

Marty M. Snyder, S.Ct. #11317  
Office of Attorney General Phill Kline  
120 SW 10<sup>th</sup> St., Third Floor  
Topeka, KS 66612  
(785) 296-2215

**Received**  
APR 21 2004  
Kansas State  
Board of Pharmacy

**BEFORE THE KANSAS BOARD OF PHARMACY**

IN THE MATTER )  
)  
OF )  
)  
ROBERT W. NYQUIST )  
LICENSE #1-08708, )  
Respondent. )  
\_\_\_\_\_ )

Case No. 03-37

**CONSENT AGREEMENT AND ORDER**

The Kansas State Board of Pharmacy and Robert W. Nyquist, hereby enter into the following Consent Agreement this 20 day of April 2004.

WITNESSETH:

WHEREAS, Robert W. Nyquist, (hereinafter referred to as "Licensee") is properly licensed as a pharmacist pursuant to the Kansas Pharmacy Act, K.S.A. 65-1625 *et seq.*, having been issued license number 08708 which expires June 30, 2004; and

WHEREAS, the Kansas Board of Pharmacy (hereinafter referred to as "Board") is a state agency empowered to enforce the Kansas Pharmacy Act, K.S.A. 65-1625 *et seq.*, including the use of disciplinary actions to suspend, revoke or otherwise limit the licenses of Kansas pharmacists who violate the Act; and

WHEREAS, the parties stipulate that the Licensee is the owner and Pharmacist-in-Charge of APOTEK Pharmacy located in Lindsborg, Kansas; and

WHEREAS, on or about April 18, 2003, a routine inspection was conducted at APOTEK Pharmacy whereby it was discovered that there were many unsigned CII prescriptions in violation of K.A.R. 68-20-19(a)(1); and

WHEREAS, the Pharmacy Inspector discussed with the pharmacists on duty the need to have all CII prescriptions signed unless it met the specifications of an emergency prescription; and

WHEREAS, on or about July 25, 2003, a follow-up inspection was conducted at APOTEK Pharmacy and the pharmacy inspector discovered ten additional unsigned CII prescriptions; and

WHEREAS, the prescriptions in question were emergency prescription orders for a nursing home from a physician(s) who was out of town. In this case, the physician/prescriber did not follow-up with a written order within seven days.

WHEREAS, the above facts state violations of K.A.R. 68-20-19(a)(1) which states, (a) Requirements of prescription. (1) A pharmacist shall dispense a controlled substance listed in schedule II, which is a prescription drug as determined under these regulations, only pursuant to a written prescription signed by the prescribing practitioner, except as provided in paragraph (4) of this subsection.

WHEREAS, the above facts state violations of K.A.R. 68-20-10a (e)(5)(D)(i) in that, within seven days after authorizing an emergency prescription drug order, the prescriber shall cause a written prescription drug order for the

emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to all other federal and state laws and regulations, the prescription drug order shall have written on its face "authorized for emergency dispensing" and the date of the transmitted prescription drug order.

WHEREAS, K.A.R. 68-20-10a (e)(5)(D)(iii) states, upon receipt, the dispensing pharmacist shall attach this written prescription drug order to the hard copy of the electronically transmitted prescription drug order. The pharmacist shall notify the nearest office of the U.S. drug enforcement agency (DEA) if the prescriber fails to deliver a written prescription drug order.

WHEREAS, the above facts state violations of K.S.A. 65-1627(a)(5) in that the board may take action against a licensee upon a finding that, the licensee has violated a provision of the federal or state food, drug and cosmetic act, the uniform controlled substances act of the state of Kansas, or any rule and regulation adopted under any such act.

WHEREAS, Licensee and Board mutually desire to enter into this Consent Agreement and Order in lieu of formal adjudicative proceedings pursuant to the Kansas Administrative Procedure Act to resolve the report of alleged violations.

WHEREFORE, for good and valuable consideration, the Licensee and the Board agree as follows:

1. Licensee shall pay to the Kansas Board of Pharmacy an administrative fine of Five Hundred Dollars (\$500.00) within ten (10) days of the date of the Final Order; and
2. Licensee shall take the Pharmacist-In-Charge (PIC) Examination

and upon completion return it to the Board office and receive a 75 percent passing score within sixty (60) days of the date of the Final Order; and

3. Licensee shall provide staff pharmacists with a Law Examination of 100 questions to be furnished by the Board. A passing grade of 75 percent is required and Licensee shall provide completed tests to the Board office within sixty (60) days of the date of the Final Order. The Licensee shall also review the Kansas Uniform Controlled Substance requirements with the pharmacy technicians.

4. Licensee agrees this Consent Agreement and Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter it and the Final Order provided for herein. The Licensee further agrees that the Kansas Pharmacy Act, K.S.A. 65-1625 *et seq.* is constitutional on its face and as applied in this case.

5. This Consent Agreement and Order constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by the parties. The Agreement shall be interpreted in accordance with the laws of the State of Kansas.

6. The Licensee 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 making specific findings of facts and

conclusions of law based only upon evidence admitted at such hearing;

- D. To take advantage of all applicable provisions of the Kansas Administrative Procedure Act and the Act for Judicial Review and Civil Enforcement of Agency Actions.

The Licensee 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 that set forth herein. The licensee further waives the right to seek reconsideration or appeal or otherwise contest this Consent Agreement and Order and Final Order provided for herein.

7. The Licensee acknowledges that he enters this Consent Agreement and Order freely and voluntarily after having the opportunity to consult with counsel of his choosing. The Licensee further acknowledges that he has read this Consent Agreement and Order in its entirety, that he understands its legal consequences and that he agrees that none of its terms are unconscionable, arbitrary, or capricious.

8. Licensee acknowledges and agrees that any violation of this Consent Agreement and 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 Consent Agreement and Order shall not affect the obligation of Licensee to comply with all terms and conditions of this Consent Agreement and Order.

9. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:

- A. Adverse Action Classification: "Administrative Fine"
- B. Basis for Action: "Other", i.e. "Failure to have signed CII prescriptions on file."

10. This Consent Agreement and Order constitutes the entire and final Agreement of the parties. In the event any provision of this Consent Agreement and Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Consent Agreement and Order shall be given full force and effect.

11. Upon execution by all parties, this Consent Agreement and Order shall be a public record in the custody of the Board.

12. This Consent Agreement and 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.

13. The Licensee acknowledges that he has been advised by the Board that he would have the right within fifteen (15) days after service of the Final Order provided herein to file a petition for reconsideration with the Board and the right within thirty (30) days after service of the Final Order provided for herein to file a petition for judicial review in the District Court in Shawnee County, Kansas 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 a petition for judicial review on the Kansas Board of Pharmacy by serving its Executive Director at 900

SW Jackson, Ste. 560, Topeka, KS 66612-1231. The Respondent hereby waives those rights.

The preceding Consent Agreement and Order is agreed to and accepted by:

\_\_\_\_\_

Robert Nyquist, R.Ph.

4-20-04  
\_\_\_\_\_  
Date

Approved by:

\_\_\_\_\_

Marty M. Snyder  
Assistant Attorney General  
Kansas Attorney General's Office  
120 SW 10<sup>th</sup> Ave.  
Topeka, Kansas 66612-1597

4-26-04  
\_\_\_\_\_  
Date

BEFORE THE KANSAS PHARMACY BOARD

**Received**  
MAY 25 2004  
Kansas State  
Board of Pharmacy

In the Matter of )  
 )  
Robert W. Nyquist, R.Ph. )  
Kansas License No. 1-08708 )

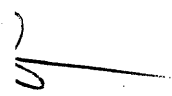
File No. 03-37

**FINAL ORDER**

Upon motion duly made, seconded and passed, the Kansas State Board of Pharmacy (the "Board") approves and accepts the within Stipulation and Final Agency Order and incorporates the provisions thereof as the Final Order of the Board.

ENTERED AND EFFECTIVE this 25 day of May 2004.

KANSAS PHARMACY BOARD

By:   
Frank Whitchurch, R.Ph.  
Vice-President

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above and foregoing CONSENT AGREEMENT AND ORDER was served by depositing same in the U.S. mail, first class postage prepaid, this 25 day of May, 2004, addressed to:

Robert W. Nyquist, R.Ph.  
110 Green  
Lindsborg, KS 67456

  
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Debra L. Billingsley  
Executive Director