

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
MICHAEL BENNETT, R. PH.)
Kansas License No. 1-13529) Case No. 17-236

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Michael Bennett, R. Ph. ("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 his attorney, N/A at this time, Michael V. Bennett

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 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 1-13529 ("Kansas License"). 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's Investigation Member has received certain information, investigated and determined that there are reasonable grounds to believe that Respondent has committed one or more acts in violation of K.S.A. 65-1627(a) which would justify the revocation or imposition

of other disciplinary action against his Kansas License under the provisions of K.S.A. 65-1627(a) and the assessment of an appropriate fine against Respondent under the provisions of KS.A. 65-1658.

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 as follows:

A. On November 8, 2017 Respondent was working as a staff pharmacist at the Pratt Regional Medical Center Hospital Pharmacy (“Pharmacy”).

B. That same day, other Pharmacy staff became concerned that Respondent was under the influence of and impaired by alcohol while working at the Pharmacy.

C. That same day, other Pharmacy staff sampled the liquid in a tumbler Respondent had been drinking from by using a sterile syringe to withdraw some of the liquid from the tumbler.

D. That same day, the sampled liquid was tested in the Hospital lab and was found to contain a high level of alcohol.

E. That same day, the Hospital’s Vice President of Patient Services asked Respondent to submit to an alcohol test. Rather than submit to the test, Respondent resigned his position with the Hospital.

F. On November 26, 2017 Respondent was arrested on suspicion of driving under the influence of alcohol or drugs and transporting an open container.

6. Upon motion duly made, seconded and passed, the Board finds and concludes that Respondent's conduct, as described above, violates the Act and such conduct warrants the

imposition of appropriate disciplinary action against Respondent's Kansas License under the provisions of pursuant to K.S.A. 65-1627 (a)(4).

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. IMPAIRED PROVIDER PROGRAM. If he has not already done so, Respondent shall immediately enter into a *Statement of Understanding* agreement with the Kansas Pharmacists Association Kansas Pharmacist Recovery Network ("KsPRN Agreement") for a period of no less than 5 years. Respondent shall fully cooperate with the recommendations and requirements of the persons managing and implementing KsPRN Agreement, the recommendations and requirements of the persons managing and implementing the evaluation and treatment programs recommended or required by KsPRN Agreement and the further requirements of the Board. Respondent shall, at all times, be in full compliance with the requirements of the KsPRN Agreement and other requirement placed upon him by the Kansas Pharmacists Association Kansas Pharmacist Recovery Network ("KsPRN"), *including, but not limited to full and continued compliance with the requirement to cooperate with requests for random bodily fluid drug screens, as provided in his KsPRN Agreement.* The Respondent shall authorize KsPRN 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 the KsPRN 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 KsPRN Agreement for a 5-year period.*

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B. SUSPENSION. The Respondent's Kansas license to practice pharmacy shall be suspended until further order of the Board. The Respondent may not petition the Board for termination of the suspension until the Respondent has been in full compliance with the terms of the KsPRN Agreement and without any positive drug or alcohol screen for a period of no less than 12 months.

C. PROBATION FOLLOWING SUSPENSION. Following termination of the suspension of Respondent's license to practice pharmacy provided for herein, Respondent's license shall be placed on probation for a period of five (5) years ("Probation Period").

D. LICENSE RESTRICTION AND REQUIREMENTS DURING PROBATION. During the Probation Period, the Respondent's license to practice pharmacy shall be restricted and Respondent shall comply with identified requirements as follows:

- i. Respondent shall not serve as a manager, supervisor, preceptor or consultant at any Kansas pharmacy during the Probation Period.
- ii. Prior to accepting employment or changing location of any employment which requires a pharmacist license, Respondent shall provide a complete copy of this Stipulation to each pharmacist manager and immediate supervisor at each location in the state of Kansas at which Respondent intends to practice pharmacy during the Probation Period.
- iii. Respondent shall not work alone during the Probation Period.
- iv. Respondent shall not fill prescriptions for himself or any of his immediate family members during the Probation Period.
- v. Respondent shall not serve as a pharmacist-in-charge during the Probation Period.
- vi. Within thirty (30) days after Respondent accepts employment or changes location of any employment as a pharmacist in the state of Kansas during the Probation Period, each pharmacist manager and immediate supervisor shall submit a written report to KsPRN using forms provided by KsPRN setting forth:

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- (a) The name and address of the employer of Respondent and the name of the pharmacist manager and immediate supervisor;
- (b) The duties and responsibilities to be carried out by Respondent;
- (c) An acknowledgment from Respondent's pharmacist manager and immediate supervisor that he or she has received a complete copy of this Order, and that he or she has read and understands its contents, including the nature of the misconduct which forms the basis of this disciplinary action;
- (d) An affirmative statement that the pharmacist manager and immediate supervisor agree to notify the Board, in writing, within seventy-two (72) hours of any evidence of a subsequent violation by Respondent of a violation of this Stipulation, or of the Kansas Pharmacy Act, or Board rules and regulations governing the practice of pharmacy; and
- (e) If there is a change in the management and/or supervision of Respondent where Respondent is employed in the practice of pharmacy, Respondent agrees to provide a complete copy of this Stipulation to his new manager and/or supervisor, immediately upon that new manager or supervisor assuming his or her duties. Within thirty (3) days of receipt of the Stipulation, the new manager or supervisor shall report said receipt to KsPRN as well as fulfillment requirements of paragraph 7D (a) through (d) as indicated above.

C. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Consent Order he 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. *Advise the Board's Executive Secretary within 10 days of being charged with any crime.*

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 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 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 Investigation Member or its attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Consent Action or the Final Order provided for herein.

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 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 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 him to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Consent Order and the Final Order provided for herein.

13. The Respondent acknowledges that he enters into this Stipulation and Consent Order freely and voluntarily after consultation with counsel of his choosing. The Respondent further acknowledges that he has read this Stipulation and Consent order in its entirety, that he understands its legal consequences and that he 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 him. 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.

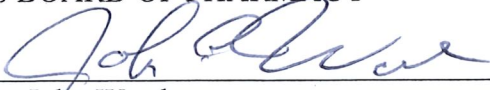
16. Upon approval and entry of the Final Order by the Board, this Stipulation and Consent Order shall be a public record in the custody of the Board.

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 and shall supersede the terms of the 2013 Consent Order.

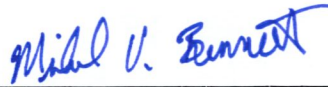
18. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Order provided for herein to file a petition for judicial review in the District Court of Shawnee County, Kansas in accordance with the Kansas 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 Director at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.

ENTERED AND EFFECTIVE this 8th day of March, 2018.

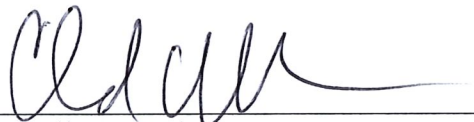
KANSAS BOARD OF PHARMACY

By: 
Dr. John Worden
President

AGREED AND APPROVED BY:


Michael Bennett, R. Ph.


12/27/17
Date


Chad Ullom, R.Ph.
Investigation Member

3/8/18
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

12/29/2017
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 12th day of March, 2018 addressed to:

Randall J. Forbes
FRIEDEN, UNREIN & FORBES, LLP
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Representative of the
KANSAS BOARD OF PHARMACY