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Alexandra Blasi, Executive Secretary

Laura Kelly, Governor

May 23, 2022

Logan Abbott
7312 W Clear Meadow Cir
Wichita KS 67205

RE: Case No. 18-793

Dear Mr. Abbott:

Enclosed you will find a Final Order issued by the Kansas Board of Pharmacy (Board) in the above-referenced matter. Please read the order in its entirety. In addition, a civil fine has been assessed totaling \$2,500 which is to be paid over a 12-month period. Please submit a check or money order made payable to the Kansas Board of Pharmacy and include your case number in the check memo at the times of your payment.

If you have any questions, feel free to contact the Board at Pharmacy.Compliance@ks.gov.

Sincerely,

Kansas Board of Pharmacy

Enclosure

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of

Logan Abbott

Kansas Pharmacy License No.: 1-100206

Case No. 18-793

OAH No.: 22BP0002 PHAR

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 suspend the Kansas Pharmacy license issued to Logan Abbott (Abbott) for period of at least twelve (12) months, under the terms and conditions set forth hereinbelow.

Statement of Case

This matter comes on for hearing on this the 6th day of April 2022, before the Board upon the review of an Emergency Agency Order issued January 12, 2022 suspending Abbott's Kansas Pharmacy license and the Petition to Revoke, Suspend or Otherwise Limit Licensure filed on January 21, 2022.

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

Brenda Head appeared as the Board's disciplinary counsel. Also appearing and providing testimony were Alexandra Blasi (Blasi), Executive Secretary for the Board, Dr. James Ferguson (Dr. Ferguson), and Caitlin Thompson (Thompson).

Abbott appeared in person and with counsel, Diane L. Belquist. Also appearing and providing testimony were Dr. Ernest Lykissa (Dr. Lykissa), Stephanie Roberts (Roberts), and Brittany Gore (Gore).

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

¹ As the Investigation Member, Terica Gatewood abstained from the deliberations and decision.

Evidentiary Rulings

The Board offered Exhibits 1 through 35 for admission as evidence. Abbott had no objection to admission of Exhibits 1, 8, 10, 11, 14-26, and 29-31. Board's Exhibits 1, 8, 10, 11, 14-26, and 29-31 were admitted.

Abbott objected to the remaining exhibits, as evidenced by the Licensee's Objection to the Board's Proposed Exhibits filed on April 5, 2022:

- Abbott objected to Exhibits 27 and 28 because they related to Abbott's testing and results during the duration of the time Abbott has been in KsPRN monitoring. Abbott suggested the exhibits contained information irrelevant to the disputed facts and would be prejudicial. As the Board is seeking discipline based upon the totality of Abbott's conduct over the entire period of time, Exhibits 27 and 28 were admitted over Abbott's objection.
- Abbott objected to Exhibits 2-7, 9, 12, 13, and 32-35 as irrelevant to prove or disprove whether Abbott had ingested Amphetamines leading to the positive test results on November 23, 2021. The exhibits were offered in support of the historical nature of Abbott's conduct as the Board was seeking discipline based upon the totality of Abbott's conduct over the entire period of time. Furthermore, some of the exhibits were being offered as relates to the credibility of Abbott's defense that the screening result was a false positive. Exhibits 2-7, 9, 12, 13, and 32-35 were admitted over Abbott's objections.

Abbott offered Appellant's Exhibits A through Q for admission as evidence. Counsel for the Board had no objection. Appellant's Exhibits A through Q were admitted into evidence.

Due to the confidential nature of the testimony to be provided during the hearing, the parties requested that the hearing be closed to the public to safeguard protected health information. The hearing was closed.

Findings of Fact

1. At all times relevant to this matter, Abbott held a current license to engage in the practice of pharmacy in the State of Kansas.

2. On March 28, 2019, Abbott and the Board entered into a Consent Agreement. (Exhibit 1).

3. The Consent Agreement was entered into in response to an investigation that had been conducted in which it was concluded that Abbott had been self-medicating and diverting controlled substances from his previous place of employment. The Consent Agreement allowed Abbott to retain his Kansas license to practice pharmacy; however, Abbott was to cease practicing as a pharmacist, subject to receiving written consent from the Board to resume, and was to enter into a Statement of Understanding agreement with the Kansas Pharmacists Association Kansas

Pharmacists Recovery Network (KsPRN) for a period of no less than five (5) years, and fully cooperate with the recommendations of KsPRN. Violation of the terms and conditions of the Consent Agreement would serve as grounds for disciplinary action.

4. On March 30, 2019, Abbott executed a KsPRN Substance Abuse Program Board Referred Statement of Understanding (Statement of Understanding). (Exhibit 3). Pursuant to the Statement of Understanding, Abbott was prohibited from using “any mood altering drugs of addiction, including alcohol and/or prescription medications unless prescribed by my physician.” Abbott was required to undergo monitoring by FirstSource Solutions (FSSolutions) and participate in the drug screening program.

5. On April 4, 2019, Abbott signed a KsPRN document setting forth Products of Concern. (Exhibit 4). This document set forth the products that could not be used and might result in a positive drug screen during the period covered by the Statement of Understanding.

6. On June 26, 2019, Abbott executed a Statement of Understanding with KsPRN. (Exhibit 7). Pursuant to the Statement of Understanding, Abbott was prohibited from using “any mood altering drugs of addiction, including alcohol and/or prescription medications unless prescribed by my physician.” Abbott was required to undergo monitoring by FSSolutions and participate in the drug screening program.

7. On July 3, 2019 the Board issued a Summary Order of Suspension based upon Abbott’s admission to having self-administered a controlled substance for which Abbott did not have a valid prescription, and for consuming alcohol, in violation of the March 28, 2019 Consent Order. (Exhibit 8).

8. On or about August 16, 2019 KsPRN received a fax of a KsPRN Verification of Prescribed Medication form advising that Abbott had been prescribed Prednisone. (Exhibit 9).

9. On December 2, 2019 the Board conducted an evidentiary hearing upon the appeal of the July 3, 2019 Summary Order of Suspension requested by Abbott. (Exhibit 11).

10. On December 5, 2019, Abbott executed a Statement of Understanding with KsPRN. (Exhibit 11). Pursuant to the Statement of Understanding, Abbott was prohibited from using “any mood altering drugs of addiction, including alcohol and/or prescription medications unless prescribed by my physician.” Abbott was required to undergo monitoring by FSSolutions and participate in the drug screening program.

11. On February 6, 2020 the Board issued a Final Order suspending Abbott’s Kansas Pharmacy license for a period of one (1) year from the date of the December 2, 2019 hearing and extending the terms of the March 28, 2019 Consent Agreement for a period of five (5) years from the date of the December 2, 2019 hearing. During the period of suspension, Abbott was to abstain from the use of any mood-altering drugs of addiction, including alcohol and/or prescription medications unless prescribed by his physician and to remain in compliance with the Statement of Understanding entered into with KsPRN on March 30, 2019.

12. On May 12, 2020 Leonard Allen (Allen), Communication and Marketing Director of the Kansas Pharmacists Association, sent an email to Abbott advising that records indicated Abbott had tested positive for alcohol on March 23, 2020 and May 4, 2020. (Exhibit 5). Abbott responded to Allen's email on the same day denying having strayed from the program. (*Id.*).

13. On May 13, 2020 Abbott sent a follow-up email to Allen, acknowledging having mis stepped and expressing his optimism that he can "maintain 100% compliance with the program" moving forward. (Exhibit 6).

14. On June 1, 2020 KsPRN Manager, Allen, sent a letter to the Board advising that Abbott had two (2) positive tests for alcohol and that the matter was being referred for the Board's consideration. (Exhibit 12).

15. On November 9, 2020 a new Statement of Understanding was mailed to Abbott. (Exhibit 13).

16. On or about March 19, 2021 KsPRN received a fax of a KsPRN Verification of Prescribed Medication form advising that Abbott had been prescribed Bupropion. (Exhibit 14).

17. According to Abbott, in May of 2021 the suspension of Abbott's Kansas Pharmacy license was lifted upon successfully completing a one (1) year period of time with no positive drug and/or alcohol screen results, as set forth in the Final Order issued on February 6, 2020.

18. Gore testified Abbott was hired as a staff pharmacist at CVS in October of 2021. Gore testified she was made aware by Abbott that he was in the KsPRN program, and that he had been forthcoming and genuine, and she had no issues with Abbott.

19. On or about November 11, 2021 KsPRN received a copy of a KsPRN Participant Employment Verification, Evaluation and Performance form advising that Abbott had been hired by CVS Pharmacy and that Abbott's supervisor, Gore, had no concerns. (Exhibit 15). It was also noted that Abbott's job performance was rated as "Excellent."

20. On or about November 23, 2021 Abbott was subjected to a drug and alcohol screen conducted by FSSolutions. A Result Certificate was prepared setting forth the results of the testing. (Exhibit 16). According to the Result Certificate, Abbott had tested positive for Amphetamines.

21. Thompson is the member services coordinator of the Kansas Pharmacists Association (KPhA) and the administrator of the KsPRN substance abuse program.

22. On December 7, 2021 Thompson sent an email to Abbott notifying him of the positive test result on November 23, 2021. (Exhibit 18). Abbott responded to Thomas's email on December 8, 2021, suggesting he had not been prescribed any Amphetamines and that the Bupropion he is prescribed can generate a false positive. (*Id.*).

23. Thompson testified she contacted FSSolutions to see if Bupropion could cause a false positive, as Abbott suggested. Thomas received a response from FSSolutions on December 9, 2021. (Exhibit 21). Dr. Ferguson opined that Bupropion will not cause a positive amphetamine screening result. Dr. Ferguson clarified this statement during his testimony, as set forth herein below.

24. On or about December 27, 2021 Abbott submitted to a hair follicle test by United States Drug Testing Laboratories. A report of the results of Abbott's hair follicle test was prepared indicating that Abbott was negative for Amphetamines. (Exhibit 22).

25. Dr. Ferguson is the Medical Director for Recovery Management Services at FSSolutions, Inc. (Exhibit 29). Dr. Ferguson testified he had been in this position for eleven (11) years.

26. Dr. Ferguson testified that Abbott's November 23, 2021 test was confirmed positive for Amphetamines. The November 23, 2021 testing went through a two (2) part process: screening and confirmation.

27. Dr. Ferguson testified that Wellbutrin, also known as Bupropion, can cause a false positive result in a single screening process; however, not when the testing has gone through the second process of confirmation, as Abbott's November 23, 2021 test had.

28. Dr. Ferguson provided two (2) articles regarding Wellbutrin and false positive drug tests. Dr. Ferguson testified, in his opinion, a false positive from Wellbutrin could be ruled out in this case.

29. Dr. Ferguson testified that his facility was not involved in the hair test that was completed, but Dr. Ferguson had reviewed the results. Dr. Ferguson testified that urine is more sensitive than hair. Hair may require more ingestion of the drug for it to be detected, but that does not negate a positive result in a urine sample is false. Dr. Ferguson testified it means there was just not enough of the drug ingested to cause a positive result in the hair test.

30. In an email dated January 3, 2022, Dr. Ferguson explained that "[i]t takes a greater amount of drug ingestion before a hair test is positive." (Exhibit 23). Dr. Ferguson further explained that the hair test "adds perspective but does not invalidate the urine."

31. Dr. Ferguson testified that a hair test would not confirm or disprove a urine test but could provide information concerning how much of the drug was ingested.

32. Abbott underwent urine drug and alcohol tests on December 7, December 16 and December 22, 2021, and January 6, 2022 and the results of each of the tests came back negative for drugs and/or alcohol. (Exhibits D, H, J and N).

33. On December 15, 2021 the Board issued an Emergency Agency Order suspending Abbott's Kansas Pharmacy license because he tested positive for Amphetamines on November 23, 2021 in violation of the Final Order issued on February 6, 2020.

34. Abbott filed a Request for Reconsideration of the Emergency Agency Order on December 28, 2021.

35. On January 12, 2022 a second Emergency Agency Order was filed by the Board. (Exhibit 24).² Because of the positive test for Amphetamines, without a valid prescription, violating the Statement of Understanding and the Consent Agreement, the Board concluded Abbott's Kansas Pharmacy license should be suspended to protect the public health, safety and welfare.

36. On or about January 25, 2022 a report was generated listing the result of Abbott's testing activity from April of 2019 through January of 2022. (Exhibit 27). Included within the report was a list of the Missed Check-ins by Abbott, as well as the times Abbott was selected for testing and did not report for the testing. There were twelve (12) total times when Abbott missed a check-in or failed to show for a selected testing date between April 2019 and April 2021. Five (5) of those occurred between January and April of 2021.

37. On or about March 23, 2022 a Detailed Test History Report was prepared for the drug and alcohol testing Abbott had undergone between July 30, 2019 and November 23, 2021. (Exhibit 28). According to the report, Abbott had positive test results on March 23, 2020; May 4, 2020; and, November 23, 2021.

38. Roberts is a Licensed Specialist Clinical Social Worker, a Licensed Clinical Addictions Counselor, A Substance Abuse Professional, and a Kansas Certified Gambling Counselor.

39. Roberts conducted an evaluation of Abbott as relates to a previously diagnosed substance abuse disorder. Roberts completed a re-evaluation of Abbott on March 30, 2022. Roberts reported there was no indication of a current drug or alcohol concern for Abbott.

40. Roberts testified that she could not explain how a urine sample, having undergone the confirmation process, would produce a false positive. Roberts also testified that while the hair test did not negate the urine test result, it did indicate that Abbott did not have an ongoing issue with substance abuse.

41. Roberts testified that it would be rare for an individual to relapse into substance abuse and then go right back into recovery, and that it is hard for someone suffering from a substance abuse disorder to do one dose and then stop usage.

42. Roberts testified that it was her opinion Abbott did not have an ongoing substance abuse problem and was fit to practice as a pharmacist.

43. Dr. Lykissa is the Lab Director at ExperTox. Dr. Lykissa has been in this position since 2000.

² It was noted that the Emergency Agency Order dated December 15, 2021 was not vacated.

44. Dr. Lykissa reviewed Abbott's positive urine screening conducted on November 23, 2021. Dr. Lykissa testified the results indicated an intake of 5-10 mg of Amphetamines, which, in Dr. Lykissa's opinion, was not an abusive intake. Dr. Lykissa opined that it may constitute a mistake or an accidental intake.

45. Although Dr. Lykissa acknowledged there is no confirmation for a hair test, he felt the hair test should be given more weight than the urine screening. Specifically, Dr. Lykissa testified that urine samples may be adulterated, and hair tests look at a longer period of time, as urine samples only give a four (4) day history.

46. Abbott testified to the history of his drug and alcohol usage, as well as the treatment and monitoring he has undergone since at least March of 2019. Abbott acknowledged he had a history of use of Amphetamines and alcohol and had undergone inpatient treatment in June of 2019.

47. Abbott testified he had been prescribed Wellbutrin for depression and suggested this could have led to a false positive screen result on November 23, 2021.

48. Abbott acknowledged that when he was contacted about the positive alcohol results in 2020 he had initially denied usage, but then spoke to his addiction sponsor and "came clean" the next day, accepting responsibility for the positive results.

49. Abbott denied having "knowingly" ingested Amphetamines since July of 2019.

50. Abbott testified he had inquired about the possibility of further testing once he learned of the positive test from November 23, 2021 and offered to take a hair test on that day.

51. Abbott testified he had returned from a trip on December 21, 2021 and submitted to the hair test on December 27, 2021.

52. Abbott questioned the validity of the positive result from the urine screening because of the negative result obtained from the hair test.

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: (1) The licensee has obtained, renewed or reinstated, or attempted to obtain, renew or reinstate, a license by false or fraudulent means, including misrepresentation of a material fact."³

In reviewing this matter the Board considered each of the five (5) counts raised against Abbott in support of the Petition to Revoke, Suspend or Otherwise Limit Licensure. In so doing, the Board concluded Abbott had committed the violations alleged in Counts II, III and IV.

³ K.S.A. 65-1627(a).

The Board noted that while Abbott suggested the positive test was the result of a false positive, Abbott had been on Wellbutrin since March of 2021, a period during which at least twenty-nine (29) tests were conducted and not one of those came back as a positive result. Furthermore, the Board found the testimony regarding the confirmed screening process to be convincing that this was not a false positive, as suggested by Abbott. The Board noted that Abbott had two (2) occasions in which he tested positive for alcohol since the Final Order was issued, both of which constituted violations of the Final Order issued in February of 2019.

“It is the function of the administrative hearing body to determine the weight or credibility of the testimony of witnesses.”⁴

The Board found Abbott’s testimony to lack credibility. First, the Board noted this was not the first time that Abbott had a positive result and attempted to deny the accuracy of the results. This had happened in previous situations involving Abbott, with the most recent occurrence being when Abbott was confronted with the positive alcohol tests in May of 2020. Moreover, when reviewing and considering the COVID-19 test photos Abbott submitted to KsPRN in January and March of 2022 as a basis for his inability to be screened the photos appear to be identical in every respect, except that one is zoomed in closer so that the surface the test was sitting on cannot be determined. Otherwise, the shadowing, the placement of the testing strip, and the last digits of the Lot Number are identical between the two (2) photos. This is contrary to the statements made by Abbott when the photographs were submitted and contrary to the testimony provided by Abbott during the hearing.

Abbott had entered into a Consent Agreement in which he had agreed to enter into a Statement of Understanding with KsPRN, which he did, and which was violated. As a result, Abbott was placed on suspension and the required participation in the KsPRN program was extended for a period of five (5) years. As part of the participation in KsPRN, Abbott was prohibited from using “any mood altering drugs of addiction, including alcohol and/or prescription medications unless prescribed by my physician.” On multiple occasions Abbott failed to comply with the Statement of Understanding, having tested positive for alcohol and/or drugs. The Board noted that based upon Abbott’s actions, it was within the Board’s statutory authority to revoke Abbott’s pharmacist license, not just suspend it.

Decision

The Board voted six (6) in favor, zero (0) opposed and one (1) abstention to suspend Abbott’s pharmacist license for a minimum period of one (1) year from the date of the hearing (April 6, 2022). Abbott will remain suspended until further order of the Board. During the period of suspension Abbott is to remain in the KsPRN program and remain in compliance with the Statement of Understanding entered into with KsPRN. Abbott shall report any violation of terms and conditions of the Statement of Understanding to the Board within ten (10) days of learning of the violation and is required to appear at the Board’s next scheduled meeting. The Board also imposes a fine of \$2,500 on Abbott due to his failure to uphold the laws of the State of Kansas,

⁴ *Lacy v. Kansas Dental Board*, 274 Kan. 1031, 1047-48, (2002) (citing *Swezey v. State Department of Social & Rehabilitation Services*, 1 Kan. App. 2d 94, 98, 562 P. 2d 117 (1977)).

said fine to be paid over a period of twelve (12) months from the date of the hearing.

Petition to Stay

Abbott filed a Petition to Stay the Effectiveness of any Final Orders. The parties were given an opportunity to present their arguments to the Board.

The Board, having given full and careful consideration to Abbott's petition, voted six (6) in favor, zero (0) opposed and one (1) abstention to deny Abbott's Petition to Stay the Effectiveness of any Final Orders.

May 21, 2022

Date

Dr. Jonathan W. Brunswig, PharmD

Dr. Jonathan W. Brunswig, PharmD (May 21, 2022 08:23 PDT)

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.⁵
3. Either party to this agency proceeding may seek judicial review of the Final Order by filing a timely petition in the District Court.⁶ 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

⁵ K.S.A. 77-529.

⁶ K.S.A. 77-613.

Certificate of Service

On May 23, 2022, I certify that a copy of the foregoing was placed in building mail to be deposited the United States first class mail, postage prepaid, addressed to:

Logan Abbott
7312 W. Clear Meadow Cir.
Wichita, KS 67205

I further certify that I caused a copy of the foregoing to be served electronically through OAH's e-filing system to:

Diane L. Bellquist
Joseph, Hollander, & Craft LLC
1508 SW Topeka Blvd
Topeka, KS 66612
Tel: (785) 234-3272

Brenda Head
Frieden & Forbes, LLP
1414 SW Ashworth Pl., Ste 201
Topeka, KS 66604
Tel: (785) 354-1100

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






18-793 Abbott Final Order May 2022

Final Audit Report

2022-05-21

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| By: | Alexandra Blasi (alexandra.blasi@ks.gov) |
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