

FILED
APR 22 2004
KANSAS STATE BOARD OF
HEALING ARTS

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

In the Matter of)
)
Steven J. Fisher, R.T.)
Application for Kansas License)
_____)

Docket No. 04-HA-38

FINAL ORDER

NOW ON THIS Seventeenth Day of April 2004, this matter comes on for review of the Initial Order issued by Ray N. Conley, D.C., Presiding Officer. Shelly R. Wakeman, Disciplinary Counsel, appears for the Board. Applicant Steven J. Fisher, R.T. appears in person.

Having the agency record before it, the Board finds, concludes and orders that the Initial Order should be adopted as the Final Order of the Board as follows:

1. Applicant requests a license to practice respiratory therapy. The Board presumes that the application is complete, and that Applicant meets the basic qualifications for licensure. The Board filed an answer opposing the application based upon allegations of unprofessional conduct. The Board has the burden to prove by clear and convincing evidence that Mr. Fisher engaged in the alleged conduct.

2. Applicant pleaded guilty to attempted stealing, a Class B misdemeanor, in the Circuit Court of Clay County, Missouri on January 20, 2000. As a result of this conviction, the Missouri Board for Respiratory Care issued Applicant a license subject to terms of probation. The probation terms would constitute a limitation if imposed under Kansas law, and constitute unprofessional conduct as defined at K.A.R. 100-55-5(e).

3. The details of the incident that lead to the guilty plea are not stated in any document in the record. Applicant did describe the incident, and characterized the incident as a

misunderstanding. Even assuming the truth of Applicant's description, Applicant participated in deceptive conduct, and that deceptive conduct resulted in a conviction of a crime of dishonesty.

4. Applicant argues that the sentence was suspended, and thus may not be considered as evidence against him. The Board finds and concludes that Applicant was convicted of the crime, and that the suspension of the sentence affects only the imposition of the penalty and not the fact of the conviction.

5. On October 21, 2000, Applicant was charged with possession of drug paraphernalia. He pleaded guilty to that crime September 25, 2001. This conviction does not, by itself, constitute a violation of the respiratory therapy practice act.

6. On January 22, 2001, Applicant tested positive for opiates.

7. Applicant argued before the Board on January 31, 2004 that the positive test for opiates was the result of prescriptions from his physician for Oxycodone. Applicant no longer makes that assertion, noting that those drugs were not prescribed until October 2001. Applicant explained that the positive drug test resulted from his use of cough syrup prescribed for his child.

8. The Board finds that Applicant's positive drug test was not the result of a lawful prescription for Applicant, and that Applicant had no authority or medical justification for self-administering the drug.

9. As a result of the conviction and the use of opiates, the Missouri board again issued a disciplinary order limiting Applicant's license. The Board concludes that this limitation is unprofessional conduct as defined at K.A.R. 100-55-5(e).

10. As provided by K.S.A. 65-5510, an application for a license to practice respiratory therapy may be denied upon a finding of unprofessional conduct.

11. In light of the nature of the conduct resulting in disciplinary orders in the State of Missouri, specifically the crime of dishonesty and the unauthorized use of a prescription-only drug containing Codeine, the Board finds that the application for licensure should be denied.

IT IS, THEREFORE, ORDERED THAT the application by Steven J. Fisher, R.T. for a Respiratory Therapy license is hereby denied.

PLEASE TAKE NOTICE that this Final Order is effective upon service. A party may seek judicial review of a Final Order by filing a petition in the District Court as authorized by K.S.A. 77-610, et seq. Reconsideration of the Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within 30 days following service of the Final Order. A copy of any petition for judicial review must be served upon the Board's executive director at 235 S. Topeka Blvd., Topeka, KS 66603.

Dated this 22ND Day of April 2004.

Kansas State Board of Healing Arts

/s/ Lawrence T. Buening Jr
Lawrence T. Buening, Jr.
Executive Director

Certificate of Service

I certify that the foregoing Final Order was served this 22nd day of April 2004 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Steven J. Fisher, R.T.
1500 NE 77th Street
Gladstone, MO 64118

and a copy was hand-delivered to:

Shelly R. Wakeman
Disciplinary Counsel
235 S. Topeka Blvd.
Topeka, Kansas 66603

_Lawrence T. Buening Jr_____