

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
SHOPKO PHARMACY #2702) Case No. 16-192A
Kansas Registration No. 2-10418)

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Shopko Pharmacy #2702 located at 908 E. 14th St., Larned, KS 67550 ("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,

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 2-10418 ("Kansas Registration"). At all times relevant hereto, the Respondent has held a current registration to operate a pharmacy at 908 E. 14th St., Larned, KS 67550 ("Pharmacy").

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.

Matter of Shopko Pharmacy # 2702, No. 16-192A (Kan. Bd. of Pharmacy)

STIPULATION AND CONSENT ORDER

5. Respondent hereby waives any further proof in this or any other proceeding before or initiated by the Board with respect to this matter, and upon motion duly made, seconded and passed, the Board finds the following:

A. On May 3, 2016 the then current Pharmacist-in-Charge (“PIC”) of the Pharmacy, Thomas P. Orel, R.Ph. (“Orel”), was terminated from his employment causing him to cease to be the PIC. The replacement PIC was not established until August 29, 2016. As a result the Pharmacy operated without a PIC for a period greater than 30 days in violation of K.A.R. 68-1-2a(b).

B. In violation of K.S.A. 65-1663(a), a person without a current Pharmacy Technician registration was allowed to perform functions as a Pharmacy Technician processing prescriptions.

C. Pharmacy technicians were allowed to perform functions of a pharmacy technician without being supervised by a licensed Pharmacist as required by K.S.A. 65-1626(pp) and non-pharmacists were allowed to perform judgmental functions that constituted the filling and refilling of prescriptions as prohibited by K.A.R. 68-2-20(b).

D. The Pharmacy failed to provide adequate security controls and procedures to guard against the theft and diversion of controlled substances as required by K.A.R. 68-20-15a(a).

E. The Pharmacy failed to create, maintain and produce to the Board’s representative required controlled substance inventories for the years 2012, 2013, 2014 and 2015 as required by K.A.R. 68-20-16.

F. The Pharmacy failed to create, maintain and produce to the Board’s representative the change of PIC inventories required by K.A.R. 68-20-16(a) and K.A.R. 68-7-12a(f).

G. The Pharmacy failed to maintain and produce to the Board's representative hard copies of controlled substances prescriptions as required by K.A.R. 68-20-16(a) and K.A.R. 68-7-12(f).

H. Incident reports were prepared that did not include all of the information required by K.A.R. 68-7-12b(c).

I. Prescriptions were dispensed from the Pharmacy without a pharmacist personally offering to counsel the patient or patient's agent as required by 68-2-20(c).

6. Upon motion duly made, seconded and passed, the Board finds and concludes that the events described in paragraph 5 above, 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)(1).

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

A. ADMINISTRATIVE FINE. Within ten (10) days of the Board entering the Consent Order provided for herein, Respondent shall pay to the Kansas Pharmacy Board an administrative fine totaling \$13,240.00 comprised of the following:

- i. For operating without a Pharmacist-in-Charge for a period of greater than 30 days in violation of K.A.R. 68-1-2(a)(b) - \$2,740.00.
- ii. For allowing a person without a current pharmacy technician registration to perform functions as a pharmacy technician processing prescriptions - \$500.00.
- iii. For allowing pharmacy technicians to perform functions of a pharmacy technician without being supervised by a licensed pharmacist as required by K.S.A. 65-1626(pp) and for allowing non-pharmacists to perform judgmental functions that constituted the filling and refilling of prescriptions as prohibited by K.A.R. 68-2-20(b) - \$2,000.00.

Matter of Shopko Pharmacy # 2702, No. 16-192A (Kan. Bd. of Pharmacy)

STIPULATION AND CONSENT ORDER

- iv. For failing to provide adequate security controls and procedures to guard against the theft and diversion of controlled substances as required by K.A.R. 68-20-15a(a) - \$1,000.00.
- v. For failing to create, maintain and produce to the Board's representative required controlled substance inventories for the years 2012, 2013, 2014 and 2015 as required by K.A.R. 68-20-16 - \$2,500.00.
- vi. For failing to create, maintain and produce to the Board's representative the inventories required by K.A.R. 68-20-16(a) and K.A.R. 68-7-12a(f) - \$2,500.00.
- vii. For failing to maintain and produce to the Board's representative hard copies of controlled substances prescriptions as required by K.A.R. 68-20-16(a) and K.A.R. 68-7-12(f) - \$500.00.
- viii. For preparing incident reports that did not include all of the information required by K.A.R. 68-7-12b(c) - \$500.00.
- ix. For dispensing prescriptions without a pharmacist personally offering to counsel the patient or patient's agent as required by 68-2-20(c) \$1,000.00.

B. 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:

- i. Comply fully with this Stipulation and Consent Order;
- ii. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws relating to Kansas pharmacies;
- iii. *Have the District Manager responsible for the Pharmacy personally appear at the Board meeting at the time this Stipulation and Consent Order is considered by the Board. It shall be the Respondent's responsibility to contact the Board's Executive Director to determine when and where to appear.*

8. 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

Matter of Shopko Pharmacy # 2702, No. 16-192A (Kan. Bd. of Pharmacy)

STIPULATION AND CONSENT ORDER

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.

9. 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.

10. 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.

11. 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.

12. 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 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 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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 Alexandra Blasi, JD, MBA, its Executive Secretary at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.


ENTERED AND EFFECTIVE this 17th day of August, 2017.

KANSAS BOARD OF PHARMACY

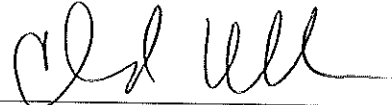
By: 
DR. JOHN WORDEN
President

AGREED AND APPROVED BY:

Shopko Pharmacy #2702
908 E. 14th Street
Larned, KS 67550

By: 
*Robert Swank
Director of Pharmacy Operations*

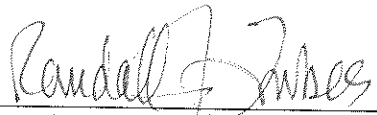
6/30/2017
Date


Chad Ullom, R.Ph.
Investigation Member

8/17/17
Date

Respondent's Attorney's Name & Address

Date


Randall J. Forbes, KS#09089 MO#64335
FRIEDEN, UNREIN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604
(785) 354-1100

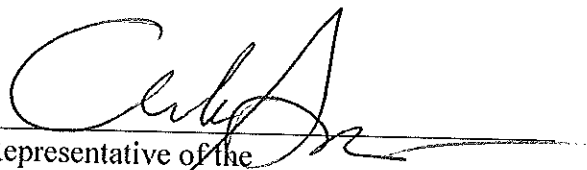
07/06/2017
Date

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 22 day of August, 2017 addressed to:

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

Shopko Pharmacy #2702
Attn.: Rob Swart, PharmD
700 Pilgrim Way
Green Bay, WI 54307


Representative of the
KANSAS BOARD OF PHARMACY