

BEFORE THE KANSAS BOARD OF PHARMACY

Filed By

JAN 29 2014

KANSAS STATE BOARD OF PHARMACY

In the Matter of)
) Case No. 13-144
DAVID K. NEIL, R.Ph.)
)
Kansas License No. 1-09830)

STIPULATION AND FINAL AGENCY ORDER

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

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Unrein & Forbes, LLP, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his 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., 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 1-09830. 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 that would justify discipline of his Kansas pharmacy license pursuant to 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 on multiple occasions Respondent took, without payment, and consumed controlled substances belonging to his employer and for which Respondent did not have a valid prescription.

The Board finds and concludes that Respondent's conduct, as described above, violates various provisions of the Pharmacy Act and regulations promulgated pursuant and is grounds for disciplinary action against his license to practice pharmacy in the State of Kansas pursuant to K.S.A. 65-1627 (a)(3), as defined by K.S.A. 65-1626 (xx)(3) and (ccc)(5); K.S.A. 65-1627 (a)(5), 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. **IMPAIRED PROVIDER PROGRAM.** If Respondent is not currently a party to an agreement with the Kansas Pharmacists Association Committee on Impaired Pharmacy Practice Program ("CIPP"), the Respondent shall immediately enter into an agreement with CIPP for a period of no less than 5 years. Respondent shall fully cooperate with the recommendations and requirements of the persons managing and implementing CIPP, the recommendations and requirements of the persons managing and implementing the evaluation and treatment programs recommended or required by CIPP and the further requirements of the Board. Respondent shall, at all times, be in full compliance with the requirements of his agreement with CIPP and other requirement placed upon him by CIPP. The Respondent shall authorize CIPP and any provider of evaluation or treatment programs he engages in to provide full and complete documentation and information regarding the Respondent's involvement in the programs, his evaluations and treatment, including, but not

limited to, all records and medical reports. *The Respondent shall not be released from the requirements of his CIPP agreement until he has made a request to the Board for release, appeared before the Board and provided proof sufficient to the Board that he has been in substantial compliance with the CIPP agreement for a 5-year period.*

B. LICENSE LIMITATION. Respondent shall not dispense prescription medications for a period of twelve (12) months from the effective date of the Final Agency Order contemplated hereby.

C. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Final Agency Order he 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;

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 his 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 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 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 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.

11. The Respondent acknowledges that he enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of his choosing or an opportunity to do so. The Respondent further acknowledges that he has read this Stipulation and Final Agency order in its entirety, that he understands its legal consequences and that he 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 or his CIPP agreement 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 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. 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.

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

15. 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.

16. 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 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, 800 SW Jackson Street, Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.


AGREED AND ACCEPTED BY:



DAVID K. NEIL, R.Ph.

12-17-13

Date



~~CHAD ULLOM, R.Ph.~~
Robert Haneke, Pharm D

1-17-2014

Date

Investigation Member

APPROVED BY:

Date



12/20/2013

Date

Randall J. Forbes, #09089
FRIEDEN, HAYNES & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603
(785) 232-7266

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
) Case No. 13-144
DAVID K. NEIL, R.Ph.)
Kansas License No. 1-09830)

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, including but not limited to the following requirement:

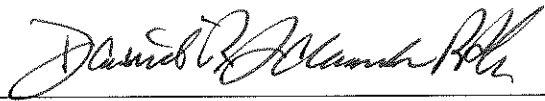
If Respondent is not currently a party to an agreement with the Kansas Pharmacists Association Committee on Impaired Pharmacy Practice Program ("CIPP"), the Respondent shall immediately enter into an agreement with CIPP for a period of no less than 5 years. Respondent shall fully cooperate with the recommendations and requirements of the persons managing and implementing CIPP, the recommendations and requirements of the persons managing and implementing the evaluation and treatment programs recommended or required by CIPP and the further requirements of the Board. Respondent shall, at all times, be in full compliance with the requirements of his agreement with CIPP and other requirement placed upon him by CIPP. The Respondent shall authorize CIPP and any provider of evaluation or treatment programs he engages in to provide full and complete documentation and information regarding the Respondent's involvement in the programs, his evaluations and treatment, including, but not limited to, all records and medical reports. *The Respondent shall not be released from the requirements of his CIPP agreement until he has made a request to the Board for release, appeared before the Board and provided proof sufficient to the*

Board that he has been in substantial compliance with the CIPP agreement for a 5-year period.

Respondent shall not dispense prescription medications for a period of twelve (12) months from the effective date of this Final Agency Order.

ENTERED AND EFFECTIVE this 29 day of January, 2014.

KANSAS PHARMACY BOARD

By: 

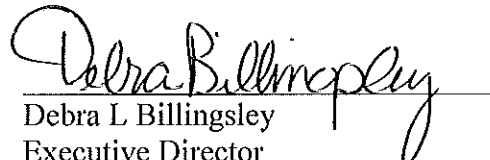
DAVID R. SCHOECH, R.Ph.
President

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 24 day of January, 2014 addressed to:

Randall J. Forbes
FRIEDEN, UNREIN & FORBES, LLP
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603

David K. Neil, R.Ph.
1372 Longhorn Ct.
Derby, KS 67307


Debra L Billingsley
Executive Director
KANSAS PHARMACY BOARD