

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of

Case No. 21-003

Logan Arkenberg, R.Ph.

License Number 1-14086

FINAL ORDER

Decision

Having heard the testimony of the witness(es), considered the evidence presented, reviewed the applicable statutes, regulations and policies, and otherwise being duly and fully informed in the premises of this matter, it is the decision of the Kansas Board of Pharmacy (Board) to reverse the Notice of Intent to Revoke dated November 9, 2021, and reinstate the Kansas pharmacy license of Logan Arkenberg (Arkenberg) subject to the terms and conditions set forth hereinbelow.

Statement of Case

This matter comes on for hearing on this the 2nd day of February 2022, before the Board upon the request for administrative hearing submitted by Arkenberg in response to the Summary Order of Revocation issued by the Board on November 9, 2021.

Appearing for the Board were: Jonathan Brunswig, PharmD, President; and members, Bill Walden, R.Ph; Terica Gatewood, PharmD; Tiffany Strohmeier, PharmD; Andrew Truong, PharmD (by video conference); Erick Axcell, PharmD and, Lucinda Noches Talbert, Public Member.¹

Arkenberg appeared without an attorney and testified on his own behalf.

Brenda Head appeared as the Board's disciplinary counsel. Also appearing and providing testimony were Alexandra Blasi, Executive Secretary for the Board, and Melissa Martin, Compliance Inspector.

Loren F. Snell, Jr., Administrative Law Judge, was appointed and served as the Presiding Officer over the evidentiary hearing.

Evidentiary Rulings

The Board offered Exhibits 1 through 9 for admission as evidence. Arkenberg had no objection to the proposed exhibits. Board's Exhibits 1 through 9 were admitted.

¹ As the Investigation Member, Terica Gatewood abstained from the deliberations and decision.

Findings of Fact

1. Arkenberg is a Pharmacist, licensed by the State of Kansas, license number 1-14086.
2. On April 24, 2019 the Active Lifestyle Pharmacy (Pharmacy) made an application for a registration number. (Ex. 5). The application was signed by Brad Heide (Heide), non-pharmacist owner. Arkenberg was identified as the Pharmacist in Charge (PIC) of the Pharmacy and certified the application.
3. The Board issued Kansas registration number 2-109379 to the Pharmacy on December 19, 2019 upon the original application dated April 24, 2019. (Ex. 5).
4. Minutes of a meeting of Active Lifestyle Pharmacy, LLC and Active Lifestyle Holdings, LLC (LLCs) held on November 13, 2019 indicate that Heide resigned from ownership of the Pharmacy. (Ex. 1). Full control of the Pharmacy was given to Fawn Lickteig (FLickteig), as Governor of the LLCs, and Jacob Lickteig (JLickteig).
5. Minutes of a meeting of the LLCs held on December 11, 2019 indicate JLickteig was named president, owner and chief manager of the Pharmacy. (Ex. 1).
6. On December 27, 2019 documentation was filed with the Kansas Secretary of State's office removing Heide from the LLCs and adding JLickteig as a member. (Ex. 1).
7. On January 15, 2020 Arkenberg notified the Board that the authorized agent had changed from Heide to JLickteig. (Ex. 5).
8. Arkenberg did not notify the Board about the change in ownership.
9. On May 27, 2020 Kansas registration number 2-109379 was renewed for the Pharmacy representing Heide as the president and authorized agent.
10. In June of 2020 the Pharmacy began servicing patients under registration number 2-109379.
11. In response to a request by Martin, Arkenberg responded indicating that the change of ownership had been communicated to the Board by letter dated January 20, 2020. (Ex. 3).
12. On February 8, 2021 Arkenberg was notified by the Board, as PIC of the Pharmacy, that no change in ownership had been reported. (Ex. 3). The Board requested that a completed application for change of ownership be submitted.
13. On February 11, 2021 the Board received the Pharmacy's application for its registration as a pharmacy with JLickteig as sole owner. (Ex. 1).
14. The Board issued registration number 2-114048 to the Pharmacy.

15. On March 15, 2021 the Pharmacy sent a letter to the board, via email, with information requested by the Board concerning a timeline and documentation of ownership of the Pharmacy. It was noted that the Pharmacy was unable to obtain power of attorney documentation from Heide. (Exs. 2 and 3).

16. On April 7, 2021 Heide emailed the Board to notify that the Pharmacy had used his name to open the active pharmacy without Heide's knowledge. (Ex. 4).

17. On May 4, 2021 Kansas registration number 2-109379 was renewed for the Pharmacy, listing Heide as the authorized agent and president. (Ex. 5).

18. It was concluded by Martin that the Pharmacy had operated under new ownership for 389 days without first making application to do so. (Ex. 3).

19. On November 9, 2021 the Board's Investigation Member, Dr. Terica Gatewood, issued a Summary Order of Revocation, revoking Arkenberg's Kansas pharmacy license because of Arkenberg's violations of K.S.A. 65-1643. (Ex. 6).

20. On November 17, 2021 Arkenberg submitted a letter requesting a hearing in regard to the Summary Order of Revocation and serving as a response to the findings of fact set forth in the Summary Order of Revocation. (Ex. 7).

21. Arkenberg testified and stated in his letter that he had signed the pharmacist portion of the original application in April of 2019, but the owner's section was not filled out. (Ex. 7).

22. Arkenberg testified and stated in his letter that he was not present for the corporate meetings or aware of the corporate minutes that had been issued and was not aware of the change in ownership until FLickeig told him in December of 2019. (Ex. 7).

23. Arkenberg testified that FLickeig was the responsible person for and ran the business. (Ex. 7).

24. Arkenberg testified and stated in his letter that he did not complete the form changing the Pharmacy's authorized agent, nor did he file it with the Board. (Ex. 7).

25. Arkenberg testified and stated in his letter that he had not renewed the registration for the Pharmacy and that FLickeig was responsible for all pharmacy filings and legal business matters. (Ex. 7).

26. Arkenberg testified and stated in his letter that he had been notified by the Board of the need for a change of ownership and he notified FLickeig, but he had not completed or submitted the change of ownership form. Arkenberg suspected FLickeig had done so. (Ex. 7).

27. Arkenberg also testified that he had not sent the emails to the Board.

Applicable Statutes, Regulations and Policies

“The board may revoke, suspend, place in probationary status or deny an application or renewal of any license of any pharmacist upon a finding that: (1) The licensee has obtained, renewed or reinstated, or attempted to obtain, renew or reinstate, a license by false or fraudulent means, including misrepresentation of a material fact.”²

“It shall be unlawful: (a) For any person to operate, maintain, open or establish any pharmacy within this state without first having obtained a registration from the board. Each application for registration of a pharmacy shall indicate the person or persons desiring the registration, including the pharmacist-in-charge, as well as the location, including the street name and number, and such other information as may be required by the board to establish the identity and exact location of the pharmacy. The issuance of a registration for any pharmacy shall also have the effect of permitting such pharmacy to operate as a retail dealer without requiring such pharmacy to obtain a retail dealer's permit. On evidence satisfactory to the board: (1) That the pharmacy for which the registration is sought will be conducted in full compliance with the law and the rules and regulations of the board; (2) that the location and appointments of the pharmacy are such that it can be operated and maintained without endangering the public health or safety; and (3) that the pharmacy will be under the supervision of a pharmacist, a registration shall be issued to such persons as the board shall deem qualified to conduct such a pharmacy.”³

The Board took into consideration that Arkenberg failed to verify ownership and proper filing of documents with the Board, particularly those containing his signature. The Board feels Arkenberg failures constitute negligence on Arkenberg’s part. While the Board feels Arkenberg, as PIC, has a responsibility to verify certain aspects of the operation of the Pharmacy, the Board does not feel it was appropriate to revoke Arkenberg’s license. Although the Board does not feel Arkenberg’s license should be revoked, the Board does believe limitations should be placed on Arkenberg’s license and a fine should be imposed due to the level of his negligence in upholding the laws of the State of Kansas and due to the excessive amount of time that lapsed while the Pharmacy was operating without a proper registration.

Decision

The Board votes six (6) in favor, none opposed to reinstate Arkenberg’s license with the limitation that Arkenberg not be able to serve as a PIC at any facility until further order of the Board. The Board also imposes a fine of \$2,500 on Arkenberg due to his failure to uphold the laws of the State of Kansas while serving as a PIC at the Pharmacy. The fine is due within thirty (30) days of service of this Order.

Mar 17, 2022

Date

Dr. Jonathan W. Brunswig, PharmD

Dr. Jonathan W. Brunswig, PharmD (Mar 17, 2022 11:46 CDT)

Jonathan Brunswig, PharmD, President
Kansas Board of Pharmacy

² K.S.A. 65-1627(a).

³ K.S.A. 65-1643.

NOTICES

1. This is a Final Order and becomes effective upon service.
2. **Within fifteen (15) days** after service of the Final Agency Order, any party may file a Petition for Reconsideration.⁴
3. Either party to this agency proceeding may seek judicial review of the Final Order by filing a timely petition in the District Court.⁵ Reconsideration of the Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed **within thirty (30) days** following service of the Final Order.
4. A copy of any petition for judicial review must be served upon the Kansas Board of Pharmacy. The agency officer designated to receive service of a petition for judicial review is:

Alexandra Blasi, Executive Secretary
Kansas State Board of Pharmacy
800 SW Jackson #1414
Topeka, KS 66612-1244

⁴ K.S.A. 77-529.

⁵ K.S.A. 77-613.

Certificate of Service

On _____, 2022, I certify that a copy of the foregoing was placed in business mail to be deposited in the United States first class mail, postage prepaid, addressed to:

Logan Arkenberg
1521 Rhode Island
Lawrence, KS 66044

Brenda Head
Frieden & Forbes, LLP
1414 SW Ashworth Place, Ste 201
Topeka, KS 66604

and, I further certify that I caused a copy of the foregoing to be hand-delivered to:

Alexandra Blasi
Executive Secretary
Kansas State Board of Pharmacy
800 SW Jackson #1414
Topeka, KS 66612-1244

Staff Person
Kansas Board of Pharmacy






21-087 Final Order

Final Audit Report

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