

BEFORE THE KANSAS BOARD OF PHARMACY

Filed By
SEP 23 2016
KANSAS STATE
BOARD OF PHARMACY

In the Matter of
the Renewal Application of
John Kollhoff, PharmD,
Kansas License No. 1-13927

Case No. 15-181
OAH No. 16BP0009

FINAL ORDER

Statement of Case

This matter comes before the Kansas Board of Pharmacy (Board) on the Summary Order to assess a civil penalty against the respondent, John Kollhoff, PharmD, in the amount of \$2,100.00 and require completion of 84 hours of additional continuing education (CE).

The hearing in this matter was held on April 20, 2016. Appearing for the Board were: President, Chad Ullom, R.Ph.; Vice President, John Worden, PharmD; and members, Robert Haneke, PharmD; James Garrelts, PharmD; and David Schoech, R.Ph. Randall J. Forbes appeared as the Board's disciplinary counsel. The respondent appeared *pro se*. Dr. Worden recused. Board member, Cheri Pugh, while not in attendance at the hearing, has also recused.

During the hearing, the respondent argued that the June 30, 2015 deadline for completing 30 hours of continuing education is not legally binding and that he complied with all continuing education requirements prior to August 1, 2015, which he characterized as the proper deadline for completion of continuing education hours and license renewal.

The parties were afforded an opportunity to submit briefs on their respective positions regarding these issues. The parties timely submitted their briefs.

The ruling of the Board is as follows.

Findings of Fact

The respondent was initially issued a biennial license to practice pharmacy in the State of Kansas by the Board in July 2005.

Prior to the respondent's submission of the renewal application now at issue, the respondent had renewed this biennial license on four previous occasions.

On July 28, 2015, the respondent submitted an online license renewal application to the Board to engage in the practice of pharmacy in the State of Kansas.

On the renewal application, the respondent certified that he completed three continuing education (CE) units or thirty clock hours of continuing education activities between July 1, 2013 and June 30, 2015.

Based on the representations of the respondent in his renewal application, the Board renewed his license to practice for the next biennial licensing period, through June 30, 2017.

On or before October 1, 2015, the respondent was selected for an audit of the continuing education hours he had certified as being completed between July 1, 2013 and June 30, 2015. The respondent was directed to furnish the Board with proof of his continuing education certificates or to provide a transcript of completion of required continuing education hours.

The respondent provided the Board with a CPE Monitor Activity Transcript for the period August 1, 2013 through July 31, 2015 documenting his completion of 31.5 clock hours of continuing education from October 29, 2014 through July 28, 2015. The respondent's submission reflected completion of only 3.5 clock hours of continuing education during the biennial licensure period from July 1, 2013 through June 30, 2015. However, the Board found that the appropriate CPE monitor record showed a total of 9.5 hours of CE completed during the audited renewal period of July 1, 2013 and June 30, 2015.

On or about December 16, 2015, the respondent was served with the Summary Order dated December 16, 2015. In relevant part, the Summary Order assessed a fine against the respondent in the amount of \$2,100 (\$100 for each hour or partial hour of continuing education not completed by June 30, 2015) and required him to complete 84 additional hours of continuing education (4 hours for each hour or partial hour not completed by June 30, 2015) within thirty days or his license would be placed on inactive status.

The respondent timely requested a hearing.

Applicable Law
and
Discussion

K.S.A. 65-1632(a) provides:

Except as otherwise provided in this section, each license to practice as a pharmacist issued by the board, shall expire every two years. . .
Except as otherwise provided in this subsection, the application,

when accompanied by the renewal fee and received by the executive secretary of the board **on or before the date of the expiration of the license**, shall have the effect of temporarily renewing the applicant's license until actual issuance or denial of the renewal. (Emphasis added.)

Accordingly, a license issued by the Board with an effective date of July 1st expires as a matter of law upon the close of June 30th two years later.

The Board concurs with the disciplinary counsel that because the respondent did not submit his renewal application or the renewal fee to the Board until July 28, 2015, the respondent's license expired, as a matter of law, on June 30, 2015, and it was not temporarily renewed pursuant to the provisions of K.S.A. 65-1632(a). As suggested by the disciplinary counsel, the Board could have denied the respondent's renewal application as untimely, informed him that his authority to practice pharmacy had lapsed by operation of law, ordered him to cease and desist the practice of pharmacy, required him to submit an application for license reinstatement, and taken other adverse action.

However, the Board approved the respondent's renewal application as though he had timely submitted it and the renewal fee prior to license expiration on June 30, 2015. In addition, the Board also relied on the truth of the respondent's certification that he had completed the hours of continuing education required by law to maintain licensure (*i.e.*, 30 clock hours during the licensure period from July 1, 2013 through June 30, 2015 as required by K.A.R. 68-1-1b(a)-(b)).

It was only after the CE audit that the Board became aware that the respondent's certification of continuing education compliance was false thus prompting the issuance of

the Summary Order now at issue.

The Board finds that by providing false certification that he completed the 30 hours of continuing education by June 30, 2015, the respondent was able to obtain the unauthorized renewal of his biennial license. Such misconduct is clearly grounds for disciplinary action under several provisions of the Kansas Pharmacy Act (KPA), K.S.A. 65-1625 *et seq.*, including but not limited to: K.S.A. 65-1627(a)(1) (obtaining a license by fraudulent means); K.S.A. 65-1627(a)(8) (violating any provision of the KPA or any implementing rule and regulation adopted by the Board); and K.S.A. 65-1627(a)(9) (noncompliance with the requirements of the board relating to the continuing education of pharmacists).

The respondent argues that the Board's action improperly relies on an unenforceable statement of policy or opinion rather than law.

K.A.R. 68-1-1b provides that completion of 30 clock hours of approved continuing education "during the licensure period" is required for renewal of any biennial license to practice pharmacy in this State. Pursuant to authority conferred by K.S.A. 65-1630 and 65-1632(d), the Board promulgated K.A.R. 68-1-1b to carry out the legislative policy expressed in K.S.A. 65-1632. This regulation accordingly has the force and effect of law. *See Murphy v. Nelson*, 260 Kan. 589, 595, 921 P.2d 1225 (1996); *Tew v. Topeka Police & Fire Civ. Serv. Comm'n*, 237 Kan. 96, 100, 697 P.2d 1279 (1985); *Carpenter v. Johnson*, 231 Kan. 783, 789, 649 P.2d 400 (1982).

Contrary to the respondent's arguments, the completion of all prescribed hours of continuing education during the licensure period is a legally binding and enforceable prerequisite to license renewal in this State.

The undisputed evidence establishes that the respondent did not satisfy these continuing education requirements and that he obtained renewal of his license, in material part, by misrepresenting to the Board that he had done so.

The respondent argues that Kansas law "allows a pharmacist to practice until August 1st, without his license being declared void."

Prior to July 1, 2014, K.S.A. 65-1632(f) provided, in pertinent part:

If the renewal fee for any pharmacist's license has not been paid by August 1 of the renewal year, the license is hereby declared void, and no license shall be reinstated except upon payment of any unpaid renewal fee plus a penalty fee fixed by the board as provided in K.S.A. 65-1645, and amendments thereto, and proof satisfactory to the board of compliance with the continuing education requirements fixed by the board.

This statutory language had been interpreted to afford Kansas pharmacists a grace period through July in which to submit a renewal application and renewal fee before their license became inoperative. However, effective July 1, 2014, the Kansas Legislature repealed, amended and re-enacted K.S.A. 65-1632(f) to eliminate the July grace period for license renewal. *See* 2014 Kan. Sess. Laws, ch. 49, at §§ 3, 11.

The Board again concurs with the disciplinary counsel that from and after July 1, 2014, K.S.A. 65-1632(a) and (f) have unmistakably provided that any biennial pharmacy license due for renewal or expiration no later than June 30, 2015 shall become void or

inoperative (and is not temporarily renewed) if the licensee does not submit a renewal application and renewal fee prior to expiration of the two-year licensure period (*i.e.*, upon the close of June 30, 2015).

Following the amendments to K.S.A. 65-1632 in 2014, the Board, both on its website as well as in the May 2015 edition of Kansas State Board of Pharmacy News, which is disseminated to licensees via email transmission, informed Kansas pharmacists that there was not a grace period for CE hours and that they must be completed June 30, 2015.

Further, on August 3, 2015, the Board ruled in *In the Matter of Eugene Capocasale*, Case No. 14-174, OAH No.15BP0019 (Final Order, filed Aug. 3, 2015), that there was not a 30 day grace period for completing the 30 hours of continuing education required for license renewal. While the *Capocasale* is not published precedent, the Board finds the factual and legal issues similar. The respondent has failed to provide any argument, statute, rule, regulation, administrative decision or judicial authority that would cause the Board to rule differently in this case than it did in *Capocasale*.

The undisputed evidence established that the respondent completed only 9.5 clock hours of CE during the biennial licensure period of July 1, 2013 and June 30, 2015. He, therefore, was 20.5 clock hours short of compliance by the June 30, 2015 deadline.

Order

Based on the foregoing, the respondent is assessed a fine in the amount of \$2,100 (\$100 for each hour or partial hour of continuing education not completed by June 30,

2015) and is required to complete 84 additional hours of continuing education (4 hours for each hour or partial hour not completed by June 30, 2015) within 30 days or his license will be placed on inactive status.

In addition, the costs of this proceeding are assessed against the respondent pursuant to K.S.A. 65-1627h. The amount of costs is \$4,407.

Due to the amount of the costs, the respondent shall be given six months to make full payment of the fine and costs due. The total fine and costs of \$6,507 shall be due by April 1, 2017.

IT IS SO ORDERED.

9/22/16
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 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 Board of Pharmacy, 800 SW Jackson, Ste. 1414, Topeka, KS 66612-1244.

CERTIFICATE OF SERVICE

On September 23, 2016, I mailed a copy of this document
to:

John Kollhoff, PharmD
1804 Faith Ave.
Abilene, KS 67410

Randall J. Forbes
Frieden, Unrein & Forbes
1414 SW Ashworth Pl, Ste 201
Topeka, KS 66604

Alexandra Blasi
Executive Secretary
Kansas Board of Pharmacy
800 SW Jackson St., Ste. 1414
Topeka, KS 66612-1244



Staff Person