

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of

Case No. 18-553

Andrew Chau

FINAL ORDER

Statement of Case

This matter comes on for hearing on this the 6th day of June 2019, before the Kansas Board of Pharmacy (Board) upon the application of Andrew Chau (Chau) for registration as a pharmacy intern in the State of Kansas.

Appearing for the Board were: John Worden, PharmD, President; and members, Jonathan Brunswig, PharmD; Robert Haneke, PharmD; Michael Lonergan, R.Ph.; Cheri Pugh, Public Member; Chad Ullom, R.Ph.; and, Bill Walden, R.Ph. Bill Walden sat in during the hearing, but recused himself from the deliberations due to his involvement with the investigation of this matter on behalf of the Board.

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

Chau appeared in person and with counsel, Diane Bellquist.

Evidentiary Rulings

The Board offered Exhibits 1 through 5 for admission. Chau had no objection. Exhibits 1 through 5 were admitted into evidence.

Chau offered Applicant's Exhibits A through K. The Board had no objection. Applicant's Exhibits A through K were admitted into evidence.

Discussion

Findings of Fact

1. On or about July 20, 2018 the board received Chau's application for registration as a pharmacy intern in the State of Kansas.

2. On the application, Chau responded, "Yes," to the question asking if he had "ever 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."

3. On the application, Chau responded, "Yes," to the question asking if he had "ever been convicted of (includes plea of guilty or no contest) or charged with a violation of any federal or state drug law(s) or rule(s) whether or not a sentence was imposed, suspended, or diverted?"

4. On the application, Chau responded, "Yes," to the question asking if he now or "in the last five years been treated for a drug or alcohol addiction or participated in any substance abuse rehabilitation program?"

5. Chau submitted a S-150 Personal History Form setting forth an explanation for the answer to the above-stated questions. Chau disclosed on the S-150 that he had been arrested on July 13, 2012 on charges of: three counts of distribution of opiate, opium narcotic, certain stimulant; two counts of using communication facility in the commission of felony drug violation; three counts of no drug tax stamp for marijuana or controlled

substance; and one count of possession of paraphernalia with intent to manufacture/plant/cultivate a controlled substance.

6. Chau further disclosed on the S-150 Personal History Form that he was convicted of one count of feloniously distributing a quantity of marijuana and one count of unlawfully, willfully, feloniously and knowingly or intentionally using a communication facility, to wit: cell phone, in committing, causing or facilitating the commission of a felony. Both of convictions constitute felonies. Chau was sentenced and placed on 18 months' probation, which he completed on March 3, 2016.

7. Chau provided extensive testimony regarding the circumstances that led to his arrest and conviction for selling marijuana.

8. Chau testified that as a result of his conviction he was placed on 18 months' probation, served 5 days in jail, met regularly with his probation officer, was subject to random drug screens and completed drug treatment.

9. Chau testified that he made a mistake when he was younger but has found the right career path and is committed to being a pharmacist. He further testified that he appreciated the seriousness of his offense and the impact it could have on his career as a pharmacist.¹ Chau testified to the changes that he has made in his life and the support system he has in place.

10. Chau voluntarily entered the Kansas Pharmacists Recovery Network

¹ Chau acknowledged that he will be required to seek a Drug Enforcement Administration (DEA) waiver due to his conviction(s).

(KsPRN), having been in the program for nearly three (3) months at the time of the hearing.

11. Chau testified that he had completed his first year of pharmacy school and applied for his pharmacy internship

Conclusions of Law

1. “The board may limit, suspend or revoke a registration or deny an application for issuance or renewal of any registration as a pharmacy intern 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.” K.S.A. 65-1676.

2. The Board may deny the granting of a license to a pharmacist who has been convicted of a “felony and the licensee fails to show that the licensee has been sufficiently rehabilitated to warrant the public trust.” K.S.A. 65-1627(a)(2).

3. The Board may deny the granting of a license to a pharmacist who has been found “guilty of unprofessional conduct.” K.S.A. 65-1627(a)(3).

4. Unprofessional conduct is defined as “conduct likely to deceive or harm the public.” Pursuant to K.S.A. 65-1626(tt)(7).

5. K.S.A. 65-1627(a)(5) permits the Board to revoke a license or registration if the licensee has violated a provision of the uniform controlled substances act of the State of Kansas.

6. Marijuana is a controlled substance, as defined by K.S.A. 65-4105(d)(17). Violation of K.S.A. 21-5706(c)(3)(A) constitutes a violation of the uniform controlled substances act of the State of Kansas.

7. In considering this matter the Board noted that these types of cases have to be considered on a case-by-case basis, taking into consideration the facts of each case and the individual. The Board felt that Chau was committed to completing the steps necessary to become a pharmacist. The Board felt that Chau accepted responsibility for his actions and seemed genuinely remorseful for his conduct. The Board noted that Chau voluntarily reached out to and entered into the KsPRN program on his own. The Board felt that Chau had demonstrated successful rehabilitation and was not a danger to the public.

Decision

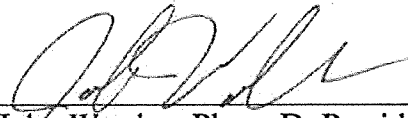
Based upon the foregoing findings of fact and conclusions of law, having heard the testimony of the witness(es), considered the evidence presented, reviewed the applicable statutes, regulations and policies, and otherwise being duly and fully informed in the premises of this matter, Applicant's Application for issuance of pharmacy intern registration is hereby GRANTED subject to a 5-year probationary status. The terms of Applicant's probation are as follows:

- Applicant must notify the Board of any change in his criminal history or any future criminal offense incidents within 10 days of the change;
- 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 intern registration;
- Applicant must obtain the signature of his pharmacist-in-charge (PIC) and preceptor

documenting knowledge of his probationary status to the Board; and,

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

7-9-19
Date


John Worden, PharmD, 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 July 11, 2019, I certify that a copy of the foregoing was placed in building mail, to be sent via United States first class mail, postage prepaid, addressed to:

Diane L. Bellquist
Joseph Hollander & Craft
1508 SW Topeka Blvd.
Topeka, KS 66612

Randall Forbes
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