

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
CONSTANCE LYNN KING, R.Ph.) Case No. 08-24
)
) OAH No. 09BP0003
Kansas License No. 1-10866)
_____)

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas State Board of Pharmacy ("Board") and Constance Lynn King, R.Ph. ("Respondent") as follows:

1. The Board is represented herein by its attorney, Kevin M. Fowler of Frieden & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. Respondent is represented herein by her attorney, Rachael K. Pirner of Triplett, Woolf & Garretson, LLC, 2959 North Rock Road, Suite 300, Wichita, Kansas 67226.
2. The Board is an agency of the State of Kansas vested with the authority to carry out and enforce the provisions of the Kansas Pharmacy Law, K.S.A. 65-1626 *et seq.*, including the initiation and conduct of hearings and proceedings to revoke, suspend

/321229

or otherwise discipline any Kansas license to practice pharmacy (“Kansas license”) and/or the holder of such license.

3. Respondent is currently authorized to engage in the practice of pharmacy in the State of Kansas as the holder of Kansas License Number 1-10866 issued by the Board. At all times pertinent, Licensee 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 Licensee has committed one or more acts in violation of the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.*, for which her Kansas license to practice pharmacy may be revoked, suspended, placed in probationary status or denied renewal pursuant to the provisions of K.S.A. 65-1627 and for which Licensee may be subject to the assessment of a civil fine under K.S.A. 65-1658.

Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board that on numerous occasions and at various times from January through December of 2007, while serving as the pharmacist-in-charge of a certain pharmacy, Respondent: (a) acquired from her pharmacy employer controlled substances for her own personal use without a valid prescription order, and possessed and consumed such controlled substances for which Respondent did not have a valid prescription; and (b) filled prescription orders for controlled substances and dispensed controlled substances to various customers based on written prescription orders that she knew were not valid. Respondent also admits and waives any further proof in this or any

/321229

other proceeding before or initiated by the Board that, on June 22, 2009, Respondent entered a plea of guilty in the United States District Court for the District of Kansas to Counts 2 and 3 of an Indictment charging her with aiding and abetting the distribution of a controlled substance in violation of 21 U.S.C. § 841(a) and 18 U.S.C. § 2, and her pleas of guilty was accepted by the United States District Court. Respondent admits that her conduct forms the basis for disciplinary action against her license.

The Board finds and concludes that Respondent's conduct, as summarized above, violates various provisions of the Kansas Pharmacy Act and regulations promulgated pursuant thereto and is grounds for disciplinary action against her license to practice pharmacy in the State of Kansas pursuant to K.S.A. 65-1627(a)(3), as further defined by K.S.A. 65-1626(rr)(4), 65-1626(rr)(5), 65-1626(rr)(7); 65-1626(nn)(2), and 65-1626(nn)(3); K.S.A. 65-1627(a)(4); K.S.A. 65-1627(a)(5); K.S.A. 65-1627(a)(8); K.S.A. 65-1627(a)(11); and K.S.A. 65-1627(a)(13).

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

VOLUNTARY SURRENDER OF LICENSE WITH CONDITIONS.

Respondent hereby agrees and consents to the Board's entry of 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 her Kansas license and in lieu of other disciplinary action, Respondent further expressly stipulates and agrees and, upon entry of the Final Order provided for herein, the Board orders and directs that if Respondent should ever again apply for

/321229

STIPULATION AND FINAL AGENCY ORDER

Matter of Constance Lynn King, R.Ph., Case No. 08-24; OAH No. 09BP0003

licensure or re-licensure as a pharmacist in Kansas, 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 and 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:

- (a) Respondent's character, maturity, experience and moral fitness at the time of the application for licensure;
- (b) The demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
- (c) The nature and extent of Respondent's rehabilitation;
- (d) The seriousness of the original misconduct;
- (e) Conduct subsequent to the surrender of her license;
- (f) The amount of time elapsed since the surrender of her license;
- (g) Respondent's character, maturity, experience and moral fitness at the time of the surrender of her license; and
- (h) Respondent's competence to practice pharmacy as of the time of the application for licensure.

As part of any future application for licensure or re-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, Respondent shall authorize the release of all information related to such tests or examinations to the Board or its representative.

/321229

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 to protect the public health, safety and welfare. Respondent further agrees not to seek licensure or re-licensure in Kansas for a period of three years from the effective date of the final agency order contemplated hereby.

6. Respondent agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and its attorneys 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 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, 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. Except as provided in Paragraph 6 above, 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. Respondent further acknowledges that the approval of the Board's attorney shall neither constitute the

/321229

approval of the Board nor bind the Board to approve this Stipulation and Final Agency Action or the Final Order provided for herein.

8. Respondent agrees that this Stipulation and Final Agency Order is in conformity with the constitution and laws of the State of Kansas and the United States, and that the Board is authorized to enter into this Stipulation and Final Agency Order and to enter the Final Order provided for herein. 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 and Final Agency Order 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. 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 Procedure Act, K.S.A. 77-501 *et seq.*, and amendments thereto, and the Kansas Act for Judicial Review, K.S.A. 77-601 *et seq.*, and amendments thereto;

/321229

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 matters provided for herein. 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. 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. 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 stipulates and agrees that none of its terms are unconscionable, arbitrary, capricious or unreasonable.

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. The following statement or the substantial equivalent of such statement will be made in the Board's newsletter: "Constance Lynn King, R.Ph. of Wichita, Kansas voluntarily surrendered her Kansas license to practice pharmacy."

/321229

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 and entry of the Final Order provided for herein, this Stipulation and Final Agency Order shall be deemed a public record in the custody of the Board.

16. This Stipulation and Final Agency Order shall become effective on the date the Board duly approves and enters the Final Order provided for herein. Upon such approval and entry of the Final Order provided for herein, this Stipulation and Final Agency Order shall be made a final order of the Board.

17. 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 Judicial Review Act, K.S.A. 77-601 *et seq.*, and amendments thereto, and to serve such a petition for judicial review on the Kansas State Board of Pharmacy by serving Debra L. Billingsley, its Executive Director at Landon Office Building, 900 SW Jackson, Room 560, Topeka, KS 66612-1231. Respondent hereby expressly waives any and all such rights.

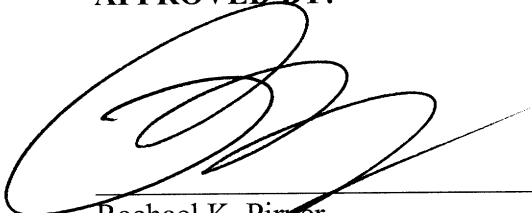
/321229

AGREED TO AND ACCEPTED BY:

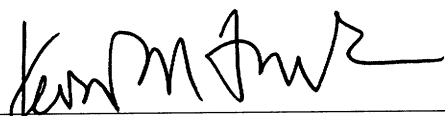

Constance Lynn King, R.Ph.
RESPONDENT

10-28-09
Date

APPROVED BY:


Rachael K. Pinner
Triplett, Woolf & Garretson, LLC
2959 North Rock Road, Suite 300
Wichita, KS. 67226
Counsel for Respondent
Tel: (316) 630-8100
Fax: (316) 630-8101
COUNSEL FOR RESPONDENT

10-28-09
Date


Kevin M. Fowler
FRIEDEN & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603
Tel: (785) 232-7266
Fax: (785) 232-5841
COUNSEL FOR THE BOARD

11-03-09
Date

/321229

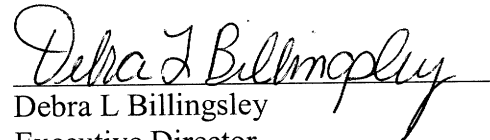
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a genuine copy of the foregoing **STIPULATION AND FINAL AGENCY ORDER** was served by depositing same in the United States mail, postage prepaid, this 4 day of December, 2009, properly addressed to:

Constance Lynn King
1841 N. Lark Circle
Wichita, KS 67212

Rachael K. Pirner
Triplett, Woolf & Garretson, LLC
2959 North Rock Road, Suite 300
Wichita, KS. 67226

Kevin M. Fowler
FRIEDEN & FORBES
555 South Kansas Ave., Suite 303
Topeka, KS 66603


Debra L Billingsley
Executive Director
KANSAS STATE BOARD OF PHARMACY

/321229