

Filed By

JUL 8 2020

KANSAS STATE BOARD OF PHARMACY

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
JOHN KELLSTROM, R.PH.) Case No. 19-611
Kansas License No. 1-10585)

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and John Kellstrom, 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 Act, 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 him Kansas license number 1-10585 ("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.

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 his 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 K.S.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. Prior to March 1, 2019, Palace Drug Company, LLC ("Palace Drug") owned and operated Kellstrom Pharmacy located at 1860 Claflin Road, Manhattan, Kansas and Kellstrom LTC located at 1862 Claflin Road, Manhattan, Kansas.

B. While owned by Palace Drug, the Board issued Kellstrom Pharmacy pharmacy registration number 2-08034. While owned by Palace Drug, the Board issued Kellstrom LTC pharmacy registration number 2-09807.

C. Effective March 1, 2019, Palace Drug sold Kellstrom Pharmacy and Kellstrom LTC to Ad Astra Pharmacy LLC ("Ad Astra").

D. At all times relevant hereto, including prior to March 1, 2019, both Kellstrom Pharmacy and Kellstrom LTC were registrants under the Kansas Controlled Substances Act, K.S.A. 65-4101 *et seq.* ("KCSA") and therefore required to comply with the requirements of the KCSA. Both pharmacies dispensed controlled substances.

E. K.S.A. 65-4121 requires all registrants under KCSA to keep records and maintain inventories in conformance with federal law and the additional rules and regulations of the Board.

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F. K.A.R. 68-20-17, a regulation adopted by the Board pursuant to the KCSA, requires that when a registrant is transferring C-II controlled substances, the use of a DEA Form 222 is required.

G. As part of the sale from Palace Drug to Ad Astra and effective March 1, 2019, all the drugs, including C-II controlled substances, located in Kellstrom Pharmacy and Kellstrom LTC were transferred from Palace Drug to Ad Astra.

H. When the C-II controlled substances located in Kellstrom Pharmacy and Kellstrom LTC were transferred effective March 1, 2019, a DEA Form 222 was not used and violations of K.A.R. 68-20-17 occurred.

I. Prior to March 1, 2019, Respondent was the sole owner of Palace Drug and therefore Kellstrom Pharmacy and Kellstrom LTC. As the sole owner of the pharmacies, Respondent was responsible for their compliance with applicable Kansas statutes and Board regulations.

J. Prior to March 1, 2019, Respondent was the Pharmacist-in-Charge ("PIC") of Kellstrom Pharmacy. K.A.R. 68-7-12(e), a regulation adopted by the Board pursuant to the Kansas Pharmacy Act, requires that an outgoing PIC must perform a controlled substances inventory before ceasing to be the PIC. Respondent ceased being the PIC of Kellstrom Pharmacy after March 1, 2019.

K. In violation of K.A.R. 68-7-12(e), Respondent failed to perform a controlled substances inventory for the Kellstrom Pharmacy controlled substances before ceasing to be the PIC.

L. 21 CFR 1304.22(a)(2)(IV) requires that a registrant pharmacy maintain documents reflecting its sale of controlled substances.

M. Respondent did not create or maintain the required records of the sale of the Kellstrom Pharmacy and Kellstrom LTC controlled substances transferred to Ad Astra. Therefore, violations of K.S.A. 65-4121 and 21 CFR 1304.22(a)(2)(IV) occurred.

N. K.S.A. 65-1627(a)(5) provides that the Board may revoke, suspend or place on probationary status the license of a licensed pharmacist if the licensee has violated a provision of the KCSA or rules and regulations adopted by the Board pursuant to the KCSA.

O. K.S.A. 65-1627(a)(8) provides that the Board may revoke, suspend or place on probationary status the license of a licensed pharmacy if the licensee has violated the Act or any rules and regulations adopted by the Board pursuant to the Act.

P. Respondent's failure to cause either Kellstrom Pharmacy or Kellstrom LTC to use a DEA Form 222 when transferring C-II controlled substances; Respondent's failure to cause either Kellstrom Pharmacy or Kellstrom LTC to maintain documents reflecting the sale of controlled substances; and Respondent's failure to perform an outgoing PIC controlled substances inventory for Kellstrom Pharmacy are each a basis for discipline of his Kansas License pursuant to K.S.A. 65-1627(a)(5) and 65-1627(a)(8).

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)(5) and 65-1627(a)(8).

7. The Respondent agrees and consents and the Board finds concludes and orders that the following disposition is just and appropriate under the circumstances:

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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 Three Thousand Dollars (\$3,000.00).

B. 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; and
2. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws relating to the practice of pharmacy.

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 his 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.

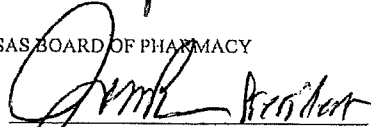
18. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final

Order provided for herein to file a petition for judicial review in 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 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 14th day of July, 2020.

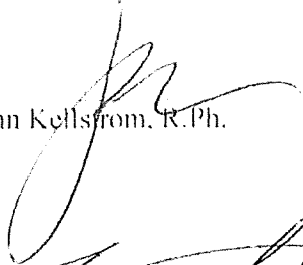
KANSAS BOARD OF PHARMACY

By:

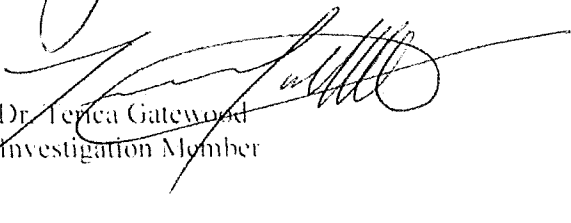

JONATHAN BRUNSWIG, R.PH.
President

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AGREED AND APPROVED BY:


John Kellstrom, R.Ph.


9/13/20
Date


Dr. Terica Gatewood
Investigation Member

6/18/2020
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

6/26/2020
Date

Disciplinary 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 8th day of July, 2020 addressed to:

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

John Kellstrom, R.Ph.
4300 Prairie Country Lane
Riley, KS 66531



Representative of the Executive Director
KANSAS BOARD OF PHARMACY