

BEFORE THE KANSAS BOARD OF PHARMACY

Filed By

SEP 22 2015

KANSAS STATE BOARD OF PHARMACY

In the Matter of)
)
DAVID WEISER)
License No. 1-10956)

Case No. 15-009

SUMMARY ORDER OF REVOCATION

NOW on this 14th day of September, 2015, comes before the Kansas Board of Pharmacy (the "Board"), through its Investigation Member, the investigation of David Weiser's (the "Respondent") entitlement to engage in the practice of pharmacy in the state of Kansas.

Pursuant to the authority granted to the Board by the Kansas Pharmacy Act, K.S.A. 65-1625, *et seq.* ("Pharmacy Act"), and in accordance with the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*, the Board's Investigation Member enters this Summary Order of Revocation in the above-captioned matter. After reviewing the investigative materials and being otherwise duly advised in the premises, the Board's Investigation Member makes the following findings, conclusions and order.

FINDINGS OF FACT

For purposes of this order, the Board's Investigative Member makes the following findings of fact:

1. On January 27, 2015, the Kansas State Board of Pharmacy office received a Risk Management Report from Larned State Hospital regarding an incident from July 25, 2014 which determined Respondent knowingly disregarded the requirements of applicable law by failing to prepare a DEA Form 222. On January 23, 2015, after failing to seek peer review, Respondent was terminated from employment at Larned State Hospital.

2. On or about July 25, 2014, while employed at Larned State Hospital, Respondent picked up controlled pain medication that was a schedule II drug (12 Fentanyl Patches) from Reed Pharmacy, where he was also employed. Although Respondent was reminded of the need to use a specific DEA Form 222 as required by law, Respondent failed to complete DEA Form 222.

3. K.S.A. 65-4121 and 21 CFR 1305.12 require completion of DEA Form 222 when a controlled pain medication that is a schedule II drug, such as Fentanyl Patches, is purchased.

4. On January 12, 2015, the Board issued a Summary Order in Case No. 14-225 disciplining Respondent's pharmacist license renewal application for failing to comply with requirements of the Board relating to continuing education of pharmacists. Respondent was ordered to pay to the Board an administrative fine of \$3,000.00 and ordered to complete one hundred twenty (120) hours of additional continuing education within thirty (30) days of receipt of the Summary Order. The deadline for completion of the continuing education hours was extended at Respondent's request to April 14, 2015. At Respondent's request, the deadline for Respondent to pay the \$3,000.00 fine was extended to August 25, 2015.

5. On or about April 14, 2015, Respondent provided proof of 75.25 hours of continuing education. Respondent has failed to provide proof of the remaining 44.75 hours of continuing education required to comply with the Board's prior order in Case No. 14-225.

6. Respondent has failed to pay the \$3,000.00 fine previously ordered by the Board in Case No. 14-225.

CONCLUSIONS OF LAW

7. Pursuant to K.S.A. 65-1627(a)(5), the Board may take disciplinary action against the license of a pharmacist for violating a provision of the federal and state food, drug and cosmetic act, the uniform controlled substance act of the state of Kansas, or any rule and regulation adopted under any such act.

8. Pursuant to K.S.A. 65-1627(a)(8), the Board may take disciplinary action against the license of a pharmacist for violating any of the provisions of the pharmacy act of the state of Kansas or any rule or regulation adopted by the Board pursuant to the provision of such pharmacy act.

9. Pursuant to K.S.A. 65-1627(a)(3), the Board may take disciplinary action against the license of a pharmacist if the pharmacist is found to be guilty of professional incompetency. K.S.A. 65-1626 (xx)(3) defines professional incompetency to include repeated instances involving a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy

10. Pursuant to K.S.A. 65-1627(a)(9), the Board may take disciplinary action against the license of a pharmacist if that pharmacist has failed to comply with the requirements of the Board relating to the continuing education of pharmacists.

11. Pursuant to K.S.A. 65-1658, in addition to any other penalty imposed by the Act, the Board may assess a civil fine in an amount not to exceed \$5,000 for each violation.

12. K.S.A. 77-511(a)(2)(A) of the Kansas Administrative Procedure Act authorizes the use of summary proceedings by a state agency if the use of summary proceedings does not violate any provision of law, the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties, and the

state agency believes in good faith, after investigation of the facts, that the allegations will be supported to the applicable standard of proof.

13. Respondent's conduct described herein violates the Pharmacy Act and constitutes multiple grounds for revocation of his Kansas license to practice pharmacy in the State of Kansas.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the Respondent's license to practice pharmacy (License No. 1-10956) is hereby REVOKED and Respondent is ordered to pay to the Board an administrative fine of \$1,000.00 (in addition to the previously ordered administrative fine of \$3,000.00) within 10 days of the effective date of this Summary Order of Revocation.

NOTICES

The Respondent is hereby notified as follows:

14. The Respondent 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.

15. If a hearing is not requested as described above, the Order fining Respondent and revoking Respondent's license shall become a final agency order of the Board, effective upon the expiration of the time to request a hearing.

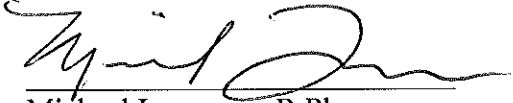
16. Within fifteen (15) days after entry of a final agency order, either party may file a petition for reconsideration pursuant to K.S.A. 77-529.

17. 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:

Carly Haynes
Acting Executive Director
Kansas Board of Pharmacy
800 SW Jackson, Suite 1414
Topeka, KS 66612

IT IS SO ORDERED.

9-14-15
Date


Michael Lonergan, R.Ph.
Investigation Member
Kansas Board of Pharmacy

CERTIFICATE OF SERVICE

I hereby certify that I did, on the 22nd day of September, 2015, deposit in the United States Mail, postage prepaid, a copy of the foregoing Summary Order of Revocation, properly addressed to the following:

David Weiser
2015 Cactus
Dodge City, KS 67801



Kansas Board of Pharmacy Staff