

BEFORE THE KANSAS BOARD OF PHARMACY

Filed By
JUL 17 2015
KANSAS STATE
BOARD OF PHARMACY

In the Matter of)
)
CHRIS HENINGTON, R.P.H.)
)
Kansas License No. 1-13153)

Case No. 14-55

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Chris Henington, R.Ph. ("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 his attorney, Randy Debenham, Debenham Law Office, LLC, 3615 SW 29th St., Topeka, KS 66614.

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 1-13153 ("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 revocation or imposition of other 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 K.S.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 June 6, 2013, the Board entered a *Consent Order and Final Agency Order* (the “2013 Order”). The 2013 Order required Respondent, among other things, to enter into a contract with the KsPRN Peer Assistance Program (the “2013 CIPP Contract”) and to remain in full compliance with each of the requirements with that contract. Pursuant to the 2013 CIPP Contract, which Respondent entered into on February 15, 2013, Respondent was obligated to refrain from drinking alcohol, comply with requests for random body fluid drug screens and attend monthly monitoring meetings. The 2013 CIPP Contract had a term of five (5) years.

(b) During 2014 Respondent violated the terms of the 2013 CIPP Contract by drinking alcohol, providing an adulterated urine sample and failing to appear at required monthly monitoring meetings with his counselor.

(c) On July 22, 2014, the Board entered an Emergency Agency Order suspending Respondent’s pharmacist license until further order of the Board finding his continued practice as a pharmacist to be an imminent danger to the public.

(d) On July 25, 2014, Respondent attended a meeting of the Board of Pharmacy at which it was determined that disposition of his case would be continued to a later date. Just three days later, on July 28, 2014, Respondent submitted a urine sample to FirstLab that was confirmed as positive for methamphetamine. Respondent’s use of methamphetamine violated the terms of his CIPP contract.

(e) During the period from January 2014 through November 2014, there were numerous instances in which Respondent either failed to make a required call to FirstLab to see if he had been randomly selected to provide a urine sample or in which he was advised he had been selected, but failed to provide a sample. The failures constituted violations of his CIPP contract.

(f) Police records indicate that on June 24, 2015, Respondent went to the residence of ASR with a shotgun. While trying to gain entrance to the house he discharged the shotgun. When law enforcement arrived, he was ordered to drop the gun which he failed to do and he discharged the shotgun again. Respondent then fled the scene in his vehicle attempting to avoid arrest. The police records indicate that Respondent admitted that he was addicted to methamphetamine and had injected himself with methamphetamine prior to driving to ASR's house. The police records indicate there was a strong smell of alcohol in Respondent's vehicle as well as open and partly consumed cans of beer. Respondent was ultimately arrested on the following charges: Attempted Aggravated Burglary, Aggravated Assault, Aggravated Assault on a Law Enforcement Officer, Possession of Methamphetamine, Possession of drug paraphernalia, Fleeing and eluding, DUI, Possession of marijuana, Transporting an open container, Criminal damage to property, Criminal discharge of a firearm, Criminal use of a weapon, Possession of a firearm while under the influence.

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 K.S.A. 65-1627 (a)(3), (a)(4) and (7).

(6) The Respondent agrees and consents and the Board finds, concludes and orders that the following disposition is just and appropriate under the circumstances:

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

- (a) the moral fitness of the Respondent at the time of the application to terminate the suspension;
- (b) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
- (c) the extent of Respondent's rehabilitation;
- (d) the seriousness of the original misconduct;
- (e) conduct subsequent to the indefinite suspension;
- (f) the time which has elapsed since the surrender of his license;
- (g) the Respondent's character, maturity, and experience at the time of the surrender of his license; and

(h) the Respondent's competence to practice pharmacy as of the time of the application for licensure.

It is further agreed and ordered that 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. It is further agreed and ordered that 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 representative. It is further agreed and ordered that should the Board determine to relicense 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. It is further agreed and ordered that as part of any future application for licensure, the Board shall have the right to require Respondent to submit to be fingerprinted at Respondent's cost and to authorize a criminal history search. Finally, the Respondent agrees not to seek relicensure in Kansas for a period of one year from the effective date of the Consent Order contemplated hereby.

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, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Consent Order is 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.

8. The stipulations contained herein shall not become binding until this Stipulation and Consent Order is approved and entered as a final order 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.

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 as a Final Order of the Board. 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 have formal notice of charges served upon him;
- (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 Procedure 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 Final Agency Order and the Final Order provided for herein.

12. The Respondent acknowledges that he enters into this Stipulation and Consent Order freely and voluntarily after consultation with or an opportunity to consult 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 Final Order by the Board, this Stipulation and Consent Order shall be a public record in the custody of the Board.

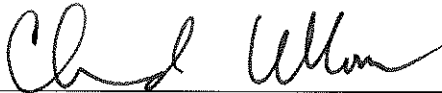
16. This Stipulation and Consent Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

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 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 Debra Billingsley, its Executive Secretary at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.

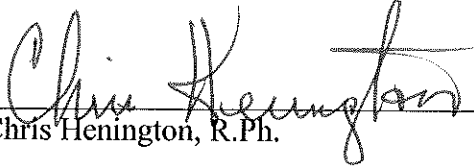
ENTERED AND EFFECTIVE this 16 day of July, 2015.

KANSAS BOARD OF PHARMACY

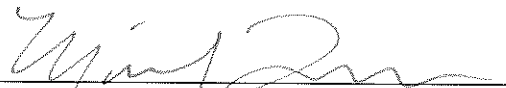
By:


~~DR. ROBERT HANEKE~~ Chad Ullom, RPh
President Vice-President

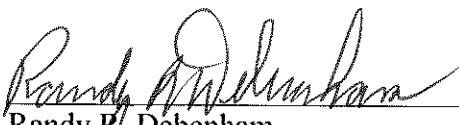
AGREED AND APPROVED BY:


Chris Henington, R.Ph.

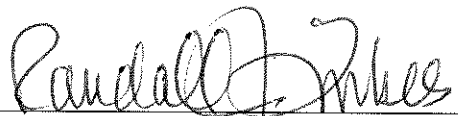
7/10/15
Date


Mike Lonergan, R.Ph.
Investigation Member

7/16/15
Date


Randy R. Debenham
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3615 SW 29th St.
Topeka, KS 66614
Attorneys for Respondent

7/10/15
Date


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FRIEDEN, UNREIN & FORBES, LLP
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Topeka, KS 66604
(785) 354-1100
Counsel for the Kansas Board of Pharmacy

7/13/2015
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 17 day of July, 2015 addressed to:

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Representative of the
KANSAS BOARD OF PHARMACY