades to the extent he passes the exams and meets all other governing standards. This path may require time and effort, but it is the one respondent will need to follow if he seeks to work in the field.

**DECISION AND ORDER**

The Iowa Plumbing and Mechanical Systems Board revokes the master plumbing, HVAC, refrigeration, and hydronics license held by Patrick O'Connor. Respondent shall immediately return his license to the Board at its headquarters, Lucas State Office Building, 321 East 12<sup>th</sup> Street, Des Moines, Iowa 50319.

Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board may bill respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Respondent shall remit for these expenses within thirty days of receipt of the bill.

Dated this 19 day of March, 2014.

  
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Ron Masters, Chair  
Iowa Plumbing and Mechanical Systems Board

cc: September Lau, Assistant Attorney General  
Respondent

**Notice**

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.