State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:	)	
	)	
Donald Michael Hinson,	)	**Case No. 110104001C**
	)	
Applicant.	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On April 20, 2011, Carolyn H. Kerr, Legal Counsel and Counsel to the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Donald Michael Hinson. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusions of law and summary order:

FINDINGS OF FACT

1. Donald Michael Hinson ("Hinson") is an individual residing in Missouri.

2. On or about June 10, 2010, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Hinson's Uniform Application for Individual Producer License / Registration ("Application").

3. In his Application, Hinson listed his residential address as 345 E. Springfield, Gerald, Missouri 63037. He listed P.O. Box 49, Gerald, Missouri 63037 as his mailing address.

4. In the section of the Application headed "Background Questions," Background Question No. 2 asks: "Have you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?"

5. Hinson answered "Yes" to Background Question No. 2.

6. With his Application, Hinson provided a signed attachment that indicated that his "pharmacy license #29716 was revoked on December 15, 2009 for the following reasons:

1) Use of methamphetamine
2) Unlawful dispensing of controlled substances
3) Impaired professional judgment[.]"

7. Hinson also provided with his Application a copy of the Findings of Fact, Conclusions of Law and Disciplinary Order ("Order") entered by the Missouri State Board of

Pharmacy ("Board") on December 15, 2009. *Missouri Board of Pharmacy v. Donald M. Hinson, R.Ph.*, Case No. 08-2047 PH.

8. On December 10, 2008, the Board filed its "Complaint and Request for Expedited Hearing" with the Administrative Hearing Commission ("AHC") seeking cause to discipline Hinson's pharmacy license and an order authorizing the Board to restrict and/or suspend Hinson's license.

9. After an expedited hearing, the AHC's December 18, 2008 Preliminary Decision found that "Hinson's extended use of methamphetamine over many months and the unlawful dispensing of controlled substances, constitutes cause" to discipline Hinson's pharmacy license pursuant to § 338.055, and that "Hinson's impaired professional judgment demonstrated by these acts and conduct constitutes a clear and present danger to patients."

10. The AHC's December 18, 2008 Preliminary Decision also granted the Board the authority "to restrict or suspend" Hinson's license.

11. On December 22, 2008, the Board entered a "Decision of the Missouri Board of Pharmacy Under the Provisions of Sections 338.005.4 and 338.055.5, RSMO" suspending Hinson's pharmacy license pursuant to the AHC's December 18, 2008 Preliminary Decision until a full hearing before the AHC could be held.

12. Hinson filed an answer and requested a full hearing before the AHC in *Missouri Board of Pharmacy v. Donald M Hinson, R.Ph.*, No. 08-2047 PH (Mo. Admin. Hrg. Comm'n, December 18, 2008).

13. Hinson subsequently withdrew his request and petition for a full hearing on the AHC's December 18, 2008 Preliminary Decision, and on June 12, 2009, filed a memorandum stating and acknowledging the following:

a. That he had no objection to the entry of a final judgment in his case;

b. That "by his election to withdraw his request for a full hearing, the decision and order of the Missouri Board of Pharmacy entered on December 22, 2008, will be entered as a final judgment;" and

c. That by withdrawing his request for a hearing, "the previous ordered entered by the Commission on December 18, 2008 granting temporary authority to the Board to restrict or suspend [his] license shall become final authority," and that the Board's December 22, 2008 decision and order "will be in full force and effect and become a final judgment[.]

14. Thereafter, the AHC entered its final Decision on July 21, 2009, with a finding that Hinson waived his right to a full hearing before the Commission and made final its December 18, 2008 Preliminary Decision.

15. The Board's Findings of Fact, Conclusions of Law and Disciplinary Order ("Order") entered on December 15, 2009, found that Hinson's license to practice as a pharmacist was "subject to revocation, suspension, probation, or censure by the Board pursuant to the provisions of Section 338.055.2(1), (2), (5), (13), (15), and (17), RSMo."

16. The Board's December 15, 2009 Order was based upon the findings made by the AHC in its Preliminary Decision in *Missouri Board of Pharmacy v. Donald M Hinson, R.Ph.*, No. 08-2047 PH (Mo. Admin. Hrg. Comm'n, December 18, 2008).

17. In its December 15, 2009 Order, the Board also found "that Mr. Hinson continues to constitute a clear and present danger to patients if he continues to practice pharmacy." As a result, it revoked Hinson's pharmacy license and ordered that he "may not apply for reinstatement for his license for seven (7) years" from the date of its Order.

18. On or about May 5, 2008, Al Thuet and Al Eickhoff, task force officers with the Drug Enforcement Administration, interviewed Hinson as part of their investigation of allegations that Hinson was illegally diverting controlled substances from his pharmacy to the production and sale of methamphetamine.

19. During his May 5, 2008 interview with Thuet and Eickhoff, Hinson made the following admissions:

a. That he used methamphetamine for at least one year prior to the interview;

b. That he "cooked" methamphetamine at his residence using iodine and pseudoephedrine he took from his pharmacy;

c. That when he took the iodine and pseudoephedrine from his pharmacy, he did not have a prescription for either drug, and he did not fill out any type of log indicating the dispensing of those drugs;

d. That he would bring pseudoephedrine home on a weekly basis for use in the production of methamphetamine;

e. That he brought Darvocet and Valium home from his pharmacy to give to his roommate, Michael Withington, even though Mr. Withington did not have a prescription for the drugs;

f. That he did not fill out any type of log indicating the dispensing of the Darvocet or Valium tablets from his pharmacy for use by Mr. Withington;

g. That he occasionally took drugs from his pharmacy for his own personal use even though he did not have a prescription for the drugs; and

h. That he would occasionally trade pseudoephedrine pills taken from his pharmacy with others in exchange for methamphetamine.

20. Hinson was licensed as a pharmacist when he began using and producing methamphetamine. Hinson admitted to federal Drug Enforcement Agency officers that he (a) used and "cooked" methamphetamine using pseudoephedrine taken from his pharmacy; (b) took controlled substances from his pharmacy without properly recording the dispensing of the drugs for his own use and for the use of others; (c) provided controlled substances to others without requiring them to provide a valid prescription; and (d) occasionally traded pseudoephedrine pills taken from his pharmacy with others in exchange for methamphetamine.

21. By withdrawing his request for a full hearing on the merits of the Board's Complaint and Request for Expedited Hearing, filed December 10, 2008, and submitting the above-referenced memorandum on June 12, 2009, Hinson acknowledged and admitted the findings of fact made by both the Board and the AHC relating to his actions as a pharmacist which led to the disciplinary action against his license.

CONCLUSIONS OF LAW

22. Section 338.055.2, RSMo (Supp. 2010)[1] provides, in part:

> 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:
>
> (1) Use of any controlled substance, as defined in chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;
>
> (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;
>
> * * *
>
> (5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;
>
> * * *
>
> (13) Violation of any professional trust or confidence;

[1] All statutory references are to the 2010 Supplement to the Revised Statutes of Missouri, unless otherwise noted.

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

* * *

(17) Personal use or consumption of any controlled substance unless it is prescribed, dispensed, or administered by a health care provider who is authorized by law to do so.

23. Section 195.050.6 (2000) provides:

Every person registered to ... dispense controlled substances under sections 195.005 to 195.425 shall keep records and inventories of all such drugs in conformance with the record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health and senior services.

24. Section 195.060.1 provides, in part:

Except as provided in subsection 3 of this section, a pharmacist, in good faith, may sell and dispense controlled substances to any person only upon a prescription of a practitioner as authorized by statute.... The person filling the prescription shall either write the date of filling and his own signature on the prescription or retain the date of filling and the identity of the dispenser as electronic prescription information. The prescription or electronic prescription information shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this law.

25. Section 195.202 states that "Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance." Darvocet, Valium, marijuana, and pseudoephedrine are considered controlled substances pursuant to § 195.017.2 and .8, RSMo.

26. Section 338.100.1 provides, in part:

Every permit holder of a licensed pharmacy shall cause to be kept in a uniform fashion consistent with this section a suitable book, file, or electronic recordkeeping system in which shall be preserved, for a period of not less than five years, the original or order of each drug which has been compounded or dispensed at such pharmacy, according to and in compliance with standards provided by the board .... The pharmacist in charge shall be responsible for complying with the permit holder's record-keeping system in compliance with this section.

27. Section 375.141 provides, in part:

> 1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:
>
> * * *
>
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

28. The definition of "trustworthy" is "worthy of confidence" or "dependable." *Stith v. Lakin*, 129 S.W. 3d 912, 918 (Mo. App. S.D. 2004).

29. Incompetency is a "state of being" amounting to an inability or unwillingness to function properly. *Albanna v. State Bd. of Regis'n for the Healing Arts*, 293 S.W.3d 423, 436 (Mo. banc 2009). It is "general lack of, or lack of disposition to use, a professional ability." *Id.*, citing *Forbes v. Missouri Real Estate Comm'n*, 798 S.W.2d 227, 230 (Mo. App. W.D. 1990).

30. "Incompetence includes a lack of disposition to use a professional ability, though incompetence is general in scope. However, incompetence also includes the mere general lack of a professional ability." *State Board of Nursing v. Manning*, No. 00-0161 BN (Mo. Admin. Hrg. Comm'n, July 3, 2000), citing *Forbes*, 798 S.W.2d at 230.

31. "Professional trust is a relationship between a licensee and another person created by such person's reliance on the special knowledge and skills that professional licensure evidences." *Id.*, citing *Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

32. "Irresponsible" is defined as "not mentally or financially fit to assume responsibility" or "lacking a sense of responsibility." THE AMERICAN HERITAGE DICTIONARY 678 (2d. College Ed. 1985).

33. "Dishonesty includes actions that reflect adversely on trustworthiness." *In re Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1992).

34. [The] license granted places the seal of the state's approval upon the licen[see]. *State ex rel. Lentine v. State Board of Health*, 65 S.W.2d 943, 950 (Mo. 1933).

35. The principal purpose of § 375.141 RSMo is not to punish licensees or applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. 1984).

CAUSE FOR ORDER REFUSING TO ISSUE PUBLIC ADJUSTER SOLICITOR LICENSE

36. It is a dishonest practice and demonstrates untrustworthiness, incompetency, and irresponsibility for Hinson to take pseudoephedrine, a controlled substance, from his pharmacy for his personal use without first having a prescription and without keeping proper records of the dispensing of the drugs, as required by §§ 195.050.6, 195.060.1, and 338.100.1.

37. It is a dishonest practice and demonstrates untrustworthiness, incompetency, and irresponsibility for Hinson to take controlled substances from his pharmacy to give others for their personal use without making sure that those persons had prescription for the drugs and without keeping proper records of the dispensing of the drugs, as required by §§195.050.6, 195.060.1, and 338.100.1.

38. The Director may refuse to issue an insurance producer license to Hinson pursuant to § 375.141.1(8) because his actions relative to the use and dispensing of controlled substances, namely pseudoephedrine, Darvocet, and Valium, without prescriptions and without keeping proper and legally required records demonstrated incompetence, untrustworthiness, and irresponsibility, in that Hinson had formed a relationship of professional trust and confidence with his clients, and those clients relied upon Hinson's professional expertise to ensure that all applicable state and federal laws and regulations regarding the practice of pharmacy.

39. According to the Board's December 15, 2009 Order, the Board revoked Hinson's pharmacy license based on its findings that Hinson committed the following acts, which subjected his professional license to discipline under §338.055.2, RSMo:

a. Hinson used a controlled substance to an extent that such use impaired his ability to perform the work of a licensed pharmacist;

b. Hinson's acts constituted "incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties" as a licensed pharmacist;

c. Hinson violated his professional trust or confidence as a licensed pharmacist;

d. Hinson violated "the drug laws or rules and regulations of this state" and of the federal government; and

e. Hinson used or consumed a controlled substance for his own use which was not prescribed, dispensed, or administered by an authorized health care provider.

40. Hinson's actions relative to his use of controlled substances, providing those drugs to others without a valid prescription and without proper documentation, and his production and use of methamphetamine demonstrate his lack of regard for complying with laws dealing with his profession. His disregard for the law and deviation from the professional standards in his role as a pharmacist "demonstrates a conscious indifference to a professional

duty" and draws into question his ability and disposition to handle the responsibilities of an insurance producer. *See*, *State Board of Embalmers and Funeral Directors v. Woodard*, No. 00-2184 EM (Mo. Admin. Hrg. Comm'n, December 7, 2000), citing *Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm'n Nov. 15, 1985) at p. 125, *aff'd*, 744 S.W.2d 524, 533 (Mo. App. E.D. 1988).

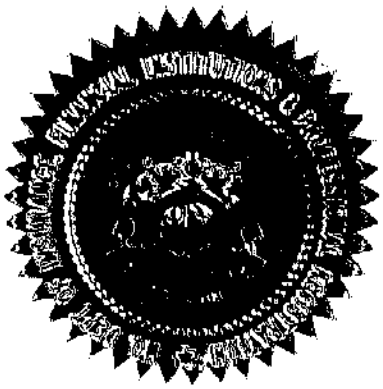
41. The Director has considered Hinson's history and all of the circumstances surrounding Hinson's Application for licensure and, for all of the reasons given in this Petition, exercises his discretion in summarily refusing to grant Hinson's license.

42. The requested order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the insurance producer license of DONALD MICHAEL HINSON is hereby summarily REFUSED.

SO ORDERED.



WITNESS MY HAND THIS 26th DAY OF APRIL, 2011.

JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri within (30) days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send your complaint by registered or certified mail, it will not be considered filed until the Administrative Hearing Commission receives it.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 2011, a copy of the foregoing notice and order was served upon Donald Michael Hinson in this matter by certified mail at the following address:

Donald Michael Hinson
345 E. Springfield
Gerald, MO 63037

Donald Michael Hinson
P.O. Box 49
Gerald, MO 63037

Certified Mail # 70070710 0002 2055 2060 # 70070710 0002 2055 2077

Kathryn Randolph