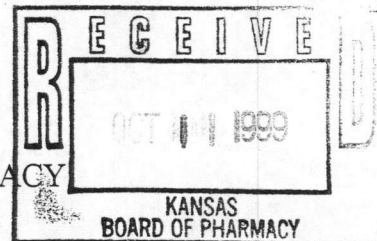


BEFORE THE KANSAS BOARD OF PHARMACY



In the Matter of)
)
MARK J. WALTRIP)
Kansas License No. 1-10439)

File No. 99-64

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Board of Pharmacy (the "Board") and Mark J. Waltrip (the "Respondent") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Haynes & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, Kevin D. Case of Cohen, McNeile, Pappas & Shuttleworth, P.C., 4601 College Boulevard, Suite 200, Leawood, Kansas 66211.

2. The Board is the Kansas agency vested with the authority to carry out and enforce the provisions of the Kansas Pharmacy Law, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a person license to practice pharmacy in Kansas.

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 1-10439. At all times relevant hereto, the Respondent has held a current license to engage in the practice of dentistry in the State of Kansas.

4. The Respondent desires to voluntarily and unconditionally surrender his license to the Board. The Board is willing to accept the surrender upon the entry of an agreed order of revocation

5. The Board finds and the Respondent agrees that the following disposition is just and appropriate under the circumstances:

A. REVOCATION. Respondent's license to practice pharmacy in the State of Kansas shall be revoked

B. SUBSEQUENT APPLICATION. Respondent agrees that he will not seek to be licensed, in any form, to practice pharmacy in Kansas for a period of five (5) years from the date of the Final Agency Order contemplated hereby.

C. OTHER REQUIREMENTS. Respondent further agrees that in the event he should apply, after the aforesaid five (5) year period, to be licensed as a pharmacist in the State of Kansas, in addition to meeting all other requirements of licensure, he shall give notice of his application to the District Attorney of Johnson County, Kansas at the time the application is made in order to give the District Attorney an opportunity to submit any desired comments to the Board before it takes action on the application.

6. Respondent agrees that all information in the possession of the Board or its attorney regarding this agreement and proposed order and the matters which led to may be disclosed to and considered by the Board as part of the presentation and consideration of this Stipulation and Final Agency Order and the Final Order provided for herein, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Final Agency 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 Final Agency 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.

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

8. The 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

9. 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.

10. 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 making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing.

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.

The Respondent freely waives these rights and acknowledges that said waiver is made voluntarily and in consideration of the matters contained herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Final Agency Order and the Final Order provided for herein.

11. The Respondent acknowledges that he enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of his choosing. The Respondent further acknowledges that he has read this Stipulation and Final Agency order in its entirety, that he understands its legal consequences and that he agrees that none of its terms are unconscionable, arbitrary or capricious.

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

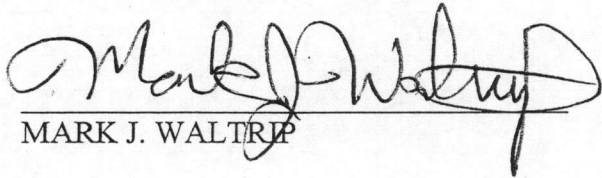
13. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

14. This Stipulation and Final Agency 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.

15. 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

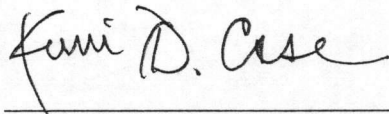
County, Kansas in accordance with the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* and to serve such a petition for judicial review on the Kansas Board of Pharmacy by serving Larry Froelich, its Administrative Secretary. The Respondent hereby waives those rights.

AGREED AND ACCEPTED BY:


MARK J. WALTRIP

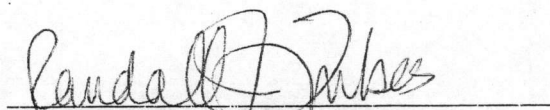
8-25-99
Date

APPROVED BY:



Kevin D. Case, #14570
Cohen, McNeile, Pappas & Shuttleworth. P.C.
4601 College Boulevard, Suite 200
Leawood, Kansas 66211
(913) 491-4050
(913) 491-9318 FAX

9/24/99
Date


Randall J. Forbes, #09089
FRIEDEN, HAYNES & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603
(785) 232-7266
(785) 232-5841 FAX

9/27/99
Date

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
MARK J. WALTRIP)
)
Kansas License No. 1-10439)

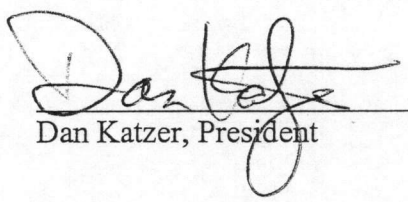
File No. 99-64

FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas Board of Pharmacy (the "Board") approves and accepts the within Stipulation and Final Agency Order and incorporates the provisions thereof as the Final Order of the Board. The Respondent's Kansas license to practice pharmacy is revoked

ENTERED AND EFFECTIVE this 30th day of September, 1999.

KANSAS BOARD OF PHARMACY

By:  9/30/99
Dan Katzer, President

BEFORE THE STATE BOARD OF PHARMACY
FOR THE STATE OF KANSAS

STATE BOARD OF PHARMACY
FOR THE STATE OF KANSAS,

Plaintiff,

v.

MARK J. WALTRIP,
License No. 1-10430,

Defendant.



FINAL ORDER

This matter comes regularly before the Board on this 3rd day of April, 1998, for the formal hearing on defendant, Mark J. Waltrip's Petition for Reconsideration.

The State of Board of Pharmacy appears by Lori Moore, Vice President and Presiding Officer; Barry Sarvis, President; Dan Katzer, Pharmacist; Vicki Schmidt, Pharmacist; Karla Kneebone, Pharmacist; and Dr. Dan Upson, Consumer Representative. Also appearing are Larry Froelich, Executive Secretary and Attorney for the Board, Dana W. Killinger. Mark J. Waltrip appears personally and with counsel, Kevin D. Case, Smithyman & Zakoura, Chartered.

The Board's attorney for Mr. Waltrip began by making opening statements and Dana Killinger on behalf of the Board made opening statements as well.

Thereupon, Mr. Case called as witnesses, Larry Froelich, Mark Waltrip and Etta Williams. Mr. Case offered various exhibits which were entered into evidence. Mr. Killinger cross-examined witnesses.

Thereupon, having introduced evidence for the Board's consideration, the Board went into executive session to deliberate on the issue of the Petition for Reconsideration.

On returning to open session, Presiding Officer Lori Moore called for a vote of the Board on Mr. Waltrip's Petition for Reconsideration.

By substantial evidence based on the testimony of Mr. Froelich, Etta Williams and Mark Waltrip and the exhibits introduced, the Board finds as follows:

1. Mark J. Waltrip is a licensed pharmacist in the State of Kansas bearing license No. 1-10430.
2. The Board of Pharmacy had placed Mark Waltrip on five years probation.
3. That the Board, through its attorney, alleged that Mark Waltrip had violated the probation and found in a Final Order, dated January 30, 1998, that a violation had occurred.
4. Mr. Waltrip through counsel filed a Petition for Reconsideration which was granted by Presiding Officer, Lori Moore.
5. That upon hearing of the Petition for Reconsideration, the Board on a vote of ³~~4~~-2 has granted the Petition for Reconsideration and has vacated its Final Order, dated January 30, 1998, and has reinstated Mr. Waltrip's pharmacy license No. 1-10430.

IT IS, THEREFORE, ORDERED that the Petition for Reconsideration is granted and that the Board's Order of January 30, 1998 is vacated.

The Kansas state pharmacy license of Mark J. Waltrip, License No. 1-10430 is reinstated.

IT IS FURTHER ORDERED that Mark J. Waltrip is placed on probation for five years.

1. That during said probation Mr. Waltrip shall contract with the CIPP Program ^{Ym} for five years or a board approved impairment program for five ^{Ym} years and shall comply with all aspects of said contract and fully cooperate with this program.
2. If it is determined by the administrators of ^{the impairment Ym} CIPP Program that Mark J. Waltrip is not in compliance with his contract, it shall be considered a violation of probation.

3. A positive urine test for any mood altering drug of addiction or controlled substance, not legally prescribed by a practitioner shall be considered a violation by the Board of the probation.

4. That Mark J. Waltrip may not be a pharmacist in charge during the term of this probation.

5. That Mark J. Waltrip pay the costs of this action as provided by K.S.A. 65-1627h.

6. Non-compliance with any part of the conditions placed on Mark J. Waltrip in this probation shall be considered violations of this probation and grounds for revocation of Mark J. Waltrip's license.

Dated this 27th day of April, 1998.

Lori Moore

Lori Moore - Presiding Officer
STATE BOARD OF PHARMACY FOR
THE STATE OF KANSAS

PREPARED BY:

SMITHYMAN & ZAKOURA, CHARTERED

By: *Kevin D. Case*

Kevin D. Case
KS bar #14570; MO Bar #41491
750 Commerce Plaza II
7400 West 110th Street
Overland Park, KS 66210-2346
(913)661-9800
(913)661-9863 (facsimile)
Attorneys for Defendant

APPROVED BY:

Dana W. Killinger

Dana W. Killinger
1505 SW Harrison St.
Topeka, KS 66612-1811
Attorney for the State Board of
Pharmacy for the State of Kansas

BEFORE THE STATE BOARD OF PHARMACY
FOR THE STATE OF KANSAS

STATE BOARD OF PHARMACY
FOR THE STATE OF KANSAS

Plaintiff,

VS.

MARK J. WALTRIP,
License No. 1-10430,

Defendant.

CERTIFICATE OF MAILING

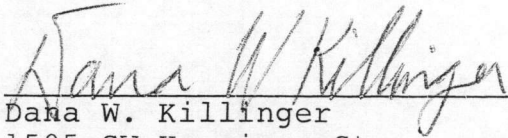
I hereby certify that a copy of the attached Order was mailed by First Class mail, postage prepaid, on this 30 day of April, 1998, addressed to the following:

Mark J. Waltrip
1900 Barber
Kansas City, KS 66103

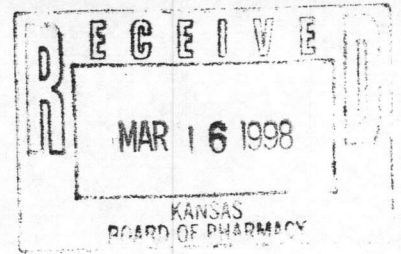
Kevin D. Case
SMITHYMAN & ZAKOURA
750 Commerce Plaza II
7400 West 110th Street
Overland Park, KS 66210-2346

Richard T. Bryant
804 Bryant Bldg.
1102 Grand Avenue
Kansas City, MO 64106

Barry Sarvis, President
Kansas State Board of Pharmacy
3643 Everett Road
Manhattan, KS 66503



Dana W. Killinger
1505 SW Harrison St.
Topeka, KS 66612-1811
(785) 232-9616
Attorney for the State
Board of Pharmacy
for the State of Kansas



BEFORE THE STATE BOARD OF PHARMACY
FOR THE STATE OF KANSAS

STATE BOARD OF PHARMACY
FOR THE STATE OF KANSAS

Plaintiff,

VS.

MARK J. WALTRIP,
License No. 1-10430,

Defendant.

ORDER

Mark J. Waltrip, by and through his attorney, Kevin D. Case, has filed a Petition for Reconsideration directed to the Board's Final Order of January 30, 1998, and signed by the Presiding Officer on February 9, 1998.

Pursuant to K.S.A. 77-529(b), the Presiding Officer enters this Order:

THE PARTIES

1. Petitioner, Mark J. Waltrip is a resident of Kansas City, Wyandotte County, Kansas. Until January 30, 1998, Mark J. Waltrip was a licensed pharmacist, having license No. 1-10430.

2. The State Board of Pharmacy is represented by Lori Moore, Pharmacist, Vice-President of the Board and Presiding Officer at the January 30, 1998 Hearing; Barry Sarvis, Pharmacist, President of the Board; Karla Kneebone, Pharmacist, Presiding Officer at the April 4, 1997 Hearing;

Vicki Schmidt, Pharmacist; Dan Katzer, Pharmacist; and Dr. Dan Upson, Consumer member.

BOARD ACTION

3. On February 19, 1997, an Order Setting Time and Place of Hearing; Petition; Order to Show Cause and Notice was filed with the Board office, K.S.A. 65-1627c, K.S.A. 65-1627d and K.S.A. 65-4119.

4. All documents except the Order Setting Time and Place of Hearing were mailed to Defendant, Mark J. Waltrip.

5. An informal telephone pre-hearing conference was held with Karla Kneebone, Presiding Officer; Dana Killinger, attorney for the Board; Larry Froelich, Executive Secretary, and Richard T. Bryant, attorney for Defendant, Mark J. Waltrip. Also included in the conference was Mark J. Waltrip at Richard T. Bryant's office. A proposed Agreed Order, settling the case was tentatively reached, K.S.A. 65-1627a and K.S.A. 77-516.

6. At the April 4, 1997, Formal Hearing, said Agreed Order was presented to the Board for approval. Larry Froelich, Executive Secretary read the Agreed Order and Mark J. Waltrip testified on his own behalf.

7. The Board then went into executive session to discuss quasi-judicial matters concerning Mark J. Waltrip, and upon returning, accepted the Agreed Order and all

parties signed said Agreed Order.

8. On December 16, 1997, the Board attorney filed a Probation Violation and Notice of Hearing for January 30, 1998, and mailed copies to Defendant, Mark J. Waltrip and his attorney, Richard T. Bryant, attorney of record for defendant.

9. The hearing on the Probation Violation was held on January 30, 1998. Mark J. Waltrip appeared without counsel, although Mr. Bryant was still counsel of record. At which hearing Larry Froelich, Etta Williams, Mark J. Waltrip and Owen Neff gave testimony.

10. Thereupon, Mr. Katzer made a motion as follows, "I would like to make a motion that we go into" (executive) "session for a period of 10 minutes to discuss" (quasi) "judicial matters".

FINDING OF FACTS

11. That Mark J. Waltrip, Defendant, was, in fact, chemically dependent. From Mark J. Waltrip's own testimony given at the April 4, 1997 Hearing, the Board had substantial evidence to enter an Agreed Order wherein Mark J. Waltrip was to enter the CIPP program which Mark J. Waltrip had already done in January of 1997 and placed him on probation for five years and other restrictions on his license (see transcript) of April 30, 1997.

12. That at the January 30, 1998 meeting, there was substantial evidence that Mark J. Waltrip had violated the terms of his probation and there were grounds for revocation.

FINDINGS OF LAW

13. That pursuant to the Agreed Order of April 4, 1997, the Board had authority to place Mark J. Waltrip on probation, K.S.A. 65-1627(a) and K.S.A. 64-4118(a)(3).

14. That the Board action of January 30, 1998, was based on substantial evidence, see Vakas v. The Kans. Board of Healing Arts, 248 Kan 589 (1991).

ORDER

In fairness to the Defendant, who appeared at the January 30, 1998, hearing without counsel, it would serve justice to allow a reconsideration hearing before the full Board in April. However the Defendant may seek a stay order under the judicial review procedure, K.S.A. 77-616 and the Presiding Officer does not feel that such relief should be granted without the full concurrence of the Board at the April meeting.

It is directed that the Board attorney give notice to the parties according to law.

IT IS SO ORDERED.

Dated this 12th day of March, 1998.

Lori Moore
Lori Moore
Presiding Officer of the State
Board of Pharmacy for the
State of Kansas
3003 Tam O'Shanter
Hays, KS 67601
Ph. (785)625-0037 Work
Ph. (785)625-4467 Home
Fax (785)625-7336

CERTIFICATE OF MAILING

I hereby certify that a copy of the above and foregoing Order was mailed by First Class mail, postage prepaid, on this 12th day of March, 1998, addressed to the following:

Mark J. Waltrip
1900 Barber
Kansas City, Kansas 66103

Kevin D. Case
750 Commerce Plaza II
7400 West 110th Street
Overland Park, Kansas 66210-2346

Richard T. Bryant
804 Bryant Bldg.
1102 Grand Avenue
Kansas City, MO 64106

Larry Froelich
Executive Secretary
Kansas State Board of Pharmacy
Landon State Office Building
900 Jackson, Room 513
Topeka, Kansas 66612-1120

Barry Sarvis, President
Kansas State Board of Pharmacy
3643 Everett Road
Manhattan, KS 66503

Dana W. Killinger
1505 SW Harrison St.
Topeka, KS 66612-1811

Lori Moore

Lori Moore
Presiding Officer
State Board of Pharmacy
for the State of Kansas.