

Filed By
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KANSAS STATE
BOARD OF PHARMACY

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
MARY V. DRAKE, R.PH.)
)
_____)

Case No. 15-113

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Mary V. Drake, R.Ph. ("Applicant") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Unrein & Forbes, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Applicant is represented herein by her 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 license to practice pharmacy.

1. On July 6, 2015 the Board received from the National Association of Boards of Pharmacy Applicant's application to transfer her Missouri pharmacist license to the State of Kansas ("Applicant's Application") and thereby obtain a Kansas pharmacist's license without examination.

4. The Board has received information from the National Association of Boards of Pharmacy indicating that on July 10, 2012, the Illinois Department of Financial and Professional Regulation entered a Consent Order in Case No. 2011-10653 by which it took disciplinary action against Applicant's Illinois license to practice pharmacy ("Illinois Consent

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Order”). The Illinois Consent Order included a finding that Applicant had diverted controlled substances from her pharmacy employer. The discipline imposed by the Illinois Consent Order included a requirement that Applicant enter into an Aftercare Agreement with the Aftercare Program and remain in compliance with the requirements of that Aftercare Agreement. The Board has also received information from the National Association of Boards of Pharmacy indicating that on December 19, 2014 discipline was imposed on Applicant’s Missouri pharmacist license, based upon the Illinois Consent Order, by way of a settlement agreement between Applicant and the Missouri Board of Pharmacy.

5. Pursuant to K.S.A. 65-1631(d), the Board may deny an application for licensure without examination for any of the reasons for which a pharmacist may be disciplined as set forth in K.S.A. 65-1627(a)(1) through (a)(13).

6. Pursuant to K.S.A. 65-1627(a)(3), the Board may take disciplinary action against the license of a pharmacist if that pharmacist is found to be guilty of unprofessional conduct, as defined by K.S.A. 65-1626(ccc)(5), for being in unlawful possession of drugs.

7. Pursuant to K.S.A. 65-1627(a)(12), the Board may take disciplinary action against the license of a pharmacist if that pharmacist’s license has been disciplined by another state’s licensing authority.

8. Applicant 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 that the discipline imposed by the Illinois Consent Order and the misconduct that lead to it are sufficient grounds for the Board to deny Applicant’s Application.

9. Upon motion duly made, seconded and passed, the Board finds and concludes that Applicant’s Application should be granted upon the following conditions:

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A. Applicant shall remain in full compliance with the requirements of the Illinois Consent Order, including compliance with the required Aftercare Agreement.

B. If at some time hereafter, Applicant begins to practice as a pharmacist in the State of Kansas she shall comply with the following requirements:

i. Before beginning practice as a pharmacist in the State of Kansas, enter into a *Statement of Understanding* agreement with the Kansas Pharmacists Association Committee on Impaired Pharmacy Practice Program (“CIPP Agreement”).

ii. Fully cooperate with the recommendations and requirements of the persons managing and implementing the CIPP Agreement, the recommendations and requirements of the persons managing and implementing the evaluation and treatment programs recommended or required by the CIPP Agreement and the further requirements of the Board.

iii. At all times, be in full compliance with the requirements of the CIPP Agreement and other requirement placed upon her by the Kansas Pharmacists Association Committee on Impaired Pharmacy Practice Program (“CIPP”), *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 her CIPP Agreement.*

iv. Authorize CIPP and any provider of evaluation or treatment programs she engages in to provide full and complete documentation and information regarding the Applicant's involvement in the programs, her evaluations and treatment, including, but not limited to, all records and medical reports to the Board.

v. *Before being released from the requirements of the CIPP Agreement, make a request to the Board for release, appear before the Board and provided proof sufficient to the Board that she has been in substantial compliance with the CIPP Agreement.*

10. The Applicant agrees and consents and the Board finds concludes and orders that the additional requirements are just and appropriate under the circumstances:

A. OTHER REQUIREMENTS. Applicant acknowledges and agrees that as a condition of this Stipulation and Final Agency Order she must, and the Board further orders the Applicant to:

1. Comply fully with this Stipulation and Final Agency 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;
3. *Advise the Board's Executive Secretary within 10 days of being charged with any crime.*

7. Applicant 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 Applicant or her attorney. In the event that this Stipulation and Consent Order is not accepted and approved by the Board, the Applicant 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 and entered as a final order by the Board. The Applicant

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 Applicant 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 Applicant 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 Applicant acknowledges that she has the following rights:

- (a) To have formal notice of charges served upon her;
- (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 Applicant 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 her to those provided for herein. The Applicant further waives the right to seek reconsideration or

appeal or otherwise contest this Stipulation and Final Agency Order and the Final Order provided for herein.

12. The Applicant acknowledges that she enters into this Stipulation and Consent Order freely and voluntarily after consultation with or an opportunity to consult with counsel of her choosing. The Applicant further acknowledges that she has read this Stipulation and Consent Order in its entirety, that she understands its legal consequences and that she agrees that none of its terms are unconscionable, arbitrary or capricious.

13. Time is of the essence to this Stipulation and Consent Order. Applicant 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 her. The pendency of any disciplinary action arising out of an alleged violation of this Stipulation and Consent Order shall not affect the obligation of Applicant 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.

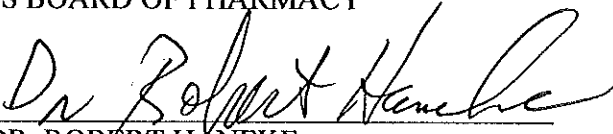
16. This Stipulation and Consent Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

17. The Applicant acknowledges that she has been advised by the Board that she 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 Carly Haynes, its Interim Executive Secretary, at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Applicant hereby waives those rights.

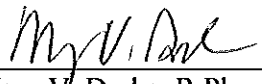
ENTERED AND EFFECTIVE this 6th day of November, 2015.

KANSAS BOARD OF PHARMACY

By:


DR. ROBERT HANEKE
President

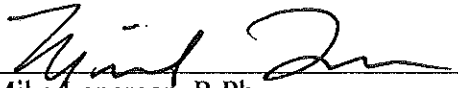
AGREED AND APPROVED BY:



Mary V. Drake, R.Ph.

10/30/2015

Date



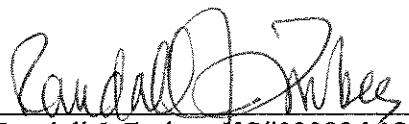
Mike Lonergan, R.Ph.
Investigation Member

11-5-15

Date

Applicant'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

11/6/2015

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 10th day of November, 2015 addressed to:

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

Mary V. Drake, R.Ph.
7900 Diamond Springs Dr.
Godfrey, IL 62035



Kansas Board of Pharmacy Staff