

DEC 05 2003

CONSENT AGREEMENT

THIS CONSENT AGREEMENT is entered into by and between David D. VanHoozier, R.Ph., (the "Licensee") and the Kansas Board of Pharmacy (the "Board").

WITNESSETH:

WHEREAS, the Licensee presently holds a license to practice pharmacy in the State of Kansas issued by the Board; and

WHEREAS, the Board is the state agency empowered to enforce the Kansas Pharmacy Act, K.S.A. 65-1625, *et seq.* (the "Act"), including the use of disciplinary actions to suspend, revoke or limit the licenses of Kansas pharmacists who violate the Act; and

WHEREAS, the Board has filed a disciplinary action against the Licensee alleging various violations of the Pharmacy Law and seeking revocation of his license to practice pharmacy in the State of Kansas; and

WHEREAS, Licensee desires to voluntarily surrender his Kansas license to practice pharmacy and the Board is willing to accept such surrender based upon certain agreements by the Licensee as detailed herein.

THEREFORE, for good and valuable consideration the Licensee and the Board agree as follows:

1. The Licensee hereby surrenders his Kansas license to practice pharmacy to the Board. Effectively immediately, Licensee's Kansas license to practice pharmacy is cancelled and Licensee shall not be entitled to practice pharmacy in the State of Kansas. Within ten (10) days of this Consent Agreement, Licensee shall deliver to the Board's office the original and all copies of any license issued to him by the Board.

2. Should Licensee ever, in the future, apply for a new license to practice pharmacy in Kansas, the Board may consider all information in its possession and Licensee shall have the burden to prove, to the Board's satisfaction, in addition to other requirements: (1) that he is, at the time of any subsequent application, morally fit to practice pharmacy; (2) that he is conscious of his wrongful conduct and the disrepute that conduct brought to the profession; (3) that his conduct between the time of this Consent Agreement and any subsequent application for licensure demonstrates he is qualified for licensure; (4) that he is, at the time of any subsequent application, competent to practice pharmacy in Kansas; and (5) that he has rehabilitated himself to the extent that he does not present a risk of additional violations of Kansas pharmacy law and he should be granted the privilege of practicing pharmacy in Kansas.

3. The Licensee agrees that this Consent Agreement is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it. The Licensee 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.

4. This Consent Agreement 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.

5. The Licensee acknowledges that he has the right:

- A. 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;

- B. 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 Licensee freely waives these rights and acknowledges that said waiver is made voluntarily and in consideration of the Board's accepting surrender of his license without requiring a revocation. The Licensee further waives the right to seek reconsideration or appeal or otherwise contest this Consent Agreement.

6. The Licensee acknowledges that he enters into this Consent Agreement freely and voluntarily after the opportunity for consultation with counsel of his choosing. The Licensee further acknowledges that he has read this Consent Agreement in its entirety, that he understands its legal consequences and that he agrees that none of its terms are unconscionable, arbitrary or capricious.

7. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:

- A. Adverse Action Classification: "1145 Voluntary Surrender of License"
- B. Basis For Action: "10 Unprofessional Conduct."

8. The following statement will be made in the Board's newsletter: "David D. VanHoozier, R.Ph. of Carrollton, Texas voluntarily surrendered his Kansas pharmacy license."

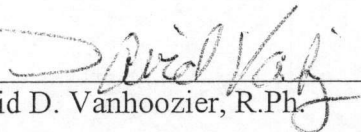
9. This Consent Agreement constitutes the entire and final agreement of the parties. In the event any provision of this Consent Agreement is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Consent Agreement shall be given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

10. Upon execution by all parties, this Consent Agreement shall be a public record in the custody of the Board.

11. This Consent Agreement shall become effective on the day it is approved and accepted by the Board by way of signature of the Board's authorized representative.

12. The Licensee acknowledges that he has been advised by the Board that he would have the right within 15 days after service of a final order of the Board to file a petition for reconsideration with the Board and the right within 30 days after service of a final order of the Board 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 Susan Linn, its Executive Director. The Licensee hereby waives those rights.

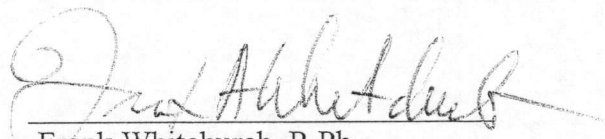
IN WITNESS WHEREOF the parties have caused this agreement to be executed on the dates indicated



David D. Vanhoozier, R.Ph.

Date

KANSAS PHARMACY BOARD

By: 

Frank Whitchurch, R.Ph.
Investigation Member

11-22-03
Date

BEFORE THE KANSAS BOARD OF PHARMACY

In The Matter Of)
)
) File No. 03-15
)
 DAVID D. VANHOOZIER, R.Ph.)
)
 LICENSE NO. 10428)

EMERGENCY AGENCY ORDER

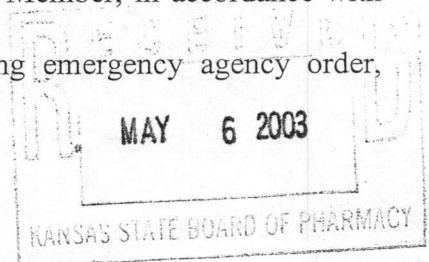
David D. Vanhoozier, R.Ph. (the "Respondent") is currently authorized to practice pharmacy in the State of Kansas by reason of the Kansas Board of Pharmacy (the "Board") having issued him License No. 10428. The following matters have come to the attention of the Board's Investigation Member:

A. By order dated December 4, 1991 the Board disciplined Respondent based upon an allegation and agreement by Respondent that there may have existed at that time sufficient evidence to prove by substantial evidence violations of K.S.A. 65-1627(4) and (13).

B. On or about February 2, 1999 the Respondent agreed to the entry of an order by the Texas Board of Pharmacy revoking Respondent's license to practice pharmacy in the State of Texas. The order entered by the Texas Board of Pharmacy was based in part on Respondent's agreement that he had admitted taking from two pharmacies in which he worked, without authorization, Dilaudid and Morphine, controlled substances, for his own personal use.

C. In late March 2003 Respondent admitted to his employer and Pharmacist in Charge that while working in a pharmacy in Arkansas City, Kansas Respondent took from that pharmacy, without authorization, various controlled substances for his personal use.

After considering the foregoing, the Board's Investigation Member, in accordance with the authority granted to him by the Board, enters the following emergency agency order, pursuant to K.S.A. 77-536 and K.S.A. 65-1627(c).



I. FINDINGS OF FACT

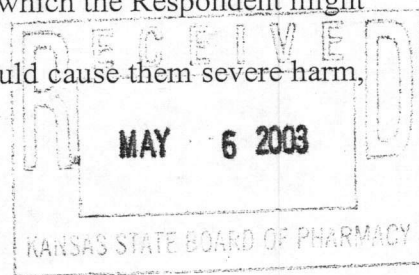
For purposes of this order, the Board's Investigation Member makes the following findings of fact:

1. The Board has previously issued Respondent license number 10428, which entitled him to practice pharmacy in the State of Kansas ("Respondent's License").
2. The Respondent has previously been disciplined for taking controlled substances from a pharmacy-employer without authorization and self-administering those controlled substances.
3. In late March 2003 Respondent admitted to the Pharmacist in Charge of the Arkansas City, Kansas pharmacy at which the Respondent was working that he had taken, without authorization, a significant number of various controlled substances for personal use.

II. CONCLUSIONS OF LAW AND FACT

For purposes of this order, the Board's Investigation Member makes the following conclusions of law and fact:

1. The Respondent's history of diverting and self-administering controlled substances indicates the Respondent is addicted to controlled substances and cannot control his desire for those drugs.
2. Being addicted to and consuming the controlled substances Respondent has admitted to would impair a human being, like Respondent, to the point that he would pose an immediate danger and significant risk to those members of the public who are customers of a pharmacy in which he might be working in the form of misfills of prescriptions, mislabeling of prescriptions, inaccurate counseling and failure to counsel customers regarding their prescriptions. As a result of these risks, customers of a pharmacy in which the Respondent might be working could receive drugs or inappropriately take drugs that could cause them severe harm, if not death.



3. 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.

4. 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 (3), (4) and (13).

III. EMERGENCY ORDER

Pursuant to K.S.A. 77-536 and K.S.A. 65-1627(c), and based upon the foregoing findings and conclusions, Respondent's License is hereby suspended until further order of the Board, effective immediately.

Within fifteen (15) days after service of this Emergency Agency Order, either party may file a petition for reconsideration pursuant to K.S.A. 77-529.

Within the time limits established in K.S.A. 77-613, either party may seek judicial review of this Emergency Agency Order, pursuant to said statute. The agency officer designated to receive service of a petition for judicial review is:

Susan Linn
Executive Director
Kansas Board of Pharmacy
900 SW Jackson, Room 560
Topeka, KS 66612-1231

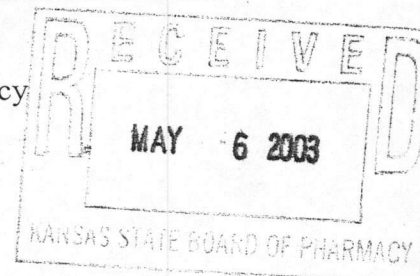
IT IS SO ORDERED.

Date

5/2/03

Michael P. Hurst

MIKE HURST, R.Ph.,
Investigation Member
Kansas Board of Pharmacy



CERTIFICATE OF SERVICE

I hereby certify that I did, on the 2nd day of May, 2003, deposit in the United States mail, postage prepaid, the original of the foregoing EMERGENCY AGENCY ORDER, properly addressed to the following:

Susan Linn
Executive Director
Kansas Board of Pharmacy
900 SW Jackson, Room 560
Topeka, KS 66612-1231

and a true and correct copy by United States mail, postage prepaid to:

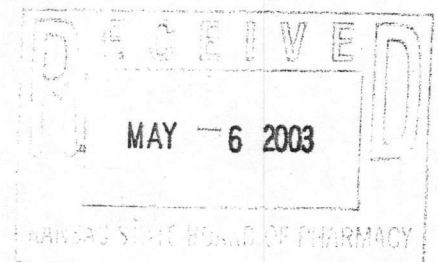
David D. VanHoozier, R.Ph.
2010 Cottonwood Rd.
Carrollton, TX 75006

Steve Schwarm
POLSNELLI, SHALTON & WELTE, AP.C.
555 Kansas Ave., Ste. 301
Topeka, KS 66603
Attorney for Respondent

Randall J. Forbes, P.A., #09089
FRIEDEN, HAYNES & FORBES
555 S. Kansas Ave., Ste. 303
Topeka, KS 66603
Attorney for Kansas Board of Pharmacy



Mike Hurst, R.Ph.
Investigation Member
Kansas Board of Pharmacy



BEFORE THE KANSAS STATE BOARD OF PHARMACY

In The Matter Of)
)
DAVID D. VANHOOZIER, R.Ph.) File No. 99-31
License No. 10428)
_____)

AGENCY ORDER

David D. Vanhoozier, R.Ph. ("Vanhoozier") has submitted an application to the Kansas State Board of Pharmacy (the "Board") for renewal of his Kansas license to practice pharmacy for the period 2000-2002. After considering the application, matters contained in the Board's files and other matters brought to the Board's attention, the Board enters the following final agency order.

I. FINDINGS OF FACT

1. The Board previously issued to Vanhoozier license No. 10428, which entitled him to practice pharmacy in the State of Kansas.
2. Vanhoozier has applied to the Board, pursuant to K.S.A. 65-1632, for renewal of his Kansas pharmacy license.
3. By order dated December 4, 1991 the Board disciplined Vanhoozier's Kansas pharmacy license.
4. By order dated February 2, 1999, the Texas State Board of Pharmacy directed that Vanhoozier's Texas license to practice pharmacy be revoked for acts which constituted violations of the Texas Pharmacy Law.

II. CONCLUSIONS OF LAW AND FACT

A. The Kansas Pharmacy Act provides that the Board may deny an application for license renewal upon a finding that the applicant "...has had a license to practice pharmacy revoked, suspended or limited ... by the proper licensing authority of another state ..." K.S.A. 65-1627 (a)(12).

B. The Texas State Board of Pharmacy is the proper licensing authority of the State of Texas and it has revoked Vanhoozier's Texas license. The renewal application submitted by Vanhoozier can and should be denied on that basis.

III. ORDER

Based upon the foregoing, the application of Vanhoozier for renewal of his Kansas pharmacy license is denied.

IV. NOTICES

Vanhoozier is hereby notified as follows:

1. Vanhoozier may request a hearing pursuant to the Kansas Administrative Procedures Act by filing a written request with the Kansas Board of Pharmacy at 900 S.W. Jackson St., Room 513, Topeka, Kansas 66612-1231 within fifteen (15) day of the date of service of this order.

2. If a hearing is not requested as described above, the order denying Vanhoozier's application for renewal of his Kansas pharmacy license shall become a final order of the Board, effective upon the expiration of the time to request a hearing.

3. Within fifteen (15) days after entry of a final agency order, either party may file a petition for reconsideration pursuant to K.S.A. 77-529.

4. Within the time limits established in K.S.A. 77-613, either party may seek judicial review of a final agency order, pursuant to said statute. The agency officer designated to receive service of a petition for judicial review is:

Carly Haynes
Acting Executive Director
Kansas Board of Pharmacy
900 S.W. Jackson Street, Room 513
Topeka, KS 66612-1231

IT IS SO ORDERED.

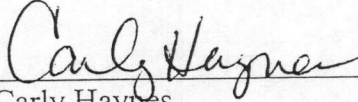
9-27-2000
Date

Vicki Schmidt
VICKI SCHMIDT, R.Ph.
President
Kansas Board of Pharmacy

CERTIFICATE OF SERVICE

I hereby certify that I did, on the 28ⁿ day of September, 2000, deposit in the United States mail, postage prepaid, a copy of the foregoing AGENCY ORDER, properly addressed to the following:

David D. Vanhoozier
4733 N. O'Connor Road
Apartment 2060
Irving, TX 75062



Carly Haynes
Acting Executive Director
Kansas Board of Pharmacy