

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of

Dustin McKennon

Case No. 16-187

Filed By
JAN 12 2017
KANSAS STATE
BOARD OF PHARMACY

FINAL ORDER

Statement of Case

This matter comes on for hearing before the Kansas Board of Pharmacy (Board) for review of the pharmacy technician application of Dustin McKennon (“Applicant”).

The hearing in this matter was convened on January 6, 2017. Appearing for the Board were: President, John Worden PharmD; Vice President, Michael Lonergan R.Ph; and members, Robert Haneke, PharmD; James Garrelts, PharmD;, R.Ph.; David Schoech, R.Ph.; Chad Ullom, R.Ph.; and Cheri Pugh.

Kevin Fowler appeared as the Board’s disciplinary counsel.

Applicant did not appear in person or by counsel.

Findings of Fact

1. On October 3, 2016, the Board received Applicant’s application for registration as a pharmacy technician (application).
2. Applicant answered “Yes” to the following questions:

Have you ever been convicted of (includes pleas of guilty and 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.

....

Have you ever been pardoned from a felony or misdemeanor criminal

conviction?

....

Have you ever been convicted of (includes pleas 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?

3. Applicant also provided a letter with his application stating and explaining various criminal convictions including a 2009 felony DUI arrest and misdemeanor prescription drug fraud charge. Applicant expressed remorse for his actions, noted various academic and family successes, and mentioned his role as an addiction counselor in an effort to demonstrate rehabilitation from his offense history.
4. However, Applicant failed to disclose or explain several offenses reported to the Board in the background report provided from the Kansas Bureau of Investigation (KBI). The charges omitted include: a DUI arrest in 1999 that was diverted, a 2006 theft charge that resulted in conviction and fine, a 2007 misdemeanor possession of hallucinogenic charge which resulted in 12 months or probation and 10 days of confinement, a second 2007 DUI offense which was dismissed with prejudice, and a 2009 misdemeanor charge of criminal use of a financial card which was dismissed.
5. On Applicant's Application, he also checked the box indicating "I have been hired for a position as a pharmacy technician". Applicant listed Walgreen's Pharmacy, registration number 2-13130, with the pharmacy contact person as Greg Bethel.
6. The Investigative Member of the Board requested that an investigation be

conducted on the application.

7. The Board's investigator included in the investigative report a statement from Greg Bethel, in which Mr. Bethel says he had not hired Applicant, and added that he would not consider Applicant for hire as a pharmacy technician due to a history of previous addictive behavior and risk of relapse.
8. The Board's investigator also provided a screenshot of a Facebook profile of Applicant, in which he lists himself as a currently employed and licensed pharmacy technician at an unspecified Walgreen's.
9. Applicant did not indicate on his application that he held a pharmacy technician license in any other state(s).
10. On December 20, 2016, the Board issued a Notice of Administrative Proceeding to allow Mr. McKennon an opportunity to appear to provide evidence regarding his responses and the underlying matters giving rise to those responses.
11. Applicant did not attend the proceeding, did not provide any correspondence to the Board prior, during, or after the proceeding, and did not present or provide any additional evidence of rehabilitation.

Applicable Law
and
Discussion

1. Pursuant to K.S.A. 65-1663, the Board may limit, suspend, or revoke a registration or deny an application for issuance or renewal of any registration as a pharmacy technician 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.

2. That pursuant to K.S.A. 65-1627(a)(2), the Board may deny the granting of a license to a pharmacist if a licensee has been convicted of a felony and the licensee fails to show sufficient rehabilitation to warrant the public trust.
3. That pursuant to K.S.A. 65-1627(a)(3) the licensee is found by the board to be guilty of unprofessional conduct or professional incompetency;
4. That pursuant to K.S.A. 65-1627(a)(5), the licensee has violated a provision of the federal or state food, drug and cosmetic act, the uniform controlled substances act of the state of Kansas, or any rule and regulation adopted under any such act.
5. That pursuant to K.S.A. 65-1626(ccc) "Unprofessional conduct" means: (1) Fraud in securing a registration or permit; (4) intentionally falsifying or altering records or prescriptions; (7) conduct likely to deceive, defraud or harm the public.
6. Due to Applicant's failure to present sufficient evidence to demonstrate his rehabilitation and in consideration of his past and present behavior, the Board finds that Applicant presents a threat to public safety if allowed to become a pharmacy technician in the state of Kansas.
7. Based on the aforementioned facts and statements of law, Applicant's application for a pharmacy technician registration in the state of Kansas **is denied.**

IT IS SO ORDERED.

1/12/17
Date

Alexandra Blasi
Alexandra Blasi, JD, MBA
Kansas Board of Pharmacy

NOTICES

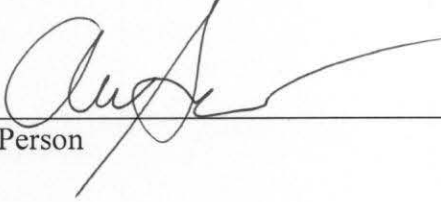
1. This is a Final Order, and becomes effective upon service.
2. **Within fifteen (15) days** after service of the Final Agency Order, any party may file a Petition for Reconsideration pursuant to K.S.A. 77-529.
3. Either party to this agency proceeding may seek judicial review of the Final Order by 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 this 13 day of January, 2017, I mailed a copy of this document to:

Dustin McKennon
665 Golfcourse Rd
Hays, KS 67601



Staff Person