

Filed By

AUG 31 2022

KANSAS STATE BOARD OF PHARMACY

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)	
)	Case No. 22-075
AMANDA GAHAGAN, R.Ph.)	
<u>Kansas License No. 1-12809</u>)	

STIPULATION AND CONSENT ORDER

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

1. The Board is represented herein by its attorney, Brenda L. Head of Frieden & Forbes, L.L.P., 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by her attorney, James R. Jarrow, Baker Sterchi Cowden & Rice, LLC, 2400 Pershing Road, Suite 500, Kansas City, Missouri 64108-2533.

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. Until the Board's March 30, 2022 Emergency Agency Order suspending Respondent's license, the Respondent was entitled to engage in the practice of pharmacy in the State of Kansas by reason of the Board having issued her Kansas license number 1-12809 ("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 and Executive Secretary have 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 of other disciplinary action against her 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 K.S.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:

A. At all times relevant hereto, Respondent was employed as a Pharmacist at Iola Pharmacy Clinic #2-10178 (the "Pharmacy").

B. On January 6, 2022, the Board received information via email about termination of Respondent's employment at the Pharmacy. The notification indicated Respondent's employment was terminated because Respondent processed and signed for receipt of prescriptions to obtain fraudulent receipts to submit to insurance for reimbursement, while never ordering in or picking up the medications. Documents show Respondent was involved in processing and falsifying records of eleven (11) fraudulent prescriptions (Xiidra and Ubrelvy) for herself and family members. Pharmacy records of third-party claims were manually edited after transmission to obtain fraudulent receipts. The drug on hand inventories were edited so that the drugs were not ordered or received by the Pharmacy. Respondent entered the point-of-sale system indicating the prescriptions were signed for when they were not. Respondent allowed a pharmacy technician to create fraudulent phoned-in prescriptions which Respondent processed through insurance.

C. On February 2, 2022, Respondent provided a verbal confession to the Pharmacy owner that she committed the acts outlined in paragraph B.

D. On February 1, 2022, the Board obtained documents confirming Respondent was involved in processing and falsifying records of eleven (11) prescription orders (Xiidra and Ubrelvy) for herself and family members allegedly prescribed by Dr. T.S. and APRN R.F. All prescription orders were submitted to insurance and/or through manufacturer coupons. Pharmacy records of third-party claims were manually edited after transmission. The drug on hand inventories of the Pharmacy were edited so that the drugs were not ordered or received by the Pharmacy. The prescriptions were signed for in the point-of-sale system at the Pharmacy but were never picked up. Three of the prescriptions for a technician's family members were documented to have been received verbally by the technician and not Respondent, a pharmacist.

E. On February 7, 2022, the Board received an email received from the Pharmacy indicating that the Pharmacy owner discussed the aforementioned prescription orders with Dr. T.S., the indicated prescriber, and Dr. T.S. did not remember prescribing any of the prescriptions, and further noted that none of the prescriptions filled as verbal orders were documented in his clinic's electronic medical records system.

F. On February 8, 2022, a written statement was received from Dr. T.S. stating he had no recollection of prescribing Xiidra to Respondent or the other identified patients. He also noted he did not believe he had ever prescribed Xiidra to any patient.

G. On February 8, 2022, a written statement was received from APRN R.F. stating she did not see in her chart a prescription for Ubrelvy for Respondent.

H. On February 10, 2022, the Board obtained documents showing four prescriptions of questionable validity (Nurtec) for the pharmacy technician and her family members were submitted to insurance and/or through manufacturer coupons. The Pharmacy records of the third-party claims were manually edited after transmission. The drug on hand

inventories of the Pharmacy were edited so that the drugs were not ordered or received by the Pharmacy. The prescriptions were signed for in the point-of-sale system by the Respondent at the Pharmacy but were never picked up.

I. On February 10, 2022, the Board received copies of receipts showing that of the thirteen (13) prescriptions in question, three of the receipts have a different patient pay amount than that which was billed in the point-of-sale system.

J. A licensed pharmacist who fraudulently processes prescriptions poses a serious health risk to individuals and constitutes an imminent danger to the public health and safety.

K. Respondent's continuation in the practice of pharmacy would constitute an immediate danger to the public health and safety or welfare. The least restrictive way to prevent or avoid the immediate danger Respondent poses to the public health, safety and welfare is to suspend Respondent's License.

L. There is cause to believe the acts committed by Respondent could form the basis for discipline of Respondent's License pursuant to various provisions of the Pharmacy Act, including K.S.A. 65-1627 (a)(3) and K.S.A. 65-1627(a)(11).

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 pursuant to K.S.A. 65-1627(a)(3), as defined by K.S.A. 65-1626(vvv)(4), (7) and (10) and K.S.A. 65-1627(a)(11).

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

Matter of Amanda Gahagan, R.Ph., No. 22-075 (Kan. Bd. of Pharmacy)

STIPULATION AND CONSENT ORDER

Page 4 of 11

A. SUSPENSION. Respondent hereby agrees and consents to the Board's entry of an order whereby her license to practice pharmacy in the State of Kansas is suspended for a period of not less than one (1) year from the March 30, 2022 Emergency Agency Order. The Board will submit Respondent's name to OIG for inclusion on the OIG Exclusion List. If Respondent commits an act during the suspension period that constitutes a violation of the Pharmacy Practices Act or the Board's regulations or fails to meet any condition set out in this stipulation the period of suspension continues.

B. ADMINISTRATIVE FINE. Respondent shall pay to the Kansas Pharmacy Board an administrative fine in the amount of Twenty-Five Hundred Dollars (\$2,500.00) prior to the expiration of the suspension described in Paragraph 6.A.

C. PROBATION. The Respondent agrees and the Board orders that the Respondent's Kansas License will be placed on a status of probation after the reinstatement from suspension for a period of twenty (20) years. The terms of Respondent's probation include:

- i. Respondent is prohibited from filling prescriptions for herself or any family member; and
- ii. Respondent is prohibited from working with any pharmacist or pharmacy technician who is not in good standing; and
- iii. Respondent cannot discharge the administrative fine included in the Stipulation and Consent Order through bankruptcy; and
- iv. Any changes in probation terms must be approved by the Board; and
- v. Respondent must comply with the notification requirements set forth herein; and
- vi. Respondent's violation of any terms in this Stipulation and Consent Order will result in license revocation.

D. PERMANENT LICENSE RESTRICTIONS. The Respondent agrees and the Board orders that Respondent shall not ever serve as Pharmacist-in-Charge or Preceptor.

E. NOTIFICATIONS. The Respondent agrees and the Board orders that Respondent shall:

- i. Require any pharmacy or drug-related employer to acknowledge receipt of this Stipulation and Consent Order;
- ii. Notify the Board of all contact information and employment changes within five (5) days;
- iii. Notify the Board of any criminal arrest and/or charges within ten (10) days.

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

1. Comply fully with this Stipulation and Consent Order; and
2. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws relating to Kansas pharmacies.

7. 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, with or without the presence of the Respondent or her attorney. In the event that this Stipulation and Consent Order is 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.

8. The stipulations contained herein shall not become binding until this Stipulation and Consent Order is approved and entered as a final order by the Board. The Respondent acknowledges that the approval of the Board's Investigation Member, Executive Secretary, or its attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Consent Order.

9. 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 as a final order of the Board. 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.

10. 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.

11. The Respondent acknowledges that she has the following rights:

- (a) To have formal notice of charges served upon her;
- (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 her 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 Consent Order provided for herein.

12. The Respondent acknowledges that she enters into this Stipulation and Consent Order freely and voluntarily after consultation with or an opportunity to consult with counsel of her choosing. The Respondent further acknowledges that she has read this Stipulation and Consent Order in its entirety, that she understands its legal consequences and that she agrees that none of its terms are unconscionable, arbitrary or capricious.

13. 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 her. 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.

14. 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.

15. 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.

16. 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.

17. The Respondent acknowledges that she has been advised by the Board that she 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 Secretary at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.

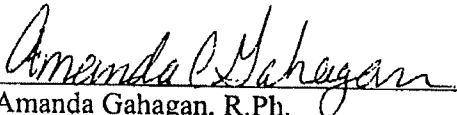
ENTERED AND EFFECTIVE this 25th day of August, 2022.

KANSAS BOARD OF PHARMACY

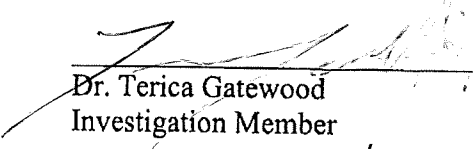
By:


DR. JONATHAN BRUNSWIG, PharmD
President

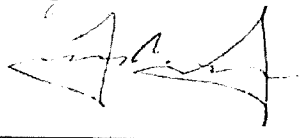
AGREED AND APPROVED BY:


Amanda Gahagan, R.Ph.

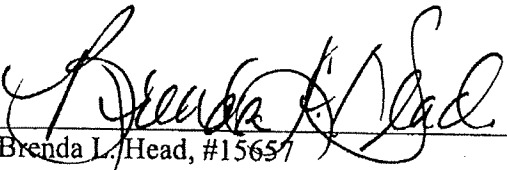
7-7-22
Date


Dr. Terica Gatewood
Investigation Member

8/25/22
Date


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7-14-2022
Date

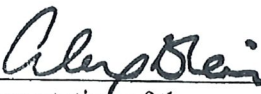
CERTIFICATE OF SERVICE

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 31st day of August, 2022 addressed to:

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Representative of the
KANSAS BOARD OF PHARMACY