

STATE OF IOWA  
BEFORE THE BOARD OF BARBERING

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IN THE MATTER OF:

CASE NO. BA T124

DIA NO. 11BB001

Patrick Thomas Smith

License No. 14793

Applicant

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION AND ORDER

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On October 26, 2010, the Iowa Board of Barbering (Board) issued a Notice of Intent To Deny Licensure (Barbershop) to Patrick Thomas Smith (Applicant). A hearing was held on April 26, 2011 at 10:25 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Applicant Patrick Thomas Smith appeared for hearing. Mr. Smith was self-represented and was assisted by his mother, Sarah Smith. The state was represented by Assistant Attorney General Kristin Ensign. The following Board members were present for the hearing: Clark (Sam) Kauffman; Chairperson; Charles Wubbena; Robert VanVooren, Tammy Ortiz, and Rhonda D. Reif. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1)(2011) and 645 IAC 11.32. After hearing all the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2011), to deliberate its decision. The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

THE RECORD

The record includes the testimony of Sarah Smith, Patrick Thomas Smith; State Exhibits A-E (See Exhibit Index for description) and Applicant Exhibit 1.

FINDINGS OF FACT

1. Patrick Thomas Smith (Applicant) currently holds Iowa license number 14793 to practice as a barber in the state of Iowa. On May 17, 2010, Mr. Smith filed an application with the Board for a barbershop license for an existing barbershop in Tiffin, Iowa. On the application, Mr. Smith answered "yes" to the question that asked if he had "been convicted, found guilty of or entered a plea of guilty or no contest to a felony

or misdemeanor crime.” Mr. Smith attached a letter to his application that mentioned two criminal charges, a 2006 OWI (Operating While Intoxicated) and breaking into his father’s workplace. Mr. Smith admitted that he had been chemically dependent but wrote that he had remained sober after completing a chemical dependency program. Mr. Smith also attached court documents from two cases in Johnson County:

- An October 5, 2007 Order in case number MHMH008474, which terminated Patrick Smith’s commitment for substance abuse treatment and which provided that the Patient Advocate would have access to all charts and records relating to his treatment.
- A March 12, 2008 Judgment Entry in case number FECRO808051, which was entered upon Mr. Smith’s guilty plea to the lesser included offense of Criminal Mischief in the Fifth Degree. Mr. Smith was required to pay a fine of \$100 plus a 32 percent surcharge, to pay \$867.00 in victim restitution, and to pay attorney fees and court costs. The case was subject to further review on October 1, 2008 and at that time the Court issued an Order finding that Mr. Smith had complied with the terms and conditions of his sentencing and had paid all fines, surcharges, restitution and court costs in full.

(State Exhibit A, pp. 1-9)

2. After Patrick Smith’s barbershop license application was received in the Board office, the Board’s Executive Officer asked Mr. Smith for additional information and explanation. In a letter dated May 25, 2010, the Executive Director:

- Asked Mr. Smith to explain why he had answered “no” to the question that asked if he had convictions on his initial application for a barber license in 2007.
- Asked Mr. Smith to provide all court documents relating to his felony burglary charge and his negotiated plea to a misdemeanor Criminal Mischief.
- Asked for a copy of Mr. Smith’s substance abuse evaluation and his discharge summary.
- Asked for a written narrative and any court documents explaining Mr. Smith’s pending charge for “Possession Medium Depicting Exploitation” and its status.

(State Exhibit A, p. 10)

3. This record does not include any written response from Patrick Smith to the Board's May 25<sup>th</sup> letter concerning his barbershop application.

4. On July 26, 2010, Patrick Smith filed an application to renew his barber license. On this renewal application, Mr. Smith answered "yes" to the question that asked if he had "been convicted, found guilty of, or entered a guilty plea or no contest to a felony or misdemeanor crime (other than minor traffic violations with fines under \$500)?" The renewal application also asked: "SINCE 07/01/2008 HAVE YOU:

- Developed a medical condition which in any way impairs or limits your ability to practice your profession with reasonable skill and safety?
- Been engaged in illegal or improper use of drugs or other chemical mood altering substances?

Patrick Smith did not answer these questions "yes" or "no" but rather inserted question marks next to the questions and added the comment "Please see attached letter." In his attached letter, Mr. Smith disclosed that he was diagnosed with schizophrenia in 2004, received treatment from psychiatrists and counselors, and his condition became stable after about 3 years. He admitted that he had an OWI in 2006, for which he completed a driving course and 6 months' probation. He further disclosed that in the fall of 2006 while working in a barbershop in Coralville, Iowa, he accepted an offer of free cocaine and quickly became addicted. When he ran out of money, he started stealing from his parents and also broke into his father's work vehicle and office. This act led to the felony burglary charge, which was later reduced to a misdemeanor after Mr. Smith completed an inpatient chemical abuse program.

Mr. Smith then returned to work as a barber and rented a room from a family in Cedar Rapids. Mr. Smith disclosed that while in Cedar Rapids, he was noncompliant with his mental health medications and became very unstable. Mr. Smith eventually returned to his parents' home to resume compliance with his medication schedule. While living at home, Mr. Smith reports that he accidentally downloaded files that contained sexually explicit photographs of minors. He was then arrested and charged with "sexual exploitation of a minor." Mr. Smith returned to outpatient substance abuse treatment because he had begun using marijuana. Mr. Smith reported that was "more than a year ago" and he is once again stable, taking his medications regularly, and seeing his mental health providers regularly. Mr. Smith anticipates that the pending sexual exploitation charge will be reduced and settled by probation.

5. On July 28, 2010, Board staff responded to Patrick Smith's barber license renewal application and asked him to submit, within 14 days:

- A signed letter of explanation providing details of the incident(s).
- A copy of all documents regarding the convictions, including court records, dates of occurrence, sentencing order, parole/probation.
- A copy of the final disposition of the conviction.
- A copy of the court ordered evaluations along with its recommendations.

Mr. Smith responded by letter dated August 9, 2010 and provided a narrative explanation concerning his charges but did not submit a copy of his substance abuse evaluation or recommendations. (State Exhibit A)

6. On October 26, 2010, the Board voted to deny Patrick Smith's application for a barbershop license based on his conduct that would have constituted a basis for revoking or suspending a barbershop license. Specifically, the denial letter cited Mr. Smith's guilty plea to Criminal Mischief in the Fifth Degree and the court order for him to pay fines, restitution, and enter a substance abuse program. The denial letter also cited Mr. Smith's pending charge for viewing pornographic images of minors. (State Exhibit B)

7. Patrick Smith filed an appeal from the license denial and enclosed an August 24, 2010 letter from an Assistant Johnson County Attorney. The letter contained an offer to dismiss the pending criminal charge on or about June 30, 2011, so long as Mr. Smith fully complies with a number of conditions, including but not limited to:

- Remaining under the close supervision of his parents;
- Obtaining a psycho-sexual evaluation and complying with any recommended treatment;
- Continue ongoing mental health and substance abuse treatment, comply with prescribed medications for the mental health diagnosis, and remain free from substance abuse;
- No unsupervised access to a computer; and
- No new law violations of any kind other than simple misdemeanors or traffic violations.

8. Patrick Thomas Smith appeared for hearing with his mother, Sarah Smith, and submitted letters and documentation prepared by her. Mrs. Smith is a registered nurse and has been a strong advocate for her son. Patrick Smith is currently living with his parents, and his mother supervises his medication administration to ensure that he remains compliant. Mrs. Smith provided a detailed explanation of Patrick Smith's childhood, mental health, substance abuse, and criminal history. (Testimony of Sarah Smith; Applicant Exhibit 1)

9. Patrick Smith has been working at a barbershop in Tiffin. The current owner of the barbershop would like Mr. Smith to take it over, and this is the barbershop for which Mr. Smith has filed his barbershop license application. Mr. Smith typically works alone in the barbershop, and most of his clients are adults. However Mr. Smith does provide barbering services to some children, although they are usually accompanied by a parent. (Testimony of Patrick Thomas Smith)

Mr. Smith testified that it has been "about a year" since he last used illegal drugs. He admits that he does have a problem with drugs if he is around them. He is not currently attending Narcotics Anonymous (NA) or Alcoholics Anonymous (AA) meetings because he has not found them to be helpful to his recovery. (Testimony of Patrick Smith)

#### CONCLUSIONS OF LAW

The Board may refuse to grant a license for any grounds for which a license may be revoked or suspended.<sup>1</sup> The Iowa Code authorizes the Board to revoke, suspend, or otherwise discipline a license for: habitual intoxication or addiction to the use of drugs<sup>2</sup> and for conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.<sup>3</sup>

The Board has reviewed Patrick Smith's application, as well as his supporting documentation and testimony. Mr. Smith has had a history of chemical dependence

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<sup>1</sup> Iowa Code section 147.4(2009)

<sup>2</sup> Iowa Code section 147.55(4)(2009)

<sup>3</sup> Iowa Code section 147.55(5)(2009).

and relapse, and chemical dependence was a major factor in both of his criminal convictions. In addition, Mr. Smith has a serious mental health condition that requires his diligent compliance with medications. Mr. Smith has apparently maintained sobriety and medication compliance under close supervision from his mother, but he has a history of relapse and medication noncompliance when he attempts to live independently. In addition to his criminal convictions, Mr. Smith has serious pending criminal charges that raise public safety concerns. Although Mr. Smith appears to be on the right road to having these charges dismissed, he has not yet satisfied all of the conditions established by the county attorney.

Upon review of this record, the Board is unable to grant Patrick Smith's application for a barbershop license at this time. Although it was requested of him, Mr. Smith has not presented documentation/verification of his substance abuse evaluation(s), treatment, or of the aftercare recommendations made by his treatment program. In order to obtain a barbershop license, Mr. Smith will be expected to provide copies of all court ordered evaluations, recommendations, and proof of his full compliance with those recommendations. In addition, Mr. Smith must be able to verify a longer period of personal stability through ongoing abstinence from illegal drugs, ongoing compliance with his prescribed medications, and no new criminal charges. The Board is not willing to consider another application for a barbershop license prior to June 2012.

#### DECISION AND ORDER

IT IS THEREFORE ORDERED that the Barbershop License application filed by Patrick Thomas Smith on May 17, 2010 is hereby DENIED.

Dated this 26<sup>TH</sup> day of July, 2011.