

**BEFORE THE KANSAS BOARD OF PHARMACY**

**Filed By**

**AUG 25 2021**

**KANSAS STATE  
BOARD OF PHARMACY**

Case No. 20-311

In the Matter of

**Austin Tracy**

License Number 24-111080,

Respondent.

**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 modify the Summary Order of Revocation dated January 11, 2021, hereby placing the Pharmacy Technician Registration Number 14-10151 issued to the Respondent, Austin Tracy (Tracy) on probation for a period of two (2) years, upon the terms and conditions set forth hereinbelow.

**Statement of Case**

This matter comes on for hearing on this the 19<sup>th</sup> day of August 2021, before the Board upon the request for a hearing submitted by Tracy on or about January 15, 2021. Tracy requested a hearing on the Board's Summary Order of Revocation dated January 11, 2021 seeking to revoke Tracy's Pharmacy Technician Registration Number. The hearing was conducted by video conference.

Appearing for the Board were: Jonathan Brunswig, PharmD, President; and members, Bill Walden, R.Ph; Tiffany Strohmeier, PharmD; Terica Gatewood, PharmD; Andrew Truong, PharmD; Erick Axcell, PharmD; and, Lucinda Noches Talbert, Public Member.

Brenda Head appeared as the Board's disciplinary counsel.

Tracy appeared in person by video conference and *pro se*.

Loren F. Snell, Jr., Administrative Law Judge (ALJ), was appointed and served as the presiding officer over the evidentiary hearing.

### **Evidentiary Rulings<sup>1</sup>**

The Board offered Exhibits 1 through 10 for admission as evidence, requesting that Exhibits 2 and 4 be sealed due to the confidential information contained therein. Tracy had no objection to admission of Exhibits 1 through 10, or the sealing of Exhibits 2 and 4. Board's Exhibits 1 through 10 were admitted and Exhibits 2 and 4 are sealed.

Tracy offered Exhibit A for admission as evidence. Counsel for the Board had no objection to admission of Exhibit A. Tracy's Exhibit A was admitted.

### **Findings of Fact**

1. The Board issued Pharmacy Technician Registration Number 24-111080 to Tracy allowing Tracy to perform the functions of a pharmacy technician in the State of Kansas.
2. On or about October 19, 2020 the Board received a complaint alleging illegal and unprofessional activities by Tracy.<sup>2</sup> (Exhibit 3)
3. On October 20, 2020 the Board sent an email to Tracy requesting current employer information. (Exhibit 7)
4. According to the Board, there was no record of Tracy responding to the Board's request.

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<sup>1</sup> The ALJ inadvertently failed to handle the admission of the proposed exhibits at the commencement of the hearing. Admission of the exhibits was addressed and the exhibits were admitted at the conclusion of Tracy's case and prior to deliberations by the Board.

<sup>2</sup> The Board requested additional information from the individual who made the allegations but received no further communication.

5. On October 22, 2020 the Board sent a second request to Tracy requesting updated employment information.

6. On November 16, 2020 the Board sent a letter to Tracy requesting a response to the various allegations of his possession, sale and/or use of illegal substances. (Exhibit 5) Tracy was to respond to the Board's request on or before December 18, 2020.

7. Having received no response from Tracy, the Board issued a Summary Order of Revocation on January 11, 2021. (Exhibit 6) The Board sought to revoke Tracy's pharmacy technician registration due to his failure to furnish the Board and its investigators with legally requested information concerning the allegations of illegal activity.

8. On January 15, 2015 the Board received a faxed written request for an administrative hearing regarding the January 11, 2021 Summary Order of Revocation. (Exhibit 7) Included with the fax was a copy of an email purportedly sent to the Board on October 23, 2020, by Tracy, informing the Board of his employer and address, in response to the Board's October 20, 2020 email.

9. On January 15, 2021 the Board received an email from Tracy, also requesting an administrative hearing regarding the January 11, 2021 Summary Order of Revocation. (Exhibit 8)

10. On January 20, 2021 the Board received a faxed Change of Name or Contact Info form from Tracy reporting Tracy's address, phone numbers and email address. (Exhibit 9)

11. On January 20, 2021 the Board received an email from Tracy setting forth his responses to the allegations of illegal activity made against him. (Exhibit 10)

12. Tracy testified to his belief that the allegations were made by an ex-girlfriend who was being vindictive. Tracy reiterated his denial of the allegations of possession, sale and/or use of illegal substances. Tracy further provided explanations regarding his previous failure to

correctly answer a question on his application. (Exhibits 1 and 2)

### **Applicable Statutes, Regulations and Policies**

“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.” K.S.A. 65-1663(f)(1).

“The board may revoke, suspend, place in a probationary status or deny an application or renewal of any license of any pharmacist upon a finding that: (15) the licensee has failed to furnish the board, its investigators or its representatives any information legally requested by the board.” K.S.A. 65-1627(a).

### **Decision**

The Board took into consideration that Tracy had failed to provide the information requested by the Board in a timely fashion, also noting that Tracy had, eventually, responded to the allegations in the complaint. Although the Summary Order of Revocation related to Tracy’s failure to provide the requested information, the Board considered the nature of the allegations that had been made and the fact that those allegations involved access to, possession, use and sale of controlled substances. The Board also took into consideration the fact that Tracy had misrepresented his criminal history on his initial application.<sup>3</sup>

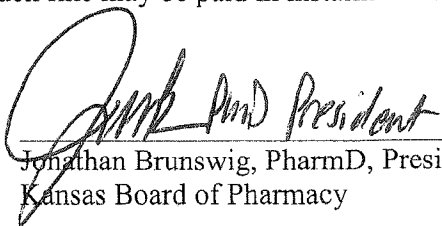
The Board voted 7-0 to modify the Summary Order of Revocation, placing Tracy on probation for a period of two (2) years. Tracy is required to reappear before the Board prior to the expiration of the two (2) year probationary period. Tracy may not have access to controlled

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<sup>3</sup> Tracy answered no when asked about having been charged with or convicted of a criminal offense which was found to be untrue after the criminal background check was completed by the Agency. Additional information and explanation was requested and Tracy did respond timely to the Board’s request.

substances in the course of his employment. Tracy must update the Board of any criminal offenses; notify the Board of any change in employment; and, notify the Board of any changes in his contact information within ten (10) days of a change. Tracy must respond to all Board requests within the timeframe requested. Tracy's current and any future pharmacist-in-charge must acknowledge in writing the Board's Final Order and the terms and conditions of Tracy's probation. Tracy is also ordered to pay to the Board an administrative fine in the amount of Five Hundred Dollars (\$500) within six (6) months of service of this order and such fine may be paid in installments.

8/25/2021  
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.

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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 25<sup>th</sup> day of August, 2021, I certify that a copy of the foregoing was deposited in business mail which is then placed in the United States first class mail, postage prepaid, addressed to:

Austin Tracy  
1301 W. 24<sup>th</sup> St., Apt. F21  
Lawrence, KS 66046

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

  
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Staff Person  
Kansas Board of Pharmacy