

BEFORE THE BOARD OF CHIROPRACTIC EXAMINERS
FOR THE STATE OF IOWA

IN THE MATTER OF:)
MICHAEL LEE GETTING) DIA NO. 06DPHCB001
RESPONDENT) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) DECISION AND ORDER

On December 2, 2005, the Iowa Board of Chiropractic Examiners (Board) issued a Preliminary Notice of Intent To Deny Licensure to Michael Lee Getting (Respondent) based on his habitual intoxication or addiction to the use of drugs. A hearing was held on April 12, 2006 at 11:00 a.m. at the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Respondent appeared and was represented by attorney Rick Harris. Assistant Attorney General Theresa O'Connell Weeg represented the state of Iowa. Respondent did not resist the state's motion to correct two dates in the Preliminary Notice of Intent To Deny Licensure, and the motion was granted.

The following Board members presided at the hearing: Valorie J. Prah, D.C., Chairperson; Steven Kraus, D.C., Vice-Chairperson; Kathleen Doochen, D.C.; Michael Powell, D.C.; Rodney Rebarcak, D.C.; Diane Puthoff and Karen Whalen, public members. The hearing was closed to the public, at Respondent's request, pursuant to Iowa Code sections 21.5(1)(a), 22.7, 147.21 (2005). The hearing was recorded by a certified court reporter. Following the hearing, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2005), to deliberate their decision. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was instructed to prepare the Board's Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the Preliminary Notice of Intent to Deny License, Notice of Hearing, Board Order: Rescheduling Hearing, State Exhibits 1-11 (See Exhibit Index for description), Respondent Exhibits A-I (See Exhibit Index

for description), and the testimony of Craig B. Rypma, Ph.D. and Respondent.

FINDINGS OF FACT

1. Respondent graduated from the Palmer College of Chiropractic in February 2005 and has passed the NBCE examinations. On October 3, 2005, Respondent filed an Application for Chiropractic Licensure with the Iowa Department of Public Health/Bureau of Professional Licensure. Respondent disclosed that he had been convicted of several misdemeanor crimes. Respondent provided court documentation relating to his arrests and convictions.

a. On January 18, 1990, Respondent was arrested for possession of marijuana, a serious misdemeanor, in violation of Iowa Code section 204.401(3). Respondent was subsequently convicted of this offense in Clay County District Court on February 4, 1991 and was sentenced to a term of two days in the county jail and required to pay \$40 in court costs. (State Exhibit 6)

b. On February 7, 1991, Respondent was convicted in Dickinson County District Court of possession of a controlled substance (marijuana), a serious misdemeanor, in violation of Iowa Code section 204.401(3). This conviction was based on an incident that occurred on or about June 23, 1990. Respondent was sentenced to one day in jail and assessed \$25.00 in court costs. (State Exhibit 7)

c. On March 20, 1995, Respondent was convicted in Dickinson County District Court of assault with intent to inflict a serious injury, an aggravated misdemeanor, in violation of Iowa Code section 708.1 and 708.2. This conviction was based on an incident that occurred on March 4, 1994. Respondent paid \$704.54 in fines and court costs. (State Exhibit 8)

d. On April 20, 1997, Respondent was convicted in Story County District Court of public intoxication, a simple misdemeanor, in violation of the Ames Municipal Code. Respondent paid a fine of \$78.00. (State Exhibit 9)

e. On January 2, 2003, Respondent was stopped while driving in Scott County and was charged with

Possession of Drug Paraphernalia (a marijuana pipe) and Operating While Intoxicated. Respondent admits that he was under the influence of marijuana at the time. On July 23, 2004, Respondent was convicted of Possession of Drug Paraphernalia. Respondent was required to complete a Victims Impact Panel, complete a drug and alcohol evaluation, and pay a fine. Respondent also pled guilty to Operating While Intoxicated but received a deferred judgment on this charge because he had participated in a drug misuse treatment program in August and September 2003. (Testimony of Respondent; State Exhibit 10)

2. In August and September 2003, Respondent participated in a six-week Substance Misuse Program through the New Life Outpatient Center, Inc. The program included educational sessions and group meetings. Respondent successfully completed the program and was discharged on September 29, 2003 with an "average" prognosis. (Testimony of Respondent; State Exhibit 11)

3. After completing the Substance Misuse Program at New Life Outpatient Center, Respondent remained abstinent from the use of marijuana for approximately 1½ years but then relapsed in 2005. Respondent reports that he used marijuana a total of three times in 2005, with his last use occurring in November 2005. (Testimony of Respondent)

4. The Board issued its Preliminary Notice of Intent To Deny Licensure to Respondent on December 2, 2005. The denial was based on Respondent's habitual intoxication or addiction to the use of drugs. The Board cited Respondent's record of convictions as the factual circumstances supporting the denial. (State Exhibit 1)

5. Respondent currently resides with his girlfriend in Simi Valley, California. Respondent has also applied for a chiropractic license in California and wants to initially practice chiropractic in California, but he hopes to eventually return to Iowa. The California Chiropractic Board issued a preliminary denial of Respondent's application, and he is waiting for the California Board to schedule an appeal hearing. Respondent has provided both Boards with letters of recommendation from his supervising chiropractic physicians at Palmer College of Chiropractic and from a former classmate. (Testimony of Respondent; Respondent Exhibits B-E, I)

6. Respondent started attending weekly meetings of Marijuana Anonymous (MA) on January 31, 2006. Respondent submitted verification of his attendance at MA meetings from January 31, 2006 through April 9, 2006. (Testimony of Respondent; Respondent Exhibit F)

7. On April 10 and 11, 2006, Craig Rypma, Ph.D. evaluated Respondent for potential for substance dependency, general psychological stability, and motivation for treatment compliance. Dr. Rypma interviewed Respondent, obtained collateral information, conducted psychological testing, and prepared a written report. Dr. Rypma concluded that Respondent has a high probability of having a substance dependence disorder. Dr. Rypma recommends that Respondent attend further substance abuse treatment, attend 12-step recovery group meetings such as Marijuana Anonymous (MA) or Alcoholics Anonymous (AA), and cooperate with laboratory testing to verify his abstinence. In Dr. Rypma's opinion, there is a high probability that Respondent will remain abstinent and comply with treatment recommendations. The first year following completion of treatment is when a person is at highest risk for relapse. (Testimony of Craig Rypma, Ph.D.; Respondent Exhibits G, H)

CONCLUSIONS OF LAW

Iowa Code section 147.4 (2005) provides that a Board may refuse to grant a license to practice a profession to any person otherwise qualified upon any of the grounds for which a license may be revoked or suspended.

Iowa Code section 147.55 provides in relevant part:

147.55 Grounds.

A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

...

4. Habitual intoxication or addiction to the use of drugs.

See Iowa Code sections 151.9(4) and 272C.10(4) for identical provisions.

The preponderance of the evidence in this record supports the Board's Preliminary Notice of Intent To Deny License.

Respondent has a long history of marijuana use and marijuana related misdemeanor convictions. Although the initial criminal convictions occurred when Respondent was nineteen years old, his most recent offense occurred when Respondent was a thirty-one year old chiropractic student. He should have been well aware of the serious consequences such behavior could have on his professional career. Although Respondent subsequently participated in a Substance Misuse Program, he was unable to maintain his sobriety and relapsed in 2005.

Respondent's most recent use of marijuana was in November 2005, after he filed his licensure application with this Board. Respondent has only been attending Marijuana Anonymous (MA) for the past few months and did not provide the Board with any verification that he is not currently using marijuana. Moreover, Dr. Rypma has concluded that Respondent has a high probability of having a substance abuse disorder and recommends further treatment. Based on Respondent's record of convictions and admitted relapse, the Board concludes that there is a factual and legal basis to deny Respondent's pending licensure application, based on his habitual intoxication or addiction to the use of drugs. Iowa Code sections 147.4; 147.55(4); 151.9(4)(2005). The Board has a primary responsibility to protect the public health, safety and welfare when it makes licensing decisions. Respondent has failed to establish that his recovery is sufficiently stable to allow the Board to grant him a license to practice chiropractic in the state of Iowa at this time.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the Application for Chiropractic Licensure filed by Respondent Michael Lee Getting is hereby DENIED.

IT IS FURTHER ORDERED that Respondent may re-apply for licensure as a chiropractor in Iowa when he establishes, to the Board's satisfaction, that he has:

- A. Successfully completed a Board-approved substance abuse treatment program. Respondent shall sign all necessary releases permitting the approved treatment program to provide the Board with a written report containing its assessment of his prognosis for

successful recovery and the treatment program's recommendations for aftercare.

B. Complied with any and all aftercare recommendations made by the approved treatment program and has provided the Board with written verification of his ongoing compliance with aftercare.

C. Established a one-year period of sobriety following his discharge from treatment. The one-year period of sobriety must be verified through Respondent's participation in a Board-approved formal randomized laboratory-testing program.

D. Provided a follow-up chemical dependency evaluation, to be completed at the end of one year of verified sobriety.

Respondent shall be responsible for all costs of treatment, aftercare, laboratory testing and evaluation. Following full compliance with these conditions and all other requirements for licensure, Respondent would be issued a probationary license for a period of five years. Conditions of probation would be established at the time of licensure.

This Findings of Fact, Conclusions of Law, Decision and Order are approved by the board on April 28, 2006.

Judicial review of the Board's action may be sought in accordance with the terms of the Iowa Administrative Procedure Act. 645 IAC 11.29.