

Filed By

JUL 8 2020

KANSAS STATE BOARD OF PHARMACY

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
MILKA GOODLETT, R.PH.) Case No. 19-341
Kansas License No. 1-15036)

STIPULATION AND CONSENT ORDER

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

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

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., ("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 her Kansas license number 1-15036 ("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

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 the sole owner of Ad Astra Pharmacy, LLC ("Ad Astra") and responsible for its operation and compliance with all applicable laws.

B. Prior to March 1, 2019, Palace Drug Company, LLC ("Palace Drug") owned and operated Kellstrom Pharmacy located at 1860 Claflin Road, Manhattan, Kansas and Kellstrom LTC located at 1862 Claflin Road, Manhattan, Kansas.

C. Effective March 1, 2019, Palace Drug sold Kellstrom Pharmacy and Kellstrom LTC to Ad Astra. Although the names of the two pharmacies did not change, effective with the change of ownership they were issued new pharmacy registration numbers. Kellstrom Pharmacy was issued 2-108660 and Kellstrom LTC was issued 2-108659.

D. Following March 1, 2019, Respondent, as the sole owner of Ad Astra, was the sole owner of both Kellstrom Pharmacy and Kellstrom LTC. As the sole owner of the pharmacies, Respondent was responsible for their compliance with applicable Kansas statutes and Board regulations.

E. Both before and after March 1, 2019, Kellstrom Pharmacy and Kellstrom LTC were registrants under the Kansas Controlled Substances Act, K.S.A. 65-4101 *et seq.*

("KCSA") and therefore obligated to comply with the requirements of the KCSA. Before and After March 1, 2019, they both dispensed controlled substances.

F. K.S.A. 65-4121 requires all registrants under KCSA to keep records and maintain inventories in conformance with federal law and the additional rules and regulations of the Board.

G. Kellstrom Pharmacy and Kellstrom LTC, under the ownership of Ad Astra, began operations on March 1, 2019.

H. 21 CFR 1304.11(b) requires that a pharmacy must have an initial inventory of controlled substances on hand before it first engages in the dispensing of controlled substances.

I. Under the ownership of Ad Astra, Kellstrom Pharmacy and Kellstrom LTC began dispensing controlled substances on March 1, 2019.

J. In violation of K.S.A. 65-4121 and 21 CFR 1304.11(b), neither Kellstrom Pharmacy nor Kellstrom LTC, under the ownership of Ad Astra, performed an initial inventory of controlled substances on hand before they first engaged in the dispensing of controlled substances.

K. Respondent's failure to have an initial inventory of controlled substances performed prior to March 1, 2019 for either Kellstrom Pharmacy or Kellstrom LTC is a basis for discipline of her Kansas License pursuant to K.S.A. 65-1627(a)(5).

L. K.A.R. 68-20-17, a regulation adopted by the Board pursuant to the KCSA, requires that when a registrant is transferring or receiving the transfer of C-II controlled substances, the use of a DEA Form 222 is required.

M. As part of the sale from Palace Drug to Ad Astra and effective March 1, 2019, all the drugs, including C-II controlled substances, located in Kellstrom Pharmacy and Kellstrom LTC were transferred from Palace Drug to Ad Astra.

N. When the C-II controlled substances located in Kellstrom Pharmacy and Kellstrom LTC were transferred effective March 1, 2019, a DEA Form 222 was not used and a violation of K.A.R. 68-20-17 occurred.

O. 21 CFR 1304.22(a)(2)(IV) requires that a registrant pharmacy maintain documents reflecting its purchase of controlled substances.

P. Respondent did not create or maintain the required records of the purchase of the Kellstrom Pharmacy and Kellstrom LTC controlled substances transferred by Palace Drug to Ad Astra. Therefore, violations of K.S.A. 65-4121 and 21 CFR 1304.22(a)(2)(IV) occurred.

Q. K.S.A. 65-1627(a)(5) provides that the Board may revoke, suspend or place on probationary status of a licensed pharmacist if the licensee has violated a provision of the KCSA or rules and regulations adopted by the Board pursuant to that Act. K.S.A. 65-1627(a)(8) provides that the Board may revoke, suspend or place on probationary status the license of a licensed pharmacy if the licensee has violated the Act or any rules and regulations adopted by the Board pursuant to the Act.

R. Respondent's failure to cause either Kellstrom Pharmacy or Kellstrom LTC to perform an initial controlled substances inventory; to use a DEA Form 222 when receiving/transferring C-II controlled substances; and to maintain documents reflecting the transfer of controlled substances to Ad Astra are each a basis for discipline of her Kansas License pursuant to K.S.A. 65-1627(a)(5) and 65-1627(a)(8).

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 pursuant to K.S.A. 65-1627 (a)(5).

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. ADMINISTRATIVE FINE. Within 10 days of the effective date of the Consent Order contemplated hereby, Respondent shall pay to the Board an administrative fine in the amount of Two Thousand Five Hundred Dollars (\$2,500.00).

B. PROBATION. Respondent's Kansas License shall be on probationary status for a period of five (5) years from the effective date of the Consent Order contemplated hereby.

C. PHARMACY CONSULTANT. Within 60 days of the time of the effective date of the Consent Order contemplated hereby, Respondent shall, at her own expense, hire and retain a pharmacy consultant ("Consultant") who has been approved by the Board for both Kellstrom Pharmacy and Kellstrom LTC (collectively the "Pharmacies"). The Respondent shall advise the Consultant of the requirements of this section of this Stipulation and Consent Order. The utilization of such Consultant will meet the following guidelines:

- i. Upon the initial visit, the Consultant will conduct a full audit and review of the Pharmacies' recordkeeping methods, policies and procedures and will assist in the implementation of improvements of those procedures when necessary.

- ii. The Consultant shall prepare a written review of the Pharmacies' compliance with the applicable Kansas statutes and Board regulations, to be submitted to the Board.
- iii. Within six months from the effective date of the Consent Order contemplated hereby, the Consultant will submit to Respondent and to the Board his or her evaluation and review of the Pharmacies' policies and procedures.
- iv. In response to the Consultant's review, Respondent shall promptly cause the Pharmacies' policies and procedures to be modified as necessary to comply with applicable Kansas statutes and Board regulations.
- v. Upon receipt and review of the Consultant's review of the Pharmacies' policies and procedures, the Board may require the Consultant to perform additional periodic evaluations and reviews of the Pharmacies' recordkeeping, policies and procedures, as may be reasonably necessary to assure a complete assessment of continued compliance with applicable Kansas statutes and Board regulations.
- vi. Failure by Respondent to cause the Pharmacies to comply with applicable Kansas statutes and Board regulations, in conformance with the Consultant's reports, shall be a basis for disciplinary action by the Board against Respondent's Kansas License.
- vii. Following submission of the Consultant's initial evaluation Respondent and the Consultant shall file quarterly reports with the Board regarding the ongoing compliance by the Pharmacies with the applicable Kansas statutes

and Board regulations. The reports shall be filed no later than March 5th, June 5th, September 5th and December 5th in the calendar year following the submission of the Consultant's initial report as provided for in paragraph (iii).

D. 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;
2. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws relating to the practice .

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, 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.

9. 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 or its attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Consent Order.

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 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.

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 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 Procedures 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.

13. 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.

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 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.

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.

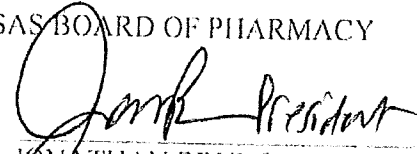
17. This Stipulation and Consent Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

18. 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.

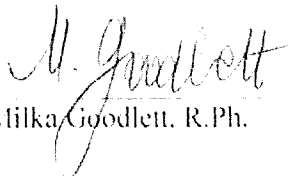
ENTERED AND EFFECTIVE this 8th day of July, 2020.

KANSAS BOARD OF PHARMACY

By:

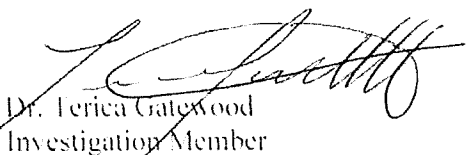

JONATHAN BRUNSWIG, R.Ph.
President

AGREED AND APPROVED BY:


Milka Goodlett, R.Ph.

4-20-2020

Date


Dr. Terica Gatewood
Investigation Member

6/18/2020


Date

(119 W. IRON AVE, SALINA, KS 67402)
LEE LEGLEITER, HAMPTON

Respondent's Attorney's Name & Address

Date

ROYCE, LC


Randall J. Forbes, KS#09089 MO#64335
FRIEDEN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
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(785) 354-1100

6/20/2020
Date

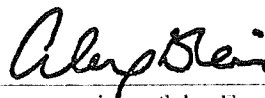
Disciplinary Counsel for the Kansas Board of Pharmacy

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 4th day of July, 2020 addressed to:

Randall J. Forbes
FRIEDEN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604

Milka Goodlett, R.Ph.
2715 Hickory St.
Hays, KS 67601



Representative of the Executive Director
KANSAS BOARD OF PHARMACY