

Filed By

**BEFORE THE KANSAS BOARD OF PHARMACY**

JUN 13 2007

In The Matter Of )  
 )  
JEAN R. APPELHANZ, R.Ph. )  
Kansas License No. 1-12661 )

Case No. 07-31

KANSAS STATE  
Board of Pharmacy

**STIPULATION AND FINAL AGENCY ORDER**

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

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by her attorney, Darin M. Conklin of Alderson, Alderson, Weiler, Conklin, Burghart & Crow, L.L.C., 2101 S.W. 21<sup>st</sup> Street, Topeka, Kansas 66604-3174.

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.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas license to practice pharmacy.

3. The Board previously issued Respondent license number 1-12661, which entitled her to practice pharmacy in the State of Kansas ("Respondent's 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 has received certain information, has investigated and has determined that there are reasonable grounds to believe that the Respondent has committed an act or acts in violation of the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.*

Respondent hereby agrees not to contest in this or any other proceeding before the Board that, while working as the pharmacist-in-charge at Medical Pavilion Pharmacy in Hays, Kansas, on one or more occasions, she failed to cancel a Schedule II prescription on the face of the prescription.

Respondent hereby agrees not to contest in this or any other proceeding before the Board that, while working as a pharmacist at Walgreens Pharmacy in Great Bend, Kansas, on one or more occasions, she diverted controlled substances for personal or non-pharmacy related use, and she was terminated for violating Walgreens' Sexual Harassment Policy.

Respondent hereby agrees not to contest in this or any other proceeding before the Board that, while working as the pharmacist-in-charge at QC Compounding in Lawrence, Kansas, on one or more occasions, she filled a Schedule II prescription for which the hard copy of the prescription is missing.

Respondent hereby agrees not to contest in this or any other proceeding before the Board that, while working as the pharmacist-in-charge at QC Compounding in Lawrence, Kansas, on one or more occasions, she diverted controlled substances for personal and non-pharmacy related use.

Respondent agrees not to contest in this or any other proceeding before the Board that, while working as the pharmacist-in-charge at QC Compounding in Lawrence, Kansas, on one or more occasions, she dispensed a Schedule II controlled substance without a written prescription signed by the prescribing practitioner.

Respondent hereby agrees not to contest in this or any other proceeding before the Board that, while working as the pharmacist-in-charge at QC Compounding in Lawrence, Kansas, on

one or more occasions, she failed to record on a Schedule II prescription whether the patient was "terminally ill" or an "LTCF patient."

Respondent hereby agrees not to contest in this or any other proceeding before the Board that, while working as the pharmacist-in-charge at QC Compounding in Lawrence, Kansas, on one or more occasions, she failed to cancel a Schedule II prescription on the face of the prescription.

Respondent hereby agrees not to contest in this or any other proceeding before the Board that, while working as the pharmacist-in-charge at QC Compounding in Lawrence, Kansas, on one or more occasions, she filled a Schedule II prescription without the full name, address, and registration of the practitioner, and directions for use.

Respondent hereby agrees not to contest in this or any other proceeding before the Board that, after being terminated as the pharmacist-in-charge at QC Compounding in Lawrence, Kansas, she failed to notify the Board in writing within 5 days of ceasing to serve as the pharmacist-in-charge.

Respondent hereby agrees not to contest in this or any other proceeding before the Board that, while working as a relief pharmacist at Western Plains Medical Complex in Dodge City, Kansas, on one or more occasions, she diverted controlled substances for personal and non-pharmacy related use.

The Board finds and concludes that Respondent's conduct, as described above, is grounds for disciplinary action in the State of Kansas pursuant to the following: K.S.A. 65-1627(a)(3), as defined in K.S.A. 65-1626(ee)(3); K.S.A. 65-1627(a)(3), as defined in K.S.A. 65-1626(hh)(5); K.S.A. 65-1627(a)(3), as defined in K.S.A. 65-1626(hh)(7); K.S.A. 65-1627(a)(3), as defined in

K.S.A. 65-1626(hh)(9); K.S.A. 65-1627(a)(4); K.S.A. 65-1627(a)(5); K.S.A. 65-1627(a)(6); K.S.A. 65-1627(a)(8); and K.S.A. 65-1627(a)(13).

5. The Board finds and the Respondent agrees that the following disposition is just and appropriate under the circumstances:

A. **VOLUNTARY SURRENDER OF LICENSE WITH CONDITIONS.** The Respondent hereby agrees and consents to the Board's entry of an order accepting the Respondent's voluntarily surrendered license to practice pharmacy in the State of Kansas, with the conditions stated herein. As a condition of the Board accepting the voluntary surrender of her license, in lieu of other disciplinary action, the Respondent further agrees to the Board entering an order that provides if Respondent should ever again apply for licensure as a pharmacist in the State of Kansas, the Respondent shall have the burden to prove, by clear and convincing evidence, that she is rehabilitated and competent to return to the practice of pharmacy in the State of Kansas. As a part of that agreement, it is further agreed that in considering whether Respondent has met her burden of proof, the Board may consider any relevant factors, including, but not limited to, the following:

1. The moral fitness of the Respondent at the time of the application to terminate the suspension;
2. the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
3. the extent of Respondent's rehabilitation;
4. the seriousness of the original misconduct;
5. conduct subsequent to the indefinite suspension;
6. the time which has elapsed since the surrender of her license;

7. the Respondent's character, maturity, and experience at the time of the surrender of her license; and
8. the Respondent's competence to practice pharmacy as of the time of the application for licensure.

As part of any future application for licensure, the Board shall have the right to require Respondent to submit to any physical and/or mental tests or examinations with providers of the Board's choice and totally at Respondent's expense. If the Board elects to have such testing performed, the Respondent shall authorize the release of all information related to such tests or examinations to the Board or its representatives. Should the Board determine to re-license Respondent, the Board may place such conditions on the termination and Respondent's right to practice pharmacy, as the Board may deem, in its discretion, necessary. The Respondent further agrees not to seek re-licensure in Kansas for a period of five (5) years from the effective date of the final agency order contemplated hereby.

B. VOLUNTARY SURRENDER OF ALL INDICIA OF LICENSURE. The Respondent hereby agrees and consents to the Board's entry of an order requiring her, within ten (10) days of the effective date of the Final Agency Order contemplated hereby, to voluntarily surrender all indicia of licensure to the Board's Executive Director, Debra L. Billingsley.

C. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Final Agency Order she must:

1. Comply fully with this Stipulation and Final Agency Order; and
2. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations, and all state and federal laws relating to Kansas pharmacists.

6. Respondent agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and its attorney regarding the investigation which led 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 Final Agency Order and the Final Order provided for herein, with or without the presence of the Respondent or her attorney. In the event that this Stipulation and Final Agency 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 Final Agency Order or the information mentioned in the preceding sentence and further agrees to waive any claim of a 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.

7. The stipulations contained herein shall not become binding until this Stipulation and Final Agency Action 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 attorney or the Board's Investigation Member shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Final Agency Action or the Final Order provided for herein.

8. The Respondent agrees that this Stipulation and Final Agency 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 that the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.*, is constitutional on its face and as applied in this case.

9. 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.

10. The Respondent acknowledges that she has the following rights:

A. To have formal notice of charges served upon her;

B. To file a response to the charges;

C. To have notice of and participate in a formal adjudicative hearing with the Board 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 and the Act for Judicial Review and Civil Enforcement of Agency Action.

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 her 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.

11. The Respondent acknowledges that she enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of her choosing or an opportunity to do so. The Respondent further acknowledges that she has read this Stipulation and Final Agency order in its entirety, that she understands its legal consequences, and that she agrees that none of its terms are unconscionable, arbitrary or capricious.

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

13. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:

A. Adverse Action Classification: "1110 Revocation of License."

B. Basis for Action: "10 Unprofessional Conduct."

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

15. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

16. This Stipulation and Final Agency 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 she has been advised by the Board that she 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 Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.*, and to serve such a petition for judicial review on the Kansas Pharmacy Board by serving Debra L. Billingsley, its Executive Director, at Landon Office Building, 900 SW Jackson, Room 560, Topeka, Kansas 66612-1231. The Respondent hereby waives those rights.

AGREED AND ACCEPTED BY:

Jean R. Appelhanz, R.Ph.  
JEAN R. APPELHANZ, R.Ph.

6/08/07  
Date

Joanne Gilstrap, R.Ph.  
JOANNE GILSTRAP, R.Ph.  
Investigation Member

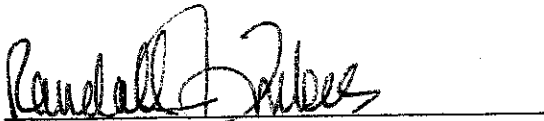
6/12/07  
Date

APPROVED BY:



Darin M. Conklin #15060  
ALDERSON, ALDERSON, WEILER,  
CONKLIN, BURGHART & CROW, L.L.C.  
2101 S.W. 21<sup>st</sup> Street  
Topeka, Kansas 66604-3174  
TEL: 785/232-0753  
FAX: 785/232-1866  
ATTORNEY FOR RESPONDENT

6-11-07  
Date



Randall J. Forbes #09089  
FRIEDEN & FORBES  
555 South Kansas Avenue, Suite 303  
Topeka, Kansas 66603  
TEL: 785/232-7266  
FAX: 785/232-5841  
DISCIPLINARY COUNSEL

6.12.07  
Date

BEFORE THE KANSAS BOARD OF PHARMACY

In The Matter Of )  
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JEAN R. APPELHANZ, R.Ph. )  
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Kansas License No. 1-12661 )

Case No. 07-31

**FINAL ORDER**

Upon motion duly made, seconded and passed, the Kansas Pharmacy Board (the "Board") approves and accepts the within Stipulation and Final Agency Order and incorporates the provisions thereof as the Final Order of the Board.

ENTERED AND EFFECTIVE this 12<sup>th</sup> day of June, 2007.

KANSAS PHARMACY BOARD

By: 

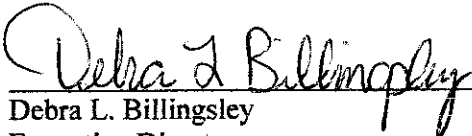
President

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND FINAL AGENCY ORDER was served by depositing same in the United States mail, postage prepaid, this 13 day of June, 2007 addressed to:

Randall J. Forbes  
FRIEDEN & FORBES  
555 South Kansas Avenue, Suite 303  
Topeka, Kansas 66603

Jean R. Appelhanz  
c/o Darin M. Conklin, Esq.  
ALDERSON, ALDERSON, WEILER,  
CONKLIN, BURGHART & CROW, L.L.C.  
2101 S.W. 21st Street  
Topeka, Kansas 66604-3174

  
Debra L. Billingsley  
Executive Director  
KANSAS PHARMACY BOARD