

BEFORE THE KANSAS PHARMACY BOARD

In the Matter of)
)
DIANE ADAMSON, R.P.H.) File No. 03-08
Kansas License No. 11636)
_____)

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Diane Adamson, R.Ph. (the "Respondent") as follows:

1. The Board is represented herein by its attorney, Steve Phillips, Assistant Attorney General of the Kansas State Attorney General's Office, 120 SW 10th Avenue, Topeka, Kansas 66612-2215. The Respondent is represented herein by her attorney _____
_____.
2. The Board is the Kansas Agency vested with the authority to carry out and enforce the provisions of the Kansas Pharmacy Law, K.S.A. 65-1626 *et seq.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas license to practice pharmacy.
3. The Respondent is presently entitled to engage in the practice of pharmacy in the State of Kansas by reason of the Board having issued her Kansas license number 11636. At all times relevant hereto, the Respondent has held a current license to engage in the practice of pharmacy in the State of Kansas.

4. The Board has received certain information, has investigated and has determined that there are reasonable grounds to believe that the Respondent has committed an act or acts in violation of the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.* Respondent hereby admits and waives any further proof in this or any other proceeding before of initiated by the Board that 67 prescriptions were filled by Diane Adamson at K-Mart Pharmacy, 3106 Iowa, Lawrence, from 10/24/01 to 1/21/03, for herself listing the prescriber as Dr. K-Mart”, eight prescriptions were filled by Respondent at K-Mart Pharmacy, 3106 Iowa , Lawrence, from 7/22/02 to 12/05/02, for Bobby Joe Adamson (Respondent’s husband), listing the prescriber as “Dr. K-Mart”; two prescriptions while working at the K-Mart Pharmacy, 9401 Metcalf in Overland Park for herself listing the prescriber as “Dr. K-Mart”. One of the prescriptions filled at the 9401 Metcalf K-Mart Pharmacy-- prescription Rx # 4435175 dated 2/21/03-- was for Phenylhistin-DH (a C-V controlled substance). No “Dr. K-Mart ” exists and Respondent did not in fact have a valid prescription from a physician or other practitioner authorized by statute to issue prescriptions. All prescriptions were billed to Advance PCS. There are numerous prescriptions under the prescriber names of Drs. Kevin Stuever and Kathy Gaumer for Diane and Bobby Joe that were not authorized by the prescriber. By filling nonexistent prescriptions or prescriptions that were not issued by an authorized practitioner, Respondent has committed unprofessional conduct as defined by K.S.A. 65-1626(hh)(4) and (5). Filling the nonexistent prescription or prescription not issued by an authorized practitioner for the controlled substance is in violation of

for the controlled substance is in violation of K.A.R. 68-20-18(a). The Board finds and concludes, and Respondent agrees, that Respondent's conduct, as described above, is grounds for disciplinary action in the State of Kansas, pursuant to K.S.A. 65-1627(a)(3), (5), (11), and (13).

5. The Board finds and the Respondent agrees that the following disposition is just and appropriate under the circumstances.

A. FINE. Respondent hereby agrees and consents to the Board's entry of an order whereby within ten (10) days of the Board entering the Final Agency Order provided for herein, she shall pay to the Kansas Pharmacy Board an administrative fine in the amount of Five Thousand dollars (\$5000.00).

If the fine has not been paid or expectable arrangements have not been made within 10 days of Board entering the Final Agency Order provided for herein, Respondent's license will be suspended by issuance of a Summary Order; suspension to last until payment or expectable arrangements have been made.

PROBATION. Respondent hereby agrees and consents to the Board's entry of an order placing Respondent's license on probation for a period of five years from the date of this Stipulation and Order. If, during the five year probationary period, the Board's Investigative Member has reasonable grounds to believe that Respondent has again filled nonexistent prescriptions or prescriptions not issued by a practitioner authorized by law to issue them, the Board's Investigative Member will issue a summary

order indefinitely suspending Respondent's license. In the event of the issuance of a Summary Order, and subsequent timely request by Respondent for hearing on the summary order, the issues to be addressed at such hearing shall be limited solely to: (1) whether the Respondent committed the violations believed by the Board to have occurred, and (2) what disciplinary sanctions should be imposed in addition to the summary lifting of the stay of suspension.

C. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Final Agency Order she must:

1. Appear at the June Board meeting (date to be announced)
 2. Comply fully with this Stipulation and Final Agency Order;
 3. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws relating to Kansas pharmacists.
6. Respondent agrees that all information in the possession of the Board or its attorney regarding the investigation which led 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 forms of this Stipulation and Final Agency Order and the Final Order provided for herein, with or without the present of the Respondent and his attorney. In the event that this Stipulation and

Final Agency Order and the Final Order provided for herein are not accepted and approved by the Board, the Respondent further 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 due process violation or the right to seek the disqualification of any Board member as a result of the Board member's consideration of said document and information.

7. The stipulations contained herein shall not become binding unless 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.
8. The Respondent 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.
9. This stipulation constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by them. The agreement shall be interpreted in accordance with the laws of the State of Kansas.
10. The Respondent acknowledges that she has the following rights:

- A. To have formal notice of charges served upon her;
- 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.
- 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 freely waives these rights and acknowledges that said waiver is made voluntarily and in consideration of the Board's limiting the disciplinary action taken against her to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Final Agency Order and the Final Order provided for herein.

- 11. The Respondent acknowledges that she enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of her choosing. The Respondent further acknowledges that she has read this Stipulation and Final Agency Order in its entirety, that she understands its legal consequences and that she agrees that none of its terms are unconscionable, arbitrary or capricious.
- 12. Time is of the essence to this Stipulation and Final Agency Order. 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 her. 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 Respondent to comply with all terms and conditions of this Stipulation and Final Agency Order.

13. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:
 - A. Adverse Action Classification: "1172 Administrative Fine."
 - B. Basis for Action: "10 Unprofessional Conduct."
14. The following statement will be made in the Board's newsletter: "Diane Adamson, R.Ph. of Lawrence, Kansas. The Board entered an order assessing an administrative fine of \$5000 and probation for a period of five years."
15. 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.
16. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board
17. 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.
18. Respondent acknowledges that she has been advised by the Board that she 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

Diane Adamson, R.Ph

Date

10/30/03

APPROVED BY:

Respondent's Attorney's Name and Address Date

Steve Phillips
Assistant Attorney General
Kansas State Attorney General's Office

Date

BEFORE THE KANSAS PHARMACY BOARD

In the Matter of)

DIANE ADAMSON, R.P.H.)

Kansas License No. ~~1-08677~~ 1-11636)

File No.

FINAL ORDER

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

ENTERED AND EFFECTIVE this ____ day of _____, 2002.

~~KANSAS PHARMACY BOARD~~

By:

~~Max Heidrich, R. Ph.~~ Michael Hurst
President

CERTIFICATE OF SERVICE

I certify that the above and foregoing was served by depositing same in the U.S. Mail, first class postage prepaid, this _____ day of _____, 2003, addressed to:

Diane Adamson, R.Ph
4106 Wimbledon Circle
Lawrence, Kansas 66047

Susan A. Linn