Filed By
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KANSAS STATE
BOARD OF PHARMACY

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of	)	
	)	
GREGORY MISSE, R.PH.	)	
Kansas License No. 1-12547	)	Case No. 14-17

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Gregory Misse, 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, E. Dudley Smith of Fisher, Patterson, Sayler & Smith, LLP, 9393 West 110th Street, Ste. 300, Building 51, Corporate Woods, Overland Park, KS 66210.

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 1-12547 ("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 imposition of disciplinary action against his Kansas License under the 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 multiple occasions while acting as a pharmacist and pharmacist-in-charge for Target at 15345 West 119th Street, Olathe, Kansas ("Target") the Respondent created records indicating that he had administered a flu shot when in fact he had not. On some of those occasions this resulted in the patient's insurance company being billed for the flu shots Respondent never administered. Subsequently thousands of hard copy prescriptions as well as vaccination administration records belonging to Target were destroyed without authorization.

B. On two occasions while acting as a pharmacist and pharmacist-in-charge for Target the Respondent created records indicating he had dispensed C-II drugs at times that he had not, which had the effect of hiding the fact that he had failed to comply with federal law regarding the timely dispensing of C-II drugs.

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 (a)(3), as defined by K.S.A. 65-1626 (ccc)(4) and (8); K.S.A. 65-1627 (a)(3), as defined at K.S.A. 65-1626 (xx)(3).

6. The Respondent agrees and consents and the Board finds concludes and orders the following disposition:

A. PROBATION. For a period of 2 years from the entry of the Consent Order, Respondent's Kansas license to practice pharmacy shall be on a probationary status ("Probation Period").

B. ADMINISTRATIVE FINE. Within 10 days of the effective date of the Consent Order, Respondent shall pay to the Board an administrative fine in the amount of Two Thousand Five Hundred Dollars ($2,500.00).

C. RESTRICTIONS. During the Probation Period, Respondent shall not serve as a Pharmacist-in-Charge or a preceptor.

D. PARE EXAMINATION. Respondent shall take the Nation Association of Boards of Pharmacy ("NABP") PARE examination on the first available date following the entry of the Consent Order. Respondent is responsible for making arrangements with NABP for administration of the examination. If the Respondent does not obtain a passing score of the PARE examination, he shall retake the examination in each successive testing period in which it is available to be taken until he does obtain a passing score. Respondent will cause the Board's Executive Director to be advised of his score on any PARE examination taken by him within 10 days of it being available. All expenses associated with the taking of the PARE Examination shall be the responsibility of Respondent.

E. APPEARANCE. Respondent shall be present at the Board meeting at which this Stipulation and Consent Order is considered by the Board. It shall be the Respondent's responsibility to contact the Board's Executive Director to determine when and where to appear.

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

1. Comply fully with this Stipulation and Consent 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 and the Consent Order provided for herein, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Consent Order and the Consent 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 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. Notwithstanding, in the event that this Stipulation and Consent Order and the Consent Order provided for herein are not accepted and approved by the Board, the Respondent does not waive his right to object to any evidence offered at a subsequent administrative hearing.

8. The stipulations contained herein shall not become binding until this Stipulation and Consent Order is approved by the Board and the Consent Order provided for herein is entered 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 or the Consent Order provided for herein.

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 and enter the Consent Order provided for herein. 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 file a response to the charges which have been served upon him in this matter;

(b) 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

(c) 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 Consent Order and the Consent Order provided for herein.

12. The Respondent acknowledges that he enters into this Stipulation and Consent Order freely and voluntarily after consultation 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 Consent 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 Consent Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Consent 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.

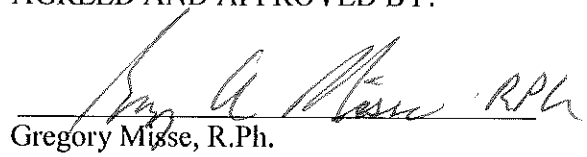
ENTERED AND EFFECTIVE this 9 day of February, 2015

KANSAS BOARD OF PHARMACY

By: _____
DR. ROBERT HANEKE
President

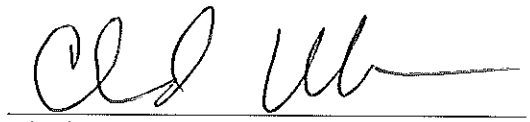
[Signatures of Agreement and Approval on Following Page]

AGREED AND APPROVED BY:



Gregory Misse, R.Ph.

12-18-14
Date



Chad Ullom, R.Ph.
Investigation Member

1/9/15
Date

E. Dudley Smith
Fisher Patterson Sayler & Smith, LLP
9393 West 110th Street , Suite 300
Building 51, Corporate Woods
Overland Park, Kansas 66210
Counsel for Respondent Gregory Misse, R.Ph.

12-18-14
Date

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

12/19/2014
Date

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 12 day of January, 2015 addressed to:

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

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11811 W. 149th St.
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Building 51, Corporate Woods
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Debra Billingsley
Executive Director
KANSAS BOARD OF PHARMACY