

BEFORE THE KANSAS BOARD OF PHARMACY

Filed By

AUG 25 2021

KANSAS STATE
BOARD OF PHARMACY

Case No. 21-003

In the Matter of

Amy Kamrath

License Number 1-12525

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 affirm the Petition to Revoke, Suspend or Otherwise Limit Licensure Order of Suspension dated May 19, 2021, under the terms and conditions set forth hereinbelow.

Statement of Case

This matter comes on for hearing on this the 2nd day of June 2021, before the Board upon the Notice of Administrative Hearing issued by the Board to review the Petition to Revoke, Suspend, or Otherwise Limit Licensure of Amy Kamrath (Kamrath) issued by the board on May 19, 2021.

Appearing for the Board were: Jonathan Brunswig, PharmD, President; and members, Bill Walden, R.Ph; Terica Gatewood, PharmD; Tiffany Strohmeyer, PharmD; Andrew Truong, PharmD (by video conference); Erick Axcell, PharmD and, Lucinda Noches Talbert, Public Member.¹

¹ Terica Gatewood abstained from the deliberations and decision.

Brenda Head appeared as the Board's disciplinary counsel.

Kamrath failed to appear despite being provided notice of the hearing.²

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 11 for admission as evidence. Board's Exhibits 1 through 11 were admitted.

Although she failed to appear, Kamrath had submitted documentation to the Board in advance of the hearing. A letter dated May 24, 2021 was marked for identification as Exhibit A and a document entitled "Statement on Virus Isolation (SOVI)" was marked as Exhibit B. Both documents were admitted and made a part of the record.

Findings of Fact

1. Kamrath is a Pharmacist, licensed by the State of Kansas, license number 1-12525.
2. On or about November 3, 2020 the Board received a complaint from Harold S. Magariel (Magariel). (Exhibit 1) Magariel had been a customer of the Hy-Vee Pharmacy in Prairie Village, Kansas, at which Kamrath was employed. Magariel voiced a concern that Kamrath refused to wear a mask during the COVID-19 pandemic.
3. The Board initiated an investigation.
4. On or about November 10, 2020 the Board received a statement from Kamrath. (Exhibit 2) Kamrath's statement involved a line by line review of The Oath of a Pharmacist. Kamrath felt she did not need to wear a mask, that being required to wear a mask was a violation

² Despite Kamrath's failure to appear, the Board chose to conduct a hearing on the evidence and render a decision rather than issue a default order.

of her rights, and that she had health concerns making it dangerous for her to wear a mask.

5. According to the Investigation Quick Summary (Exhibit 4), Kamrath acknowledged not wearing the cloth face covering. Kamrath eventually began wearing a face shield; however, would wear the face shield up most of the time, unless a customer was “irrationally fearful, and they either politely requested that I put it down or indicated through body language that they wanted me to do so, I would bring it down.”

6. Despite being made aware of the requirements for personal protective face covering due to the COVID-19 pandemic, as set forth in the Kansas Governor’s Executive Orders (Exhibits 5-7), Johnson County Board of Public Health Orders (Exhibits 8 and 9), and Hy-Vee’s Personal Protection Policy (Exhibit 3), Kamrath repeatedly failed to properly wear personal protective face coverings and abide by such orders and policy.

7. In lieu of formal discipline, the Board authorized disciplinary counsel to offer a Stipulation and Consent Order to Kamrath. (Exhibit 10) The Stipulation and Consent Order would have subjected Kamrath to one year’s probation and a fine of \$500.

8. By letter dated January 22, 2021 Kamrath rejected the Stipulation and Consent Order. (Exhibit 11)

9. On May 19, 2021, disciplinary counsel for the Board issued a Petition to Revoke, Suspend, or Otherwise Limit Licensure against Kamrath.

10. On or about May 24, 2021 Kamrath submitted a letter to the Board, as well as a document entitled “Statement on Virus Isolation (SOVI)”. (Exhibits A and B)

Applicable Statutes, Regulations and Policies

“The board may revoke, suspend, place in probationary status or deny an application or renewal of any license of any pharmacist upon a finding that: (3) the licensee is found by the board to be guilty of unprofessional conduct or professional incompetency.” K.S.A. 65-1627(a).

For purposes of these proceedings, unprofessional conduct is defined as: “(7) conduct likely to deceive, defraud or harm the public.” K.S.A. 65-1626(uuu).

For purposes of these proceedings, professional incompetency is defined as “(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree that constitutes ordinary negligence, as determined by the board; or (3) a pattern of pharmacy practice or other behavior that demonstrates a manifest incapacity or incompetence to practice pharmacy.” K.S.A. 65-1626(iii).

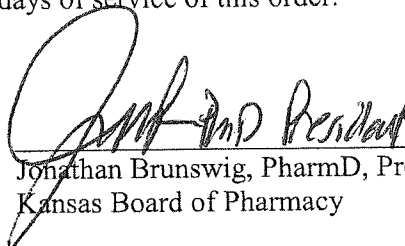
The Board took into consideration that pharmacies are responsible for setting policies and ensuring those policies are complied with. Hy-Vee had policies in place to comply with local, state and/or federal guidelines and orders. Despite the State and local orders, as well as the policies instituted by Hy-Vee, Kamrath failed and refused to comply with the directives set forth therein. A review of the evidence proves Kamrath failed to wear a face mask or a face shield, consistent with her admissions in her written statements to the Board. Moreover, Kamrath failed to appear and participate in the hearing process despite being given notice of the hearing and the process for participating.

Decision

The Board voted six (6) in favor, none opposed to suspend Kamrath’s pharmacist license for a period of one (1) year from the date of the hearing (June 2, 2021). At the conclusion of the one (1) year suspension Kamrath is to be placed on probation for a period of one (1) year. The

standard conditions of probation apply. In addition, Kamrath is required to comply fully with all of Kansas Governor's Executive Orders, Johnson County Board of Public Health Orders and all Hy-Vee policies relating to face coverings, personal protection and COVID-19; notify the Board of any change in employment; and, notify the Board of any changes in Kamrath's contact information. Kamrath is also ordered to pay to the Board and administrative fine in the amount of One Thousand Dollars (\$1,000) within ninety (90) days of service of this order.

7/25/2021
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 25th day of August, 2021, I certify that a copy of the foregoing was placed in the United States first class mail, postage prepaid, addressed to:

Amy Kamrath
1207 Meadow Lake Pkwy.
Kansas City, MO 64114

Brenda Head
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