

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
DONALD E. GARDNER, R.PH.)
)
Kansas License No. 1-13477)

Case No. 06-55

FINAL AGENCY ORDER

On December 5, 2006, a hearing was held before the Kansas Board of Pharmacy (the "Board") on the Petition to Revoke, Suspend or Otherwise Limit Licensure filed in the above-captioned matter regarding Donald E. Gardner, R.Ph. ("Gardner"). After considering the evidence admitted at the hearing, the Board enters the following final agency order.

I. FINDINGS OF FACT

1. The Board previously issued Gardner license number 1-13477, which entitled him to practice pharmacy in the State of Kansas ("License").
2. By letter dated May 25, 2006, the Board received information from Omnicare/PharmaSource, Gardner's employer, indicating that on May 23, 2006, Gardner was working as a pharmacist while intoxicated and under the influence of alcohol. On May 23, 2006, Gardner's co-workers observed Gardner fall down and reported that he smelled like alcohol while working as a pharmacist. When Gardner was asked to submit to a blood alcohol test, he agreed. Under the blood alcohol test given to Gardner, a serum ethanol result greater than or equal to 20 mg/dL is considered positive. The results of Gardner's blood alcohol test revealed a serum ethanol result of 145 H mg/dL, which is considered positive. Gardner's co-workers also reported that he smelled like alcohol on a separate occasion within the week of May 15, 2006 to May 23, 2006. [Exhibit 1].

3. In a letter dated May 30, 2006, the Board, by and through its attorney, submitted a proposed Consent Agreement to Gardner, whereby Gardner could agree to enter into an evaluation and treatment program, at his cost, as directed by the Kansas Pharmacy Impaired Provider Program. [Exhibit 2].

4. Gardner executed the Consent Agreement on June 2, 2006, which required him to enter into and comply with the recommendations and requirements of the persons managing or implementing the Kansas Pharmacy Impaired Provider Program. [Exhibit 3].

5. The Heart of America Professional Network ("HAPN") is the entity that contracts to implement the evaluation, treatment, and monitoring functions of the Kansas Pharmacy Impaired Provider Program. On or about June 6, 2006, HAPN referred Gardner to Mission Valley Hope Association ("MVH"), which offers services for alcohol, drug and related treatment. [Exhibit 4].

6. On or about July 20, 2006, David R. Mouille, Ph.D., Licensed Psychologist ("Dr. Mouille") of MVH performed a substance abuse evaluation of Gardner. Dr. Mouille determined that because Gardner's use of alcohol significantly affects his function as a pharmacist in a negative manner, he would pose a danger to himself and to the people of Kansas if he were permitted to continue to practice as a pharmacist. Dr. Mouille also determined that Gardner exhibited symptoms of substance abuse to such a degree that he should be in therapy because he became intoxicated willingly before returning to work and remains insensitive to his impaired condition. Consequently, Dr. Mouille recommended that HAPN consider a program of outpatient treatment lasting at least one year and that Gardner's work as a pharmacist should be terminated. [Exhibit 4].

7. By letter dated August 15, 2006, Pat Peterson of MVH notified HAPN that, upon review with Gardner of Dr. Mouille's substance abuse evaluation, Gardner was not open to the

evaluation and was adamant that he did not need substance abuse treatment. As a result, MVH discharged Gardner. [Exhibit 4].

8. In a letter dated October 4, 2006, Gardner's case with HAPN was closed for non-compliance because Gardner chose not to go to treatment or return a signed agreement for treatment. [Exhibit 4].

II. CONCLUSIONS OF LAW AND FACT

9. On May 23, 2006, Gardner was working as a pharmacist while intoxicated and under the influence of alcohol.

10. Gardner is not in compliance with the Consent Agreement he executed on June 2, 2006, which requires him to enter into and comply with the recommendations and requirements of the persons managing or implementing the Kansas Pharmacy Impaired Provider Program.

11. Gardner violated the Kansas Pharmacy Law as specified in Count I of the Petition to Revoke, Suspend or Otherwise Limit Licensure. As a result, Gardner's License to practice pharmacy may be disciplined pursuant to K.S.A. 65-1627(a)(3), including professional incompetence as defined in K.S.A. 65-1626(ee), because when Gardner worked as a pharmacist while intoxicated, he failed to adhere to the applicable standard of pharmaceutical care to a degree which constitutes gross negligence. Gardner's License to practice pharmacy may also be disciplined pursuant to K.S.A. 65-1627(a)(3), including unprofessional conduct as defined in K.S.A. 65-1626(hh)(7), because when Gardner worked as a pharmacist while intoxicated, he engaged in conduct that is likely to deceive, defraud, or harm the public.

12. Gardner violated the Kansas Pharmacy Law as specified in Count II of the Petition to Revoke, Suspend or Otherwise Limit Licensure. As a result, Gardner's License to practice pharmacy may be disciplined pursuant to K.S.A. 65-1627(a)(4), in that Gardner is

addicted to the liquor or drug habit to such a degree as to render him unfit to practice the profession of pharmacy.

III. FINAL ORDER

Based upon the evidence introduced at the hearing held December 5, 2006 and the foregoing findings and conclusions, Gardner's License to practice pharmacy in Kansas (Kansas License Number 1-13477) is hereby indefinitely suspended until further order of the Board.

Gardner is hereby ordered to come into full compliance with the written Consent Order that he executed on June 2, 2006. It is further ordered that, if Gardner comes into compliance with said written Consent Order, the Board shall receive written notification from the Kansas Pharmacy Impaired Provider Program that Gardner is able to practice before the Board will consider a request to change the status of Gardner's License.

Within fifteen (15) days after service of this Final Agency Order, either party may file a petition for reconsideration pursuant to K.S.A. 77-529.

Within the time limits established in K.S.A. 77-613, either party may seek judicial review of this Final Agency Order, pursuant to said statute. The agency officer designated to receive service of a petition for judicial review is:

Debra L. Billingsley
Executive Director
Kansas Board of Pharmacy
900 SW Jackson, Suite 560
Topeka, Kansas 66612-1231

IT IS SO ORDERED.

Date

1-30-07



MAX HEIDRICK, R.PH.

President


Kansas Board of Pharmacy

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing FINAL AGENCY ORDER was sent by United States Mail, postage prepaid, on this the 5 day of February, 2007, and properly addressed to the following:

Donald E. Gardner, R.Ph.
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Debra L. Billingsley
Executive Director
Kansas Board of Pharmacy