

BEFORE THE KANSAS BOARD OF PHARMACY

Filed By
AUG 15 2016
KANSAS BOARD OF PHARMACY

In the Matter of

CORY R. BEHNKE
Kansas Registration No. 3-13336

Case No. 15-097
OAH No. 16BP0002

FINAL ORDER

Statement of Case

This matter comes on for hearing before the Kansas Board of Pharmacy (Board) upon the Petition to Revoke, Suspend or otherwise Limit Registration (Petition) of Cory R. Behnke to practice as a pharmacy intern.

The hearing in this matter was initially convened on February 5, 2016. Appearing for the Board were: President, Chad Ullom, R.Ph.; Vice President, John Worden; and members, Robert Haneke, PharmD; James Garrelts, PharmD; Michael Lonergan, R.Ph.; David Schoech, R.Ph.; and Cheri Pugh.

Randall J. Forbes appeared as the Board's disciplinary counsel.

Mr. Behnke appeared *pro se*.

After hearing evidence in this matter, including the testimony of Mr. Behnke, the Board determined that the hearing would be continued to July 15, 2016. The Board specifically stated that Mr. Behnke would be allowed to participate in the Kansas Committee on Impaired Pharmacy Practice (CIPP) program during this time period. Mr. Behnke was also advised that if he had any additional exhibits which he intended to offer at the next hearing, they would need to be submitted to the Board no later than June 20,

2016. An order was issued after the hearing containing the deadline for both parties to provide additional exhibits and the Board's allowance of Mr. Behnke to participate in the CIPP program.

On July 15, 2016, the hearing was reconvened.

Appearing for the Board were President, Chad Ullom, R.Ph.; Vice President, John Worden; and members, Robert Haneke, PharmD; James Garrelts, PharmD; David Schoech, R.Ph.; and Cheri Pugh. Mr. Behnke again appeared *pro se*. Mr. Forbes appeared as the Board's disciplinary counsel.

Findings of Fact

1. Mr. Behnke was a pharmacy student at the University Kansas School of Pharmacy. Mr. Behnke had been issued an intern registration to practice as a pharmacy intern in the state of Kansas.
2. In August 2015, Mr. Behnke was employed in the pharmacy department at the Target store in Lawrence, Kansas. Mr. Behnke also worked in the pharmacy at St. Francis Health Center in Topeka, Kansas.
3. During this time period, the Lawrence/Douglas Country Drug Enforcement Unit investigated allegations of Mr. Behnke submitting fraudulent prescriptions for Oxycodone and Hydromorphone at the Lawrence and Overland Park Target stores. Jaime Williams, Special Investigator with Target, reported that Mr. Behnke had submitted nine fraudulent prescriptions between June 25 and August 8, 2015. Ms. Williams also reported that Mr. Behnke, while working at the pharmacy at St. Francis

Health Center in Topeka, Kansas, had stolen a prescription pad and had forged Dr. Guy Giroux's name on the fraudulent prescriptions he submitted.

4. It was determined after speaking with Dr. Giroux that Mr. Behnke had forged nine prescriptions.
5. On August 13, 2015, Detective John Hanson with the Lawrence/Douglas County Drug Enforcement Unit and Ms. Williams interviewed Mr. Behnke when he appeared for work at the Lawrence Target store.
6. Mr. Behnke admitted to stealing the prescription sheets while working in the pharmacy at St. Francis Health Center. He stated that he had obtained Dr. Giroux's DEA number from a site on the internet and then forged the doctor's name on nine prescriptions. Mr. Behnke also admitted to filling the prescriptions at the Target stores in Lawrence and Overland Park, Kansas. Mr. Behnke stated that he had fraudulently obtained the prescriptions to help him with pain from a previous knee injury dating back to December 2011. Mr. Behnke stated that in January 2015, his knee flared up and he visited an orthopedic doctor in Lawrence for treatment. Mr. Behnke stated that in May or June 2015, he saw a physician at First Med on a walk-in visit and was prescribed Percocet. Mr. Behnke stated that he then contacted the same doctor but he would not return his phone calls so he saw a different doctor at another walk-in visit. He was prescribed the same medication, *i.e.* Percocet. During this visit, however, Mr. Behnke signed an

agreement that he would see the first doctor and have all prescriptions filled by him. He stated that he did not hear back from the first doctor and, therefore, due to the pain, decided to fraudulently obtain pain medications by stealing prescription sheets from St. Francis and forging Dr. Giroux's name.

7. In doing a search of his phone, the Drug Enforcement Unit also found a text evidencing that Mr. Behnke was selling eight pills for \$60.00.
8. No additional pills, containers, or prescription sheets were found at Mr. Behnke's residence.
9. The Board of Pharmacy was advised of the termination of Mr. Behnke by Target on August 17, 2015.
10. On August 18, 2015, an Emergency Order of Suspension was issued by the Board suspending Mr. Behnke's pharmacy intern registration.
11. On August 21, 2015, the Petition to Revoke, Suspend or Otherwise Limit Registration was issued by the Board upon Mr. Behnke.
12. Mr. Behnke appeared at the hearing on February 5, 2016.
13. During his testimony, Mr. Behnke did not deny the allegations contained within the Petition, however, stated that he was using the drugs to manage the pain in his knee. He stated that he had been to three doctors to determine the cause of his pain.
14. When questioned by the Board as to whether he had a substance abuse issue, he stated that he was seeking help. He, however, failed to provide

any documentation including drug tests evidencing that he was not using any illegal substances. When questioned about selling the pills, he stated that he had only sold them the one time.

15. During the hearing, Mr. Behnke reiterated on numerous occasions that he did not have the money to see doctors or to get help with his substance abuse issues.
16. After hearing the evidence, the Board directed that Mr. Behnke could participate in the CIPP program. The Board also continued the suspension of his license but rescheduled the conclusion of the hearing until the July Board meeting.
17. On July 15, 2016, Mr. Behnke appeared ten minutes late for the hearing. He stated that he had not contacted the CIPP program about participating as he “misunderstood that he was to do so.” He also stated that he was seeing a physician at the Gardner Family Care Center for his knee pain.
18. Mr. Behnke failed to provide any additional exhibits to the Board.

Applicable Law

1. K.S.A. 65-1676(d) provides, in pertinent part:
 - (1) The board may limit, suspend or revoke a registration or deny an application for issuance or renewal of any registration as a pharmacist intern on any ground that would authorize the board to take action against the license of a pharmacist under K.S.A. 65-1627, and amendments thereto.

...

(3) Proceedings under this section shall be subject to the Kansas administrative procedure act.

2. K.S.A. 65-1627(a) provides:

The board may revoke, suspend, place in a probationary status or deny a renewal of any license of any pharmacist upon a finding that:

...

(3) the licensee is found by the board to be guilty of unprofessional conduct or professional incompetency;

(4) the licensee is addicted to the liquor or drug habit to such a degree as to render the licensee unfit to practice the profession of pharmacy;

(5) the licensee has violated a provision of the federal or state food, drug and cosmetic act, the uniform controlled substances act of the state of Kansas, or any rule and regulation adopted under any such act;

...

(13) the licensee has self-administered any controlled substance without a practitioner's prescription order or a mid-level practitioner's prescription order.

3. Pursuant to K.S.A. § 65-1626(ccc)(5), "unprofessional conduct" includes "unlawful possession of drugs."

Conclusions of Law
and
Discussion

1. The issue in this case is whether Mr. Behnke committed acts which justify disciplinary action being taken against his Kansas intern registration.

2. After considering all of the evidence in this matter, the Board finds that revocation of Mr. Behnke's pharmacy intern registration is warranted.
3. Mr. Behnke admitted to stealing prescription sheets while working at St. Francis Health Center in Topeka, Kansas, and then forging Dr. Giroux's name to obtain controlled substance drugs for which he did not have a valid prescription.
4. The Board finds that notwithstanding allowing Mr. Behnke to participate in the CIPP program, he took no personal initiative to contact CIPP.
5. Mr. Behnke failed to provide any evidence that he does not currently have a substance abuse issue and is still not using controlled substances for which he does not have a prescription.
6. The Board finds that Mr. Behnke continues to take no effort to establish to the Board that he has taken the appropriate steps to insure that his prior conduct will not be repeated and that he should be permitted to hold a pharmacy intern registration.

Order

1. Based on the foregoing, the Board unanimously finds that revocation of Mr. Behnke's pharmacy intern registration is warranted.
2. In addition, the costs of this proceeding are assessed against Mr. Behnke pursuant to K.S.A. 65-1627h. The amount of costs is \$1,246.00. The costs are due within 30 days of the date of service of this order.

IT IS SO ORDERED.

8/15/16
Date

Chad Ullom
Chad Ullom, R.Ph.
President, Kansas Board of Pharmacy

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 pursuant to K.S.A. 77-529.
3. Either party to this agency proceeding may seek judicial review of the Final Order by filing a timely petition in the District Court as authorized by K.S.A. 77-613. 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

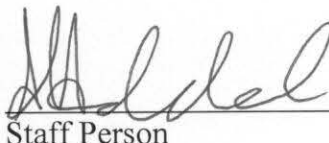
CERTIFICATE OF SERVICE

On August 15, 2016, I mailed a copy of this document
to:

Cory R. Behnke
1733 West 21st Terr.
Lawrence, KS 66046

Randall J. Forbes
Frieden, Unrein & Forbes
1414 SW Ashworth Pl, Ste. 201
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Staff Person