

**BEFORE THE KANSAS STATE BOARD OF PHARMACY**

Filed

JUN 09 2010

KANSAS STATE  
Board of Pharmacy

In the Matter of )  
 )  
RANDY HILGERS, R.PH. )  
Kansas License No. 1-09211 )

Case No. 08-79

**STIPULATION AND FINAL AGENCY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas State Board of Pharmacy (the "Board") and Randy Hilgers ("Respondent"), as follows:

1. The Board is represented herein by its attorneys, Randall J. Forbes and Justin L. McFarland of Frieden, Unrein, Forbes & Biggs, LLP, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, Darin Conklin of Alderson, Alderson, Weiler, Conklin, Burghart & Crow, L.L.C., 2101 SW 21<sup>st</sup> Street, Topeka, Kansas 66604.

2. The Board is the Kansas agency vested with the authority to carry out and enforce the provisions of the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas registration to operate a pharmacy.

3. Respondent (Kansas License No. 1-09211) is presently authorized to engage in the practice of pharmacy in the State of Kansas. At all times relevant hereto, the Respondent has held a current license to engage in the practice of pharmacy in the State of Kansas.

**STIPULATION AND FINAL AGENCY ORDER**

*Matter of Randy Hilgers*, Case No. 08-79 (Kan. St. Bd. Pharm.)

4. The Board has received information and investigated allegations against Respondent. Based on its investigation, the Board has determined that there are reasonable grounds for believing that Respondent has violated the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.* (the "KPA" or the "Act") and that Respondent is accordingly subject to appropriate disciplinary action under applicable provisions of the Act, including K.S.A. 65-1627(a)(3) as defined at K.S.A. 65-1626(nn)(2) and (3) and K.S.A. 65-1626(rr)(2), (3), (5), K.S.A. 65-1627(a)(8), K.S.A. 65-1637(c)(1), K.A.R. 68-7-12 and K.A.R. 68-7-14.

5. Respondent hereby agrees not to contest and shall not contest, in this and any other proceeding before the Board, any of the following matters:

A. While the Respondent was the pharmacist-in-charge of Cosentino's Food Stores Pharmacy in Leawood Kansas (the "Pharmacy"), he caused the Pharmacy to purchase, in a twelve month period, 19,300 capsules of Chlorpheniramine 12 mg. extended release capsules, a prescription-only drug (the "Drug"). Although the capsules were found to be gone from the Pharmacy's inventory, no prescriptions for the Drug or records of the sale of the Drug could be found in the Pharmacy's records.

B. At all times relevant hereto, the Respondent did not have a valid prescription for the Drug. Notwithstanding, the Respondent dispensed large quantities of the Drug to himself without the knowledge or approval of the Pharmacy.

C. The Respondent failed to create any records of the self-dispensing.

D. The Board's investigation revealed that a coworker of Respondent reported that on more than one occasion the Respondent dispensed, without charge, the Drug to other individuals who the Respondent knew did not have a valid prescription for the Drug and failed to

create a record of the dispensing. Respondent admits to dispensing, without charge, the Drug to one individual who the Respondent knew did not have a valid prescription for the Drug and failed to create a record for the dispensing. In addition, the Respondent blacked out the words "For Prescription Use Only" from the label on the vial in which the Drug was dispensed.

6. The Board hereby finds, concludes and otherwise determines that Respondent's conduct, as described in Paragraph 5 of this Stipulation and Final Agency Order, constitutes reasonable grounds for disciplinary action under the KPA, including the provisions of K.S.A. 65-1627(a)(3) as defined at K.S.A. 65-1626(nn)(2) and (3) and K.S.A. 65-1626(rr)(2), (3), (5), K.S.A. 65-1627(a)(8), K.S.A. 65-1637(c)(1), K.A.R. 68-7-12 and K.A.R. 68-7-14.

7. The Board and Respondent expressly understand, stipulate and agree, and the Board hereby finds, concludes and otherwise determines, that the following disposition of Case 08-79 is just and appropriate under the circumstances:

A. **LIMITATION ON PRACTICE.** Respondent hereby agrees and consents to the Board's entry of this order limiting his license to practice pharmacy in the State of Kansas for a period of 5 years, beginning on the effective date of the Final Agency Order Contemplated hereby. During the period of limitation, Respondent's license to practice pharmacy in the State of Kansas shall be limited to prohibit Respondent from working alone if working with prescription medications. Respondent is not prohibited from working alone if not working with prescription medications.

B. **IMPAIRED PROVIDER PROGRAM.** Unless otherwise terminated pursuant to the terms of this paragraph, Respondent shall continue his agreement with the Kansas Pharmacy Impaired Provider Program until June 9, 2015. Respondent shall fully cooperate with

the recommendations and requirements of the person managing and implementing the Kansas Pharmacy Impaired Provider Program, the recommendations and requirements of the persons managing and implementing the evaluation and treatment programs recommended or required by the Kansas Pharmacy Impaired Provider Program and the further requirements of the Board as set forth below. Specifically, the Board requires and Respondent agrees to initiate treatment in accordance with the recommendations of a Kansas Impaired Provider Program approved psychotherapist and fully cooperate with the recommendations and requirements of the psychotherapist and any professional to whom the psychotherapist refers Respondent. Respondent shall at all times be in full compliance with the requirements of the Kansas Pharmacy Impaired Provider Program. The Respondent shall authorize the Kansas Pharmacy Impaired Provider Program 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.

C. OTHER REQUIREMENTS. Respondent further understands, stipulates and agrees that, as additional conditions of this Stipulation and Final Agency Order, Respondent must: (i) fully comply with all provisions of this Stipulation and Final Agency Order and (ii) fully comply with all federal and state laws, including the Kansas Pharmacy Act and the Board's rules and regulations, relating to the practice of pharmacy in the State of Kansas.

8. Respondent stipulates and agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and/or its attorneys 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 Agency Order provided for herein, with or without the presence of Respondent or its attorney. In the event that this Stipulation and Final Agency Order and the Final Agency Order provided for herein are not accepted and approved by the Board, 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 right and/or claim of right under any provision of law, including any actual or alleged entitlement to due process of law, to seek or obtain the disqualification of any Board member as a result of the Board member's consideration of said document and information.

9. Except as provided in Paragraph 7 above, the stipulations and agreements set forth herein shall not become binding until this Stipulation and Final Agency Action is approved by the Board and the Final Agency Order provided for herein is entered by the Board. Respondent acknowledges that the approval of the Board's Investigation Member or its attorney shall not constitute the approval of the Board nor obligate the Board to approve this Stipulation and Final Agency Action or the Final Order provided for herein.

10. 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. 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.

11. This Stipulation and Final Agency Order constitutes the entire agreement of the parties and no term, condition or provision hereof may be altered, modified or amended except

pursuant to a subsequent written agreement signed by the parties. This Stipulation and Final Agency Order shall be governed by and interpreted in accordance with the laws of the State of Kansas.

12. 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 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.

Respondent freely waives these rights and acknowledges that said waiver is made voluntarily and in consideration of the Board's agreement to limit any disciplinary action against Respondent in Case No 08-79 in accordance with the terms and conditions of this Stipulation and Final Agency Order. Respondent further waives any and all rights he has or may have to seek administrative reconsideration, to seek judicial review by any court, or to otherwise contest this Stipulation and Final Agency Order and the Final Order provided for herein.

13. Respondent acknowledges that he enters into this Stipulation and Final Agency Order freely and voluntarily after consultation or a reasonable opportunity to consult with counsel of his choosing. Respondent further acknowledges that he has read this Stipulation and Final Agency Order in its entirety and that he understands its legal consequences. Respondent

stipulates and agrees that none of the terms, conditions or provisions of this Stipulation and Final Agency Order are unconscionable, arbitrary, capricious or otherwise unreasonable.

14. 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 be deemed to be a willful violation of a lawful Board order and constitutes reasonable grounds for further disciplinary action against him. 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.

15. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event that any term, condition or provision of this Stipulation and Final Agency Order is held to be invalid or unenforceable by a court of competent jurisdiction, it shall be severed and all remaining terms, conditions and/or provisions of this Stipulation and Final Agency Order shall be given full force and effect.

16. Upon execution by all parties, this Stipulation and Final Agency Order shall be classified and maintained as a public record of the Kansas State Board of Pharmacy.

17. This Stipulation and Final Agency Order shall become effective on the day it is approved, accepted and made an order of the Board as a result of the execution and issuance of the Final Agency Order provided for herein.


18. Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Final Agency Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Agency 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 Billingsley, its Executive Secretary, at 900 SW Jackson Street, Topeka, Kansas 66612-1231. The Respondent hereby expressly waives all such rights.

**AGREED TO AND ACCEPTED BY:**

By:   
Randy Hilgers, R.Ph.

6-8-10  
Date

  
Shirley Arck, Pharm. D.  
Investigative Member of the Board

6-9-10  
Date



**APPROVED BY:**



Darin Conklin                      KS #15060  
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COUNSEL FOR THE RESPONDENT

6-8-10  
\_\_\_\_\_  
Date

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Justin L. McFarland                      KS #24247  
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DISCIPLINARY COUNSEL FOR THE BOARD

\_\_\_\_\_  
Date

**APPROVED BY:**

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DISCIPLINARY COUNSEL FOR THE BOARD

\_\_\_\_\_  
6-8-2010  
Date

**BEFORE THE KANSAS STATE BOARD OF PHARMACY**

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Kansas License No. 1-09211 )

Case No. 08-79

**FINAL AGENCY ORDER**

Upon motion duly made, seconded and passed, the Kansas State Board of Pharmacy (the "Board") approves and accepts the within Stipulation and Final Agency Order and hereby fully incorporates by this reference all provisions, findings, conclusions, terms and conditions therein as the final order of the Board in Case No. 08-79.

ENTERED AND EFFECTIVE this 9<sup>th</sup> day of June, 2010.

KANSAS STATE BOARD OF PHARMACY

By: Karen Branman  
President

**CERTIFICATE OF SERVICE**

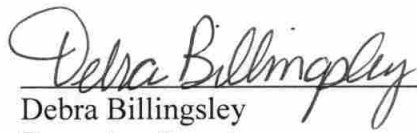
The undersigned hereby certifies that a genuine copy of the above and foregoing **STIPULATION AND FINAL AGENCY ORDER** was served by depositing same in the United States mail, postage prepaid, on this 9 day of June, 2010, properly addressed to:

Randy Hilgers

Meriden, KS

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Debra Billingsley  
Executive Secretary  
Kansas State Board of Pharmacy