

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
MICHAEL C. FILLMORE, PHARMD)
Kansas License No. 1-13456) Case No. 13-02

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Michael C. Fillmore, PharmD ("Respondent") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Unrein & Forbes, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by his attorney,

2. The Board is the Kansas agency vested with the authority to carry out and enforce the provisions of the Kansas Pharmacy Law, K.S.A. 65-1626 *et seq.*, (the "Act") 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 1-13456 ("Kansas License"). 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's Investigation Member has received certain information, investigated and determined that there are reasonable grounds to believe that Respondent has committed one or more acts in violation of K.S.A. 65-1627(a) which would justify the revocation or imposition

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of other disciplinary action against his Kansas License under the provisions of K.S.A. 65-1627(a) and the assessment of an appropriate fine against Respondent under the provisions of KS.A. 65-1658.

5. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board, and upon motion duly made, seconded and passed, the Board finds as follows:

A. In May, 2013, with Respondent's approval, the Board entered a Consent Order and Final Agency Order ("2013 Consent Order").

B. As part of the 2013 Consent Order, Respondent admitted that while employed as a pharmacist in a Kansas pharmacy he diverted for his own use hydrocodone and Keflex belonging to the pharmacy. He further admitted that he did not have a valid prescription for the drugs he diverted and that he was self-medicating.

C. Based upon the Respondent's stipulation that his conduct constituted sufficient grounds under the Act for the Board to discipline his Kansas license, the 2013 Consent Order placed Respondent's license on probation for a period of 5 years ("Probation Period"). The Board further ordered Respondent to contact the KsPRN Peer Assistance Program ("KsPRN Program) and enter into a contract with the KsPRN Program ("KsPRN Contract") and to remain in compliance with the requirements of the KsPRN Contract during Respondent's Probation Period.

D. The 2013 Consent Order included a provision that required Respondent to abstain from all mood altering drugs and alcohol.

E. On July 13, 2015, the Director of Operation for the KsPRN Program ("Director") notified Respondent in writing that he was being required by the KsPRN Program

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to, within 5 days, make an appointment with a see a neurologist regarding Respondent's ongoing use of opiate medications. By the same letter, the Director further notified Respondent that the KsPRN Program had determined that he should not engage in the practice of pharmacy while using opiate medications.

F. Respondent failed to make an appointment with a neurologist as directed.

G. Although Respondent continued to work as a pharmacist, his September 21, 2015 sample tested positive for Oxymorphone.

H. On October 14, 2015, a neurologist devised a treatment plan for Respondent that did not include the use of opiate medications.

I. Although Respondent continued to work as a pharmacist, his November 30, 2015 sample tested positive for Oxymorphone.

J. On December 22, 2015, when the KsPRN Manager spoke with Respondent, he indicated that he thought she would be calling about a sample taken on December 16, 2015 because on December 22, 2015 he took Percocet (hydrocodone). Respondent told the KsPRN Manager that he mistook the Percocet for an Excedrine.

K. On December 23, 2015, the KsPRN Manager advised the Board that the KsPRN Program considered Respondent out of compliance with his KsPRN Contract. As a result, Respondent had violated the terms of the Board's 2013 Consent Order.

L. Since January 2016 Respondent remained in compliance with his KsPRN Contract until, on November 18, 2016, he tested positive for Doxylamine, which although obtained over the counter, is a Drug of Concern prohibited by Respondent's KsPRN Contract because it is a mood altering substance.

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6. Upon motion duly made, seconded and passed, the Board finds and concludes that Respondent's conduct, as described above, violates the Act and such conduct warrants the imposition of appropriate disciplinary action against Respondent's Kansas License under the provisions of pursuant to K.S.A. 65-1627 (a)(3), as defined by K.S.A. 65-1626b (xx)(3) and (ccc)(5); K.S.A. 65-1627 (a)(5), and K.S.A. 65-1627 (a)(13).

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

A. IMPAIRED PROVIDER PROGRAM. If he has not already done so, Respondent shall immediately enter into a new *Statement of Understanding* agreement with the Kansas Pharmacists Association Kansas Pharmacist Recovery Network that is dated no earlier than January 1, 2017 ("KsPRN Agreement") for a period of no less than 5 years. Respondent shall fully cooperate with the recommendations and requirements of the persons managing and implementing KsPRN Agreement, the recommendations and requirements of the persons managing and implementing the evaluation and treatment programs recommended or required by KsPRN Agreement and the further requirements of the Board. Respondent shall, at all times, be in full compliance with the requirements of the KsPRN Agreement and other requirement placed upon him by the Kansas Pharmacists Association Kansas Pharmacist Recovery Network ("KsPRN"), *including, but not limited to full and continued compliance with the requirement to cooperate with requests for random bodily fluid drug screens, as provided in his KsPRN Agreement.* The Respondent shall authorize KsPRN and any provider of evaluation or treatment programs he engages in to provide full and complete documentation and information regarding the Respondent's involvement in the programs, his evaluations and treatment, including, but not limited to, all records and medical reports. *The Respondent shall not be released from the*

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requirements of the KsPRN Agreement until he has made a request to the Board for release, appeared before the Board and provided proof sufficient to the Board that he has been in substantial compliance with the KsPRN Agreement for a 5-year period.

B. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Consent Order he must, and the Board further orders the Respondent to

- i. Comply fully with this Stipulation and Consent Order;
- ii. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws relating to Kansas pharmacies;
- iii. *Advise the Board's Executive Secretary within 10 days of being charged with any crime.*

8. Respondent agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and or its attorney regarding the investigation which lead to this disciplinary action 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 Consent Order and the Final Order provided for herein, with or without the presence of the Respondent or its attorney. In the event that this Stipulation and Consent 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 Consent 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.

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9. The stipulations contained herein shall not become binding until this Stipulation and Consent 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 Investigation Member or its attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Consent Action or the Final Order provided for herein.

10. The Respondent agrees that this Stipulation and Consent 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, for purposes of this matter, that the Kansas Pharmacy Act, K.S.A. 65-1626 *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 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 or its designee making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing; and
- (d) To take advantage of all applicable provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.* and the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

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

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to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Consent Order and the Final Order provided for herein.

13. The Respondent acknowledges that he enters into this Stipulation and Consent Order freely and voluntarily after consultation with counsel of his choosing. The Respondent further acknowledges that he has read this Stipulation and Consent 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 Consent Order. Respondent acknowledges and agrees that any violation of this Stipulation and Consent 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 Consent Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Consent Order.

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

16. Upon approval and entry of the Final Order by the Board, this Stipulation and Consent Order shall be a public record in the custody of the Board.

17. This Stipulation and Consent 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 and shall supersede the terms of the 2013 Consent Order.

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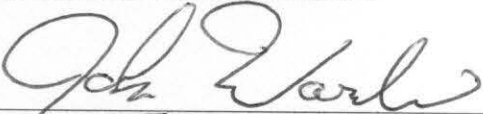
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18. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days 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 Judicial Review Act, K.S.A. 77-601 *et seq.* and to serve such a petition for judicial review on the Kansas Board of Pharmacy by serving Alexandra Blasi, JD, MBA, its Executive Director at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.

ENTERED AND EFFECTIVE this 7th day of April, 2017.

KANSAS BOARD OF PHARMACY


By: 
~~CHAD ULLOM, R.Ph.~~ John Worden, PharmD
President

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AGREED AND APPROVED BY:


Michael C. Fillmore, PharmD


12-28-16
Date


Mike Lonergan, R.Ph.
Investigation Member

4-6-17
Date

Respondent's Attorney's Name & Address

Date


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01/04/2017
Date

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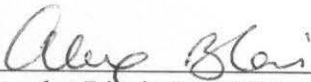
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND CONSENT ORDER was served by depositing same in the United States mail, postage prepaid, this 7th day of April, 2017 addressed to:

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Topeka, KS 66604

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Alexandra Blasi, JD, MBA
Executive Director
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