

BEFORE THE KANSAS STATE BOARD OF PHARMACY

In the Matter of)		
Kmart Pharmacy #3358,)	Case No.	11-67
Kansas Registration No. 2-09716.)	OAH No.	12BP0008

CONSENT AGREEMENT

This Consent Agreement is voluntarily entered into by Kmart Pharmacy #3358 (“Respondent”), and the Kansas State Board of Pharmacy (“Board”), in lieu of further litigation based on the Petition filed in the above-captioned matter.

WAIVER OF RIGHTS: Respondent understands that it has the following rights in this case: The right to discovery, a hearing before the Board, and if found in violation of the Kansas Pharmacy Act, the right to appear before the District Court and Kansas appellate courts pursuant to the Kansas Judicial Review Act (the “KJRA”). Knowing these rights, Respondent, by signing this agreement, knowingly and voluntarily gives up these rights, including the right to a hearing by the Board.

Respondent hereby acknowledges its right to be represented by a lawyer of its own choosing, and is represented by E. Dudley Smith of Fisher Patterson Sayler & Smith, LLP, 51 Corporate Woods, Ste. 300, 9393 West 110th St, Overland Park, Kansas 66210, and Edward D. Rickert of Krieg DeVault, LLP, 30 North LaSalle St., Suite 3516, Chicago, Illinois 60602.

FACTS: Respondent stipulates to the following facts and statements of law:

1. The Board is charged with the administration of the Kansas Pharmacy Act (K.S.A. § 65-1626, *et seq.*) (the “Pharmacy Act”) and with the enforcement of the rules and regulations promulgated thereunder.
2. The Board is authorized to “enter an order of revocation, suspension, probation or denial of the renewal of a license, registration or permit.” K.S.A. § 65-1627f.

3. The Board is authorized to assess civil fines under the provisions of the Pharmacy Act. More specifically, the Board may, “assess a civil fine, after notice and an opportunity to be heard in accordance with the Kansas administrative procedure act, against any licensee or registrant under subsections (a), (c), (d) and (e) of K.S.A. 65-1627, and amendments thereto, for violations of the pharmacy act of the state of Kansas or rules and regulations of the state board of pharmacy or for violation of the uniform controlled substances act or rules and regulations of the state board of pharmacy adopted under the uniform controlled substances act, in an amount not to exceed \$5,000 for each violation. K.S.A. § 65-1658.

4. Respondent Kmart Pharmacy #3358 is located at 4830 S. Broadway, Wichita, Kansas 67216.

5. Kmart is currently registered as a pharmacy in the State of Kansas having been issued Registration No. 2-09716.

6. Pursuant to laws and regulations pertaining to of pharmacies, the Board is authorized to conduct hearings, summary proceedings, and emergency proceedings under the Kansas Administrative Procedure Act (K.S.A. § 77-501, *et seq.*) (“KAPA”). K.S.A. § 65-1663(e)(4). Such proceedings may result in suspension, revocation, and other disciplinary actions affecting Respondent’s ability to conduct business as a registered pharmacy in the State of Kansas.

7. K.S.A. § 65-1627(e) provides:

The board may revoke, suspend, place in a probationary status or deny a renewal of any license of a pharmacy upon a finding that: . . . (1) Such pharmacy has been operated in such a manner that violations of the provisions of the pharmacy act of the state of Kansas or of the rules and regulations of the board have occurred in connection therewith; . . .

8. K.S.A. § 65-1627(g) provides: “Orders under this section, and proceedings thereon, shall be subject to the provisions of the Kansas administrative procedure act.”

9. Respondent Violated K.S.A. § § 65-1637(a) and 65-1656(d) By Dispensing Medication in Larger Amounts than Prescribed by the Physician in that:

- (a) The Board received a complaint regarding Kmart, which included concerns regarding failure to fill prescriptions as written by the practitioner.
- (b) K.S.A. § 65-1637(a) states in pertinent part that: “All prescriptions shall be filled in strict conformity with any directions of the prescriber. . . .”
- (c) K.S.A. § 65-1656(d) states: “Drugs shall in no event be dispensed more frequently or in larger amounts than the prescriber ordered without direct prescriber authorization by way of a new prescription order.”
- (d) An investigation of the complaint found that Kmart received prescription no. 7005249 for Neurontin 1200ml with refills.
- (e) Prescription no. 7005249 was filled and refilled for a quantity of 1410ml without authorization from the physician.

10. Respondent Kmart Pharmacy #3358 Violated K.S.A. § 65-1637(c)(1) by Refilling Prescriptions When No Refill was Authorized by the Physician in that:

- (a) K.S.A. § 65-1637(c)(1) states, in pertinent part: “. . . no prescription shall be refilled unless authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filled by the pharmacist.”
- (b) Kmart received original prescription no. 6996482 for Elavil 75mg quantity 30 with directions to take one at bedtime with no refills.
- (c) Kmart dispensed the original prescription on August 5, 2009.

(d) Kmart dispensed a refill of prescription no. 6996482 on August 24, 2009.

(e) Kmart does not have any record of authorization for the refill from the prescribing physician.

11. In mitigation, Kmart asserts that the pharmacist who engaged in the conduct described in this Consent Agreement is no longer employed by Kmart, and his conduct in changing the quantity of a prescription without prescriber authorization and refilling a prescription that had no authorized refills was a violation of Kmart policies in effect at the time.

TERMS AND CONDITIONS:


The Board and Respondent agree to settle this matter under the following terms:

1. Respondent agrees to pay a civil fine of Two Thousand Five Hundred and no/100 Dollars (\$2,500.00); and
2. Within 30 days of the date of execution of this Consent Agreement, Respondent shall hold a Continuous Quality Improvement (CQI) meeting to review the violations described above and to implement proper safeguards to ensure such violations do not occur in the future. Respondent shall provide a written report of the CQI meeting and its results to the Board as soon as possible upon completion of the meeting.

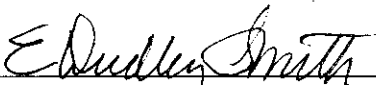
CONSENT OF THE KANSAS STATE BOARD OF PHARMACY: This Consent Agreement is not binding upon the Board until it has been reviewed and agreed to by the Kansas State Board of Pharmacy at its next quarterly meeting, to be held May 31 and June 1, 2012.

The parties below have read this Consent Agreement, know and understand its contents, and agree to comply with its terms. Respondent specifically agrees to waive the constitutional rights enumerated above.


Kmart Pharmacy No. 3358

By: 
Name: GHASAN HOURANI
Title: VP/GM pharmacy ADMIN.


Date: 4/25/12


E. Dudley Smith, KS Bar #06023
Attorney for Respondent
Fisher, Patterson, Saylor & Smith, LLP
51 Corporate Woods, Suite 300
9393 West 110th St.
Overland Park, KS 66210

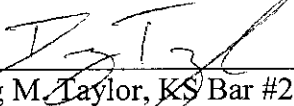
Date: 5-8-12


Edward D. Rickert
Attorney for Respondent
Krieg DeVault, LLP
30 North LaSalle St., Ste. 3516
Chicago, IL 60602

Date: 5/4/12


David R. Schoech, R.Ph.
Investigative Member
Kansas State Board of Pharmacy
800 SW Jackson St., Ste. 1414
Topeka, KS 66612

Date: 5/22/2012




Doug M. Taylor, KS Bar #23690
Compliance Counsel
Kansas State Board of Pharmacy
800 SW Jackson St., Ste 1414
Topeka, KS 66612

Date: 5/9/12

APPROVAL OF THE BOARD OF PHARMACY

This Consent Agreement has been reviewed by the Kansas State Board of Pharmacy and is agreed to as of the date stated below.



James Garrelts, Pharm.D., President
Kansas State Board of Pharmacy
800 SW Jackson St., Ste. 1414
Topeka, KS 66612

Date: 6/1/2012

CERIFICATE OF SERVICE

I hereby certify that I did, on the 4 day of June, 2012, deposit in the United States Mail, postage prepaid, a fully executed copy of the foregoing Consent Agreement, properly addressed to the following:

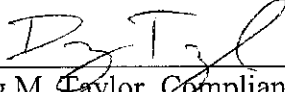
E. Dudley Smith
Fisher, Patterson, Saylor & Smith, LLP
51 Corporate Woods, Suite 300
9393 West 110th St.
Overland Park, KS 66210

and

Edward D. Rickert
Krieg DeVault, LLP
30 North LaSalle St., Ste. 3516
Chicago, IL 60602

And via facsimile to

Michele L. Tunnell
Administrative Law Judge/Presiding Officer
Office of Administrative Hearings
1020 S. Kansas Ave.
Topeka, KS 66612



Doug M. Taylor, Compliance Counsel