

BEFORE THE KANSAS BOARD OF PHARMACY

Filed By

OCT 02 2006

KANSAS STATE
Board of Pharmacy

In the Matter of)
)
KATHERINE A. HAYDEN, R.PH.)
Kansas License No. 1-09507)

Case No. 05-27

STIPULATION AND FINAL AGENCY ORDER

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

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by her attorney, Darin M. Conklin of Alderson, Alderson, Weiler, Conklin, Burghart & Crow, L.L.C., 2101 S.W. 21st Street, Topeka, Kansas 66604-3174.

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.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas license to practice pharmacy.

3. The Board previously issued Respondent license number 1-09507, which entitled her to practice pharmacy in the State of Kansas ("Respondent's License").

4. The Respondent is not presently entitled to engage in the practice of pharmacy in the State of Kansas by reason of an Emergency Agency Order entered by the Board on June 7, 2005. In the Emergency Agency Order, the Respondent's License was suspended until further order of the Board. At all times relevant hereto, the Respondent held a current license to practice pharmacy in the State of Kansas.

5. The Board has received certain information, has investigated and has determined that there are reasonable grounds to believe that the Respondent has committed an act or acts in violation of the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.*

Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board that, as the owner of The Medicine Shoppe Pharmacy in Hays, Kansas, on multiple occasions, she gave controlled substances to individuals who did not have a prescription for the drugs.

Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board that, as the owner of The Medicine Shoppe Pharmacy in Hays, Kansas, on one or more occasion, she failed to keep records and maintain inventories in conformance with recordkeeping and inventory requirements.

Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board that, as the owner of The Medicine Shoppe Pharmacy in Hays, Kansas, on multiple occasions, she failed to cancel a written or emergency prescription for a controlled substance listed in Schedule II.

The Board finds and concludes that Respondent's conduct, as described above, violates K.A.R. 68-20-16 and K.A.R. 68-20-19 and is grounds for disciplinary action in the State of Kansas pursuant to K.S.A. 65-1627(a)(3), (5), (6), and (8).

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

A. FINE. Respondent hereby agrees and consents to the Board's entry of an order assessing against her an administrative fine in the amount of Five Thousand Dollars (\$5,000.00) for giving controlled substances to individuals who did not have a prescription for

the drugs, to be paid to the Board within ten (10) days of the effective date of the Final Agency Order contemplated hereby. Respondent hereby agrees and consents to the Board's entry of an order assessing against her an administrative fine in the amount of Five Thousand Dollars (\$5,000.00) for failing to keep records and maintain inventories in conformance with recordkeeping and inventory requirements, to be paid to the Board within sixty (60) days of the effective date of the Final Agency Order contemplated hereby. Respondent hereby agrees and consents to the Board's entry of an order assessing against her an administrative fine in the amount of Five Thousand Dollars (\$5,000.00) for failing to cancel written or emergency prescriptions for a controlled substance listed in Schedule II, to be paid to the Board within one-hundred and twenty (120) days of the effective date of the Final Agency Order contemplated hereby.

B. PROBATION. Respondent hereby agrees and consents to the Board's entry of an order placing her Kansas license to practice pharmacy on probation for a period of sixty (60) months from the effective date of the Final Agency Order contemplated hereby. If the Respondent commits an act during the probation period that constitutes a violation of the Kansas Pharmacy Act or the Board's regulations, the Board, after conducting a hearing in accordance with the Kansas Pharmacy Act, may suspend the Respondent's license and the suspension shall be in addition to any other discipline the Board might order for the subsequent violation(s).

C. SUSPENSION. Respondent hereby agrees and consents to the Board's entry of an order whereby the suspension of her license to practice pharmacy in the State of Kansas shall be considered served from June 7, 2005 until the effective date of the Final Agency Order contemplated hereby.

D. RESTRICTION ON ACTING AS PHARMACIST IN CHARGE.

During the probation period beginning on the effective date of the Final Agency Order contemplated hereby, the Respondent shall not serve or perform the duties of a pharmacist in charge in any practice setting. After the probation period, but before serving or performing the duties of a pharmacist in charge in any practice setting, the Respondent shall take, and satisfactorily achieve the minimum passing requirements, of the pharmacist in charge examination. The Respondent will immediately notify the Board office within ten (10) days of any change in her employment.

E. CONTINUED MEDICAL TREATMENT. During the probation period beginning on the effective date of the Final Agency Order contemplated hereby, the Respondent shall continue to follow all of the treatment recommendations of Ken Loos, M.S., LMLP, LCP, of High Plains Mental Health Center, Hays, Kansas, or any other medical provider that may replace Mr. Loos.

F. ANNUAL REPORT OF CONTINUED MEDICAL TREATMENT. During the probation period beginning on the effective date of the Final Agency Order contemplated hereby, it is requested that Ken Loos, M.S., LMLP, LCP, of High Plains Mental Health Center, Hays, Kansas, or any other medical provider that may replace Mr. Loos, provide an annual report to the Board, beginning in December 2006, regarding the Respondent's condition and treatment.

G. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Final Agency Order she must:

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 pharmacists; and

3. Appear at the Board meeting at which the Stipulation is considered.

It shall be the Respondent's responsibility to contact the Board's Executive Director at the Board office to determine the time and place when the Stipulation shall be considered.

7. Respondent agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and its attorney regarding the investigation which led 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 Final Agency Order and the Final Order provided for herein, with or without the presence of the Respondent or her attorney. In the event that this Stipulation and Final Agency 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 Final Agency Order or the information mentioned in the preceding sentence and further agrees to waive any claim of a 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 Final Agency 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 attorney or the Board's Investigation Member shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Final Agency Action or the Final Order provided for herein.

9. The Respondent agrees that this Stipulation and Final Agency 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 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 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 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 and the Act for Judicial Review and Civil Enforcement of Agency Action.

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 her to those provided for herein. The Respondent 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 Respondent acknowledges that she enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of her choosing or an

opportunity to do so. The Respondent further acknowledges that she has read this Stipulation and Final Agency 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 Final Agency Order. Respondent acknowledges and agrees that any violation of this Stipulation and Final Agency 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 Final Agency Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Final Agency Order.

14. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:

- A. Adverse Action Classification: "1173 Publicly Available Fine/Monetary Penalty."
- B. Adverse Action Classification: "1135 Suspension of License."
- C. Adverse Action Classification: "1125 Probation of License."
- D. Basis for Action: "10 Unprofessional Conduct."

15. The following statement will be made in the Board's newsletter: "A pharmacist in Hays, Kansas was disciplined by the Board entering an order recognizing the previous suspension of license, placing the license on a 60 month probation period, and assessing an administrative fine of \$15,000.00."

16. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and

the remaining provisions of this Stipulation and Final Agency Order shall be given full force and effect.

17. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

18. This Stipulation and Final Agency 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.

19. The Respondent 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 Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.*, and to serve such a petition for judicial review on the Kansas Pharmacy Board by serving Debra L. Billingsley, its Executive Director, at Landon Office Building, 900 SW Jackson, Room 560, Topeka, Kansas 66612-1231. The Respondent hereby waives those rights.

AGREED AND ACCEPTED BY:



KATHERINE A. HAYDEN, R.Ph.

9/21/06

Date



JOANNE GILSTRAP, R.Ph.
Investigation Member

9/26/06

Date

APPROVED BY:



Darin M. Conklin #15060
ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.
2101 S.W. 21st Street
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ATTORNEY FOR RESPONDENT

9/22/06
Date

Randall J. Forbes #09089
FRIEDEN & FORBES
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Topeka, Kansas 66603
TEL: 785/232-7266
FAX: 785/232-5841
DISCIPLINARY COUNSEL

Date

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In the Matter of)
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Kansas License No. 1-09507)

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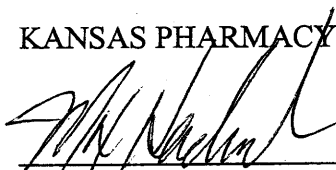
FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas Pharmacy Board (the "Board") approves and accepts the within Stipulation and Final Agency Order and incorporates the provisions thereof as the Final Order of the Board.

ENTERED AND EFFECTIVE this 30 day of Sept, 2006.

KANSAS PHARMACY BOARD

By:



Max Heidrick, R.Ph.
President

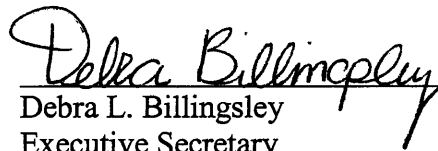
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND FINAL AGENCY ORDER was served by depositing same in the United States mail, postage prepaid, this 2 day of October, 2006 addressed to:

Randall J. Forbes
FRIEDEN & FORBES
555 South Kansas Avenue, Suite 303
Topeka, Kansas 66603

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Debra L. Billingsley
Executive Secretary
KANSAS PHARMACY BOARD