

DEC 3 2001

BEFORE THE KANSAS BOARD OF PHARMACY

*In The Matter Of* )  
 )  
MICHAEL R. LINDER, R.PH. ) Case No. 00-57-A  
 )  
LICENSE NO. 1-11223 )

**FINAL AGENCY ORDER**

On November 6, 2001, a hearing was held before the Kansas Pharmacy Board (the "Board") on the disciplinary petition filed against Michael R. Linder, R.Ph. ("Respondent"). After considering the evidence admitted at the hearing, the Board enters the following final agency order.

**I. FINDING OF FACT**

1. On August 29, 2000, following an evidentiary hearing, the Board entered an Emergency Agency Order regarding Respondent. As part of that Emergency Agency Order, the Board found that between July 27, 1999 and August 17, 2000, while working as a pharmacist in a Kansas pharmacy, the Respondent diverted and /or consumed: 23,166 tablets of Norco; 8,072 tablets of Vicoprophen; 9,583 tablets of Hydrocodone 10mg/ APAP 500mg; 945 tablets of Lortab; and 253 tablets of Fiorinal with Codine. The Board also found that the Respondent admitted to being addicted to controlled substances for a significant period of time and to consuming large quantities of controlled substances on a daily basis, including days he worked in a pharmacy as a pharmacist. Finding that Respondent's practice of pharmacy after having consumed such quantities of drugs posed an immediate danger to the public, the Emergency Agency Order suspended Respondent's license to practice pharmacy in Kansas until further order of the Board. The August 29, 2000 Emergency Agency Order was not appealed.

2. On June 5, 2001, following an evidentiary hearing, the Board entered a Final Agency Order (the "June Order"). As part of that June Order, the Board found that the matters set forth in a Stipulation between the Board's disciplinary counsel and the Respondent, a copy of which is attached hereto, were true and that all the allegations in the First Amended Petition filed in case 9000-97, a copy of which is also attached hereto, with the exception of those contained in paragraphs 23 and Count 4, were true. As part of the June Order, the Board found that at various times over a period up to five years and while licensed by the Board to practice pharmacy in Kansas, Respondent diverted large quantities of drugs from his employer and consumed large quantities of various drugs, without a prescription, while functioning as a pharmacist. As part of the June Order, the Board found that on the dates of December 8, 1998, January 3, 1999, February 27, 1999, June 1, 1999, July 9, 1999 and July 12, 1999 the Respondent misfilled prescriptions. As part of the June Order, the Board found that On December 15, 2000 Respondent was convicted of one count of felony theft as a result of his diverting drugs from his employer. The findings of the June Order are incorporated as findings herein.

3. In the June Order the Board concluded that the conduct of the Respondent in diverting drugs from his employer and consuming and being under the influence of drugs while performing as a pharmacist constituted unprofessional conduct as defined by K.S.A. 65-1626 (hh)(5) and (7); professional incompetence as defined by K.S.A. 65-1626 (ee)(3); and grounds for discipline of Respondent's license to practice pharmacy in the State of Kansas pursuant to K.S.A. 65-1627 (a)(3), (4), (5) and (13). In the June Order the Board also concluded that the Respondent was subject to discipline, pursuant to K.S.A. 65-1627 (a)(6) for failing to fill prescriptions in strict accordance with the directions of the prescribing practitioner and that the Respondent was subject to discipline, pursuant to K.S.A. 65-1627 (a)(2) as a result of having been convicted of a felony.

4. As part of the June Order, the Board required, among other things, that “[f]or a period of five (5) years from the effective date of [the June Order], the Respondent shall not work in a pharmacy unless another pharmacist or pharmacy technician is also physically present in the physical confines of the pharmacy area.” In that Order, the Board also required that the Respondent enter into a new agreement with the Kansas Pharmacy Impaired Provider Program and fully cooperate with the recommendations and requirements of the program and those managing and implementing the program and the treatment that was part of the program.

5. The Kansas Pharmacy Impaired Provider Program is administered in part by the Heart of America Professional Network, Inc. (“HAPN”). Among other things, HAPN identifies needed treatment programs and monitors compliance by participating pharmacists, such as the Respondent, with the requirements of those treatment programs.

6. On September 6, 2001, the Respondent began employment as a pharmacist at the Kmart store at 47<sup>th</sup> and Broadway in Wichita, Kansas.

7. At an emergency hearing held October 19, 2001, in response to a question from the Board President, Respondent testified that since September 6, 200, he had never worked in the Kmart pharmacy alone.

8. Gwendolyn Tarrance worked in the pharmacy at the Kmart store located at 47<sup>th</sup> and Broadway in Wichita, Kansas during the same time period that Respondent did. On September 22, 2001 when she arrived for work, the Respondent was in the pharmacy alone filling prescriptions. When she left for lunch that day the Respondent remained in the pharmacy working alone. On September 23, 2001, when she arrived for work, the Respondent was in the pharmacy working alone. When she left for lunch that day, the Respondent remained in the pharmacy working alone. On October 6, 2001 when she arrived for work, the Respondent was in the pharmacy working alone. When she left for lunch that day, the Respondent remained in the

pharmacy working alone. On October 7, 2001, when she arrived for work, the Respondent was in the pharmacy working alone. When she left for lunch that day, the Respondent remained in the pharmacy working alone. On multiple occasions Gwendolyn Tarrance and the Respondent were the only persons working in the pharmacy. Gwendolyn Tarrance was neither a pharmacist nor a pharmacy technician, a fact the Respondent knew at the time he worked with her in the Kmart pharmacy.

9. Within weeks of having started work at the Kmart pharmacy and on a day after Respondent had been at work at the Kmart store at 47<sup>th</sup> and Broadway in Wichita, Kansas, he self administered Tylenol III with Codine, a controlled substance, that had been prescribed for his daughter. The Respondent did not have a prescription issued by a practitioner or a mid-level practitioner, as those terms are used in the Pharmacy Law, for Tylenol III with Codine. Taking this drug was contrary to the requirements of the Respondent's participation in the Kansas Pharmacy Impaired Provider Program. Shortly thereafter, on September 28, 2001, Respondent was requested to submit a urine sample for purposes of a urinalysis. The test results were positive for morphine. When Mary Carder, Executive Director of HAPN, asked Respondent if he had taken a drug that had not been prescribed for him he initially denied doing so. Some hours later he called her and admitted he had. The self administration of the controlled substance, under the circumstances, and his subsequent denial of having done so are yet additional indications of bad decisions Respondent makes regarding drugs.

## II. CONCLUSIONS OF LAW AND FACT

1. Respondent, during his career as a Kansas pharmacist, has had a serious drug addiction. He has converted large quantities of prescription drugs from his employer. He has admitted to self administering large quantities of drugs while working as a pharmacist at a

Kansas pharmacy. The Board has determined that Respondent's addiction and his conversion and/or consumption of such large quantities of drugs adversely effected his ability to function as a pharmacist and posed a real and immediate threat to the public.

2. Notwithstanding Respondent's history of drug addiction and conversion of drugs from his employer, the Board's June Order allowed him to retain his Kansas pharmacy license and to return to work as a pharmacist on specific conditions.

3. Subsequent to June 5, 2001, the Respondent violated the terms of the June Order by self administering Tylenol III with Codine, a controlled substance, for which he did not have a prescription from a practitioner or a mid-level practitioner, as those terms are used in the Pharmacy Law.

4. Subsequent to June 5, 2001, the Respondent violated the terms of the June Order by working alone in the Kmart pharmacy.

5. Subsequent to June 5, 2001, the Respondent violated the terms of the June Order by working in the Kmart pharmacy when the only other person in the pharmacy was a person Respondent knew was neither a pharmacist nor a pharmacy technician.

6. On October 19, 2001 the Respondent testified falsely under oath in response to a question posed to him by the Board President regarding his compliance with the terms of the June Order.

7. After self administering Tylenol III with Codine, Respondent falsely denied having done so to the Executive Director of HAPN, the entity Respondent knew was responsible for monitoring his compliance with the his treatment program.

8. The Respondent's conduct from July 1999 forward, as found herein, constitutes a pattern of behavior which demonstrates a manifest incapacity and incompetence to practice

pharmacy. The Respondent is guilty of professional incompetence as defined by K.S.A. 65- 1626 (ee)(3), subjecting his Kansas Pharmacy License to discipline pursuant to K.S.A. 65- 1627 (a)(3).

9. The Respondent's self administration of Tylenol III with Codine, a controlled substance, for which he did not have a prescription from a practitioner or a mid-level practitioner, as those terms are used in the Pharmacy Law, is grounds to subject his Kansas Pharmacy License to discipline pursuant to K.S.A. 65- 1627 (a)(13).

10. The Respondent's failure to comply with the terms of the June Order is grounds to subject his Kansas Pharmacy License to discipline pursuant to K.S.A. 65- 1627 (a)(8).

11. The Respondent's false testimony under oath in response to a question posed to him by the Board President is grounds to subject his Kansas Pharmacy License to discipline pursuant to K.S.A. 65- 1627 (a)(15).

12. Under all the circumstances of this and the previous case involving Respondent, his self administration of a controlled substance for which he had no prescription, knowing his own history with drugs and that to do so violated the terms of the June Order and the requirements of his impaired provider program, within weeks of returning to work in a pharmacy and thereafter denying having done so, indicates the Respondent is addicted to drugs to such a degree as to render him unfit to practice the profession of pharmacy, subjecting his Kansas Pharmacy License to discipline pursuant to K.S.A. 65- 1627 (a)(4).

### III. FINAL ORDER

Based upon the findings and conclusions set forth or incorporated herein, the Board orders that the Respondent's Kansas Pharmacy License be and it is hereby revoked.

Within fifteen (15) days after service of this Final Agency Order, either party may file a petition for reconsideration pursuant to K.S.A. 77-529. By the terms of the Stipulation, Respondent has waived his right to do so.

Within the time limits established in K.S.A. 77-613, either party may seek judicial review of this Final Agency Order, pursuant to said statute. The agency officer designated to receive service of a petition for judicial review is:

Susan Linn, Executive Director  
Kansas Pharmacy Board  
Landon State Office Building #513  
Topeka, KS 66612

By the terms of the Stipulation, Respondent has waived his right to do so.

IT IS SO ORDERED.

Nov. 30, 2001

Date

Vicki Schmidt, R.Ph.

VICKI SCHMIDT, R.PH.

President

Kansas Pharmacy Board

DEC 3 2001

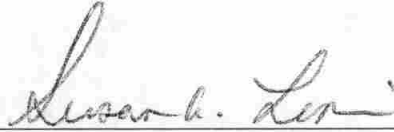
CERTIFICATE OF SERVICE

I hereby certify that I did, on the 10 day of December, 2001, deposit in the United States mail, postage prepaid, a copy of the foregoing FINAL AGENCY ORDER, properly addressed to the following:

Michael R. Linder, R.Ph.  
1304 West 11<sup>th</sup> Street  
Hutchison, KS 67501

Michael E. Francis  
Sloan, Listrom, Eisenbarth, Sloan & Glassman  
700 Kansas Avenue #714  
Topeka, KS 66603

~~Alan Varner~~ Steve Phillips  
Assistant Attorney General  
120 West 10<sup>th</sup> 2<sup>nd</sup> Floor  
Topeka, KS 66612



---

Susan Linn  
Executive Director  
Kansas Pharmacy Board