

BEFORE THE KANSAS STATE BOARD OF PHARMACY

In the Matter of)		
)	Case No.	11-63
Broadway Pharmacy, P.A.)		
Kansas Registration No. 2-09952)		
David Bergen, Registered Agent)		
1610 S. Broadway)	OAH No.	12BP0013
Wichita, Kansas 67211)		
)		
and)		
)		
David Bergen, R.Ph.)		
License No. 1-09176.)		

CONSENT AGREEMENT

This Consent Agreement is voluntarily entered into by Defendants Broadway Pharmacy, P.A. and David Bergen, R.Ph., and the Kansas State Board of Pharmacy (“Board”), in lieu of further litigation based on the Petition filed in the above-captioned matter.

WAIVER OF RIGHTS: Defendants understand that they have the following rights in this case: The right to discovery, a hearing before the Board, and if found in violation of the Kansas Pharmacy Act, the right to appear before the District Court and Kansas appellate courts pursuant to the Kansas Judicial Review Act (the “KJRA”). Knowing these rights, Defendants, by signing this agreement, knowingly and voluntarily give up these rights, including the right to a hearing by the Board.

Defendants hereby acknowledge their right to be represented by a lawyer of their own choosing. Defendants have been represented by E. Dudley Smith, Fisher Patterson Saylor & Smith, LLP, 9393 West 110th Street, Suite 300, Overland Park, Kansas 66210.

FACTS: Defendants stipulate to the following facts and statements of law:

- i. The Board is charged with the administration of the Kansas Pharmacy Act (K.S.A. § 65-1626, *et seq.*) (the “Pharmacy Act”) and with the enforcement of the rules and regulations promulgated thereunder.

2. The Board is authorized to “enter an order of revocation, suspension, probation or denial of the renewal of a license, registration or permit.” K.S.A. § 65-1627f.

3. The Board is authorized to assess civil fines under the provisions of the Pharmacy Act. More specifically, the Board may, “assess a civil fine, after notice and an opportunity to be heard in accordance with the Kansas administrative procedure act, against any licensee or registrant under subsections (a), (c), (d) and (e) of K.S.A. 65-1627, and amendments thereto, for violations of the pharmacy act of the state of Kansas or rules and regulations of the state board of pharmacy or for violation of the uniform controlled substances act or rules and regulations of the state board of pharmacy adopted under the uniform controlled substances act, in an amount not to exceed \$5,000 for each violation. K.S.A. § 65-1658.

4. Defendant Broadway Pharmacy, P.A. is a Kansas professional association located at the address in the caption above.

5. Broadway Pharmacy, P.A. is currently registered as a pharmacy in the State of Kansas having been issued Registration No. 2-09952.

6. Defendant David Bergen, R.Ph. resides at 1311 West River Boulevard, Wichita, Sedgwick County, Kansas 67203.

7. Defendant David Bergen, R.Ph. is currently registered as a pharmacist in the State of Kansas having been issued License No. 1-09176.

8. K.S.A. § 65-1627(e) provides:

The board may revoke, suspend, place in a probationary status or deny a renewal of any license of a pharmacy upon a finding that: . . . (1) Such pharmacy has been operated in such a manner that violations of the provisions of the pharmacy act of the state of Kansas or of the rules and regulations of the board have occurred in connection therewith; . . .

9. K.S.A. § 65-1627(a) provides:

The board may revoke, suspend, place in a probationary status or deny a renewal of any license of any pharmacist upon a finding that: . . . (3) the licensee is found by the board to be guilty of unprofessional conduct or professional incompetency; . . . (6) the licensee is found to have filled a prescription not in strict conformance with the directions of the practitioner or a mid-level

practitioner; . . . (8) the licensee has violated any of the provisions of the pharmacy act of the state of Kansas or any rule and regulation adopted by the board pursuant to the provisions of such pharmacy act; . . .

10. Defendants failed to keep accurate records of prescriptions filled, in violation of K.S.A. § 65-1642(b), which states: "Each pharmacy shall keep a suitable book or file which records every prescription order filled at the pharmacy and a medication profile record system as provided under subsection (d). . . ." and K.A.R. 68-9-1, which states:

All electronic data storage systems operating within this state shall comply with the following requirements: . . . (6) maintain a written prescription on file that preserves all information contained in the original prescription. A machine-printed supplement that provides all information necessary to comply with the law may be filed with or attached to the written prescription, if the supplement does not obscure the required information on the original prescription; . . .

11. Defendant Broadway Pharmacy, P.A. failed to keep a suitable book or file which records every prescription at the pharmacy and a medication profile record system, in violation of K.S.A. § 65-1642, which states, "Each pharmacy shall keep a suitable book or file which records every prescription order filled at the pharmacy and a medication profile record system as provided under subsection (d). . . .".

12. Defendant Broadway Pharmacy, P.A. failed to properly record the transfer of refillable prescriptions between pharmacies in violation of K.A.R. 68-7-19(3), which states:

(3) The prescription record at the pharmacy receiving the transferred prescription shall show the following, in addition to all other lawfully required information of an original prescription:

- (A) The word "transfer" written on the face of the prescription record;
- (B) the date of original issuance and the date of original filling, if different from the issuance date;
- (C) the original number of refills authorized, the number of remaining authorized refills, and the date of last refill;
- (D) the original prescription number;
- (E) the name, address, and telephone number of the transferring pharmacy, and the name of the transferring pharmacist;
- (F) the name, address, and telephone number of the prescriber; and

(G) if the transfer involves a C-III, IV, or V controlled substance, the DEA registration number of the prescriber and of the transferring pharmacy.

13. Defendants refilled prescriptions without authorization, in violation of K.S.A. § 65-1637(c), which states: "Except as provided in paragraph (2), no prescription shall be refilled unless authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filled by the pharmacist."

14. Defendants refilled prescriptions more than one year from the date of origin, in violation of K.A.R. 68-2-20, which states: "(b) Those judgmental functions that constitute the filling or refilling of a prescription shall be performed only by a licensed pharmacist or by a pharmacy student or intern under the direct supervision of a licensed pharmacist and shall consist of the following steps: . . . (2) limit any filling or refilling of a prescription to one year from the date of origin, except as provided by K.S.A. 65-1637 and amendments thereto; . . ."

TERMS AND CONDITIONS:

1. The Board and Defendant agree to settle this matter under the following terms:
 - a. Defendant Broadway Pharmacy, P.A. agrees to:
 - i. Pay a civil fine of Five Thousand and no/100 Dollars (\$5,000.00); and
 - ii. Defendant Broadway Pharmacy, P.A.'s license to act as a pharmacy in the State of Kansas shall be under probation for a period of one (1) year from the date of execution of this Consent Agreement under the following conditions:
 1. Defendant Broadway Pharmacy, P.A. shall retrain pharmacy staff on necessity of accurate information entry into data system and provide documentation of retraining to the Board;
 2. Defendant Broadway Pharmacy, P.A. shall retrain pharmacists on staff regarding accountability in verification of work performed by technicians and provide documentation of retraining to the Board;

3. Defendant Broadway Pharmacy, P.A. shall update policy and procedure manuals to reflect steps necessary for accurate filling and refilling of prescriptions and documentation necessary to comply with the Kansas Pharmacy Act regulations; and
4. For a period of one (1) year, Defendant Broadway Pharmacy, P.A. shall provide daily review of prescriptions filled as to accuracy of medication, directions, dates, and refill information and provide monthly documentation to the Board of the reviews.

b. Defendant David Bergen, R.Ph. agrees that:

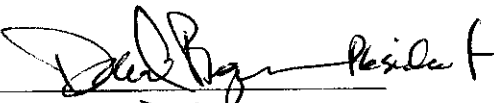
- i. Defendant David Bergen, R.Ph. shall pay a civil fine of Five Hundred and no/100 Dollars (\$500.00) and
- ii. Defendant David Bergen, R.Ph.'s license to practice pharmacy in the State of Kansas shall be placed in probationary status for a period of one (1) year under the following conditions:
 1. Defendant David Bergen, R.Ph. shall take responsibility for completion of all conditions placed on Defendant Broadway Pharmacy in paragraph 1(a)(2) above;
 2. Defendant David Bergen, R.Ph. shall complete four (4) hours of continuing education specifically pertaining to pharmacy law during the period of his probation and report his completion to the Board; and
 3. Defendant David Bergen, R.Ph. shall document the number of hours he works weekly at Defendant Broadway Pharmacy for a period of one year, and provide quarterly documentation of his hours to the Board.

CONSENT OF THE KANSAS STATE BOARD OF PHARMACY: This Consent


Agreement is not binding upon the Board until it has been reviewed and agreed to by the Kansas State Board of Pharmacy at its next quarterly meeting, to be held March 8 and 9, 2012.

The parties below have read this Consent Agreement, know and understand its contents, and agree to comply with its terms. Defendants specifically agree to waive the constitutional rights enumerated above.

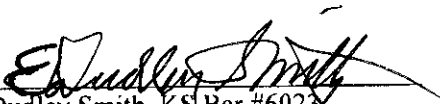
Broadway Pharmacy, P.A.

By:  President
Name: DAVID BERGEN
Title: President


Date: 12-21-2011


David Bergen, R.Ph.
1311 West River Boulevard
Wichita, KS 67203

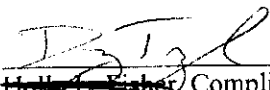
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E. Dudley Smith, KS Bar #6023
Fisher Patterson Sawyer & Smith, LLP
9393 West 110th Street, Suite 300
Building 51, Corporate Woods
Overland Park, Kansas 66210
Attorney for Defendants

Date: 1-6-12


David R. Schoech, R.Ph.
Investigative Member
Kansas State Board of Pharmacy
800 SW Jackson St., Ste. 1414
Topeka, KS 66612

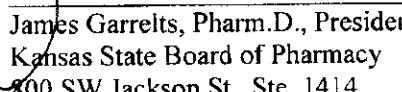
Date: 01-30-2012


Holly G. Fisher, Compliance Counsel
Kansas State Board of Pharmacy
800 SW Jackson St., Ste 1414
Topeka, KS 66612

Date: 1/25/12

APPROVAL OF THE BOARD OF PHARMACY

This Consent Agreement has been reviewed by the Kansas State Board of Pharmacy and is agreed to as of the date stated below.


James Garrelts, Pharm.D., President
Kansas State Board of Pharmacy
800 SW Jackson St., Ste. 1414
Topeka, KS 66612

Date: 3/8/12

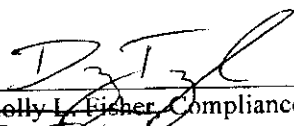
CERTIFICATE OF SERVICE

I hereby certify that a true and correct, fully executed copy of the above and foregoing Consent Agreement was served upon the following by facsimile, on the 12 day of March, 2012, addressed to:

E. Dudley Smith, Esq.
Fisher Patterson Saylor & Smith, LLP
9393 West 110th Street, Suite 300
Building 51, Corporate Woods
Overland Park, Kansas 66210
Fax 913.339.6187

and

Michelle L. Tunnell
Administrative Law Judge/Presiding Officer
Office of Administrative Hearings
1020 S. Kansas Avenue
Topeka, KS 66612
(785) 296-4848 (fax).


Holly L. Fisher, Compliance Counsel
Doug Taylor