

Doug M. Taylor, KS Bar #23690  
Kansas State Board of Pharmacy  
800 SW Jackson, Suite 1414  
Topeka, KS 66612  
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Filed  
SEP 14 2012  
KANSAS STATE  
Board of Pharmacy

**BEFORE THE KANSAS STATE BOARD OF PHARMACY**

In the Matter of	)		
	)	Case Nos.	09-52
	)		10-10
Cesar T. Miller, R.Ph.	)		
Kansas License No. 1-11729	)	OAH No.	11BP0001

**CONSENT AGREEMENT AND FINAL ORDER**

COMES NOW, the Kansas State Board of Pharmacy ("the Board"), by and through its Compliance Counsel Doug M. Taylor, and Cesar T. Miller, R.Ph. ("Respondent"), by and through his counsel, Brian C. Wright of Wright Law Office, Chartered, and reviews the file on Cesar T. Miller, R.Ph. ("Respondent").

THEREUPON, being duly advised on the matter, the Board and Respondent agree as follows:

1. Respondent is entitled to engage in the practice of pharmacy in the State of Kansas by virtue of having been issued License Number 1-11729.
2. This Consent Agreement and the filing of such document are in accordance with applicable law, and the Board has jurisdiction to enter into the Consent Agreement as provided by K.S.A. 65-1627a. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Agreement shall constitute the Board's Final Order.

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3. The Kansas Pharmacy Act is constitutional on its face and as applied to this case. Respondent agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
4. Respondent voluntarily and knowingly waives his right to a hearing. Respondent voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Respondent voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.
5. The terms and conditions of this Consent Agreement are entered into between the undersigned parties and are submitted for the purpose of allowing these terms and conditions to become an order of the Board. This Consent Agreement shall not be binding until an authorized signature is affixed at the end of this document.
6. The Board has received information and has investigated the same and has reason to believe there are grounds pursuant to K.S.A. 65-1627(a)(3), (6) and (8), as further defined by K.S.A. 65-1626(ee), K.A.R. 68-20-18(b)(1), and K.A.R. 68-20-19(c)(1) to take disciplinary action with respect to Respondent's license under the Kansas Pharmacy Act.
7. Specifically, the Board alleges that in the course of practice, Respondent violated the Kansas Pharmacy Act in that:
  - a. Respondent exhibited professional incompetency by continuing to fill new prescriptions under the name of a doctor who had died prior to the date the prescription was recorded as being issued.

- b. Respondent issued partial fills of Schedule II controlled substances without notifying the prescriber of the situation.
  - c. Respondent did not fulfill his corresponding responsibility to ensure that a prescription had been issued for a legitimate medical purpose by failing to contact the purported prescribing physician when a patient's use of controlled substances had significantly increased over time and when such patient was requesting such controlled substances at a suspiciously frequent rate.
  - d. Respondent exhibited professional incompetency by failing to contact the purported prescribing physician when a patient's use of controlled substances had significantly increased over time and when such patient was requesting such controlled substances at a suspiciously frequent rate.
8. The undersigned parties agree that if these allegations were proven, they would constitute violations of the Kansas Pharmacy Act.
9. Respondent acknowledges that if formal hearing proceedings were conducted and Respondent presented no exhibits, witnesses or other evidence, the Board would have sufficient evidence to prove a prima facie case that Respondent had violated the Kansas Pharmacy Act with respect to the allegations.
10. Respondent does not admit the allegations made by the Board, but for the sole purpose of this Consent Agreement, Respondent will not contest the allegations as they relate to the actions stated in Paragraph 7(b), involving failure to notify the prescriber of a partial fill of a Schedule II controlled substance.

11. Pursuant to K.S.A. 65-1627, the Board may revoke, suspend, place in probationary status or deny a renewal of any license of any pharmacist. Pursuant to K.S.A. 65-1658, the Board has the authority to impose civil fines for violations of the Kansas Pharmacy Act.
12. In lieu of conducting a formal hearing, Respondent, by signature affixed to this Consent Agreement, hereby voluntarily agrees to disciplinary action in the form of probation against his license to practice pharmacy as follows:
  - a. Respondent's probationary status shall run for a period of five years, during which time he shall continue to comply with the Kansas Pharmacy Act, and any rules and regulations promulgated thereunder.
  - b. Respondent shall be assessed a civil fine in the amount of \$15,000.00.
  - c. Respondent shall implement a perpetual inventory system to monitor all Schedule II controlled substances and any prescription order containing hydrocodone.
  - d. Within 60 days of the time this Consent Agreement and Final Order is approved by the Board, Respondent shall, at his own expense, hire and retain a pharmacy consultant, to be approved in advance by the Board. The utilization of such pharmacy consultant will meet the following guidelines:
    - i. Upon the initial visit, the consultant shall conduct a full audit and review of Respondent's record-keeping methods, policies and procedures, and will assist in the implementation of improvements to those procedures when necessary.
    - ii. The pharmacy consultant shall prepare a written review of Respondent's compliance with the Board's statutory and regulatory requirements, to be submitted to the Board.

- iii. Within six months from the date this Consent Agreement and Final Order is approved by the Board, the pharmacy consultant will submit to Respondent and to the Board its evaluation and review of Respondent's policies and procedures.
- iv. In response to the pharmacy consultant's review, Respondent shall promptly modify his policies and procedures as necessary to comply with the Board's statutory and regulatory requirements.
- v. Upon receipt and review of the pharmacy consultant's review of Respondent's policies and procedures, the Board may require the pharmacy consultant to perform periodic additional evaluations and reviews of Respondent, only as may be reasonably necessary to assure a complete assessment of Respondent's continued compliance.
- vi. Failure by Respondent to comply with the Board's statutory and regulatory requirements, although revealed to the Board by the pharmacy consultant's reports, shall remain a basis for disciplinary action by the Board.
- vii. Following submission of the pharmacy consultant's initial evaluation and review, the pharmacy consultant shall file quarterly reports with the Board regarding Respondent's ongoing compliance with the Board's statutory and regulatory requirements. The reports shall be filed no later than March 5<sup>th</sup>, June 5<sup>th</sup>, September 5<sup>th</sup> and December 5<sup>th</sup> in the calendar year following the submission of the pharmacy consultant's initial report discussed in Paragraph (iii).

13. Respondent understands and agrees that any failure to comply with the terms of this Consent Agreement may result in the Board taking any such further disciplinary action as the Board deems appropriate, in accordance with the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*

14. By signing below, Respondent acknowledges that he has read this Consent Agreement and fully understands its terms and requirements, and that it was entered into freely and voluntarily.

IT IS THEREFORE ORDERED that the Consent Agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

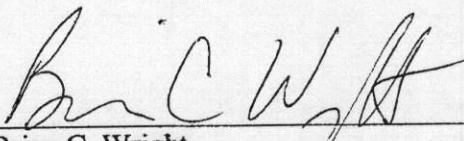
IT IS SO ORDERED on this 13 day of September, 2012.

**SIGNED:**



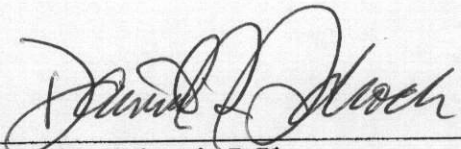
Cesar T. Miller, R.Ph.  
925 Mountain View Ct.  
Goodland, KS 67735

Date: 8-29-12



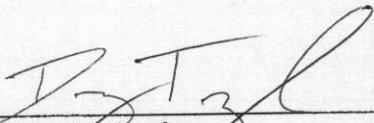
Brian C. Wright  
Attorney for Respondent  
Wright Law Office, Chartered  
4312 10<sup>th</sup> St. Place  
Great Bend, KS 67530

Date: Sept 6, 2012



David R. Schoech, R.Ph.  
Investigative Member  
Kansas Board of Pharmacy  
800 SW Jackson, Ste. 1414  
Topeka, KS 66612

Date: 9/14/2012

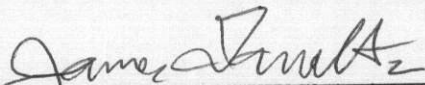


Doug M. Taylor  
Compliance Counsel  
Kansas Board of Pharmacy  
800 SW Jackson, Ste. 1414  
Topeka, KS 66612  
(785) 296-8734  
doug.taylor@pharmacy.ks.gov

Date: 9/11/12

**APPROVAL OF THE BOARD OF PHARMACY**

This Consent Agreement has been reviewed by the Kansas State Board of Pharmacy and is agreed to as of the date stated below.



James Garrelts, Pharm.D., President  
Kansas State Board of Pharmacy  
800 SW Jackson St., Ste. 1414  
Topeka, KS 66612

Date: 9/13/2012

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14 day of September, 2012, I deposited a true and correct copy of the above and foregoing Consent Agreement in the United States Mail, postage prepaid, and addressed to:

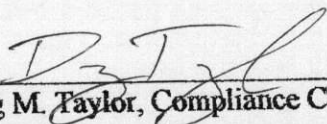
Cesar T. Miller, R.Ph.  
925 Mountain View Ct.  
Goodland, KS 67735

and

Brian C. Wright  
Attorney for Respondent  
Wright Law Offices, Chartered  
4312 10<sup>th</sup> St. Place  
Great Bend, KS 67530

and via facsimile to:

Michele L. Tunnell  
Administrative Law Judge  
Office of Administrative Hearings  
1020 S. Kansas Ave.  
Topeka, KS 66612  
Fax: (785) 296-4848

  
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Doug M. Taylor, Compliance Counsel