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KANSAS STATE
Board of Pharmacy

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of }
 }
Mohamed Elberry, }
License No. 1-14805 }
_____ }

Case No.: 11-49

CONSENT AGREEMENT

This Consent Agreement is based upon the following statements of fact and stipulations of the parties in the above captioned matter:

STATEMENTS OF FACT

1. The Kansas State Board of Pharmacy (“Board”) is charged with the administration of the Kansas Pharmacy Act (K.S.A. 65-1626, *et seq.*) and with the enforcement of the rules and regulations promulgated thereunder (K.A.R. 68-1-1a *et seq.*).

2. The Licensee is Mohammed Elberry, License No. 1-14805, (“Licensee”) who currently resides at 1908 W. 12th Ave., Emporia, Kansas 66801. Licensee is a pharmacist who is subject to all laws and regulations pertaining to the practice of pharmacy administered by the Board.

3. Pursuant to laws and regulations pertaining to the practice of pharmacy, the Board is authorized to conduct hearings, summary proceedings, and emergency proceedings under the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.* Such proceedings could result in suspension, revocation, and other disciplinary actions affecting Registrant’s ability to obtain an education which would allow her to obtain a pharmacists license in the State of Kansas.

4. K.S.A. § 65-1627(a)(3) provides:

The board may revoke, suspend, place in a probationary status or deny a renewal of any license of any pharmacist upon a finding that: . . . (3) the licensee is found by the board to be guilty of unprofessional conduct or professional incompetency.

5. K.S.A. § 65-1626(rr) defines unprofessional conduct as:

. . . (5) unlawful possession of drugs and unlawful diversion of drugs to others; . . . (7) conduct likely to deceive, defraud or harm the public; . . .

6. K.S.A. § 65-1627(g) provides: "Orders under this section, and proceedings thereon, shall be subject to the provisions of the Kansas administrative procedure act."

7. That Licensee entered into a KPhA/CIPP Statement of Understanding on July 6, 2011, to resolve the issues *In the Matter of Mohammed Elberry*, Case No. 11-49 with the Board.

8. The Kansas Pharmacy Association Impaired Provider Committee of the Impaired Pharmacist Association Program is an agent and/or representative of the Board for the purposes of assisting impaired pharmacists, pharmacy students and other professionals licensed or registered with the Board to lawfully perform their duties under the Kansas Pharmacy Act.

9. The Lyon County District Attorney has filed criminal charges against Licensee for the following:

- a. On or about April 15, 2011, Respondent possessed Hydrocodone, in violation of K.S.A. § 21-36a(06).
- b. On or about April 15, 2011, Respondent took Tussionex from Wal-Mart No. 0557 without paying for said medication.
- c. On or about April 26, 2011, Respondent possessed Hydrocodone, in violation of K.S.A. § 21-36a(06).
- d. On or about April 26, 2011, Respondent took Tussionex from Wal-Mart No. 0557 without paying for said medication.
- e. On or about April 29, 2011, Respondent possessed Hydrocodone, in violation of K.S.A. § 21-36a(06).

- f. On or about April 29, 2011, Respondent took Tussionex from Wal-Mart No. 0557 without paying for said medication.
 - g. On or about April 30, 2011, Respondent possessed Hydrocodone, in violation of K.S.A. § 21-36a(06).
 - h. On or about April 30, 2011, Respondent took Tussionex from Wal-Mart No. 0557 without paying for said medication.
 - i. On or about May 1, 2011, Respondent possessed Hydrocodone, in violation of K.S.A. § 21-36a(06).
 - j. On or about May 1, 2011, Respondent took Tussionex from Wal-Mart No. 0557 without paying for said medication.
 - k. On or about May 13, 2011, Respondent possessed Hydrocodone, in violation of K.S.A. § 21-36a(06).
 - l. On or about May 13, 2011, Respondent took Tussionex from Wal-Mart No. 0557 without paying for said medication.
 - m. On or about May 16, 2011, Respondent possessed Hydrocodone, in violation of K.S.A. § 21-36a(06).
 - n. On or about May 16, 2011, Respondent took Tussionex from Wal-Mart No. 0557 without paying for said medication.
 - o. On or about May 18, 2011, Respondent possessed Hydrocodone, in violation of K.S.A. § 21-36a(06).
 - p. On or about May 18, 2011, Respondent took Tussionex from Wal-Mart No. 0557 without paying for said medication.
10. On or about May 18, 2011, Respondent was terminated from his position as a pharmacist at Wal-Mart No. 0557 for his thefts and possessions of Hydrocodone and Tussionex.

11. In the KPhA/CIPP Statement of Understanding, Licensee agreed to be enter into a CIPP monitoring program for a period of five (5) years.

STIPULATIONS OF LAW

12. K.S.A. § 65-1627(a)(3) provides:

The board may revoke, suspend, place in a probationary status or deny a renewal of any license of any pharmacist upon a finding that: . . . (3) the licensee is found by the board to be guilty of unprofessional conduct or professional incompetency.

13. K.S.A. § 65-1626(rr) defines unprofessional conduct as: “. . . (5) unlawful possession of drugs and unlawful diversion of drugs to others; . . . (7) conduct likely to deceive, defraud or harm the public; . . .”

14. Licensee was originally issued License No. 1-14805 by the Board.

15. That pursuant to K.S.A. 65-1627a “The board shall have jurisdiction of the proceedings to revoke, suspend, place in a probationary status or deny a renewal of *any* license, *registration*, or permit issued by the board under the provision of the pharmacy act of the state of Kansas.” (Emphasis added). See also K.S.A. 1627f(a).

16. The Board may place in probationary status the license of a pharmacist for “unprofessional conduct.” K.S.A. 65-1627(a)(3).

STIPULATIONS OF THE PARTIES

17. The Kansas Administrative Procedures Act specifically authorizes parties to resolve matters as expeditiously as possible without the need for evidentiary hearings or more formal proceedings under the Act. K.S.A. 77-505. It is the intent of both parties to avoid the proceedings to formally limit, suspend, or revoke Registrant’s privilege to function as a pharmacist in the State of Kansas. Therefore, Registrant voluntarily agrees to:

18. Five years supervised probation beginning the date of this agreement with KPhA/CIPP serving as the Registrant’s probation officer on behalf of the Board.

19. Participate in the KPhA/CIPP program for five years beginning the date this Consent Agreement is signed.

20. Keep the Board informed of any changes to his name, address, telephone number, e-mail address employment status and location(s).
21. Comply with the laws of the United States and the State of Kansas, including all state and federal pharmacy laws and regulation.
22. Comply with the terms of the KPhA/CIPP Statement of Understanding between the parties dated July6, 2011.
23. Licensee also agrees to:
 - a. Comply with random drug testing to be administered by the KPhA/CIPP program;
 - b. Refrain from acting or taking a position that would require him to be a Pharmacist-in-Charge;
 - c. Have another licensee or registrant in the pharmacy at all times the Licensee is working (the term "licensee" and/or "registrant" includes pharmacists, pharmacy interns and/or pharmacy technicians licensed and/or registered by the Kansas Board of Pharmacy); and
 - d. Obtain Board approval before probation is lifted and before Licensee can leave the KPhA/CIPP monitoring program.
24. By signing this Consent Agreement, Licensee is bound by its statements of facts and stipulations.
25. Nothing in this Consent Agreement shall prevent the Board from filing any administrative proceedings to suspend, revoke, or otherwise limit the Licensee's license to act as a pharmacist upon its sole determination that just cause exists at the time of said action. However, should formal administrative actions be initiated by the Board, pursuant to petition or proceedings, Licensee shall have those rights provided by the Kansas Administrative Procedure Act and the Kansas Judicial Review Act.

26. It is specifically understood by Licensee that any violation of this Consent Agreement constitutes just cause to initiate a formal administrative proceeding to suspend, revoke, or otherwise limit Licensee's license to function as a pharmacist in the State of Kansas.

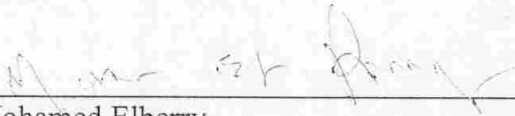
IN WITNESS WHEREOF, the parties have executed this Consent Agreement on the dates specified by their signatures below.



Date:

09/02/2011

Investigation Member
Kansas State Board of Pharmacy
800 Jackson St., Suite 1414
Topeka, KS 66612
785/296-4056 Main Office
785/296-8420-FAX



Date:

8/26/11

Mohamed Elberry
1908 W. 12th Avenue
Emporia, KS 66801

APPROVED BY:



Date:

8/26/11

Thomas G. Lemon
Cavanaugh & Lemon P.A.
2942A SW Wanamaker Dr., Ste. 100
Topeka, KS 66614

SUBMITTED AND APPROVED BY:



Date:

8/30/11

Holly L. Fisher, Compliance Counsel
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