

BEFORE THE TENNESSEE BOARD OF PHARMACY

IN THE MATTER OF:)

EVAN MICHAEL MCKENZIE, RT (#56731))
452 MOSS TRAIL, APT A3)
GOODLETTSVILLE TN 37072)

452 MOSS TRAIL, APT A30)
GOODLETTSVILLE, TN 37072)

1005 MOUNTAIN VALLEY LANE)
NASHVILLE, TN 37209)

Docket No. 17.56-153881A

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SECRETARY OF STATE

FINAL ORDER

This matter came to be heard before the Tennessee Board of Pharmacy ("Board") on January 9, 2019, pursuant to a Notice of Hearing and Charges and Memorandum for Assessment of Civil Penalties and Costs ("NOC") issued against Evan Michael McKenzie ("Respondent"). Presiding at the hearing was the Honorable Shannon Barnhill, Administrative Law Judge, assigned by the Secretary of State. The Division of Health Related Boards of the Tennessee Department of Health ("State") was represented by Matthew R. Gibbs, Assistant General Counsel. The Respondent was not present and not represented by counsel. After providing proof of attempts of service on the Respondent, the State moved for, and was granted, a default judgment. In support of its motion, the State introduced evidence that the State attempted service at three separate addresses via United States Postal Service certified and first class mail. The State sent mailings to Respondent's address of record on file with the Board (located at 1005 Mountain Valley Lane, Nashville) and two addresses obtained via a Westlaw CLEAR search (located at 452 Moss Trail, Apt. A3, and 452 Moss Trail, Apt. A30). Of the six pieces of mail

sent to the three addresses, all pieces were returned to the State except the first class mailing to 1005 Mountain Valley Lane. The postmasters in the zip codes of each aforementioned address indicated, by way of a Request for Change of Address or Box holder Information Needed for Service of Legal Process (i.e. postal trace), Respondent is “not known at address given.”

The State attempted to contact the Respondent via his telephone number of record, but the telephone number is not receiving calls. The State attempted to contact the Respondent on December 20, 2018, via email. The Respondent did not respond to the email.

Having considered the evidence in this matter, the Administrative Law Judge advised the Board that service on the Respondent was legally sufficient. By majority vote, the Board GRANTED the State’s motion to find the Respondent in DEFAULT and to conduct the proceeding without the participation of the Respondent. After consideration of the NOC, testimony of witnesses, argument of counsel, and the record as a whole, the Board finds as follows:

I. FINDINGS OF FACT

1. Respondent has been at all times pertinent hereto registered by the Board as a pharmacy technician in the State of Tennessee, having been granted registration number 56731 on July 5, 2016, which expired on July 31, 2018.
2. At all times pertinent hereto, Respondent was registered and employed as a pharmacy technician at the Kroger Pharmacy #541 located in Goodlettsville, Tennessee (“Kroger”).
3. On September 20, 2016, a pharmacist employed at Kroger noticed, when performing the final verification, that less tablets of Oxycodone were present in the prepared vial than what was prescribed to the patient. Respondent completed the product dispensing step in

the workflow process for this prescription.

4. During an interview with Kroger personnel on September 23, 2016, Respondent admitted, in writing, to stealing Oxycodone tablets from prepared vials on several occasions over the course of several weeks.

II. CONCLUSIONS OF LAW

5. The findings of fact contained in paragraphs three and four constitute grounds for disciplinary action against Respondent's license to practice as a pharmacy technician in the State of Tennessee pursuant to TENN. CODE ANN. §53-11-402(a)(3), the relevant portion of which reads as follows:

It is unlawful for any person knowingly or intentionally to:

- (3) Acquire or obtain, or attempt to acquire or attempt to obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

6. The findings of fact contained in paragraphs three and four constitute grounds for disciplinary action against Respondent's license to practice as a pharmacy technician in the State of Tennessee pursuant to TENN. CODE ANN. §63-10-305(4), the relevant portion of which reads as follows:

Engaging in conduct prohibited or made unlawful by any of the provisions of parts 2-5 of this chapter or any other laws of the state or of the United States relating to drugs or to the practice of pharmacy.

7. The findings of fact contained in paragraphs three and four constitute grounds for disciplinary action against Respondent's license to practice as a pharmacy technician in the State of Tennessee pursuant to TENN. CODE ANN. §63-10-305(6), the relevant portion

of which reads as follows:

Been guilty of dishonorable, immoral, unethical or unprofessional
conduct;

III. ORDER

THEREFORE, in consideration of the above Findings of Fact and Conclusions of Law, it is **ORDERED, ADJUDGED, and DECREED** as follows:

8. Respondent's registration to practice as a pharmacy technician (registration number 56731) is hereby **REVOKED**.
9. Respondent must pay, pursuant to TENN. CODE ANN. § 63-1-144, the actual and reasonable costs of prosecuting this case to the extent allowed by law including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. These costs will be established by an Assessment of Costs prepared and filed by counsel for the Department. Said costs shall not exceed ten thousand dollars (\$10,000.00).
10. Any and all cost shall be paid in full within thirty (30) days after the issuance of the Assessment of Costs. Payment shall be made by **certified check, cashier's check, or money order**, payable to the **State of Tennessee, Department of Health**. Any and all payments shall be forwarded to the **Disciplinary Coordinator, Tennessee Board of Pharmacy, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243**. A notation shall be placed on said money order or such check that it is payable for the Assessment of Costs of Evan Michael McKenzie, RT, Docket No. 17.56-153881A.

IV. POLICY STATEMENT

The Board takes this action in order fulfill its obligation to protect the health, safety, and welfare of the public.



So **ORDERED** by the Tennessee Board of Pharmacy this 9th day of January, 2019.

Debra Wilson
Chairperson
Tennessee Board of Pharmacy
by Ronald Gill

PREPARED FOR ENTRY:

Matthew R. Gibbs

Matthew R. Gibbs, (BPR # 032744)
Assistant General Counsel
Tennessee Department of Health
665 Mainstream Dr., 2nd Floor
Nashville, Tennessee 37228
(615) 741-1611



RECONSIDERATION, ADMINISTRATIVE RELIEF AND JUDICIAL REVIEW

Within fifteen (15) days after the entry of an initial or final order, a party may file a petition to the Board for reconsideration of the Final Order. If no action is taken within twenty (20) days of filing of the petition with the Board, it is deemed denied. TENN. CODE ANN. § 4-5-317.

In addition, a party may petition the Board for a stay of the Final Order within seven (7) days after the effective date of the Final Order. TENN. CODE ANN. § 4-5-316.

Finally, a party may seek judicial review by filing a petition for review in the Chancery Court of Davidson County within sixty (60) days after the effective date of the Final Order. A petition for reconsideration does not act to extend the sixty (60) day period; however, if the petition is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the petition. TENN. CODE ANN. § 4-5-322.

CERTIFICATE OF FILING

This Order was received for filing in the Office of the Tennessee Secretary of State,
Administrative Procedures Division, and became effective on the 10th day of January
~~2018.~~ 2019

J. Richard Collier
Richard Collier, Director
Administrative Procedures Division



Certificate of Service

The undersigned hereby certifies that a true and correct copy of this Final Order has been served upon Respondent, Evan Michael McKenzie, RT, by certified and first class mail on this the 11th day of January, 2019, at the following locations:

452 Moss Trail, Apt 3
Goodlettsville, TN 37072

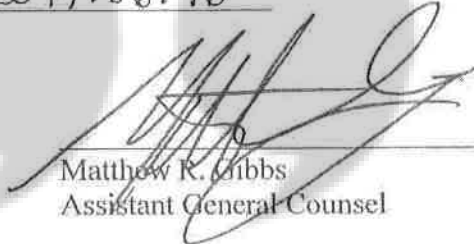
Certified Mail Number: 70173380000099786727

452 Moss Trail, Apt A30
Goodlettsville, TN 37072

Certified Mail Number: 70173380000099786741

1005 Mountain Valley Lane
Nashville, TN 37209

Certified Mail Number: 70173380000099786796



Matthew R. Gibbs
Assistant General Counsel

