

BEFORE THE
KANSAS STATE BOARD OF PHARMACY
Landon State Office Building, Room 513
Topeka, Kansas 66612
785/296-4056

In The Matter

of

KENNETH ROGERS,
Registered Pharmacist, #1-09617,
Respondent

Case No.

CONSENT AGREEMENT AND ORDER

Now on this 7th day of January, 1999, the above-captioned matter comes before the Kansas State Board of Pharmacy (Board) by agreement of Kenneth Rogers, (Licensee) and the Kansas State Board of Pharmacy for the purpose of settling the above-captioned case.

Licensee hereby acknowledges the following:

1. Kenneth Rogers is a licensed pharmacist within the meaning of the Kansas Pharmacy Act, K.S.A. 65-1625 et seq. and amendments thereto.

2. On or about October 30, 1998, the Board received a report of information concerning Licensee's conduct alleging Licensee may have violated statutes and regulations governing the practice of pharmacy, to wit:

(a) K.S.A. 65-1637 which requires that when a pharmacist is not in attendance at a pharmacy, the premises shall be enclosed.

(b) K.S.A. 65-1627(a)(8) as interpreted by K.A.R. 68-1-8 which makes it the duty of every pharmacist in charge to ensure that a registered pharmacist is on duty at all times during which the pharmacy is open.

(c) K.S.A. 65-1627(a)(8) as interpreted by K.A.R. 68-2-11 which requires that the pharmacy section of a business regulated by the Kansas Board of Pharmacy be so constructed that it may be completely closed when a pharmacist is not on duty.

3. The Board conducted an investigation concerning Licensee's alleged violation of statutes and regulations.

4. During the investigation, Licensee was informed of the reported information, and was given the opportunity to respond to the allegations, and did respond to the allegations.

5. As a result of the investigation, the Board makes the following factual determinations:

(a) On or about October 30, 1998 at 10:40 am the Rogers Pharmacy located at 106 Main Street, Attica, Kansas was open for business with no pharmacist on duty. On that day, Ella Whatt purchased a prescription which was filled on October 29, 1998 from pharmacy technician Jamie Watts.

(b) On October 30, 1998 at 11:00 am there was no pharmacist on duty at Rogers Pharmacy. On that date the pharmacy section of Rogers Pharmacy could not be physically enclosed and secured.

(c) On October 30, 1998 at 11:00 am the pharmacy section of Rogers Pharmacy was open. There was no pharmacist on duty at that time.

6. As a result of the investigation, the Board determined that reasonable grounds exist to believe the Licensee has violated K.S.A. 65-1637; K.S.A. 65-1627(a)(8) as interpreted by K.A.R. 68-1-8; and K.S.A. 65-1627(a)(8) as interpreted by K.A.R. 68-2-11.

HOWEVER, Licensee and the Board mutually desire to enter into the Consent Agreement and Order in lieu of adjudicative proceedings to resolve the report of alleged violations.

WHEREFORE Licensee waives all rights to an adjudication of facts and law which could be determined pursuant to a hearing conducted in accordance with the Kansas administrative procedure act in relation to this matter.

WHEREFORE Licensee waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas act for judicial review in relation to this matter.

WHEREFORE Licensee consents to:

(a) The Licensee agrees to enclose and secure the pharmacy section of Rogers Pharmacy located at 106 Main Street in such a manner prescribed by Kansas law and regulations. The Licensee agrees that the pharmacy section of Rogers Pharmacy shall be permanently enclosed and secured no later than 60 days from the date this Consent Agreement and Order is accepted by

the Board on March 8, 1999. The Licensee agrees to notify the Board of the completion of the project enclosing and securing the pharmacy section of Rogers Pharmacy and consents to the inspection of that pharmacy by an employee of the Kansas Board of Pharmacy.

(b) The licensee agrees to three years probation from the date this Consent Agreement and Order is accepted by the Board.

(c) The Licensee agrees to take the Board of Pharmacy law exam and achieve a correct score of 85% or better. In the event the Licensee takes the Board of Pharmacy law exam and fails to achieve a score of 85% or greater, the Licensee's license to practice pharmacy will be suspended indefinitely until the Licensee achieves a score of 85% or greater on the pharmacy law exam. The pharmacy law exam will be given by a Board of Pharmacy employee at a time and place which is acceptable to the licensee and staff which will be not later than 60 days from the date this Consent Agreement and Order is accepted by the Board.

(d) The Licensee admits to the violation of three counts of the Kansas Pharmacy Act and its implementing rules and regulations. The Licensee agrees to pay a civil fine in the amount of Two Hundred Fifty dollars and no cents (\$250.00) for each of the three violations of the Kansas Pharmacy Act. The Licensee shall pay the entire Seven Hundred Fifty dollar and no cent (\$750.00) civil penalty upon acceptance of this Consent Agreement and Order by the Board.

(e) This Consent Agreement and Order constitutes the entire agreement between the Licensee and may be modified or amended only by written agreement signed by the parties.

(f) Licensee shall be responsible for all costs incurred in satisfying the terms of the Consent Agreement and Order.

(g) Notification of the Consent Agreement and Order shall be provided to another jurisdiction's licensing board if the Licensee is also licensed, registered or certified in another jurisdiction.

(h) This Consent Agreement and Order is reportable to state and federal licensing agencies and applicable professional associations.

(i) Evidence of Licensee's willful failure to comply with any of the conditions will result in a hearing, with notice and opportunity to be heard, to determine whether Licensee has in fact willfully failed to comply with any conditions. Upon determination at such hearing that Licensee has willfully breached, violated or failed to comply with any condition, Licensee understands and

agrees that the license shall be revoked.

(j) Licensee acknowledges an affirmative duty to notify the Board within five (5) days of any changes in personal or professional status which would inhibit compliance with conditions. In such event, a designee of the Board is authorized to modify or amend this Consent Agreement and Order in writing.

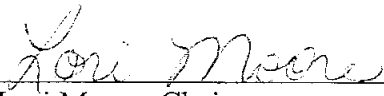
WHEREFORE Licensee consents to the submission of this Consent Agreement and Order to the Kansas State Board of Pharmacy, and understands that upon approval of the Board, this Consent Agreement and Order becomes a final order of the Board.

WHEREFORE Licensee agrees that all information in the possession of the Board or its attorney regarding the complaint which led to this disciplinary action, the investigation of the complaint 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 Consent Agreement and Order and the Final Order provided for herein, with or without the presence of the licensee or the licensee's attorney. In the event that this Consent Agreement and 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 Consent Agreement and 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.

WHEREFORE the Board agrees that so long as licensee complies with the above conditions that the Board will not initiate further disciplinary action against Licensee in relation to violation of K.S.A. 65-1625 et seq regarding this matter.

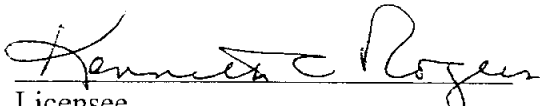
WHEREFORE the provisions above are consented to and are hereby made the final order of the Kansas State Board of Pharmacy which become effective on the date indicated in the below Certificate of Service.

IT IS SO ORDERED.



Lori Moore, Chair
Kansas State Board of Pharmacy

APPROVED AND CONSENTED TO:

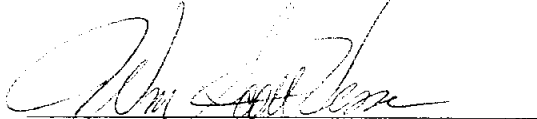


Licensee

12-15-98

(Date)

SUBMITTED AND APPROVED BY:



WM. SCOTT HESSE
Assistant Attorney General
2d Floor, Judicial Center
Topeka, Kansas 66612
785/296-2215

1/7/99

(Date)

Certificate of Service

This is to certify that on the 7 day of January, 1998 a true and correct copy of the above and foregoing Consent Agreement and Order was deposited in the U.S. mail, first class postage prepaid, addressed to:

Kenneth Rogers
Rogers Pharmacy
106 Main Street
Attica, Kansas 67009

Wm. Scott Hesse
Assistant Attorney General
2d Floor, Judicial Center
Topeka, Kansas 66614



For the Kansas State Board of Pharmacy