

BEFORE THE KANSAS BOARD OF PHARMACY

Filed By  
MAY 1 2015  
KANSAS STATE  
BOARD OF PHARMACY

In the Matter of )  
 )  
DON ATWILL, R.PH. )  
Kansas License No. 1-10087 )

Case No. 15-007

**STIPULATION AND CONSENT ORDER**

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

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Unrein & Forbes, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by his 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.*, (the "Act") 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 him Kansas license number 1-10087 ("Kansas License"). 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's Investigation Member has received certain information, investigated and determined that there are reasonable grounds to believe that Respondent has committed one or more acts in violation of K.S.A. 65-1627(a) which would justify the revocation or imposition of other disciplinary action against his Kansas License under the

*Matter of Don Atwill*, No. 15-007 (Kan. Bd. of Pharmacy)

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provisions of K.S.A. 65-1627(a) and the assessment of an appropriate fine against Respondent under the provisions of KS.A. 65-1658.

5. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board, and upon motion duly made, seconded and passed, the Board finds:

A. On January 20, 2015, Respondent was working as a pharmacist at the B&K Prescription Shop pharmacy in Salina Kansas (the "Pharmacy").

B. On January 20, 2015 customer TVP brought a prescription for her daughter KVP to the pharmacy. The prescription was for Keflex.

C. On January 20, 2015 dispensed to TVP the Keflex as well as a second bottle containing Klonopin. The bottle containing the Klonopin was labeled with KVP's name, but had been prescribed for a different patient.

D. On January 20, 2015 Respondent failed to verify the Klonopin prescription prior to dispensing it to TVP as required by K.A.R. 68-2-20 (b)(3).

E. On January 20, 2015 Respondent failed to offer to counsel or appropriately counsel TVP on a drug KVP had not previously taken as required by K.A.R. 68-2-20 (b)(5) and 68-2-20 (c).

Upon motion duly made, seconded and passed, the Board finds and concludes that Respondent's conduct, as described above, violates the Act and such conduct warrants the imposition of appropriate disciplinary action against Respondent's Kansas License under the provisions of pursuant to K.S.A. 65-1627 K.S.A. 65-1627 (a)(8).

6. The Respondent agrees and consents and the Board finds concludes and orders that the following disposition is just and appropriate under the circumstances:

A. CONTINUING EDUCATION. Within 30 days of the effective date of the Consent Order contemplated hereby, Respondent shall complete the 18-hour online course entitled *Patient Safety – Medication Error Reduction for Pharmacists* available through the Oregon State University College of Pharmacy and provide proof thereof to the Board's Executive Secretary. The continuing education hours obtained to meet this requirement may not be used to meet the continuing education requirements necessary to obtain renewal of Respondent's pharmacy license.

B. ADMINISTRATIVE FINE. Within 10 days of the effective date of the Consent Order contemplated hereby, Respondent shall pay to the Board an administrative fine in the amount of Five Hundred Dollars (\$500.00) for failure to verify the Klonopin prescription. Within 10 days of the effective date of the Consent Order contemplated hereby, Respondent shall pay to the Board an additional administrative fine in the amount of Five Hundred Dollars (\$500.00) for failing to offer to counsel and properly counsel the patient's agent on a prescription the patient had not previously received.

C. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Final Agency Order he must, and the Board further orders the Respondent to:

1. Comply fully with this Stipulation and Final Agency Order;
2. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws relating to Kansas pharmacies;
3. *Advise the Board's Executive Secretary within 10 days of being charged with any crime.*

7. Respondent 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 Consent Order, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Consent Order is not accepted and approved by the Board, the Respondent further waives any objection to the Board members' consideration of this Stipulation and Consent 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.

8. The stipulations contained herein shall not become binding until this Stipulation and Consent Order is approved and entered as a final order by the Board. The Respondent acknowledges that the approval of the Board's Investigation Member or its attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Consent Order.

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

10. 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.

11. The Respondent acknowledges that he has the following rights:

(a) To have formal notice of charges served upon him;

(b) To file a response to the charges;

(c) To have notice of and participate in a formal adjudicative hearing with the Board or its designee 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, K.S.A. 77-501 *et seq.* and the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

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 him 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.

12. The Respondent acknowledges that he enters into this Stipulation and Consent Order freely and voluntarily after consultation with or an opportunity to consult with counsel of his choosing. The Respondent further acknowledges that he has read this Stipulation and Consent Order in its entirety, that he understands its legal consequences and that he agrees that none of its terms are unconscionable, arbitrary or capricious.

13. Time is of the essence to this Stipulation and Consent Order. Respondent acknowledges and agrees that any violation of this Stipulation and Consent Order shall constitute a willful violation of a lawful Board order and grounds for further disciplinary action against him. The pendency of any disciplinary action arising out of an alleged violation of this Stipulation and Consent Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Consent Order.

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

15. Upon approval and entry of the Final Order by the Board, this Stipulation and Consent Order shall be a public record in the custody of the Board.

16. This Stipulation and Consent 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.

17. 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 Judicial Review Act, K.S.A. 77-601 *et seq.* and to serve such a petition for judicial review on the Kansas Board of Pharmacy by serving Debra Billingsley, its Executive Secretary at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.

ENTERED AND EFFECTIVE this 24<sup>th</sup> day of April, 2015.

KANSAS BOARD OF PHARMACY

By: Dr. Robert Haneke  
DR. ROBERT HANEKE  
President

AGREED AND APPROVED BY:

Don Atwill  
Don Atwill, R.Ph.

4/2/15  
Date

\_\_\_\_\_  
Mike Lonergan, R.Ph.  
Investigation Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Respondent's Attorney's Name & Address

\_\_\_\_\_  
Date

Randall J. Forbes  
Randall J. Forbes, KS#09089 MO#64335  
FRIEDEN, UNREIN & FORBES, LLP  
1414 SW Ashworth Place, Suite 201  
Topeka, KS 66604  
(785) 354-1100

4/6/2015  
Date

**Counsel for the Kansas Board of Pharmacy**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND CONSENT ORDER was served by depositing same in the United States mail, postage prepaid, this 1 day of May, 2015 addressed to:

Don Atwill, R.Ph.  
2636 Deborah Dr.  
Salina, KS 67401

Randall J. Forbes  
FRIEDEN, UNREIN & FORBES, LLP  
1414 SW Ashworth Pl., Ste. 201  
Topeka, KS 66604

Michele L. Tunnell  
OFFICE OF ADMINISTRATIVE HEARINGS  
1020 S. Kansas Ave.  
Topeka, KS 66612

Mitzi Boddie  
Representative of the  
KANSAS BOARD OF PHARMACY