

BEFORE THE IOWA BOARD OF CHIROPRACTIC

IN THE MATTER OF THE PETITION)
FOR WAIVER BY:)
) Waiver Request No. 18-002
Brian C. Nook, D.C.)
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ORDER

Pursuant to Iowa Code section 17A.9A and 645 Iowa Administrative Code chapter 18, the Iowa Board of Chiropractic (“Board”) makes the following ruling on Brian C. Nook (“Petitioner”) Petition for Waiver.

PROCEEDINGS

1. On August 10, 2018, Petitioner filed a Petition for Waiver requesting a waiver of Iowa Administrative Code rule 645-41.14(3)“b”(3) that governs the requirements for reactivation.
2. Iowa Administrative Code rule 645-41.14(3)“b”(3) requires that an applicant whose license has been on an inactive status for more than five years and seeking to reactivate shows evidence of passing the Special Purpose Examination for Chiropractors (SPEC) as outlined in rule 645-41.14.
3. Petitioner acquired his chiropractic license in Iowa in 1984. He practiced in Iowa from 1984 to 2003. Petitioner then moved to Australia, where he was employed and licensed as a chiropractor from 2003 to 2017. While in Australia, Petitioner developed a chiropractic program and taught at Murdoch University.
4. Petitioner’s Iowa chiropractic license expired on June 30, 2004. Petitioner’s license in Australia is current and in good standing.
5. Petitioner successfully passed the NBCE Part IV in May of 2018. Completing the Part IV of the examination was not a criterion in Iowa when the Petitioner graduated in 1983.
6. Petitioner has informed the Board that he does not intend to practice chiropractic in Iowa at this time but is seeking reinstatement of his license in order to obtain a license in California via reciprocity.
7. The Board considered the Petition for Waiver at its regularly scheduled board meeting on July 11, 2018.

APPLICABLE LAW

8. Requirements for chiropractic reactivation are set forth in Iowa Administrative Code rule 645-41.6.
9. The Board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the Board finds, based on clear and convincing evidence, all of the following:
 - a. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
 - b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
 - c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;
 - d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.
10. The Board's rules provide that "the burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the Board should exercise its discretion to grant a waiver from a rule." Iowa Admin. Code r. 645-18.10 (2).

ANALYSIS OF WAIVER CRITERIA

Would application of the rule create an undue hardship on the person requesting the waiver?

11. The Board was in consensus that the Part IV of the NBCE examination is equivalent in demonstrating a practitioner's clinical competency and that it would impose an undue hardship on the Petitioner to be required to undertake the time and expense to pass the SPEC examination before granting reactivation.

Would a waiver prejudice the substantial legal rights of any person?

12. The Board is not aware of any substantial legal rights of any person being prejudiced by granting this waiver.

Does the petition seek waiver of a rule mandated by statute?

13. The requirement found in the Board's administrative rule is not mandated by statute.

Will substantially equal protection of the public health, safety, and welfare be afforded by a means other than that prescribed in the particular rule for which the waiver is requested?

14. The Board was in consensus that public health, safety, and welfare would not be adversely affected by granting this waiver. The Petitioner has been actively practicing since 1984 with no evidence disciplinary action taken against his license.

IT IS THEREFORE ORDERED:

The petition for waiver of Iowa Administrative Code rule 645-41.14(3)"b"(3) is **GRANTED** and the Petitioner may be issued an Iowa license by endorsement.

Appeals from this order may be taken in conformance with Iowa Administrative Code rule 645-18.16.

Dated this 11th day of July, 2018



Rex Jones, D.C.
Board Chairperson
Iowa Board of Chiropractic
Lucas State Office Bldg., 5th floor
321 E. 12th St.
Des Moines, IA 50319-0075