

BEFORE THE
KANSAS STATE BOARD OF PHARMACY
Landon State Office Building, Room 513
Topeka, Kansas 66612
785/296-4056

In The Matter }
 }
 of } Case No.
 }
 THOMAS DINH, }
 Registered Pharmacist, #1-11145, }
 Registered Pharmacist, #2-08433, }
 Respondent }
 _____ }

CONSENT AGREEMENT AND ORDER

Now on this 20th day of January, 2000, the above-captioned matter comes before the Kansas State Board of Pharmacy (Board) by agreement of Thomas Dinh (Licensee) and the Kansas State Board of Pharmacy for the purpose of settling the above-captioned case.

Licensee hereby acknowledges the following:

1. Thomas Dinh is a licensed pharmacist within the meaning of the Kansas Pharmacy Act, K.S.A. 65-1625 et seq. and amendments thereto. Thomas Dinh is a registered pharmacist-in-charge

2. On or about March 9, 1999, the Board received a report of information concerning Licensee's conduct alleging Licensee may have violated statutes and regulations governing the practice of pharmacy, to wit:

(a) The refill of prescription number 572295, a schedule III or IV controlled substance, a sixth time on February 9, 1999 in violation of the Kansas Uniform Controlled Substances Act, K.S.A. 65-4123(c);

(b) The refill of prescription number 572295, a schedule III or IV controlled substance, a seventh time on February 22, 1999 in violation of the Kansas Uniform Controlled Substance Act, K.S.A. 65-4123(c);

(c) The refill of prescription number 572295, a schedule III or IV controlled substance, a

eighth time on March 5, 1999 in violation of the Kansas Uniform Controlled Substance Act, K.S.A. 65-4123(c);

(d) Prescription number 572295 was a prescription for a schedule III controlled substance which was filled more than five times without meeting the conditions established by K.A.R. 68-20-20(b)(2) by the respondent failing to record the refill dated February 9, 1999 on the reverse side of the original prescribing document;

(e) Prescription number 572295 was a prescription for a schedule III controlled substance which was filled more than five times without meeting the conditions established by K.A.R. 68-20-20(b)(2) by the respondent failing to record the refill dated February 22, 1999 on the reverse side of the original prescribing document;

(f) Prescription number 572295 was a prescription for a schedule III controlled substance which was filled more than five times without meeting the conditions established by K.A.R. 68-20-20(b)(2) by the respondent failing to record the refill dated March 5, 1999 on the reverse side of the original prescribing document.

3. The Board conducted an investigation concerning Licensee's alleged violation of statutes and regulations.

4. During the investigation, Licensee was informed of the reported information, and was given the opportunity to respond to the allegations, and did respond to the allegations.

5. As a result of the investigation, the Board makes the following factual determinations:

(a) The respondent refilled prescription number 572295 a sixth time on February 9, 1999;

(b) The respondent refilled prescription number 572295 a seventh time on February 22, 1999;

(c) The respondent refilled prescription number 572295 an eighth time on March 5, 1999;

(d) The respondent refilled prescription number 572295 a sixth time on February 9, 1999 by failing to record the refill on the reverse side of the original prescribing document;

(e) The respondent refilled prescription number 572295 a seventh time on February 22, 1999 by failing to record the refill on the reverse side of the original prescribing document;

(f) The respondent refilled prescription number 572295 an eighth time on March 5, 1999 by failing to record the refill on the reverse side of the original prescribing document;

6. As a result of the investigation, the Board determined that reasonable grounds exist to believe the Licensee has violated K.S.A. 65-4123(c) a total of three times and has violated K.A.R.

68-20-20(b)(2)(b) and K.S.A. 65-1627(a)(5) a total of three times.

HOWEVER, Licensee and the Board mutually desire to enter into the Consent Agreement and Order in lieu of adjudicative proceedings to resolve the report of alleged violations.

WHEREFORE Licensee waives all rights to an adjudication of facts and law which could be determined pursuant to a hearing conducted in accordance with the Kansas administrative procedure act in relation to this matter.

WHEREFORE Licensee waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas act for judicial review in relation to this matter.

WHEREFORE Licensee consents to:

(a) A fine in the amount of ~~Two Thousand Five Hundred~~ ^{One Thousand} dollars and no cents ~~(\$2,500.00)~~ ^{\$1,000.00}

(b) The licensee will take the MPJE and pass that test with 85% correct or better.

(c) ~~The suspension of the licensee's pharmacist in charge registration for 30 days from the date this Consent Agreement and Order is accepted by the Board or until the licensee complies with paragraph (b) whichever is longer.~~
Respondent shall update the stores policy & procedure manual. Staff at the store will be trained on new procedures. New procedures will be provided to the board within 60 days.

(d) This Consent Agreement and Order constitutes the entire agreement between the Licensee and may be modified or amended only by written agreement signed by the parties.

(e) Licensee shall be responsible for all costs incurred in satisfying the terms of the Consent Agreement and Order, including the costs involved in taking the MPJE exam.

(f) Notification of the Consent Agreement and Order shall be provided to another jurisdiction's licensing board if the Licensee is also licensed, registered or certified in another jurisdiction.

(g) This Consent Agreement and Order is reportable to state and federal licensing agencies and applicable professional associations.

(h) Evidence of Licensee's willful failure to comply with any of the conditions will result in a hearing, with notice and opportunity to be heard, to determine whether Licensee has in fact willfully failed to comply with any conditions. Upon determination at such hearing that Licensee has willfully breached, violated or failed to comply with any condition, Licensee understands and agrees that the license shall be revoked.

(i) Licensee acknowledges an affirmative duty to notify the Board within five (5) days of any changes in personal or professional status which would inhibit compliance with conditions. In such

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event, a designee of the Board is authorized to modify or amend this Consent Agreement and Order in writing.

(j) The licensee shall appear in person before the Kansas State Board of Pharmacy to respond to any questions or comments that may be posed by the board.

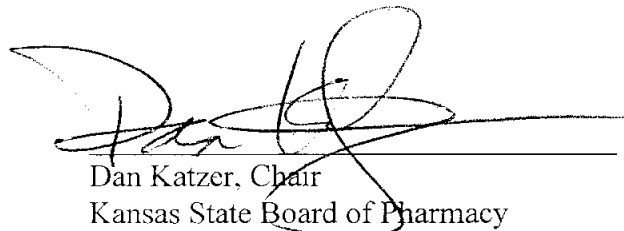
WHEREFORE Licensee consents to the submission of this Consent Agreement and Order to the Kansas State Board of Pharmacy, and understands that upon approval of the Board, this Consent Agreement and Order becomes a final order of the Board.

WHEREFORE Licensee agrees that all information in the possession of the Board or its attorney regarding the complaint which led to this disciplinary action, the investigation of the complaint 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 Consent Agreement and Order and the Final Order provided for herein, with or without the presence of the licensee or the licensee's attorney. In the event that this Consent Agreement and 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 Consent Agreement and 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.

WHEREFORE the Board agrees that so long as licensee complies with the above conditions that the Board will not initiate further disciplinary action against Licensee in relation to violation of K.S.A. 65-1625 et seq regarding this matter.

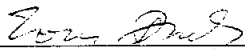
WHEREFORE the provisions above are consented to and are hereby made the final order of the Kansas State Board of Pharmacy which become effective on the date indicated in the below Certificate of Service.

IT IS SO ORDERED.



Dan Katzer, Chair
Kansas State Board of Pharmacy

APPROVED AND CONSENTED TO:


Thomas Dinh

1/11/00
(Date)

SUBMITTED AND APPROVED BY:


WM. SCOTT HESSE
Assistant Attorney General
2d Floor, Judicial Center
Topeka, Kansas 66612
785/296-2215

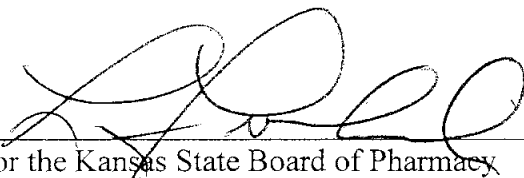
1/20/00
(Date)

Certificate of Service

This is to certify that on the 20th day of January, 2000 a true and correct copy of the above and foregoing Consent Agreement and Order was deposited in the U.S. mail, first class postage prepaid, addressed to:

Thomas Dinh
Cummings Pharmacy #1
3100 E. Central, Suite B
Wichita, Kansas 67214-4817

Wm. Scott Hesse
Assistant Attorney General
2d Floor, Judicial Center
Topeka, Kansas 66614


For the Kansas State Board of Pharmacy