

**BEFORE THE KANSAS BOARD OF PHARMACY**

In the Matter of )  
 )  
CIVIC CENTER PHARMACY )  
Kansas Registration Nos. 22-02317 )  
\_\_\_\_\_ )

Case No. 15-085

Filed By  
NOV 10 2015  
KANSAS STATE  
BOARD OF PHARMACY

**STIPULATION AND CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Civic Center Pharmacy ("Respondent") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Unrein & Forbes, LLP, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by its 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 registration to operate a pharmacy.

3. The Respondent is presently entitled to operate a pharmacy in the State of Kansas by reason of the Board having issued it Kansas registration number 22-02317 ("Kansas Registration"). At all times relevant hereto, the Respondent has held a current registration to operate a 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 operated in a manner that violates the Act.

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 the following:

A. On or about June 11, 2012, Respondent entered into a Stipulation and Final Agency Order with the State of Colorado Board of Pharmacy relating to Respondent's failure to comply with the data submission requirements of Colorado's Electronic Prescription Drug Monitoring Program ("PDMP") on 2 occasions and failure to disclose a subsequent relinquishment on a December 8, 2011 application for a Colorado new non-resident drug outlet registration (the "Colorado Order"). (A true and correct copy of the Colorado Order is attached hereto as Exhibit A and incorporated herein by this reference).

B. Respondent entered into the a Stipulation and Final Agency Order with the Colorado Board, Case No. 2009-001497, on or about December 29, 2008, relating to Respondent's failure to comply with the Colorado PDMP's data submission requirements. Therein Respondent was ordered to register and comply with all data submission requirements of the PDMP and pay a \$5,750.00 fine, including surcharge.

C. Respondent entered into a second Stipulation and Final Agency Order with the Colorado Board, Case No. 2010-002042, on or about February 3, 2010, relating to Respondent's failure to comply with the Colorado PDMP's data submission requirements. In lieu of paying an ordered \$10,000.00 fine, Respondent relinquished its Colorado registration.

D. Respondent submitted an application for a Colorado new non-resident drug outlet registration on or about December 8, 2011. Therein, Respondent failed to disclose the February 3, 2010 relinquishment of its Colorado registration.

E. Pursuant to the Colorado Order, under which Respondent admitted to the findings and waived all further proof in the matter, the Colorado Board reissued Respondent's Colorado registration subject to Respondent paying a \$10,000.00 fine, timely registering with the Colorado PDMP, compliance with all data submission requirements of the PDMP, truthfully answering all background questions pertaining to Respondent on future Colorado applications, and compliance with all other terms and conditions of the Colorado Order.

F. On or about March 27, 2014, Respondent entered into an Agreed Board Order with the Texas State Board of Pharmacy relating to a failure to disclose the Colorado Orders to the Texas Board on its August 4, 2009 and August 24, 2011 applications for licensure. (the "Texas Order"). (A true and correct copy of the Texas Order is attached hereto as Exhibit B and incorporated herein by this reference).

G. The Texas Board alleged that Respondent's response to a question regarding whether Respondent had been subject to discipline in another state in its August 4, 2009 application, Respondent failed to disclose the discipline rendered by the Colorado Board in Case No. 2009-001497. Additionally, the Texas Board alleged that Respondent's response to a question regarding whether Respondent had been subject to discipline in another state in its August 24, 2011 application, Respondent failed to disclose the discipline rendered by the Colorado Board in Case Nos. 2009-001497 and 2010-002042.

H. Respondent neither admitted nor denied the truth of the Texas Board's allegations in the Texas Order.

I. Pursuant to the Texas Order, Respondent agreed to pay an administrative penalty of \$2,000.00, allow Texas Board staff to directly contact Respondent regarding

enforcement of the Texas Order, and required Respondent to comply with all other terms of the Texas Order.

J. On or about June 10, 2014, Respondent entered into a Consent Order with the North Carolina Board of Pharmacy relating to the filling and shipping of approximately 180 prescriptions for North Carolina patients written by Oklahoma doctors between September 2010 and July 2012. (the "North Carolina Order") Said prescriptions were found to be filled in violation of North Carolina law. (A true and correct copy of the North Carolina Order is attached hereto as Exhibit C and incorporated herein by this reference).

K. By and through the North Carolina Order, the North Carolina Board found that Respondent knew or reasonably should have known that the prescriptions not accompanied by the required physical examination for schedule III controlled substances under North Carolina law.

L. Moreover, the North Carolina Board found that Respondent did not provide records requested by the North Carolina Board on December 7, 2012, until March of 2013, after the North Carolina sent notice of prehearing conference relating the failure to timely provide records.

M. By and through the North Carolina Order, Respondent's North Carolina permit was indefinitely suspended. However, the suspension was stayed indefinitely based upon Respondent abiding by the laws governing the practice of pharmacy and the distribution of drugs, and Respondent abiding by the rules and regulations of the North Carolina Board. Furthermore, Respondent agreed to comply with the terms and conditions of the North Carolina Order.

N. On or about March 18, 2015, Respondent entered into a Consent Agreement with the State Board of Pharmacy of South Carolina pursuant to the discipline imposed by the North Carolina Order (the "South Carolina Order"). (A true and correct copy of the South Carolina Order is attached hereto as Exhibit D and incorporated herein by this reference).

O. By and through the South Carolina Order, Respondent's South Carolina permit was suspended for 2 years. However, the suspension was stayed immediately with Respondent's permit continuing on probationary status for not less than 2 years, contingent upon Respondent's compliance with the terms of the South Carolina Order. Moreover, Respondent was required to submit updated policies and procedures to the South Carolina Board and comply with all other terms and conditions of the South Carolina Order.

P. On or about April 8, 2015, Respondent entered into a Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order with the Board of Pharmacy Department of Commerce and Consumer Affairs State of Hawaii pursuant to the discipline imposed by the North Carolina Order (the "Hawaii Order"). (A true and correct copy of the South Carolina Order is attached hereto as Exhibit E and incorporated herein by this reference).

Q. By and through the Hawaii Order, Respondent agreed to pay a fine of \$1,500.00 and comply fully with all other terms of the Hawaii Order.

R. Respondent self-reported the Orders referenced herein to the Board on or before May 20, 2015.

6. Upon motion duly made, seconded and passed, the Board finds and concludes that the events described in paragraph 5 above, constitute the operation of a pharmacy in a manner

that violates the Act and the Regulations of the Board and is therefore grounds for disciplinary action against the Respondent's Kansas Registration pursuant to K.S.A. § 65-1627 (e)(4).

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

A. INDEFINITE SUSPENSION. Respondent agrees and consents and the Board further orders that Respondent's Kansas Registration is hereby suspended indefinitely. However, such suspension is indefinitely stayed contingent upon the following:

i. Respondent shall not violate any laws governing the practice of pharmacy or the distribution of drugs; and

ii. Respondent shall not violate any rules or regulations of the Board.

Moreover, in the event that Respondent fails to comply with any term or condition of this Stipulation and Consent Order, the stay of Respondent's suspension shall be terminated and Respondent may be subject to additional disciplinary action by the Board.

B. COMPLIANCE WITH OTHER STATE ORDERS. As a condition of the stay of its indefinite suspension, Respondent agrees and consents and the Board further orders that Respondent shall fully comply with any and all terms, conditions, limitations and other requirements of the Colorado Order, the Texas Order, the North Carolina Order, the South Carolina Order and the Hawaii Order.

C. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Consent Order it 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

3. Comply fully with all state and federal laws relating to pharmacy practice;

8. 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 Final Order provided for herein, with or without the presence of the Respondent or its attorney. In the event that this Stipulation and Consent 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 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.

9. The stipulations contained herein shall not become binding until this Stipulation and Consent Order 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 Investigation Member or its attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Consent Order.

10. 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 Final

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.

11. 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.

12. The Respondent acknowledges that it has the following rights:

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

(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 it to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Consent Order provided for herein.

13. The Respondent acknowledges that it enters into this Stipulation and Consent Order freely and voluntarily after consultation with counsel of its choosing. The Respondent further acknowledges that it has read this Stipulation and Consent Agency order in its entirety,



that it understands its legal consequences and that it agrees that none of its terms are unconscionable, arbitrary or capricious.

14. 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 it. 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.

15. 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.

16. 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.

17. 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.

18. The Respondent acknowledges that it has been advised by the Board that it 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 Carly

Haynes, its Acting Executive Secretary at 800 SW Jackson St., Suite 1414, Topeka, KS 66612.

The Respondent hereby waives those rights.

ENTERED AND EFFECTIVE this 6<sup>th</sup> day of November, 2015.

KANSAS BOARD OF PHARMACY

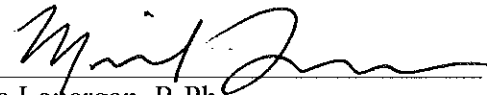
By:   
DR. ROBERT HANEKE, President

AGREED AND APPROVED BY:

Civic Center Pharmacy

By: 


10/7/15  
Date

  
Mike Loneragan, R.Ph.  
Investigation Member

11-5-15  
Date

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

\_\_\_\_\_  
Date

  
Randall J. Forbes, KS#09089 MO#64335  
Timothy D. Resner, #25064  
FRIEDEN, UNREIN & FORBES, LLP  
1414 SW Ashworth Place, Suite 201  
Topeka, KS 66604  
(785) 354-1100  
(785) 354-1113 (fax)  
Attorneys for the Kansas Board of Pharmacy

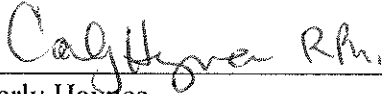
10.15.15  
Date

**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 10<sup>th</sup> day of November, 2015 addressed to:

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

Civic Center Pharmacy  
7331 E. Osborn Drive, #208  
Scottsdale, AZ 85251

  
\_\_\_\_\_  
Carly Haynes  
Acting Executive Director  
KANSAS BOARD OF PHARMACY