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Frieden, Haynes & Forbes

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
ROBERT D. SCHROEDER, R.PH.)
Kansas License No. 1-11579)
_____)

Case No. 01-52

Office of
JAN 02 2003
Administrative Hearings

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Board of Pharmacy (the "Board") and Robert D. Schroeder, R.Ph. (the "Respondent") as follows:

1. The Board is represented herein by its attorneys, Randall J. Forbes and Terry A. Iles of Frieden, Haynes & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, Donald F. Hoffman of Dreiling, Bieker & Hoffman, LLP, 111 West 13th Street, Hays, Kansas 67601.

2. The Board is the Kansas agency vested with the authority, pursuant to K.S.A. 74-1603, *et seq.*, to carry out and enforce the provisions of the Kansas Pharmacy Act, K.S.A. 65-1625, *et seq.*, 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 1-11579. 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 has received certain information, has investigated and has determined that there are reasonable grounds to believe that the Respondent has committed an act or acts in violation of the Kansas Pharmacy Act, K.S.A. 65-1625, *et seq.*

5. On or about January 18, 2002, the Respondent voluntarily executed a Consent Agreement and agreed to cease the practice as a pharmacist in the State of Kansas.

6. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board, that the following facts are true:

A. On at least two (2) occasions the Respondent has entered the pharmacy located at Citizen's Medical Center in Colby, Kansas, at times he was not scheduled to work and took drugs, including controlled substances, without authorization to do so and without a prescription for the drugs.

B. On at least two (2) occasions the Respondent has unlawfully possessed drugs, including controlled substances, which were not obtained for any legitimate medical purpose.

C. On numerous occasions the Respondent has self-administered drugs, including controlled substances, without a valid practitioner's prescription or a valid mid-level practitioner's order for such drugs. Respondent contends that he never self administered drugs, but rather flushed them down the toilet.

The Board finds and concludes that the Respondent's conduct, as described above, is violative of the Kansas Pharmacy Act and is grounds for disciplinary action pursuant to K.S.A. 65-1627(a)(3) as defined by K.S.A. 65-1626(hh)(5) and K.S.A. 65-1627(a)(13).

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

INDEFINITE SUSPENSION. The Respondent hereby agrees and consents to the Board's entry of an order indefinitely suspending his license to practice pharmacy in the State of Kansas. No sooner than 12 months from the effective date of the Final Agency Order contemplated hereby, Respondent shall have the right to petition the Board to terminate the suspension. In seeking termination of the suspension, the Respondent shall have the burden to prove, by clear and convincing evidence, that he is rehabilitated and competent to return to the practice of pharmacy in the State of Kansas. It is further agreed that in considering whether Respondent has met his burden of proof, the Board may consider any relevant factors, including, but not limited to, the following:

- a. the moral fitness of the Respondent at the time of the application to terminate the suspension;
- b. the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
- c. the extent of Respondent's rehabilitation;
- d. the seriousness of the original misconduct;
- e. conduct subsequent to the indefinite suspension;
- f. the time which has elapsed since the indefinite suspension;
- g. the Respondent's character, maturity, and experience at the time of the indefinite suspension; and
- h. the Respondent's competence to practice pharmacy as of the time of the application to terminate the suspension.

As part of any application to terminate the suspension, the Board shall have the right to require the Respondent to submit to any physical and/or mental tests or examinations with providers of the Board's choice and totally at Respondent's expense. Should the Board elect to have such testing performed, the Respondent must authorize the release of all information related to such tests or examinations to the Board or its representative. Should the Board determine to terminate the suspension it may place such conditions on the termination and Respondent's right to practice pharmacy, as the Board may deem, in its discretion, necessary.

8. Respondent agrees that all information in the possession of the Board or its attorneys 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 Stipulation and Final Agency Order and the Final Order provided for herein, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Final Agency Order and the Final 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 Stipulation and Final Agency 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 Final Agency Action is approved by the Board and the Final Order provided for herein is entered by the Board. The Respondent acknowledges that the approval of the Board's attorney

shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Final Agency Action or the Final Order provided for herein.

10. The Respondent agrees that this Stipulation and Final Agency Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it and enter the Final Order provided for herein. The Respondent 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.

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 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.
- B. To take advantage of all applicable provisions of the Kansas Administrative Procedures Act and the Act For Judicial Review and Civil Enforcement of Agency Action.

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 Final Agency Order and the Final Order provided for herein.

13. Respondent acknowledges that he enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of his choosing. The Respondent

further acknowledges that he has read this Stipulation and Final Agency 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 Final Agency Order. Respondent acknowledges and agrees that any violation of this Stipulation and Final Agency 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 Final Agency Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Final Agency Order.

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

16. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

17. This Stipulation and Final Agency 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. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:

- A. Adverse Action Classification: "1135 Suspension of License"
- B. Basis For Action: "10 Unprofessional Conduct"

19. The following statement will be made in the Board's newsletter: "The license of Robert D. Schroeder, R.Ph., currently residing in Colby, Kansas, was indefinitely suspended by order of the Board."

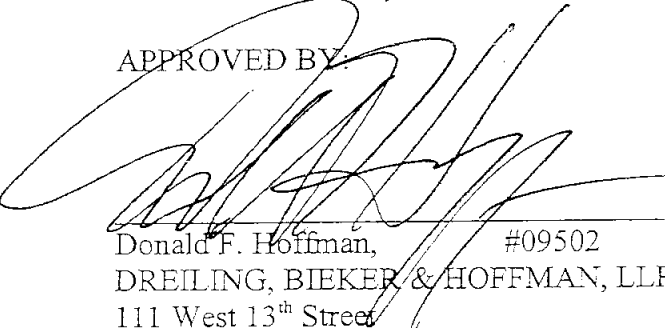
20. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Order provided for herein to file a petition for judicial review in the District Court of Shawnee County, Kansas, in accordance with the Kansas 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 Susan Linn, its Executive Director. The Respondent hereby waives those rights.

AGREED AND ACCEPTED BY:


Robert D. Schroeder, R.Ph.

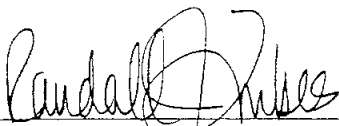
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Date

APPROVED BY:


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12-11-02
Date

APPROVED BY:



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TEL: 785/232-7266

FAX: 785/232-5841

12/13/02

Date

ATTORNEYS FOR THE BOARD

BEFORE THE KANSAS BOARD OF PHARMACY

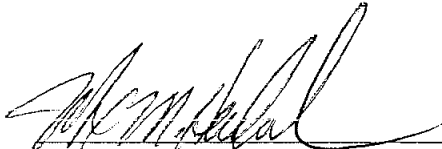
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) Case No. 01-52
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Kansas License No. 1-11579)
_____)

FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas 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. The Kansas license to Robert D. Schroeder, R.Ph., is hereby indefinitely suspended.

ENTERED AND EFFECTIVE this 19 day of December, 2002.

KANSAS PHARMACY BOARD

By:  _____
Max Heidrick, R.Ph.
President

CONSENT AGREEMENT

THIS CONSENT AGREEMENT is entered into this 18th day of January, 2002 by and between Robert D. Schroeder, R.Ph., (the "Licensee") and the Kansas Board of Pharmacy (the "Board").

WITNESSETH:

WHEREAS, the Licensee presently holds license number 1-11579 to practice pharmacy in the State of Kansas issued by the Board; and

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

WHEREAS, the Board has received information regarding Licensee's diversion of drugs from his employer, which would constitute probable cause to believe there is a basis for the Board to take disciplinary action against the Licensee and his license to practice as a pharmacist in Kansas; and

WHEREAS, the Board is willing to temporarily withhold initiating an emergency proceeding suspending or otherwise limiting the Licensee's Kansas license in return for certain agreements by the Licensee as detailed herein.

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

1. The Board will temporarily withhold initiating an emergency proceeding suspending or otherwise limiting the Licensee's Kansas license to practice as a pharmacist in the State of Kansas based upon the Licensee's agreement to do the following:

a. The Licensee will immediately cease to practice as a pharmacist in Kansas and shall not again resume the practice of pharmacy in Kansas without the subsequent written agreement of the Board.

b. The Licensee, if he has not already done so, shall immediately enter into an evaluation and treatment program, totally at the Licensee's cost, as directed from time to time by the Kansas Pharmacy Impaired Provider Program and as approved from time to time by the Board and shall continue to fully cooperate with the recommendations and requirements of the persons managing or implementing the Kansas Pharmacy Impaired Provider Program, the recommendations and requirements of the persons managing or implementing the evaluation and treatment programs recommended or required by the Kansas Pharmacy Impaired Provider Program and the further requirements of the Board.

c. The Licensee shall authorize the Kansas Pharmacy Impaired Provider Program and any provider of evaluation or treatment programs he engages in to provide full and complete documentation and information regarding the Licensee's involvement in the programs, his evaluations and treatment including, but not limited to, all records and medical reports.

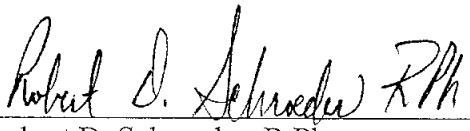
2. This agreement shall not constitute an admission by the Licensee that he has violated the Kansas Pharmacy Act.

3. Should the Board determine, in good faith but in its sole and exclusive discretion, that the Licensee has failed to comply with the provisions hereof, this agreement shall cease and

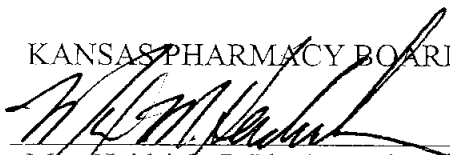
shall not thereafter prevent, in any respect, the Board from initiating an emergency proceeding to suspend or otherwise limit the Licensee's Kansas license to practice pharmacy.

4. This agreement shall not prevent, in any manner, the Board from initiating a non-emergency proceeding to revoke, suspend or otherwise limit the Licensee's Kansas license to practice pharmacy.

IN WITNESS WHEREOF the parties have caused this agreement to be executed the day and year first above written.



Robert D. Schroeder, R.Ph.

KANSAS PHARMACY BOARD
By: 

Max Heidrick, R.Ph., Investigation Member