

BEFORE THE STATE BOARD OF PHARMACY
STATE OF KANSAS

Received
JUN 08 2004
Kansas State
Board of Pharmacy

IN THE MATTER OF)
COMPLAINT AGAINST:)

JEFFREY HODGSON, R.Ph.)
License No. 1-13251)

Case No. 03-64
03-65

AGREED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

This matter comes for hearing on June 8, 2004, before the Kansas Board of Pharmacy (hereinafter referred to as "Board"). Board members Heidrick, Whitchurch, McFarland, Thompson, and Gilstrap were present. President Whitchurch presided. Marty M. Snyder, Assistant Attorney General, served as prosecutor for the Board. Respondent appeared in person and was represented by counsel, Steve Schwarm, Polsinelli, Shalton, Welte, Suelthaus, P.C. The Complaint in this matter is incorporated into this Agreed order by reference.

The Board and Respondent hereby agree to the following Findings of Fact, Conclusions of Law and Final Order. The Respondent has been advised of his right to contest the allegations against him, to cross examine witnesses, and to present witnesses and evidence in his own defense. The Respondent hereby knowingly and voluntarily waives these rights. In addition, Respondent understands and acknowledges that this document is a public record that is subject to the provisions of the Kansas Open Records Act, K.S.A. 40-215 *et seq.* Furthermore, Respondent understands and acknowledges that the Agreed Order does not affect any criminal, civil

or administrative charges that may be brought by any governmental entity other than the Kansas State Board of Pharmacy.

The Board waives its right to present evidence and witnesses in support of these allegations if this agreement is signed.

Should this Order not be accepted by the Board, it is agreed that neither the presentation of the Order to the Board nor the Board's consideration of the Order, will be deemed to have unfairly or illegally prejudiced the Board or its individual members and, therefore, will not be grounds for precluding the Board or any individual member of the Board from further participating in proceedings related to the matters set forth in the Order.

AGREED FINDINGS OF FACT

1. Jeffrey E. Hodgson, R.Ph. is a licensed pharmacist in the State of Kansas having been issued license number 1-13251. This fact is established through the official records of the Kansas Board of Pharmacy.

2. That from approximately September of 2002 until January of 2004, the Respondent diverted controlled substances Tussionex and Hydrocodone with an estimated cost to the pharmacy of \$5,247.97.

3. The Respondent took these controlled substances for his own use and he admits that he believes he became addicted.

4. That on January 6, 2004 the Board received a complaint from Lawrence Memorial Hospital in Lawrence, Kansas regarding a dispensing error for an 81 year old female patient with ovarian cancer. The complaint indicated that the patient's blood count dropped, pancytopenia developed and she suffered a syncopal episode as a result of the error. Respondent acknowledges and accepts the content of the complaint.

5. Board Pharmacy Inspector, Jim Kinderknecht conducted an Investigation and found that the Respondent had filled RX 0107482 N for purinethol 50 mg when the order was for P.T.U. 50 mg. This prescription was filled on November 13, 2003. The Respondent initialed the back of the prescription hardcopy as having filled the Prescription. Respondent acknowledges this finding.

6. That on December 15, 2003 the RX 0107482N was refilled incorrectly with purinethol 50 mg.

7. That on February 11, 2004 the Respondent entered into a Consent Agreement with the Board whereby he voluntarily agreed to cease practicing until further order of the Board. Respondent has fully complied with the February 11, 2004 Consent Agreement and, in fact, ceased practicing on January 2, 2004.

8. Respondent has fully cooperated with the Board investigation and voluntarily entered into the Kansas Pharmacy Impaired Provider Program.

AGREED CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter and over the Respondent pursuant the Kansas Pharmacy Act, K.S.A. 65-1625, *et seq.*

2. Any Finding of Fact which is properly a Conclusion of Law is hereby incorporated by reference and vice versa.

3. The Board has the express jurisdiction of the proceedings to revoke or suspend the license of any pharmacist licensed under the Kansas Pharmacy Act pursuant to K.S.A. 65-1627. Further the Board has the express authority to assess civil penalties to persons in violation of the Kansas Pharmacy Act pursuant to K.S.A 65-1658.

4. The State Board of Pharmacy may assess a civil fine in the amount of

\$5,000.00 against any licensee found to have violated K.S.A. 65-1627(a). See K.S.A. 65-1658.

5. The Board has the express jurisdiction to enact rules and regulations promulgated to carry out the Kansas Pharmacy Act. See K.S.A. 65-1630. The Board has the jurisdiction to enforce its rules and regulations. See K.S.A. 65-1627.

6. Respondent has admitted to violating K.S.A. 65-1627(a)(4) in that the licensee has been addicted to or has had a drug habit to such a degree as to render the licensee at relevant times unfit to practice the profession of pharmacy.

7. Respondent pharmacist has violated K.S.A. 65-1637(a) by failure to fill a prescription in strict conformity with any directions of the prescriber.

AGREED ORDER

1. Respondent Jeffrey E. Hodgson, as holder of pharmacist license No.13251, does not deny the above findings of fact but for the purpose of resolution of this matter will not contest the imposition of disciplinary sanctions.

2. Respondent agrees to a suspension of his pharmacist license for a period of 60 days with such to be deemed completely served without incident from April 9, 2004 to June 9, 2004.

3. Respondent agrees to be placed on probation for a period of five years from the effective date of the Final Order. During that probationary period the Respondent will enter into an agreement with the Kansas Pharmacy Impaired Provider Program or provide proof of present participation with the Kansas Pharmacy Impaired Provider Program. Respondent shall fully cooperate with 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. Respondent shall at all times be in compliance with the requirements of the Kansas Pharmacy Impaired Provider Program. The licensee shall authorize the Kansas Impaired Provider Program and any provider of evaluation or treatment programs he engages in to provide full and complete documentation and information regarding the Licensee's involvement in the programs, his evaluations and treatment, including but not limited to, all records and medical reports. If Respondent commits an act during the probation period that constitutes a failure to comply with the Kansas Impaired Provider Program the Respondent shall immediately cease practice until further order of the Board. At that time the Board may conduct a hearing in compliance with the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.* to determine whether additional action should be taken against the Respondent's license for any new allegations or violations of this agreement.

4. During the probationary period beginning on the effective date of the Final Agency Order contemplated hereby, Respondent shall not serve or perform the duties of a Pharmacist-In-Charge in any practice setting. The Respondent will provide the Board office with his place of employment and immediately notify the Board office within ten (10) days of any changes in his employment. Respondent shall be entitled to petition the Board for a modification of this Pharmacist-In-Charge provision after June 9, 2006.

5. Until further order of the Board, the Respondent shall not work in a pharmacy for any length of time unless another pharmacist or a pharmacy technician is also on duty in the pharmacy.

6. Failure of Respondent to abide by any of the terms of this Agreed Order

could result in further disciplinary action as allowed by the Kansas Pharmacy Act and the Board's rules. The Board, therefore, retains jurisdiction over the proceeding until all matters are finally resolved as set forth in the Agreed Order.

7. This Agreed Order 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.

8. The Respondent acknowledges that he enters into this Agreed Order freely and voluntarily after consultation with counsel of his choosing. The Respondent further acknowledges that he has read this Agreed and Final Order in its entirety, that he understands its legal consequences and that he agrees that none of its terms are unconscionable, arbitrary, or capricious.

9. 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 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 or other district court, as applicable, 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 petition for judicial review on the Kansas Pharmacy Board by serving Debra Billingsley, its Executive Director. The Respondent hereby waives those rights.

10. In addition to the above requirements, Respondent, for the first twelve months after he is employed in any pharmacy, shall provide a copy of any incident report completed in compliance with Kansas Administrative Regulation (K.A.R.) 68-7-

12b wherein Respondent is involved within forty-eight hours after such report is completed to the Board's Executive Director. This provision is in addition to the other requirements of K.A.R. 68-7-12b.

FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas State Board of Pharmacy approves and accepts the within Agreed Findings of Fact and Conclusions of Law and incorporates the provisions thereof as the Final Order of the Board.

THIS ORDER IS EFFECTIVE this 8th day of June, 2004.

KANS _____

By:

Frank Whitchurch, R.Ph.
President

~~JEFFREY E. HODGSON~~, R.Ph.

6-10-04
DATE

STEVE SCHWARM #13232
COUNSEL FOR LICENSEE

062904
DATE

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing AGREED FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER was sent by U.S. mail postage prepaid this 13 day of ~~June~~, 2004, addressed to the following: *July*

Jeffrey E. Hodgson, R.Ph.
1121 Summerfield Way
Lawrence, KS 66049

Steve Schwarm
Polsinelli, Shalton & Welte
555 S. Kansas Ave.
Topeka, KS 66603

and a copy sent via building mail to:

Marty M. Snyder
Kansas Attorney General's Office
120 SW 10th, 2nd Floor
Topeka, KS 66612-1597

Debra L. Billingsley *[Signature]*
Executive Secretary/Director