

BEFORE THE KANSAS STATE BOARD OF PHARMACY

In the Matter of)
)
DILLONS PHARMACY #51) Case No. 08-115
4107 West 10th)
Great Bend, Kansas 67530)
Kansas Registration No. 2-09393)
_____)

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED, UNDERSTOOD AND AGREED by and between the Kansas State Board of Pharmacy (the "Board") and Dillons Pharmacy #51, 4107 West 10th, Great Bend, Kansas 67530 (the "Respondent"), as follows:

1. The Board is represented herein by its attorney, Kevin M. Fowler of Frieden & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by its attorney, _____

2. The Board is the Kansas agency vested with the authority to carry out and enforce the provisions of the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas registration to operate a pharmacy.

3. The Respondent is presently authorized to operate a pharmacy at 4107 West 10th, Great Bend, Kansas 67530 as the holder of Kansas registration number 2-09393 issued by the Board. At all times relevant hereto, the Respondent has held a current registration to operate a pharmacy in the State of Kansas.

4. An Investigative Member of the Board has received certain information, has investigated and has determined that there are reasonable grounds to believe that the Respondent violated the Kansas Pharmacy Act or rules and regulations of the Board by failing to cause or require all pharmacy employees who were involved in an incident involving patient D.S. on or about August 20, 2008 to sign the Pharmacy Incident Report prepared by Audrey Smyl, R.Ph., as expressly required under the provisions of K.A.R. 68-7-12b(c)(6).

5. The Respondent hereby stipulates, admits, and waives any further proof in this or any other proceeding before or initiated by the Board, that the Respondent violated the Kansas Pharmacy Act or rules and regulations of the Board by failing to cause or require all pharmacy employees who were involved in an incident involving patient D.S. on or about August 20, 2008 to sign the Pharmacy Incident Report prepared by Audrey Smyl, R.Ph., as expressly required under the provisions of K.A.R. 68-7-12b(c)(6).

6. Upon the Respondent's execution and the Board's approval of this Stipulation and Final Agency Order, all stipulations, understandings and agreements expressed herein shall become fully binding upon each of the parties, and the Board may enter its enforcement order based upon such stipulations, understandings and agreements without the necessity of filing any formal charges or holding hearings in these proceedings. The stipulations and agreements set forth in Paragraph 9 below shall become fully binding and effective immediately upon the Respondent's execution of this Stipulation and Final Agency Order.

7. The Board finds and concludes that the Respondent's conduct described in Paragraphs 4 and 5 above constitutes grounds for disciplinary action pursuant to K.S.A.

65-1627(e)(1), including the assessment of a civil fine not to exceed \$5,000 for each violation.

8. The Board finds and the Respondent stipulates and agrees that the following disposition is lawful, just and appropriate under the circumstances:

A. CIVIL FINE. The Respondent shall pay to the Kansas Pharmacy Board an administrative fine in the amount of Five Hundred Dollars (\$500.00) within ten (10) days of the date upon which the Board approves and enters the Final Agency Order provided for herein.

B. OTHER REQUIREMENTS. As a further condition of this Stipulation and Final Agency Order, the Respondent must fully comply with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws applicable to Kansas pharmacies.

9. The Respondent stipulates and agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and or its attorney regarding the investigation which lead to this disciplinary action and all information discovered during the pendency of the disciplinary action may be disclosed to and considered by the Board as part of the presentation and consideration of the proposal of settlement in the form of this Stipulation and Final Agency Order and the Final Order provided for herein, with or without the presence of the Respondent or its attorney. The Respondent further stipulates and agrees that in the event this Stipulation and Final Agency Order and the Final Order provided for herein are not accepted and approved by the Board, the Respondent waives any objection to the Board members' consideration of this Stipulation and Final Agency Order or the information mentioned in

the preceding sentence and further agrees to waive any claim of a due process violation or any right to seek disqualification of any Board member as a result of the Board member's consideration of said document and information.

10. Except for the stipulations and agreements set forth in Paragraph 9 above, the stipulations, understandings and agreements contained herein shall not become binding until this Stipulation and Final Agency Action is approved by the Board and the Final Order provided for herein is entered by the Board. The Respondent acknowledges that the approval of the Board's attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Final Agency Action or the Final Order provided for herein.

11. The Respondent stipulates and agrees that this Stipulation and Final Agency Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it and enter the Final Order provided for herein. The Respondent further agrees that the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.* is constitutional on its face and as applied in this case.

12. This Stipulation and Final Agency Order constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by them. The stipulations, understandings and agreements expressed herein are contractual and shall be interpreted in accordance with the laws of the State of Kansas.

13. The Respondent acknowledges that, as a registered pharmacy in the State of Kansas, it has the following rights:

- A. To have formal notice of charges served upon it;
- B. To file a response to the charges;

C. To have notice of and participate in a formal adjudicative hearing with the Board making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing; and

D. To take advantage of all applicable provisions of the Kansas Administrative Procedures Act and the Act for Judicial Review and Civil Enforcement of Agency Action.

The Respondent knowingly, intelligently and voluntarily waives these rights and acknowledges that said waiver is made in adequate and sufficient consideration of the limited disciplinary action provided for herein. In further consideration hereof, the Respondent also waives any right to contest or otherwise challenge this Stipulation and Final Agency Order, including the terms, conditions and Final Order provided for herein, in any direct or collateral proceeding which seeks administrative review or reconsideration by the Board or judicial review by any court.

14. The Respondent acknowledges that it enters into this Stipulation and Final Agency Order knowingly, intelligently and voluntarily after the opportunity to consult with counsel or consultation with counsel of its choosing. The Respondent further acknowledges that it has read this Stipulation and Final Agency order in its entirety, that the Respondent understands its legal consequences; and that the Respondent stipulates and agrees that none of its terms are unconscionable, fraudulent, oppressive, arbitrary, capricious or otherwise unreasonable.

15. Time is of the essence to this Stipulation and Final Agency Order. The Respondent acknowledges and agrees that any violation of this Stipulation and Final Agency Order shall constitute a willful violation of a lawful Board order and grounds for

further disciplinary action against it. The pendency of any disciplinary action arising out of an alleged violation of this Stipulation and Final Agency Order shall not affect the obligation of the Respondent to comply with all terms and conditions of this Stipulation and Final Agency Order.

16. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Stipulation and Final Agency Order shall be given full force and effect.

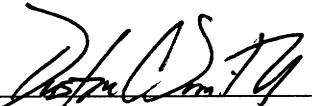
17. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

18. This Stipulation and Final Agency Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

19. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Order provided for herein to file a petition for judicial review in the District Court of Shawnee County, Kansas in accordance with the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* and to serve such a petition for judicial review on the Kansas Pharmacy Board by serving Susan Linn, its Executive Secretary. The Respondent hereby waives those rights.

AGREED TO AND ACCEPTED BY:

DILLONS PHARMACY #51
4107 West 10th
Great Bend, Kansas 67530
Kansas Registration No. 2-09393

By: 
Signature of Respondent's Authorized Representative

June, 08, 2009
Date

Dustin C Smith
Name of Respondent's Authorized Representative

Pharmacy Manager Dillons #51
Title of Respondent's Authorized Representative


APPROVED BY:

Signature of Respondent's Attorney

Date

Printed Name of Respondent's Attorney

Address of Respondent's Attorney


Kevin M. Fowler KS Bar #11227
FRIEDEN & FORBES
555 South Kansas Avenue, Suite 303
Topeka, KS 66603
Tel: (785) 232-7266
Fax: (785) 232-5841
*Counsel for the Kansas State Board
of Pharmacy*

June 29, 2009
Date

BEFORE THE KANSAS STATE BOARD OF PHARMACY

In the Matter of)
)
DILLONS PHARMACY #51)
4107 West 10th)
Great Bend, Kansas 67530)
Kansas Registration No. 2-09393)
_____)

Case No. 08-115

FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas Pharmacy Board (the "Board") approves and accepts the Stipulation and Final Agency Order as set forth above and fully incorporates the provisions thereof as the Final Order of the Board.

IT IS SO ORDERED.

ENTERED AND EFFECTIVE this 2nd day of September, 2009.

KANSAS STATE BOARD OF PHARMACY

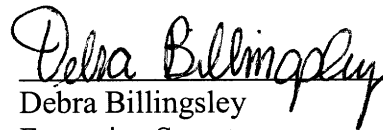
By: Karen Braman
Karen Braman, R.Ph., M.S.
Acting President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND FINAL AGENCY ORDER was served by depositing same in the United States mail, postage prepaid, this 3 day of September, 2009, properly addressed to:

Dillons Pharmacy #51
4107 West 10th
Great Bend, Kansas 67530

Kevin M. Fowler
FRIEDEN & FORBES
555 South Kansas Avenue, Suite 303
Topeka, KS 66603



Debra Billingsley
Executive Secretary
Kansas State Board of Pharmacy