

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
SETH DEPASQUALE, R.PH.)
Kansas License No. 1-106950) Case No. 20-259

STIPULATION AND CONSENT ORDER

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

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden & Forbes, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. 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.*, ("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 her Kansas license number 1-106950 ("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 and employed by BET Pharm located in Lexington Kentucky and registered by the Board as a Kansas non-resident pharmacy.

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 her 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:

A. At all times relevant hereto, Respondent was the pharmacist employed and working at the BET Pharm Pharmacy located at 1501 Bull Lea Road, Ste. 102B, Lexington, Kentucky ("Pharmacy").

B. On March 12, 2020, the Board entered a Consent Order in Case No. 19-520B ("Prior Consent Order"), which, among other things, disciplined Respondent's Kansas License by placing it in a probation status for a period of four (4) years and providing that during that probation period he could not serve as a Pharmacist-in-Charge ("PIC") of a pharmacy.

C. Prior to March 12, 2020, Respondent was identified as PIC of the Pharmacy, the Pharmacy being required to have a PIC licensed in Kansas for it to be registered by Kansas.

D. Notwithstanding the Prior Consent Order, Respondent remained the Pharmacy PIC until September 14, 2020 in direct violation of the Board's order.

E. On July 23, 2019, the Kentucky Board of Pharmacy entered an Agreed Order disciplining Respondent's Kentucky pharmacist license for allowing pharmacy technicians to work in the Pharmacy without a pharmacist being present in violation of the Kentucky Pharmacy Law ("Kentucky Discipline"). The Kentucky Discipline, among other things, required

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Responded to obtain six (6) hours of continuing education in the area of compounding (“Kentucky Required CE”).

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 pursuant to K.S.A. 65-1627(a)(16) for failure to comply with the Prior Consent Order.

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 10 days of the effective date of the Consent Order contemplated hereby, Respondent shall pay to the Board an administrative fine in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) (“Fine”).

B. SUSPENSION. Respondent's Kansas License shall be suspended until the Fine is paid in full.

C. PROBATION. In addition to the probation provided for in the Prior Consent Order, Respondent's Kansas License shall be on a probationary status for a period from the effective date of the Consent Order provided for herein through September 1, 2025 (“Additional Probation Period”). During the Additional Probation Period Respondent shall comply with all applicable laws, shall not serve as a PIC or a Preceptor, and shall report to the Board in writing any discipline of any pharmacist license he holds within 10 days of the effective date of the discipline.

D. ADVISE EMPLOYER. During the Additional Probation Period, Respondent shall advise his current and any future employer that he is prohibited by this Consent Order from serving as a PIC.

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E. KENTUCKY REQUIRED CE. Within 20 days of the effective date of the Consent Order provided for herein, Respondent shall provide the Board proof that he has successfully completed the Kentucky Required CE. Respondent may not use the Kentucky Required CE to meet the continuing education requirement for future renew his Kansas License.

F. 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:

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

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, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Consent Order is 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 and entered as a final order 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 as a final order of the Board. 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 Consent Order provided for herein.

13. The Respondent acknowledges that he enters into this Stipulation and Consent Order freely and voluntarily after consultation with or an opportunity to consult with counsel of her 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.

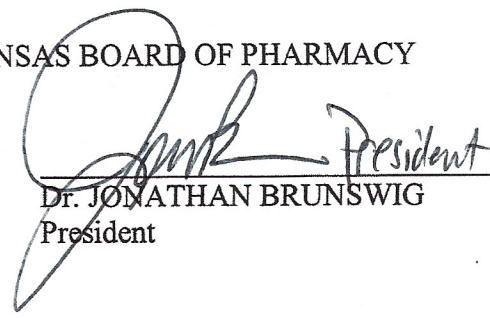
17. This Stipulation and Consent Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

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 a District Court of 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 December, 2020.

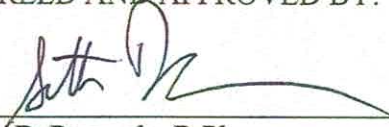
KANSAS BOARD OF PHARMACY

By:

 President

Dr. JONATHAN BRUNSWIG
President

AGREED AND APPROVED BY:



Seth DePasquale, R.Ph.
416 Dudley Rd.
Lexington, KY 40502

11/17/20

Date




Dr. Terica Gatewood
Investigation Member

12/15/20

Date

Respondent's Attorney's Name & Address

Date



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

12/01/2020

Date

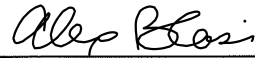
Counsel for the Kansas Board of Pharmacy

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 17th day of December, 2020 addressed to:

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

Seth DePasquale, R.Ph.
416 Dudley Rd.
Lexington, KY 40502



Representative of the
KANSAS BOARD OF PHARMACY