

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 admits and waives any further proof in this or any other proceeding before or initiated by the Board that Respondent, while functioning as a pharmacist at a Kansas pharmacy, knowingly diverted two (2) Darvocet N-100 from her employer and self administered Darvocet N-100 without a practitioner's order^{and} filled a prescription other than in strict conformity with the directions of the prescriber. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board that in March 28, 2000 Respondent, while functioning as a pharmacist at a Kansas pharmacy, failed to fill a prescription in strict conformity with the directions of the prescriber in that she filled a prescription for Hydrocodone and the two refills provided for on the prescription all at the same time.

The Board finds and concludes that Respondent's conduct, as described above, violates K.S.A. 65-1637 (a) and is grounds for disciplinary action in the State of Kansas pursuant to K.S.A. 65-1627 (a)(3), as defined at K.S.A. 65-1626 (hh)(5), and K.S.A. 65-1637(a).

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

A. **SUSPENSION.** Respondent hereby agrees and consents to the Board's entry of an order whereby her license to practice pharmacy in the State of Kansas is suspended for a period of three hundred sixty-five (365) days. The suspension shall begin on the third business day after the effective date of the Final Agency Order contemplated hereby. The first thirty (30) days of the suspension shall be served immediately upon the beginning of the

suspension. The last three hundred thirty-five (335) days of the suspension shall not take effect if during a 12-month probation period beginning on the effective date of the Final Agency Order contemplated hereby, the Respondent does not commit any further act that would constitute a further violation of the Pharmacy Practices Act or the Board's regulations. If Respondent commits an act during the probation period that constitutes a violation of the Pharmacy Practices Act or the Board's regulations or fails to meet any condition set out in this stipulation, the remaining three hundred thirty-five (335) days of the suspension shall be served in addition to any other requirements or discipline the Board might impose. If Respondent does not commit an act during the probation period which constitutes a violation of the Pharmacy Practices Act or the Board's regulations and meets all the conditions set out in this stipulation, the remainder of the suspension period provided for herein shall never become effective.

B. 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;
2. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws relating to Kansas pharmacists;
3. Appear at the Board meeting at which the Stipulation is considered, which consideration is presently scheduled to take place at the Board meeting on February 14, 2002 at Pozez Education Center, 1505 SW 8th Street, Topeka, Kansas.

6. Respondent agrees that all information in the possession of the Board or 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 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 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.

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. 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: "1135 Suspension of License."

B. Basis For Action: "03 Narcotics Violation."

14. The following statement will be made in the Board's newsletter: "Danielle Hawker of Kansas City, Kansas was disciplined by the Board entering an order suspending her license for 30 days."

15. 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.

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

17. 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.

18. 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 Susan Linn, its Executive Director. The Respondent hereby waives those rights.

AGREED AND ACCEPTED BY:

DANIELLE HAWKER, R.Ph.

Date

1/25/02

MAX HEIDRICK, R.Ph.
Investigation Member

Date

1/25/02

APPROVED BY:

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11/25/02
Date

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Attorney For Kansas Pharmacy Board

1/29/02
Date

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 18th day of February, 2002 addressed to:

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Susan Linn
Executive Director
KANSAS PHARMACY BOARD