

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of

Andrew Chau

Case No. 18-553

FINAL ORDER

Decision

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, it is the decision of the Kansas Board of Pharmacy (Board) to revoke the pharmacy intern registration previously granted to Andrew Chau (Chau).

Statement of Case

This matter comes on for hearing on this the 10th day of March 2020, upon the Petition by the Board to revoke, suspend or otherwise limit the licensure (intern registration) of Chau for registration as a pharmacy intern in the State of Kansas.

Appearing for the Board were: Jonathan Brunswig, PharmD, President; and members, John Worden, PharmD; Bill Walden, R.Ph; Michael Lonergan, R.Ph.; Terica Gatewood, PharmD; Tiffany Strohmeyer, PharmD; and, Cheri Pugh, Public Member.

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

Chau appeared *pro se*.

Loren F. Snell, Jr., Administrative Law Judge, was appointed and served as the Presiding Officer over the evidentiary hearing.

Evidentiary Rulings

The Board offered Exhibits 1 through 9 for admission. Chau had no objection. Exhibits 1 through 9 were admitted into evidence.

Chau offered Applicant's Exhibit A. The Board had no objection. Applicant's Exhibit A was admitted into evidence.

Findings of Fact

1. On or about July 9, 2019, the Board issued a decision granting Chau a pharmacy intern registration, subject to a 5-year probationary status.

2. During the hearing conducted prior to issuing the pharmacy intern registration, Chau disclosed 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. Chau further disclosed 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.

3. Despite his convictions, the Board granted Chau the pharmacy intern registration.

4. In granting the pharmacy intern registration, the Board took note of the fact that Chau voluntarily entered into a Statement of Understanding with the Kansas Pharmacists

Recovery Network (KsPRN), an agreement that would remain in place for a period of at least five (5) years.

5. Chau complied with the provisions of the Statement of Understanding until approximately August or September of 2019, when school resumed.

6. Chau stated that he decided it was more important for him to focus on his school work than to attend the required 12 step meetings or monthly monitoring meetings. Chau stated that he did not see the point in attending the meetings, especially since he had already complied with and been released from his probation for his criminal convictions.

7. KsPRN Manager, Kelly Rockers, stated that Chau had missed multiple call-ins for urinalysis testing, having stopped calling in completely as of February 25, 2020. In addition, Rockers stated that Chau had tested positive for alcohol on January 7, 2020.¹

8. Chau stated that he never spoke to the Board or KsPRN about his desire to discontinue the meetings and urinalysis.

9. The Committee on Impaired Pharmacy Practice (CIPP) referred the matter to the Board due to Chau's non-compliance with the KsPRN Statement of Understanding.

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.

¹ Chau was required to abstain from the use of alcohol and drugs pursuant to the KsPRN Statement of Understanding.

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(ttt)(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.

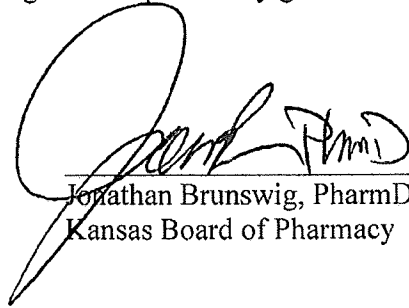
6. Marijuana is a controlled substance, as defined by K.S.A. 65-4105(d)(17). Violation of K.S.A. 21-5706(c)(3)(A) constitutes a violation of the uniform controlled substances act of the State of Kansas.

7. In considering this matter, the Board noted that while Chau was granted a pharmacy intern registration, it was granted subject to a 5-year probationary period. The purpose for the probationary period was to allow for Chau to participate in KsPRN and prove he could remain in compliance with the provisions of the Statement of Understanding, despite his underlying convictions. While the Board felt that Chau was committed to completing the steps necessary to become a pharmacist when he first appeared in June of 2019, Chau clearly demonstrated a disregard for the process, the rules and the decision of the Board. Furthermore, despite his actions and statements earlier, the Board now questioned Chau’s rehabilitation and felt that his actions demonstrated that he could be 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, the Board revokes the pharmacy intern registration previously granted to Andrew Chau.

4-16-20
Date


Jonathan Brunswig, 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 April 29, 2020, I certify that a copy of the foregoing was placed in the United States first class mail, postage prepaid, addressed to:

Andrew Chau
1424 Bristol Terr., #107
Lawrence, KS 66049

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