

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
PRECISION PHARMACY, LLC,)
Kansas Registration No. 22-12940)
_____)

Case No. 15-032

Filed By
JUL 23 2015
KANSAS STATE
BOARD OF PHARMACY

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Precision Pharmacy, L.L.C. ("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 its attorney, Jonathan Allan Klein of Kelly, Hockel & Klein, PC, 44 Montgomery Street, Ste. 1500, San Francisco, CA 94104

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 registration to operate a pharmacy.

3. The Respondent is presently entitled to operate a pharmacy in the State of Kansas by reason of the Board having issued it Kansas registration number 22-12940 ("Kansas Registration"). At all times relevant hereto, the Respondent has held a current registration to operate a 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 operated in a manner that violates the Act.

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 the following:

A. On or about December 20, 2013, Respondent entered into a Stipulated Settlement and Disciplinary Order (hereinafter the "California Order") with the State of California Board of Pharmacy, Department of Consumer Affairs, regarding certain allegations asserted by the California Board of Pharmacy by way of an "Accusation" filed on March 30, 2013. (A true and correct copy of the California Order is attached hereto as Exhibit "A," the provisions of which are incorporated herein by reference).

B. The California Order became effective on February 11, 2014.

C. In the California Order, the California Board of Pharmacy alleged that Respondent violated certain sections of California law as more fully set forth in Exhibit A hereto.

D. By and through the California Order, Respondent agreed that, the charges and accusations made by the Board of Pharmacy, if proven at a hearing, could constitute cause for discipline. Without admitting the facts underlying the allegations, Respondent waived its right to contest the allegations, and consented and agreed to revocation of its California pharmacy permit and sterile compounding license; said revocations were stayed and Respondent's California pharmacy permit and sterile compounding license were placed on probation for three (3) years conditioned upon Respondent obeying all state and federal laws and regulations, Respondent reporting violations of the law to the California Board as enumerated in the California Order, Respondent reporting the California Board on a quarterly basis regarding its compliance with the terms and conditions of its probation, Respondent submitting to in-person interviews with the California Board as determined by the California Board, Respondent

cooperating with California Board staff during the California Board's monitoring and investigating Respondent's compliance with the California Order, Respondent's payment of a Ten Thousand Dollar (\$10,000.00) fine, Respondent's payment of the California Board's probation monitoring costs, and Respondent's compliance with any other terms and conditions which might be required by the California Order, as fully set forth in Exhibit A hereto.

E. Subsequent to the entry of the California Order, Respondent has been subject to discipline in the following jurisdictions pursuant to the California Order:

a. On or about February 4, 2014, the Louisiana Board of Pharmacy ("Louisiana Board") entered a Consent Agreement (hereinafter the "Louisiana Order") whereby Respondent consented and agreed to the suspension of Respondent's Louisiana pharmacy permit for a period of three (3) years, beginning on February 12, 2014; said period of suspension was suspended conditioned on Respondent's compliance with any applicable local, state or federal pharmacy laws or laws relating to controlled dangerous substances, Respondent's payment of a Ten Thousand Dollar Fine (\$10,000.00) and reimbursement of Two Hundred Fifty Dollars (\$250.00) in administrative costs, and Respondent's compliance with any other terms and conditions which might be required by the Louisiana Order, a true and correct copy of which is attached hereto as Exhibit "B," the provisions of which are incorporated herein by reference.

b. On or about May 6, 2014, the Board of Pharmacy of the State of Oregon ("Oregon Board") entered a Consent Order (hereinafter the "Oregon Order") whereby Respondent consented and agreed to revocation of Respondent's Oregon pharmacy registration; said revocation was stayed and Respondent was placed on probation until February 12, 2017 or release of probation from the California Board, conditioned on Respondent's compliance with the California Order, notifying the Oregon Board of any action related to the California Order,

complying with all Oregon laws and rules relating to the practice of pharmacy and Respondent's compliance with any other terms and conditions which might be required by the Oregon Order, a true and correct copy of which is attached hereto as Exhibit "C," the provisions of which are incorporated herein by reference.

c. On or about May 8, 2014, the Colorado State Board of Pharmacy ("Colorado Board") entered a Stipulation and Final Agency Order (hereinafter the "Colorado Order") whereby Respondent consented and agreed to indefinite probation of Respondent's Colorado pharmacy registration, until Respondent's California registration becomes active and unencumbered by the California Board and Respondent is released from probation in California. Additionally, the Colorado Board ordered Respondent to promptly pay its own fees and costs associated with the Colorado Order, comply fully with the Colorado Order and comply fully with all Colorado Pharmacy Laws, Colorado Board rules and regulations and any other applicable state and federal laws and regulations and Respondent's compliance with any other terms and conditions which might be required by the Colorado Order, a true and correct copy of which is attached hereto as Exhibit "D," the provisions of which are incorporated herein by reference.

d. On or about August 26, 2014, the Iowa Board of Pharmacy ("Iowa Board") entered a Settlement Agreement and Final Order (hereinafter the "Iowa Order") whereby Respondent consented and agreed to probation of Respondent's Iowa license for the entirety of Respondent's California probationary period conditioned on Respondent's compliance with the California Order, and any changes thereto and Respondent's compliance with any other terms and conditions which might be required by the Iowa Order, a true and correct copy of which is attached hereto as Exhibit "E," the provisions of which are incorporated herein by reference.

e. On or about October 8, 2014, the Michigan Board of Pharmacy (“Michigan Board”) entered a Stipulation and Consent Order (hereinafter the “Michigan Order”) whereby Respondent consented and agreed to the payment of a Three Thousand Dollar (\$3,000.00) fine due to entry of the California Order and Respondent’s compliance with any other terms and conditions which might be required by the Michigan Order, a true and correct copy of which is attached hereto as Exhibit “F,” the provisions of which are incorporated herein by reference.

f. On or about December 3, 2014, the Nevada State Board of Pharmacy (“Nevada Board”) entered a Stipulation and Consent Order (hereinafter the “Nevada Order”) whereby Respondent consented and agreed to the suspension of its Nevada certificate of registration; said suspension was stayed and Respondent’s Nevada certificate of registration was placed on indefinite probation until the Nevada Board’s receipt of documentation from the California Board indicating that Respondent’s probation has been released and Respondent’s California certificate of registration has been returned to active and unencumbered status. Additionally, Respondent’s probation was conditioned upon the Respondent complying with the California Order and any changes thereto, all federal and Nevada laws relating to the practice of pharmacy, Respondent notifying the Nevada Board of any action relating to the California Order, Respondent notifying the Nevada Board of any violation of federal law or Nevada law, and Respondent’s compliance with any other terms and conditions which might be required by the Nevada Order, a true and correct copy of which is attached hereto as Exhibit “G,” the provisions of which are incorporated herein by reference.

g. On or about January 21, 2015, the Alabama State Board of Pharmacy (“Alabama Board”) entered a Consent Order (hereinafter the “Alabama Order”)

whereby Respondent consented and agreed to the suspension of its Alabama pharmacy permit until February 14, 2017; said suspension was immediately reverted to probation subject to Respondent's compliance with the California Order, Respondent's submission to the Alabama Board documentation from the California Board by June 30, 2015, December 31, 2015, June 30, 2016 and December 31, 2016, affirming Respondent's compliance with the California Order and permit being in good standing, payment of a Five Thousand Dollar (\$5,000.00) fine, and Respondent's compliance with any other terms and conditions which might be required by the Alabama Order, a true and correct copy of which is attached hereto as Exhibit "H," the provisions of which are incorporated herein by reference.

h. On or about January 28, 2015, the State Board of Pharmacy of South Carolina ("South Carolina Board") entered a Consent Agreement (hereinafter the "South Carolina Order") whereby Respondent consented and agreed to revocation of its South Carolina pharmacy permit; said revocation was stayed and Respondent's South Carolina Pharmacy permit was placed on probation conditioned on Respondent's compliance with the California Order, Respondent's compliance with all state and federal laws and regulations, and reporting within seventy-two (72) hours of enumerated violations of federal or state law, Respondent reporting to the South Carolina Board on a quarterly basis whether Respondent has complied with all terms and conditions of its South Carolina probation, Respondent's appearance for scheduled interviews with the South Carolina Board and Respondent's maintenance of a current authorization to practice pharmacy in the State of South Carolina, and Respondent's compliance with any other terms and conditions which might be required by the South Carolina Order, a true and correct copy of which is attached hereto as Exhibit "I," the provisions of which are incorporated herein by reference.

i. On or about February 3, 2015, the Texas State Board of Pharmacy (“Texas Board”) entered an Agreed Board Order (hereinafter the “Texas Order”) whereby Respondent’s Texas license was placed on probation concurrent with the probationary period imposed by the California Order, conditioned on Respondent’s compliance with the terms of the Texas Order, all applicable federal laws, Texas laws and other states laws relating to pharmacy, controlled substances, dangerous drugs and all regulations relating thereto, Respondent’s payment of a One Thousand Two Hundred Dollar (\$1,200.00) probation fee, Respondent’s utilization of a pharmacist approved by the Texas Board to serve as a management consultant and conduct quarterly visits and submit quarterly reports regarding Respondent’s compliance with the Texas Order and laws and rules governing the practice of pharmacy, and Respondent’s compliance with any other terms and conditions which might be required by the Texas Order, a true and correct copy of which is attached hereto as Exhibit “J,” the provisions of which are incorporated herein by reference.

j. On or about May 7, 2015, the Missouri Board of Pharmacy (“Missouri Board”) entered a Settlement Agreement Between State Board of Pharmacy and Precision Pharmacy, LLC (hereinafter the “Missouri Order”) whereby Respondent’s Missouri pharmacy permit was placed on probation until February 10, 2017, conditioned on Respondent’s timely payment of all licensing fees to the Missouri Board, Respondent’s compliance with all federal and state drug laws, rules and regulations and all federal and state criminal laws, provision to the Missouri Board of all licensed pharmacists employed by Respondent if requested by the Missouri Board, Respondent submitting a written form to the Missouri Board every six (6) months answering truthfully whether Respondent has complied with all terms and conditions of the Missouri Order, Respondent not serving as an intern training facility for

Missouri interns, Respondent making a representative available for personal interviews to be conducted at the discretion of the Missouri Board, and Respondent's compliance with any other terms and conditions which might be required by the Missouri Order, a true and correct copy of which is attached hereto as Exhibit "K," the provisions of which are incorporated herein by reference.

Upon motion duly made, seconded and passed, the Board finds and concludes that the events described in paragraph 5 above, and as more fully described in Exhibits A – K hereto, constitute the operation of a pharmacy in a manner that violates the Act and the Regulations of the Board and is therefore grounds for disciplinary action against the Respondent's Kansas Registration pursuant to K.S.A. § 65-1627 (e)(4).

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

A. PROBATION. Respondent agrees and consents and the Board further orders that Respondent's Kansas Registration is hereby revoked. However, said revocation is stayed and Respondent is placed on probation for three (3) years from the date this Stipulation and Consent Order is entered by the Board, or until receipt of documentation of release from probation with the California Board.

B. COMPLIANCE WITH CALIFORNIA ORDER. As a condition of its probation, Respondent agrees and consents and the Board further orders that Respondent shall fully comply with all terms, conditions, limitations and other requirements of the California Order. See Exhibit A.

C. COMPLIANCE WITH OTHER STATE ORDERS. As a condition of its probation, Respondent agrees and consents and the Board further orders that Respondent

shall fully comply with all terms, conditions, limitations and other requirements of the Louisiana Order, the Oregon Order, the Colorado, the Iowa Order, the Michigan Order, the Nevada Order, the Alabama Order, the South Carolina Order, the Texas Order and the Missouri Order. See Exhibits B – K.

D. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Consent Order it must, and the Board further orders the Respondent to:

1. Comply fully with this Stipulation and Consent Order;
2. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations; and
3. Comply fully with all state and federal laws relating to pharmacy practice;

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 and the Final Order provided for herein, with or without the presence of the Respondent or its attorney. In the event that this Stipulation and Consent 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 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 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 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 and enter the Final Order provided for herein. 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 it has the following rights:

- (a) To have formal notice of charges served upon it;
- (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 Procedures 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 it to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Consent Order provided for herein.

12. The Respondent acknowledges that it enters into this Stipulation and Consent Order freely and voluntarily after consultation with counsel of its choosing. The Respondent further acknowledges that it has read this Stipulation and Consent Agency order in its entirety, that it understands its legal consequences and that it 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 it. 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 it has been advised by the Board that it 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

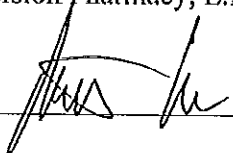
By:


DR. ROBERT HANEKE, President

AGREED AND APPROVED BY:

Precision Pharmacy, L.L.C.

By:




6/22/15

Date

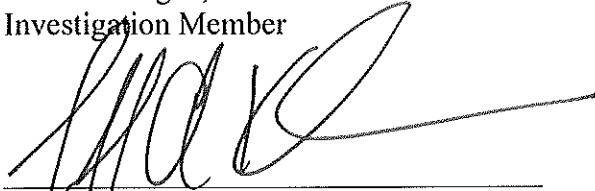
7-17-15

Date


Mike Lohergan, R.Ph.
Investigation Member

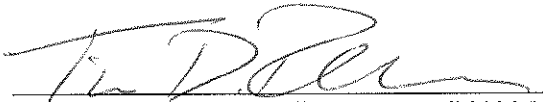
6/25/14

Date


Jonathan Allan Klein, CBN 162071
KELLY, HOCKEL & KLEIN P.C.
44 Montgomery Street, Suite 1500
San Francisco, CA 94104
(415) 951-0535
(415) 391-7808 (fax)
Attorneys for Precision Pharmacy

Date

7/9/2015


Randall J. Forbes, KS#09089 MO#64335
Timothy D. Resner, #25064
FRIEDEN, UNREIN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604
(785) 354-1100
(785) 354-1113 (fax)
Attorneys for the Kansas Board of Pharmacy


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 23 day of July, 2015 addressed to:

Randall J. Forbes
Timothy D. Resner
FRIEDEN, UNREIN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604

Precision Pharmacy, L.L.C.
Attn.: Rachel Taggs, Compliance Officer
5301 Young Street
Bakersfield, CA 93311

Jonathan Allan Klein
KELLY, HOCKEL & KLEIN, PC
44 Montgomery Street, Ste. 1500
San Francisco, CA 94104



Debra Billingsley
Executive Director
KANSAS BOARD OF PHARMACY