

January 18, 2022

DANIEL McKINNEY
149 N CHAUTAUQUA
WICHITA, KS 67214

RE: Case No. 22-024

Dear Mr. McKinney:

Enclosed you will find a Summary Order issued by the Kansas Board of Pharmacy (Board) in the above-referenced matter. Please read the order in its entirety. In addition, a civil fine has been assessed totaling \$300. Please submit a check or money order made payable to the Kansas Board of Pharmacy and include your case number in the check memo.

If you disagree with the findings of fact, you have the right to request a hearing. Instructions for filing a written request are included under the "Notices" section of the order. Hearings are held before the full Board during their regularly scheduled quarterly meetings.

According to KSA 65-1627h, the Board is required to recoup the costs of administrative hearings when the decision is adverse to the licensee. These costs may include charges for services rendered by the Board's disciplinary counsel, an administrative law judge, and, if applicable, a court reporter.

If you have any questions, feel free to contact the Board at Pharmacy.Compliance@ks.gov.

Sincerely,

Kansas Board of Pharmacy

Enclosure

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
Daniel McKinney)
)
Registration No. 24-116238)

Case No. 22-024

SUMMARY ORDER

NOW, on this 18th day of January 2022, comes before the Kansas Board of Pharmacy (the “Board”), through its Executive Secretary, the matter of Daniel McKinney, (“Applicant”), for application for registration as a Kansas pharmacy technician.

Pursuant to the authority granted to the Board by the Kansas Pharmacy Act, K.S.A. 65-1625, *et seq.*, and in accordance with the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*, the Board’s Executive Secretary enters this Summary Order in the above-captioned matter. After reviewing the application materials and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order.

FINDINGS OF FACT

1. On October 18, 2021, the Board received Applicant’s application for registration as a pharmacy technician in the State of Kansas (“Applicant’s Application”).
2. Applicant answered “YES” to the following question on his application: *Have you been charged with or convicted of (includes plea of guilty or no contest) a criminal offense or is there any criminal charge now pending against you (other than minor traffic violations) in any state or federal court whether or not a sentence was imposed, suspended, or diverted? This includes misdemeanors.* The application directs that if the applicant answers “YES”, the applicant must attach a Form S-150: Personal History (“S-150”).

3. As part of the application, Applicant certified that the information he provided was true, correct, and complete to the best of his knowledge.

4. Applicant's S-150 statement and accompanying court records detailed that he had been arrested in 2016 for driving under the influence of alcohol, but did not appear in court until 2019. At that time, Applicant pled no contest and was placed on one-year probation, which he successfully completed and so had the charge dismissed. Applicant's S-150 statement noted that he feels remorse for having placed others' lives at risk, and that he takes full responsibility for having made the poor decision to drink and drive. Applicant detailed that he has been sober for four years, and gainfully employed since 2017.

5. Subsequently, the Board received information regarding a 1999 battery offense.

6. On October 21, 2021, the Board sent a letter to Applicant requesting he provide the Board with a more thorough S-150 to include the battery offense, as well as certified court pleadings from the case.

7. On November 17, 2021, the Board received from Applicant a request for extension of the deadline by which to submit the requested documents.

8. On November 22, 2021, the Board granted Applicant's request for extension of his submission deadline, now set for December 15, 2021.

9. On December 2, 2021, the Board received the requested documentation.

10. Applicant's documentation recorded that, while intoxicated during an altercation, he had been arrested and charged with domestic battery. Applicant was subsequently granted diversion but, after failing to comply with his diversion agreement, was arrested for such failure and convicted of the domestic battery charge. For the charge, Applicant completed 12 months of supervised probation which involved a six-month battery intervention course.

CONCLUSIONS OF LAW

1. Pursuant to K.S.A. 65-1658, the Board may assess a civil fine not to exceed \$5,000, after notice and an opportunity to be heard, to any registrant for violation of the Pharmacy Act of the State of Kansas or any other rules or regulations of the State Board of Pharmacy.

2. Pursuant to K.S.A. 65-1663, the Board may take action on an application for issuance of any registration as a pharmacy technician on any ground which would authorize the Board to take action against the license of a pharmacist under K.S.A. 65-1627, and amendments thereto.

3. Pursuant to K.S.A. 65-1627(a)(1), the Board may discipline the license of any pharmacist who has attempted to obtain a license by false or fraudulent means, including misrepresentation of a material fact.

4. Pursuant to K.S.A. 65-1627(a)(3), the Board may place in a probationary status the license of any pharmacist who has been found guilty of unprofessional conduct.

5. Pursuant to K.S.A. 65-1626(vvv), unprofessional conduct includes conduct likely to deceive or harm the public, or fraud in securing a registration.

6. Applicant did not disclose his 1999 battery incident on his initial Application despite the fact that he had been convicted of such and had served both diversion and probation for this charge.

7. Applicant's failure to disclose his complete criminal history on his application, after having certified as to its completeness, is a misrepresentation of material fact and a basis to impose a civil fine against any registration granted to Applicant pursuant to K.S.A. 65-1627(a)(1) and 65-1658.

8. Applicant's DUI and battery incidents are bases to place any registration granted to Applicant in a probationary status pursuant to K.S.A. 65-1627(a)(3), as the potential harm of repeatedly breaking laws and endangering the public may place the pharmacy community at risk. Though some time has elapsed since the most recent incident, of some concern are the nature and history of both alcohol use and non-compliance with court orders.

9. To prevent harm, the issuance of any registration to Applicant should be carefully supervised and scrutinized to ensure the protection of the public.

ORDER

Based upon the foregoing findings of fact and conclusions of law, Applicant's Application for issuance of pharmacy technician registration is hereby GRANTED, SUBJECT TO A 2-YEAR PROBATIONARY STATUS AND THE PAYMENT OF A \$300 FINE, for the violations. Applicant has 30 days from the date of this order to pay the fine. The terms of Applicant's probation are as follows:

- Applicant must notify the Board of any change in his court status within 10 days of the change;
- Applicant must notify the Board of any further arrest or criminal charge within 10 days of the date of the arrest or charge;
- Applicant must notify the Board of any change in employment within 10 days of the change and obtain Board approval for the change;
- Applicant must inform employers of the probationary status of his pharmacy technician registration;
- Applicant must obtain the signature of his pharmacist-in-charge (PIC) documenting knowledge of her probationary status to the Board; and

- Applicant must comply with all rules and regulations of the Pharmacy Practice Act.

NOTICES


Applicant is hereby notified as follows:

1. Applicant may request a hearing pursuant to the Kansas Administrative Procedure Act by filing a written request with the Kansas Board of Pharmacy, 800 SW Jackson, Suite 1414, Topeka, KS 66612-1231 within fifteen (15) days after service of this order.
2. If a hearing is not requested as described above, the Order shall become a final order of the Board, effective upon the expiration of the time to request a hearing.
3. Within fifteen (15) days after entry of a final agency order, either party may file a petition for reconsideration pursuant to K.S.A. 77-529.
4. Within the time limits established in K.S.A. 77-613, either party may seek judicial review of a final agency order, pursuant to said statute. The agency officer designated to receive service of a petition for judicial review is

Alexandra Blasi, JD, MBA
Executive Secretary
Kansas Board of Pharmacy
800 SW Jackson, Suite 1414
Topeka, KS 66612

IT IS SO ORDERED.

1/18/2022
Date



Alexandra Blasi, JD, MBA
Executive Secretary
Kansas Board of Pharmacy

CERTIFICATE OF SERVICE

I hereby certify that I did, on the 18th day of January 2022, deposit in business mail a copy of the foregoing Summary Order, which is then placed in the United States Mail, postage prepaid, properly addressed to the following:

DANIEL McKINNEY
149 N CHAUTAUQUA
WICHITA, KS 67214



Kansas Board of Pharmacy Staff