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JUN 09 2010
KANSAS STATE
Board of Pharmacy

BEFORE THE KANSAS STATE BOARD OF PHARMACY

In the Matter of)
)
KELLY J. GAUTHIER, R.Ph.)
Kansas License No. 1-14381)

Case No. 09-59

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas State Board of Pharmacy Board (the "Board") and Kelly J. Gauthier ("Respondent" or "Registrant"), as follows:

1. The Board is represented herein by its attorneys, Randall J. Forbes of Frieden, Unrein, Forbes & Biggs, LLP, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by her attorney, Deborah K. Mitchell, Woodard, Hernandez, Roth & Day, 257 N. Broadway, Suite 300, Wichita, KS 67202

2. The Board is the Kansas agency vested with the authority to carry out and enforce the provisions of the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas registration to operate a pharmacy.

3. Respondent (Kansas License No. 1-14381) is presently authorized to engage in the practice of pharmacy in the State of Kansas. At all times relevant hereto, the Respondent has held a current license to engage in the practice of pharmacy in the State of Kansas.

Investigation Member 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. 65-1626 *et seq.*, which would subject her pharmacy license to discipline pursuant to K.S.A. 65-1627.

4. The Board has received information and investigated allegations against Respondent. Based on its investigation, the Board has determined that there are reasonable grounds for believing that Respondent has violated the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.* (the "KPA" or the "Act") and that Respondent is accordingly subject to appropriate disciplinary action under applicable provisions of the Act, including K.S.A. 65-1627(a)(6) and K.S.A. 65-1658.

5. Respondent hereby agrees not to contest and shall not contest, in this and any other proceeding initiated by or before the Board, any of the following matters:

A. At all times relevant hereto, the Respondent was employed as a pharmacist at CVS Pharmacy #8561, 14950 W. 87th, Lenexa, Kansas 66215.

B. On June 23, 2009, Respondent was working at CVS Pharmacy #8561. Another CVS employee, a registered pharmacy technician, noticed Respondent handling a prescription in a non-routine way. Upon investigation, the technician examined the bottle and the prescription label. The technician identified the prescription label calling for #4 Levitra 10mg tablets. The technician further noticed that there were more than four tablets in the bottle. The technician alerted her manager as to her belief of what was occurring.

C. Respondent had created a prescription for Levitra 10mg for her fiancé at his request. Respondent claims that she contacted a Dillons store pharmacy who indicated to her

that her fiancé's prescription had expired. Respondent claims to have then attempted to contact her fiancé's physician to obtain a refill. Prior to receiving authorization from a physician, she created a refill prescription for her fiancé.

D. Respondent edited the prescription on the CVS computer multiple times. First, she changed the prescription from 6 tablets of Levitra 10mg to 5 tablets of Levitra 10mg. Then, she changed the prescription to 4 tablets of Levitra, then to 4 tablets of Viagra 50mg before finally changing it to 4 tablets of Levitra 10mg.

E. Each time Respondent edited the prescription, the prescription was submitted to her fiancé's prescription third party payor.

F. At the time Respondent filled the prescription, Respondent was aware that her fiancé's prescription had expired. Respondent did not have acknowledgment of a valid prescription at the time she filled and paid for the prescription. CVS has no documentation that there was ever an authorized prescription for the refill.

G. Respondent paid for 4 tablets of Levitra 10mg, but left CVS with a total of 14 tablets, having put the extra tablets in the bottle without intending to pay for them.

H. Respondent told a CVS investigator that the Levitra was for her fiancé. Respondent told the investigator that she put the extra pills in the bottle knowing her fiancé could not afford the number she put in there. Respondent admitted that it was against CVS policy to fill a prescription without a valid prescription. Respondent admitted that it was against CVS policy to fill the prescription for 14 tablets and only pay for 4 tablets.

6. The Board hereby finds, concludes and otherwise determines that Respondent's conduct, as described in Paragraph 5 of this Stipulation and Final Agency Order, constitutes

reasonable grounds for disciplinary action under the KPA, including the provisions of K.S.A. 65-1627(a)(3) unprofessional conduct as further defined in K.S.A. 65-1626(rr)(4) and K.S.A. 65-1627(a)(11).

6. The Board and Respondent expressly understand, stipulate and agree, and the Board hereby finds, concludes and otherwise determines, that the following disposition of Case 09-59 is just and appropriate under the circumstances:

A. **SUSPENSION.** Respondent hereby agrees and consent to the Board's entry of an order suspending her license to practice pharmacy in the State of Kansas for a period of 90 days from the effective date of the Final Agency Order Contemplated hereby.

B. **PROBATION.** Respondent hereby agrees and consents to the Board's entry of an placing her license to practice pharmacy in the State of Kansas for a period of 5 years, beginning on the effective date of the Final Agency Order Contemplated hereby.

C. **MULTISTATE PHARMACY JURISPRUDENCE EXAM.** Respondent hereby agrees and consents to the Board's entry of an order requiring her to take and pass the Multistate Pharmacy Jurisprudence Exam within sixty (60) days of the effective date of the Final Agency Order contemplated hereby.

D. **OTHER REQUIREMENTS.** Respondent further understands, stipulates and agrees that, as additional conditions of this Stipulation and Final Agency Order, Respondent must: (i) fully comply with all provisions of this Stipulation and Final Agency Order and (ii) fully comply with all federal and state laws, including the Kansas Pharmacy Act and the Board's rules and regulations, relating to the practice of pharmacy in the State of Kansas.

7. Respondent stipulates and agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and/or its attorneys regarding the investigation which led 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 Final Agency Order and the Final Agency Order provided for herein, with or without the presence of Respondent or its attorney. In the event that this Stipulation and Final Agency Order and the Final Agency Order provided for herein are not accepted and approved by the Board, 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 right and/or claim of right under any provision of law, including any actual or alleged entitlement to due process of law, to seek or obtain the disqualification of any Board member as a result of the Board member's consideration of said document and information.

8. Except as provided in Paragraph 7 above, the stipulations and agreements set forth herein shall not become binding until this Stipulation and Final Agency Action is approved by the Board and the Final Agency Order provided for herein is entered by the Board. Respondent acknowledges that the approval of the Board's Investigation Member or its attorney shall not constitute the approval of the Board nor obligate the Board to approve this Stipulation and Final Agency Action or the Final Order provided for herein.

9. 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. Respondent further agrees 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 and Final Agency Order constitutes the entire agreement of the parties and no term, condition or provision hereof may be altered, modified or amended except pursuant to a subsequent written agreement signed by the parties. This Stipulation and Final Agency Order shall be governed by and interpreted in accordance with the laws of the State of Kansas.

11. Respondent acknowledges that she has the following rights:

A. To have formal notice of charges served upon it;

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; and

D. 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.

Respondent freely waives these rights and acknowledges that said waiver is made voluntarily and in consideration of the Board's agreement to limit any disciplinary action against Respondent in Case No 09-59 in accordance with the terms and conditions of this Stipulation and Final Agency Order. Respondent further waives any and all rights she has or may have to seek administrative reconsideration, to seek judicial review by any court, or to otherwise contest this Stipulation and Final Agency Order and the Final Order provided for herein.

12. Respondent acknowledges that she enters into this Stipulation and Final Agency Order freely and voluntarily after consultation or a reasonable opportunity to consult with counsel of her choosing. Respondent further acknowledges that she has read this Stipulation and Final Agency Order in its entirety and that she its legal consequences. Respondent stipulates and agrees that none of the terms, conditions or provisions of this Stipulation and Final Agency Order are unconscionable, arbitrary, capricious or otherwise unreasonable.

13. 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 be deemed to be a willful violation of a lawful Board order and constitutes reasonable 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.

14. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event that any term, condition or provision of this Stipulation and Final Agency Order is held to be invalid or unenforceable by a court of competent jurisdiction, it shall be severed and all remaining terms, conditions and/or provisions of this Stipulation and Final Agency Order shall be given full force and effect.

15. Upon execution by all parties, this Stipulation and Final Agency Order shall be classified and maintained as a public record of the Kansas State Board of Pharmacy.

16. This Stipulation and Final Agency Order shall become effective on the day it is approved, accepted and made an order of the Board as a result of the execution and issuance of the Final Agency Order provided for herein.

17. Respondent acknowledges that she has been advised by the Board that she would have the right within 15 days after service of the Final Agency Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Agency 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 Pharmacy Board by serving Debra Billingsley, its Executive Secretary, at 900 SW Jackson Street, Topeka, Kansas 66612-1231. The Respondent hereby expressly waives all such rights.

AGREED TO AND ACCEPTED BY:

By: Kelly J. Gauthier
Kelly J. Gauthier, R.Ph.

5/3/10
Date

Shirley Arck
Shirley Arck, Pharm. D.
Investigative Member of the Board

6/9/10
Date

APPROVED BY:

Deborah K Mitchell
Signature of Respondent's Attorney

5/10/10
Date

Deborah K Mitchell
Name of Respondent's Attorney

257 N. Broadway, Ste 300
Address of Respondent's Attorney
Wichita KS 67202

Randall J. Forbes
Randall J. Forbes KS #09089

5.13.10
Date

FRIEDEN, UNREIN, FORBES & BIGGS, LLP
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Topeka, Kansas 66603
TEL: 785/354-1100
FAX: 785/354-1113
DISCIPLINARY COUNSEL FOR THE BOARD

BEFORE THE KANSAS STATE BOARD OF PHARMACY

In the Matter of)
)
KELLY J. GAUTHIER, R.Ph.)
Kansas License No. 1-14381)

Case No. 09-59

FINAL AGENCY 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 hereby fully incorporates by this reference all provisions, findings, conclusions, terms and conditions therein as the final order of the Board in Case No. 09-59.

ENTERED AND EFFECTIVE this 9th day of June, 2010.

KANSAS STATE BOARD OF PHARMACY

By: Karen S. Bluman
President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a genuine copy of the above and foregoing **STIPULATION AND FINAL AGENCY ORDER** was served by depositing same in the United States mail, postage prepaid, on this 9 day of June, 2010, properly addressed to:

Kelly Gauthier
517 Arizona Street
Lawrence, KS 66049

Deborah K. Mitchell

(Name of Respondent's Attorney)

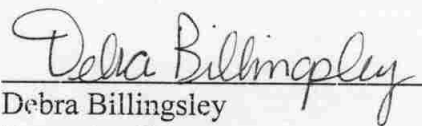
257 N. Broadway, Suite 300

(Street Address or P.O. Box)

Wichita, KS 67202

(City, State and Zip Code)

Randall J. Forbes
FRIEDEN, UNREIN, FORBES & BIGGS, LLP
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Topeka, Kansas 66603



Debra Billingsley
Executive Secretary
Kansas State Board of Pharmacy