

- b. as to licensee Asher, the record does not show a several-years period of substance abuse and multiple disciplinary actions by several states resulting from his substance abuse problem;
 - c. as to both licensees, unlike Mr. Cezar, who has applied for initial licensure in Alaska, the reinstated licensees had already been admitted to practice in Alaska and had a track record of working in Alaska, which placed the board in a better position to monitor their rehabilitation through the memoranda of agreement they entered into;
 - d. though neither of the licensees had as long a period of rehabilitation or good conduct following surrender of their licenses before reinstatement as Mr. Cezar had following his last incident of misconduct, the licensees had a reasonable expectation, predicated on 12 AAC 52.970 and 12 AAC 52.980, that if (as they did) they surrendered their licenses rather than waiting to see if the licenses would be suspended or revoked, they could be considered for reinstatement with conditions relatively soon, while as a new applicant Mr. Cezar had no such expectation.³
6. Though the board appreciates Mr. Cezar's offer to accept conditions on his license, in light of his pattern of past misconduct and substance abuse, the board concludes that this is not an appropriate case in which to impose terms and conditions of probation (normally reserved for disciplinary actions) on initial licensure as a means of enabling a new applicant with a history of serious misconduct and prior disciplinary action to practice in Alaska.⁴

Accordingly, the "Conclusion" section beginning on page 17 and continuing through page 18 of the October 22nd decision document is hereby rejected. The board instead exercises its discretion to deny Mr. Cezar's application for licensure and hereby affirms its prior denial decision.

³ Under 12 AAC 52.970, a suspended license can be reinstated as soon as the requirements of the suspension order are satisfied. Under 12 AAC 52.980, a licensee whose license is revoked can apply for reinstatement one year after revocation.

⁴ Nothing in this conclusion is meant to preclude the board from imposing conditions on initial licensure in a different case if the board finds it appropriate to do so on the facts of the different case.

This Decision of the Board and the October 22, 2007 decision document, as modified above, shall constitute the final decision of the Board of Pharmacy in this matter, as adopted by a vote of the board this 14th day of February, 2008.

By: /

Mary Mondell, Chair
On behalf of the Board of Pharmacy /

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL FROM THE BOARD OF PHARMACY**

In the Matter of)
Mahdi Cezar) OAH No. 06-0255-PHA
_____) Board Case No. 2650-06-001

DECISION

I. Introduction

Mahdi Cezar challenges the Board of Pharmacy's denial of his application for a pharmacist license. The board denied Mr. Cezar's application due to a history of discipline in other states stemming from a substance abuse problem and related criminal violations. At the hearing Mr. Cezar presented uncontroverted evidence of rehabilitation at least equal to that of two licensees whose surrendered licenses were reinstated by the board with conditions of probation imposed. Mr. Cezar also stated that he would agree to conditions on his license to require, for instance, drug and alcohol testing. To ensure that the board's treatment of licensees and license applicants is consistent, Mr. Cezar's application should be approved, provided that he agrees conditions on his license, drawn from 12 AAC 52.930 and 12 AAC 52.940, similar to those imposed on reinstated licenses.

II. Facts

Mahdi Cezar is a pharmacist licensed in several other states who applied for a license to practice pharmacy in Alaska in 2005.¹ The board denied his application in 2006 based on the discipline history below.²

A. Discipline History

On his application for licensure in Alaska, Mr. Cezar answered "yes" to following questions:

1. Have you ever had a professional license denied, revoked, suspended, surrendered, placed on probation, or been the subject of any restriction, censure, or other disciplinary action in any jurisdiction? . . .
3. Have you had a license to practice as a registered pharmacist revoked, suspended, or restricted? . . .
4. Have you ever been charged or convicted of a violation of a U.S. or state statute or regulation, excluding minor traffic violations? . . .
9. Have you been charged with or convicted of a violation of any federal or state controlled substance law?^[3]

¹ March 29, 2005 Pharmacist License Application.

² Letter from Sher Zinn (Mar. 9, 2006).

³ March 29, 2005 Pharmacist License Application.

The history behind these answers is as follows.

On August 30, 1989, Mr. Cezar entered a conditional guilty plea in Tennessee for the offense of “[d]ispensing controlled substance w/out proper authorization.”⁴ Mr. Cezar explained that he thought Dr. Joe Moss had given him blanket authorization to prescribe medication when in fact Dr. Moss had not.⁵ Mr. Cezar offered to submit to drug testing but denied that he abused drugs.⁶ The court sentenced Mr. Cezar to three years of probation, and required him to undergo evaluation and treatment for drug abuse and submit to random drug screening.⁷

The Tennessee Board of Pharmacy suspended Mr. Cezar’s license for two years following his guilty plea, but stayed the suspension and placed him on a two-year period of probation.⁸ In its fact findings the Tennessee board indicated that Mr. Cezar had unlawfully obtained drugs and dispensed a prescription without authorization.⁹

The Louisiana Board of Pharmacy also suspended Mr. Cezar’s license, stayed the suspension, and ordered two years of probation for the same incident.¹⁰ The Louisiana board imposed special conditions of probation that included random drug screening.¹¹

In 1992, Mr. Cezar applied for licensure as a pharmacist in Illinois. It came to the attention of the Illinois Department of Professional Regulation that Mr. Cezar “failed to provide information about license disciplines (from other States) on an application for reciprocity licensure as a Pharmacist.”¹² The Illinois Department of Professional Regulation issued Mr. Cezar a license but subjected the license to a one year term of probation.¹³

In 1994, Mr. Cezar was caught on videotape taking painkillers from his employer, a Walgreens drug store in Indianapolis, Indiana.¹⁴ When confronted by his employer he admitted to taking approximately 100 tablets of each of the following medications: (1) Lortab

⁴ Probation Order in *State v. Cezar*, No. 1088-353 (Cir. Ct. of Williamson County, Tenn. Aug. 30, 1989) (Division’s Exhibit 1).

⁵ August 30, 1989 Handwritten Statement at 1 & 2 (explaining the same to the court in the statement which accompanied a probation order); accord June 30, 2006 Testimony of Mahdi Cezar (Cezar Testimony) (offering the same explanation during the Alaska adjudicatory hearing).

⁶ *Id.*

⁷ *Id.*

⁸ *In re Cezar*, No. 12.12-D-89-1163A (Tenn. Board of Pharmacy Dec. 18, 1989).

⁹ *Id.*

¹⁰ *In re Cezar*, No. 90-13691 (La. Board of Pharmacy Apr. 25, 1990).

¹¹ *Id.*

¹² *State v. Cezar*, No. 92-5334, at 1 (Ill. Department of Professional Regulation Jan. 15, 1993).

¹³ *Id.*

¹⁴ *State v. Cezar*, No. 94 IBP 003 at 2 (Ind. State Board of Pharmacy Mar. 24, 1994).

(hydrocodone), (2) Tylenol #3 (codine, a schedule III controlled substance), (3) Xanax (alprazolam, a schedule IV controlled substance), (4) Valium (diazepam, a schedule IV controlled substance), and (5) Vicoden ES.¹⁵ Mr. Cezar also stated that he began taking pain killers without a prescription in 1993 due to back pain that resulted from an automobile accident.¹⁶

Mr. Cezar's license to practice pharmacy in Indiana was summarily suspended for 90 days.¹⁷ A medical doctor's evaluation of Mr. Cezar around the time of his suspension states that he "is either actively clinically dependent . . . or is actively engaged in criminal behavior."¹⁸ At the time of his medical evaluation Mr. Cezar denied that he was chemically dependent.¹⁹

An Indiana criminal court sentenced Mr. Cezar to one year of probation for possession of a controlled substance and ordered him to pay Walgreens \$1,250.²⁰ In 1995, his license to practice pharmacy in Indiana was indefinitely suspended, subject to various conditions for reinstatement.²¹ Later, in November of 1999, the Indiana board also placed Mr. Cezar's license on probation because of impairment due to alcohol addiction, but it is not clear from the Indiana documents made part of the record whether this action stemmed from his earlier problems or whether one or more other incidents occurred closer in time to the 1999 action.²²

In 1995, the Illinois Department of Professional Regulation suspended Mr. Cezar's license indefinitely, attributing its action to the Indianapolis Walgreens theft and to Mr. Cezar failure to disclose his conviction on an Application to Change Pharmacist-in Charge.²³

Mr. Cezar's license to practice pharmacy has been restored in all states that have suspended it.²⁴ He allowed his Kentucky license to lapse but had it restored through payment of a fee once he had satisfied the disciplinary requirements of the other states.²⁵ Since applying for

¹⁵ *Id.* at 2-3.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ Letter from Fred Frick (May 3, 1994).

¹⁹ *See id.*

²⁰ *See State v. Cezar*, No. 92-027179 (Mun. Ct. of Marion County, Ind. Apr. 21, 1995).

²¹ *State v. Cezar*, No. 94 IBP 003 (Ind. State Board of Pharmacy Oct. 12, 1995).

²² *State v. Cezar*, No. 94 IBP 003 at 2 (Ind. Board of Pharmacy Dec. 17, 2001) (finding same in the context of granting Mr. Cezar's request to withdraw his probation).

²³ *Dep't of Prof'l Regulation v. Cezar*, No. 94-2372-LEG at 5 (Ill. Department of Professional Regulation Dec. 30, 1995).

²⁴ *In re Cezar*, No. 1994-02372-1 at 3 (Ill. Department of Professional Regulation June 4, 2001); *State v. Cezar*, No. 94 IBP 003 at 4 (Ind. Board of Pharmacy Dec. 17, 2001); *In re Cezar*, License No. 13691 (La. State Board of Pharmacy Feb. 21, 2002); *In re Cezar*, License No. 6874 (Tenn. Board of Pharmacy Feb. 18, 2000).

²⁵ Cezar Testimony.

licensure in Alaska, Mr. Cezar has been licensed by Texas, following a hearing, and by Minnesota and Nevada, based on documentary submittals, without a hearing.²⁶

B. Rehabilitation

Mr. Cezar has not tested positive in a drug test since 1994 and has had no convictions for violations of “pharmacy law” since about that time.²⁷ In 1995, Mr. Cezar signed contracts with recovering pharmacist programs in Illinois and Indiana, agreeing to abstain from mood-altering drugs and submit himself to a drug testing program to ensure compliance.²⁸ He is not currently required to undergo routine drug screening, but his employer at the time of the 2006 hearing had a policy of performing random drug tests.²⁹

Mr. Cezar has attended many support group meetings as part of his recovery program. These have included Alcoholics Anonymous or Narcotics Anonymous meetings three to five times per week, weekly Caduces recovery network meetings, and three years’ worth of aftercare group meetings.³⁰ Mr. Cezar also has sponsored other people in the Alcoholics Anonymous/Narcotics Anonymous programs.³¹

As early as 1995, his doctor recommended allowing Mr. Cezar to resume practice as a pharmacist, if “the conditions of his recovery contract c[ould] be monitored and meeting attendance can be validated”³² Mr. Cezar has practiced continuously as a pharmacist since 1999.³³ A letter from the Illinois Professionals Health Program states that Mr. Cezar has been in full remission since May 1994 and suggests that further monitoring is not necessary.³⁴ The results of a psychological evaluation state that Mr. Cezar’s alcohol dependency and opiod dependency are both in remission.³⁵ No evidence that Mr. Cezar has experienced a relapse was

²⁶

Id.

²⁷

Id.; *accord* Copies of documents identified as “Exhibit R’s group 10,” apparently from another proceeding but included in the agency record for this case before the Alaska board (showing that results of drug tests taken by Mr. Cezar between September 1994 and October 1995 were all negative). The conviction for possession of controlled substances stemming from the Walgreens incident was in 1995.

²⁸

See Indiana Pharmacists Association Contract (Sep. 29, 1995); *see also* Illinois Pharmacist Recovery Program Contract (Oct. 25, 1995).

²⁹

Cezar Testimony.

³⁰

Id. *Also* Handwritten notes in agency record apparently identified in another proceeding as “Exhibit R’s group 5” (indicating that Mr. Cezar attended over 90 recovery program meetings between May and October, 1994).

³¹

Cezar Testimony.

³²

Letter from Fred Frick, M.D. (Nov. 14, 1995).

³³

Cezar Testimony.

³⁴

Letter from Martin Doot and Russell Romano (June 27, 2005)

³⁵

Letter from Susan Alden (Oct. 3, 2005).

presented. He attributes his success to working through his addiction issues with pharmacy recovery network support groups.³⁶

C. Application Denial

The board denied Mr. Cezar's application at a February 2006 meeting.³⁷ The denial letter explains that the board voted to deny Mr. Cezar's application and that the board's motion cited "Alaska Statutes 08.80.261[a] (1), (2), (7E), (11), and (14)."³⁸ No other reason was given in the denial letter issued a month after the board's meeting.

In March 2006, Mr. Cezar requested a hearing.³⁹ During the prehearing conference, the division agreed to file an amended statement of issues more fully articulating the reasons for the denial.⁴⁰ In April 2006 the board reviewed the reasons for its prior denial of Mr. Cezar's application, and the division provided the following summary of that review:

The board specifically cited as reasons for denial: AS 08.80.261[a](1), failure to provide information regarding current and prior discipline on his application for licensure for the state of Illinois in 1993; AS 08.80.261[a](2), in 1989 used a prescriber's name to prescribe legend drugs without the prescriber's authorization; AS 08.80.261[a](7)(E), include repeat offenses in several states, and his inability to provide proper and positive rehabilitation for his offenses, questioning his safety and competence in performing his work as a pharmacist; AS 08.80.261[a](4) [&] (11), prescribing medication without prescriptive authority and self medicating; AS 08.80.261[a](14) self medicating, deceit, inability to discern right from wrong, not providing accurate information on applications and forms.⁴¹

III. Discussion

Mr. Cezar's appeal does not so much dispute the board's authority to deny his application as it questions whether the board should exercise its discretion to approve his application. His arguments for approval are essentially that he has a long history of rehabilitation, which has been recognized by the licensing authorities in other jurisdictions, and the board has reinstated licensees with similar histories and shorter periods of rehabilitation. Regarding recognition of his rehabilitation, Mr. Cezar argues that this board must give full faith and credit to the actions of the other licensing authorities. Regarding this board's past actions in reinstating licensees, Mr. Cezar

³⁶ Cezar Testimony.

³⁷ Letter from Sher Zinn (Mar. 9, 2006) (describing the board's vote at it February 9-10, 2006 meeting).

³⁸ *Id.*

³⁹ See Notice of Defense/Request for Hearing (Mar. 22, 2006).

⁴⁰ May 3, 2006 Recording of Prehearing Conference; May 18, 2006 Prehearing Order at p. 1.

⁴¹ Letter from Sher Zinn (May 1, 2006).

has offered to accept conditions on licensure similar to those imposed on the reinstated licensees. Those arguments, and the offer to accept conditions, will be discussed in Part B. First, however, the board's authority to deny Mr. Cezar's application for the grounds described in the May 1, 2006 amended statement of issues will be in Part A.

A. THE BOARD'S AUTHORITY TO DENY THE APPLICATION

The board may grant a license to practice pharmacy in Alaska to applicants licensed in another jurisdiction, who provide proof that they "do not currently have a pharmacist license suspended, revoked, or otherwise restricted," and meet several other requirements.⁴² The board, however, may deny a license application for any of the reasons for which a pharmacist licensed in Alaska can be subjected to disciplinary sanctions.⁴³ The reasons for which disciplinary sanctions may be imposed are found in AS 08.80.261(a), the statute the board cited for the five reasons on which it based the denial of Mr. Cezar's application. Each reason is discussed below.

1. Failure to Provide Information

The first reason given for the board's denial was "failure to provide information regarding current and prior discipline on his application for licensure for the state of Illinois in 1993[.]"⁴⁴ Under AS 08.80.261(a)(1) the board may deny a license to an applicant when the board finds that the applicant has "secured or attempted to secure a license through deceit, fraud, or intentional misrepresentation." The Illinois Department of Professional Regulation found that Mr. Cezar failed to provide information about license discipline from other states on his application for reciprocity licensure as a pharmacist in Illinois.⁴⁵ Mr. Cezar has acknowledged that he failed to answer a question on the Illinois application correctly.⁴⁶ Mr. Cezar has not provided any information disputing the assertion that his failure to answer correctly was deceitful, fraudulent, or intentional. The board was within its authority under AS 08.80.261(a)(1) to deny Mr. Cezar's application on this basis in 2006. It retains the authority to do so now.

⁴² AS 08.80.145.

⁴³ AS 08.80.261(a).

⁴⁴ Letter from Sher Zinn (May 1, 2006).

⁴⁵ *State v. Cezar*, No. 92-5334, at 1 (Ill. Department of Professional Regulation Jan. 15, 1993).

⁴⁶ *See Pharmacist License Application* (Mar. 29, 2005).

2. Unauthorized Prescriptions

The second reason given for the board's denial of Mr. Cezar's application was that "in 1989 [he] used a prescriber's name to prescribe legend drugs without the prescriber's authorization[.]"⁴⁷ Under AS 08.80.261(a)(2), the board may deny a license to an applicant when the board finds that the applicant has "engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities[.]" The Tennessee Board of Pharmacy found that Mr. Cezar unlawfully obtained drugs and wrote prescriptions without proper authorization.⁴⁸ The written statement Mr. Cezar provided with his 1989 Tennessee Probation Order indicates that the unauthorized prescriptions were a misunderstanding,⁴⁹ but the documentary record and Mr. Cezar's testimony at the hearing do not negate the Tennessee board's conclusion. Indeed, Mr. Cezar's Alaska application for licensure acknowledges that he "filled prescriptions in Tennessee without proper authorization."⁵⁰ When Mr. Cezar filled the unauthorized prescriptions in Tennessee he impliedly represented that he had proper authorization, which was a misrepresentation. The board was within its authority under AS 08.80.261(a)(2) to deny Mr. Cezar's application on this basis in 2006. It retains the authority to do so now.

3. Repeated Offenses

The third reason given for the board's denial of Mr. Cezar's application was "repeat offenses in several states, and his inability to provide proper and positive rehabilitation for his offenses, questioning his safety and competence in performing his work as a pharmacist[.]"⁵¹ Under AS 08.80.261(a)(7)(E), the board may deny a license to an applicant when the board finds that the applicant "is incapable of engaging in the practice of pharmacy with reasonable skill, competence, and safety for the public because of . . . factors determined by the board[.]" Mr. Cezar's record of multiple offenses could be construed as evidencing a lack of capability to safely engage in the practice of pharmacy.

The board's reasoning, however, linked the history with concerns about Mr. Cezar's rehabilitation. Documents in the record and Mr. Cezar's testimony at the hearing provide

⁴⁷ Letter from Sher Zinn (May 1, 2006).

⁴⁸ *In re Cezar*, No. 12-12-D-89-1163A (Tenn. Board of Pharmacy Dec. 18, 1989).

⁴⁹ *State v. Cezar*, No. 1088-353 (Cir. Ct. of Williamson County, Tenn. Aug. 30, 1989).

⁵⁰ Pharmacist License Application (Mar. 29, 2005).

⁵¹ Letter from Sher Zinn (May 1, 2006).

evidence of rehabilitation the board may not have, and likely could not have, considered in 2006. The board may have been within its authority under AS 08.80.261(a)(7)(E) to deny Mr. Cezar's application due to the history of his offenses and evidence of rehabilitation when the denial decision was made. The additional evidence of Mr. Cezar's rehabilitation, however, calls into question whether the board's can now hold to the conclusion that he is incapable of practicing safely, especially in comparison to licensees whose licenses have been reinstated, as discussed in Subpart B.2 below.

4. Unauthorized Prescriptions and Self-Medication

The fourth reason given for the board's denial of Mr. Cezar's application was "prescribing medication without prescriptive authority and self medicating[.]"⁵² Under AS 08.80.261(a)(4) & (11), the board may deny a license

- to an applicant who has been convicted of a felony or of a crime "that affects the applicant's ... ability to practice competently and safely"; or
- when the board finds that the applicant "violated state or federal laws or regulations pertaining to drugs and pharmacies[.]"

Mr. Cezar's criminal convictions in Indiana and Tennessee establish that he violated laws pertaining to drugs and pharmacies, and the Indiana conviction was for a felony.⁵³ The board was within its authority under AS 08.80.261(a)(11) to deny Mr. Cezar's application on this basis in 2006. It retains the authority to do so now.

5. Additional Unprofessional Conduct

The fifth reason given for the board's denial of Mr. Cezar's application was "self medicating, deceit, inability to discern right from wrong, [and] not providing accurate information on applications and forms."⁵⁴ Under AS 08.80.261(a)(14), the board may deny a license to an applicant when it finds that the applicant "engaged in unprofessional conduct, as defined in regulations of the board." Applicable regulations list several behaviors that constitute "unprofessional conduct," including: (1) failing to provide information or providing false or fraudulent information on an application, (2) failing to use reasonable knowledge, skills, or

⁵² *Id.*

⁵³ *See State v. Cezar*, No. 92-027179 (Mun. Ct. of Marion County, Ind. Apr. 21, 1995) (conviction for possession of a controlled substance); *see also State v. Cezar*, No. 1088-353 (Cir. Ct. of Williamson County, Tenn. Aug. 30, 1989) (conviction for dispensing controlled substances without authorization).

⁵⁴ Letter from Sher Zinn (May 1, 2006).

judgment in the practice of pharmacy, and (3) knowingly dispensing a drug under a fraudulent prescription.⁵⁵ Several events in Mr. Cezar's history constitute unprofessional conduct under the applicable regulations, as shown by the problem with the Illinois application and his criminal convictions.⁵⁶ The board was within its authority under AS 08.80.261(a)(14) to deny Mr. Cezar's application on this basis in 2006. It retains the authority to do so now.

In sum, four of the five reasons given for the board's denial of Mr. Cezar's application can still be supported after consideration of the information and arguments brought out through the hearing process. The board, therefore, has the authority to affirm its prior denial. The only question remaining is whether the evidence of Mr. Cezar's rehabilitation, particularly in light of the board's practice regarding license reinstatement for pharmacists with similar misconduct histories, should lead the board to exercise its discretion to approve Mr. Cezar's application.

B. THE BOARD'S DISCRETION TO APPROVE THE APPLICATION

By statutory amendment in 2003, the legislature explicitly extended to the board the discretion to deny a license for the same reasons it can discipline a licensee.⁵⁷ The board is not required to deny a license to an applicant with a history of conduct that would justify disciplinary sanctions, but it has the discretion to do so.⁵⁸ Similarly, as to people already licensed in Alaska, the board is not required to take away a license for particular misconduct, but by regulation it has reserved to itself the discretion to suspend or revoke licenses for repeat or serious violations.⁵⁹ In particular, the board's discretion to revoke a license extends to situations in which a licensee violates subsection (1) or (4) of AS 08.80.261(a),⁶⁰ which are two of the subsections on which the board based its decision to deny Mr. Cezar's application.

In short, whether the matter concerns initial licensure or discipline of a current licensee, the board's decision about how a history of misconduct affects a person's ability to practice pharmacy involves an exercise of discretion by the board. Whether, and subject to what

⁵⁵ 12 AAC 52.920(1), (13) & (15).

⁵⁶ See *State v. Cezar*, No. 92-5334 at 1 (Ill. Department of Professional Regulation Jan. 15, 1993) (failure to provide information on an application); *State v. Cezar*, No. 92-027179 (Mun. Ct. of Marion County, Ind. Apr. 21, 1995) (conviction for possession of a controlled substance); *State v. Cezar*, No. 1088-353 (Cir. Ct. of Williamson County, Tenn. Aug. 30, 1989) (conviction for dispensing controlled substances without authorization).

⁵⁷ See AS 08.80.261 and history of amendments thereto.

⁵⁸ See AS 08.80.261(a) (using the word "may," which vests discretion, when describing the board's authority to deny licensure for the same grounds as justify disciplinary action).

⁵⁹ See 12 AAC 52.920(b)&(c) (indicating that the board "will, in its discretion" suspend or revoke pharmacists' licenses for certain violations).

⁶⁰ 12 AAC 52.920(b)(3).

conditions, the board should reverse its prior denial of Mr. Cezar's application, therefore, requires an exercise of discretion in which the board takes into account the evidence of Mr. Cezar's rehabilitation. Mr. Cezar has argued that the Full Faith and Credit Clause of the U.S. Constitution and the board's recent practice concerning license reinstatements dictate that the board should reverse its denial. Each argument is considered below.

1. Full Faith and Credit Clause

During the hearing and in briefing, Mr. Cezar argued that the Full Faith and Credit Clause of the U.S. Constitution, in effect, requires the Alaska board to defer to the determination of other state boards on the question of Mr. Cezar's rehabilitation.⁶¹ In pertinent part that clause states: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."⁶² Essentially, Mr. Cezar has argued that this constitutional principle requires an Alaska licensing authority to accept as fact a finding (or implied finding) by a second state's licensing authority that a licensee is rehabilitated, *and* to rely on that fact in making the discretionary decision on whether to approve an application for licensure. He also has argued that the Alaska board must defer to the determinations (or implied determinations) by other states' licensing authorities that he is rehabilitated. Mr. Cezar's argument is flawed in several respects.

The Full Faith and Credit Clause does not require that one state give another state's administrative findings of fact conclusive effect under circumstances such as these. The purpose of the clause is "to preserve rights acquired or confirmed under the public acts and judicial proceedings of one state by requiring recognition of their validity in others."⁶³ The acts of other states issuing a license to Mr. Cezar, or reinstating his license, did not confirm to him a right to practice pharmacy in Alaska. Certainly, if the issue in Mr. Cezar's appeal concerned whether he is licensed in another state to which reciprocity extends, Alaska's board would give full faith and credit to the act of the other state having issued (or reinstated) a license allowing Mr. Cezar to practice in that state. That is not the issue.

⁶¹ June 30, 2006 Hearing Argument; Undated Hearing Brief at pp. 2-3 (received June 26, 2006); Undated Supplemental Hearing Brief at pp. 1-4 & 6 (received July 7, 2006); July 17, 2006 Reply Supplemental Hearing Brief at pp. 1-2.

⁶² U.S. Const., art. IV, § 1.

⁶³ *Pink v. A.A.A. Highway Express, Inc.*, 314 U.S. 201, 210 (1941), *rehearing den.* (1942).

Instead, Mr. Cezar is asking the Alaska board to accept the finding (either explicitly made or implicit in the issuance or reinstatement of a license) by another state's licensing authority that Mr. Cezar is "rehabilitated" for the licensing state's purposes, and then extend the finding to mean that he is rehabilitated for purposes of meeting Alaska's licensing requirements. His argument overlooks the rule that even if the clause required one state to give full faith and credit to the administrative findings of another state, the credit due would be limited to that paid in the state in which the finding was made.⁶⁴ Thus, if deference would not be paid to the administrative finding in the courts of the state where the finding was made, it certainly would not be due from the sister state (Alaska).⁶⁵ Mr. Cezar has provided no evidence or briefing showing that the courts of the other states in which he is licensed defer to the decisions of the licensing authorities in those states on the question of rehabilitation or anything else.

Additionally, accepting another state's finding (or implied finding) as conclusive on the subject of rehabilitation, and deferring to that state's finding, would have the effect of delegating the board's discretionary function to another state's licensing authority. When the legislature vests a particular individual or entity with authority to carry out a function to be exercised based on the individual's or entity's expertise, the function may not be delegated unless the legislature has authorized delegation.⁶⁶ By statute, the Alaska board "is responsible for the control and regulation of the practice of pharmacy" in Alaska.⁶⁷ The Alaska board is charged with determining whether an applicant who is licensed elsewhere meets the requirements for licensure in Alaska.⁶⁸ The Alaska board was given the discretion in AS 08.80.261 to deny a license to someone "the board finds" committed one of the acts for which a licensee can be disciplined.

⁶⁴ *Ringgold v. District of Columbia Department of Employment Services*, 531 A.2d 241, 242-243 (D.C. App. 1987) (ruling that a Maryland administrative finding relating to a workers' compensation claim was not binding on the D.C. agency because the finding had little binding effect under Maryland law upon the agency and courts of that state).

⁶⁵ *Id.*

⁶⁶ *See Kaiser v. Sundberg*, 734 P.2d 64, 69-70 (Alaska 1987), which states that the general rule governing subdelegations is whether "it is reasonable to believe the legislature intended a particular function to be performed by designated persons because of their special qualifications." *Sutherland, supra*, § 414, at 155-56. If the legislature intended a function to be performed only by limited persons, a subdelegation is invalid. *Id.* at 156.

⁶⁷ AS 08.80.030(a).

⁶⁸ *See* AS 08.80.145 (indicating, among other things, that the Alaska board approves the required examination and must be satisfied with proof of licensure in a reciprocal state).

Nothing in AS 08.80.261 even remotely suggests that the Alaska board can delegate the exercise of its discretion to approve or deny an application to another state's licensing authority.

Deferring to another state's finding also would be problematic in cases in which different states have reached different conclusions. If one state finds a licensee to be rehabilitated and another state finds that the licensee is not, a third state cannot defer to the findings of both. It must make its own assessment of the person's fitness to practice, based on its own standards. The Alaska board, therefore, should not defer to the administrative findings of other states' licensing authorities, but it can draw reasonable inferences from those findings.

It is reasonable to infer from another state's act of licensing or reinstating Mr. Cezar *only* that the evidence of rehabilitation he supplied to that state satisfied its licensing authorities, under standards applicable in that state. It would not be reasonable to leap to the conclusion that Mr. Cezar's rehabilitation satisfies the concerns the Alaska board considers when exercising its discretion, especially absent a showing that other states' standards for finding a person sufficiently rehabilitated to practice competently are the same as Alaska's standards, or at least address the Alaska board's concerns. Mr. Cezar was afforded an opportunity to make such a showing but elected instead to stand on his constitutional and equitable arguments.⁶⁹

In sum, the Full Faith and Credit Clause of the U.S. Constitution does not require that an Alaska board charged with making a discretionary decision to approve or deny an application must defer to the administrative findings of a sister state's licensing authority. Deferring to such a finding based on the limited showing Mr. Cezar made, likely would be an improper delegation of the board's discretionary function. The board, however, can infer from the fact that other states have licensed or reinstated Mr. Cezar in the interim since he got his substance abuse problem under control that his rehabilitation has been successful enough to satisfy the other states' licensing authorities when applying their states' standards for licensure and reinstatement.

2. Past Practice of Reinstating Licenses

Whether the board considered how Mr. Cezar's history compares to that of licensees, including those whose licenses have been reinstated, is not apparent from the reasons given for

⁶⁹ At the conclusion of the hearing, the record was held open to allow the parties to submit post-hearing briefs. The parties were invited to brief the question of how much weight should be given to Mr. Cezar's reinstatements and new licenses in other states, and Mr. Cezar was encouraged to address how the standards for those reinstatement and licensure actions compare to Alaska's standards. Mr. Cezar's supplemental brief and his reply to the division's supplemental brief did not provide information on the other state's standards or attempt to compare them to Alaska's.

denial of his application. During the hearing, Mr. Cezar identified two recent cases in which the board reinstated licenses for pharmacists with histories somewhat similar to his: the Matter of Jimmie Lynn Asher (Lic. No. 1495) and the Matter of Sarah Martin (Lic. No. 1135). Mr. Cezar contends that if the board was comfortable reinstating Mr. Asher and Ms. Martin in light of their histories, the board should be comfortable approving his application. He expressed a willingness to have his license subjected to conditions should the board require that.

The decision to approve an application for licensure is distinct from the decision to take disciplinary action against a current licensee. Denial of an application may result from any of several deficiencies, including lack of sufficient age, good moral character, or requisite experience.⁷⁰ When, as in Mr. Cezar's case, the application denial is predicated solely on AS 08.80.261, however, it is akin to imposing a disciplinary sanction.

To be clear, denying a license pursuant to AS 08.80.261 still is not the same as imposing a disciplinary sanction. The disciplinary sanctions AS 08.80.261 permits the board to impose on licensees include several that could not be imposed on an unlicensed person.⁷¹ When the legislature amended AS 08.80.261 to authorize the board to deny licensure for the same kinds of misconduct as warrant discipline, however, it put applicants and current licensees on similar footing in that the board now can prohibit both applicants and licensees from practicing for precisely the same kind of misconduct.⁷²

Under a general provision applicable to most professional and occupational licensing boards in Alaska, including the Board of Pharmacy, disciplinary sanctions must be applied consistently.⁷³ Strictly speaking, as an applicant denied a license, rather than a licensee who stands to lose his license, Mr. Cezar is not being subjected to a disciplinary sanction by the

⁷⁰ AS 08.80.145 (establishing requirements for the board's exercise of discretion to allow licensure by reciprocity).

⁷¹ See generally AS 08.01.075 (authorizing several sanctions, including fines, probation, peer review and others that could be applied only to a licensee over whom the board has jurisdiction). AS 08.80.261(a), which prescribes the standards for the board imposing disciplinary sanctions, authorizes the board to impose the sanctions set out in AS 08.01.075 "on a person licensed under [AS 08.80] when the board finds ..." one of fourteen enumerated grounds to exist.

⁷² Under AS 08.80.261(a) "[t]he board may deny a license to an applicant" and may "impose a disciplinary sanction authorized under AS 08.01.075 ..." on a licensee. The sanctions authorized under that statute include suspension, revocation and acceptance of voluntary surrender of a license. The chief difference is that a current licensee must be afforded a hearing opportunity before a sanction is imposed, while an applicant has a hearing opportunity only after the board denies the application.

⁷³ AS 08.01.075(f) provides, in pertinent part, that "[a] board shall seek consistency in the application of disciplinary sanctions." See also AS 08.01.010(30) (providing that title 8, chapter 1 applies to the Board of Pharmacy).

board's action in this case. The 2003 amendment of AS 08.80.261 putting applicants on similar footing with licensees regarding the effect of misconduct on the ability to secure or retain the right to practice in Alaska, coupled with the expectation that the board will consistently apply sanctions, argues for a process in which the board compares an applicant's history to that of licensees who have been disciplined, when deciding whether to deny a license based on similar misconduct.⁷⁴

To address this concern, Mr. Cezar's history of misconduct and rehabilitation should be compared to that of Mr. Asher and Ms. Martin, two licensees who were subjected to disciplinary sanctions (voluntary surrender under AS 08.01.075(e)) but later had their licenses reinstated.⁷⁵ To reinstate a license, the board must "determine that the licensee is competent to resume practice"⁷⁶ Implicit in that determination is a conclusion that any substance abuse problem the licensee has will be controlled well enough to allow the licensee to competently carry out the duties of a pharmacist, and that past misconduct of the type that impairs competency will not be repeated. The board can use its disciplinary powers to impose conditions meant to control and monitor these problems.⁷⁷

In 2005, Mr. Asher was convicted in Colorado of felony and misdemeanor charges concerning controlled substances.⁷⁸ Shortly before the conviction, his Colorado license was summarily suspended based on sixteen counts of alleged misconduct involving controlled

⁷⁴ It is the combination of AS 08.80.261 and AS 08.01.075(f) that argue for a process in which applicants are treated the same as similarly situated licensees with regard to the effect of their histories of misconduct, not the combination of the Privileges and Immunities and Full Faith and Credit clauses of the U.S. Constitution, as Mr. Cezar suggests. *See* Undated Supplemental Hearing Brief (received July 7, 2006) at p. 5. The Full Faith and Credit Clause does not dictate the result in Mr. Cezar's case for the reasons discussed in Part III.B.1 above. The Privileges and Immunities Clause (U.S. Constitution, Article IV, § 2) is not implicated by the board's decision because nothing in AS 08.80.261 even remotely suggests that an applicant from another state will be treated differently than an applicant residing in Alaska.

⁷⁵ In the post-hearing briefing, the Division of Corporations, Business and Professional Licensing expressed no opposition to Mr. Cezar's argument that his application should be considered in comparison to the board's reinstatement of Mr. Asher and Ms. Martin. *See generally* July 14, 2006 Response to Supplemental Briefing. During closing arguments at the hearing, the division briefly argued that the "property interest" of a licensee who surrendered the license and then sought reinstatement might justify treating a reinstated licensee different than an applicant. Mr. Cezar countered that a person who surrenders a license gives up any "property interest" the person may have had in the license. Neither party made a compelling argument that the "property interest" in a surrendered license has a particular bearing upon whether the board needs to be consistent in its treatment of applicants relative to its treatment of persons seeking reinstatement of surrendered licenses.

⁷⁶ AS 08.01.075(e).

⁷⁷ AS 08.01.075(a)(4) (giving the board the power to "impose limitations or conditions on the professional practice of a licensee"); AS 08.01.075(a)(7) (giving the board the power to "impose probation requiring a licensee to report regularly to the board on matters related to the grounds for probation").

⁷⁸ February 9, 2006 Memorandum of Agreement (Asher MOA) at ¶ 3.

substances.⁷⁹ Mr. Asher had previously been disciplined in Colorado.⁸⁰ In September of 2005, Mr. Asher surrendered his Alaska license because the Colorado criminal charges were pending.⁸¹ He admitted that grounds existed “for possible suspension, revocation, or other disciplinary sanctions of his [Alaska] license pursuant to AS 08.01.075 and [AS] 08.80.261(4).”⁸² The board reinstated Mr. Asher’s license five months after he surrendered it, subject to terms and conditions that include a three-year period of probation; random urinalysis, blood, breath, and hair tests; mandatory care from a health care provider approved by the board; various reporting requirements; and periodic interviews with the board.⁸³

Like Mr. Cezar, Mr. Asher apparently had a substance abuse problem that caused or contributed to the misconduct that led him to surrender his Alaska license. Based on the limited record provided concerning Mr. Asher’s history, his problem may have been of shorter duration than Mr. Cezar’s, but they were also more recent, and the evidence of rehabilitation appears to have been far less for Mr. Asher. Mr. Cezar presented evidence showing that his substance abuse problem had been under control for many years, perhaps more than twelve years at the time of the hearing.⁸⁴ In contrast, Mr. Asher’s problem manifested itself to the board just a few months before the board reinstated his license and thereby determined that he could competently return to practice, as long as he complied with the conditions imposed.

Ms. Martin’s situation also parallels Mr. Cezar’s in some respects. She had a history of misconduct dating to late 2000, including dispensing medication without proper labeling, failing to log medication into the pharmacy’s inventory as required by statute and regulation, and allowing a pharmacy technician to practice outside the scope of the technician’s authority.⁸⁵ She entered into a memorandum of agreement (MOA) approved by the board.⁸⁶ Less than two years

⁷⁹ *In re Asher*, Order of Summary Suspension (Colo. Board of Pharmacy Aug. 12, 2005). It is unclear from the record submitted concerning Mr. Asher’s disciplinary history whether the summary suspension remained effective follow a hearing, or whether a hearing was even held.

⁸⁰ October 9, 2002 Letter from Colorado State Board of Pharmacy to Jimmie Asher (admonishing Mr. Asher for violation of three statutes and two board rules stemming from dispensing albuterol syrup with the wrong directions to a patient).

⁸¹ Asher MOA at ¶ 3c.

⁸² *Id.* at 3e.

⁸³ *Id.* at pp. 3-6 (setting out terms and conditions).

⁸⁴ Apart from the Indiana board’s decision to place Mr. Cezar’s license in probation status as recently as 1999, due to concerns about alcohol addiction, nothing in the record refutes Mr. Cezar’s testimony and the letters to the effect that he has had his substance abuse problem under control since the mid 1990s.

⁸⁵ April 28, 2005 Memorandum of Agreement (Martin 2005 MOA) at ¶ 3a-f.

⁸⁶ October 8, 2002 Memorandum of Agreement (Martin 2002 MOA).

into the five-year term of probation, Ms. Martin reportedly “falsified prescription records by adding a refill of 90 tablets of Hydrocodone/APAP 10-325 to her own prescription.”⁸⁷ She admitted that grounds existed for suspension, revocation or other sanctions to be imposed under AS 08.01.075 and AS 08.80.261, and voluntarily surrendered her license as of April 22, 2004.⁸⁸ She applied for reinstatement five months later, and the board approved reinstatement on January 28, 2005, subject to terms and conditions dictating certain supervision and reporting arrangements but requiring no treatment for substance abuse.⁸⁹

Some of Ms. Martin’s 2000 misconduct is roughly similar to Mr. Cezar’s dispensing misconduct that led to his 1989 conviction. The difference is that nothing in the limited record concerning Ms. Martin’s history conclusively demonstrates that her misconduct stemmed from a substance abuse problem. She did, however, commit further misconduct in 2004, which she admitted would have justified suspension, revocation or imposition of other sanctions. Her license was reinstated, subject to conditions, despite this relapse, just nine months after she had surrendered it.

Mr. Cezar’s situation is not identical to either Mr. Asher’s or Ms. Martin’s. The similarities are close enough to ask whether in light of its past practice of reinstating licenses to pharmacists who relatively recently engaged in similar misconduct, and reinstating them within a few to several months after surrender, the board should approve his application because many years have passed since his misconduct and he has his substance abuse problem under control. The answer might reasonably be “no,” if the board had no ability to monitor Mr. Cezar for continued success in his rehabilitation, in the way that it can and does monitor the reinstated licensees under board-approved MOAs. Mr. Cezar has offered to accept conditions on his licensure, however.

The board has the power to “impose limitations or conditions on the professional practice of a licensee” under AS 08.01.075(a)(4). Though the context of AS 08.01.075 suggests that the powers in that section are to be used when a board is imposing discipline on a licensee, read literally, subparagraph (4) is not so limited. The board’s power under that subparagraph, therefore, at least arguably extends to conditioning licenses upon initial issuance to address

⁸⁷ Martin 2005 MOA at ¶ 3h.

⁸⁸ *Id.* at ¶ 3i&k.

⁸⁹ *Id.* at ¶ 3j&k; pp. 3-6 (setting out terms and conditions).

disciplinary concerns. When, as here, denial of licensure is based solely on the AS 08.80.261 grounds for discipline, and the applicant is willing to agree to conditions being place on his license, the board's discretion is broad enough to allow it to issue Mr. Cezar a license with conditions. Even if someone else might question the board's authority to place conditions on initial licenses, Mr. Cezar himself would have agreed to the conditions and thus would have to comply with them.

The board has expressed its intent to administer its disciplinary policies consistently.⁹⁰ Insofar as the reinstatement of Mr. Asher and Ms. Martin reflect the board's approach to disciplining licensees with substance abuse problems and repeated misconduct, the board has shown a willingness to exercise its discretion to permit a pharmacist to practice in Alaska if the board can monitor the licensee, even if the misconduct is relatively recent. Since Mr. Cezar has offered to agree to conditions being imposed on his license, his misconduct is more than twelve years old, and he has submitted credible evidence that his rehabilitation efforts are succeeding, it would be consistent with the board's treatment of Mr. Asher and Ms. Martin for the board, in its discretion, to approve Mr. Cezar's license, subject to imposition of appropriate conditions.

IV. Conclusion

The board had the discretion to deny Mr. Cezar licensure when it did so. It retains the discretion to do so still.

Through the hearing process, however, Mr. Cezar presented evidence that his degree of rehabilitation permits him to practice pharmacy competently in other states. Many years—perhaps more than twelve—have passed since the pattern of misconduct on which the board's previous denial was based occurred.

Mr. Cezar identified two licensees with histories of misconduct somewhat similar to his whose licenses were reinstated, with conditions, less than a year after their relatively recent misconduct came to the board's attention and they voluntarily surrendered their licenses. He has offered to accept conditions on his license. Under these narrow circumstances, and in furtherance of the board's intent to apply disciplinary policies consistently, the board will exercise its discretion to approve Mr. Cezar's application, provided that

⁹⁰ 12 AAC 52.900 (describing the purpose of the disciplinary guidelines the board has added to AS 08.80 by regulation).

1. Mr. Cezar negotiates a Memorandum of Agreement (MOA) with the Division of Corporations, Business and Professional Licensing containing appropriate conditions drawn from 12 AAC 52.930 (Terms of Probation) and 12 AAC 52.940 (Use of Alcohol or Controlled Substances);
2. the MOA contains, at a minimum, conditions substantially similar to the following ones found at pages 3-6 of the Asher MOA:
 - a. A. Duration of Probation, modified so that the agreed period does not begin to run until Mr. Cezar begins working in Alaska;
 - b. B. Urinalysis and Blood Tests;
 - c. C. Personal Health Care Provider;
 - d. D. Employer Reports;
 - e. G. Periodic Interview with the Board;
 - f. H. Compliance with Laws;
 - g. I. Probation Violation;
3. The MOA is submitted to and approved by the Alaska Board of Pharmacy.

Upon the effective date of this decision, the matter of Mr. Cezar's application for licensure as a pharmacist is remanded to the Division of Corporations, Business and Professional Licensing, which shall attempt to negotiate the MOA contemplated in 1-3 above and report to the board on the progress of the negotiations at the board's next regularly scheduled meeting thereafter. If the negotiations between Mr. Cezar and the division do not result in an MOA being submitted to the board within 180 days after the effective date of this decision, Mr. Cezar may request to be heard directly by the board on the matter. The board reserves the right, in its discretion, to modify proposed conditions, or to add new conditions, prior to approval of the MOA.

DATED this 22nd day of October, 2007.

By: _____
Terry L. Thurbon
Chief Administrative Law Judge