

BEFORE THE
KANSAS STATE BOARD OF PHARMACY
Landon State Office Building, Room 560
Topeka, KS 66612
785/296-4056

In the Matter of)
)
MICHAEL D. MCDANIEL)
Registered Pharmacist) Case No. 03-53
#1-11364)
)
Respondent.)

CONSENT AGREEMENT AND ORDER

Now on this 9th day of March, 2004, the above-captioned matter comes before the Kansas State Board of Pharmacy (Board) by agreement of Michael D. McDaniel (Licensee) and the Kansas State Board of Pharmacy for the purpose of settling the above-captioned case.

Licensee hereby acknowledges the following:

1. Michael D. McDaniel is a licensed pharmacist within the meaning of the Kansas Pharmacy Act, K.S.A. 65-1625, et seq., and amendments thereto.
2. The Board received a report of information concerning Licensee's violations of statutes and regulations governing the practice of pharmacy, to-wit:
 - (a) On September 24, 2003, Dr. Lee Bittenbender wrote a *Dispense as Written* prescription for Amnesteem 40 mg. capsule for a patient. Michael D. McDaniel R.Ph. filled the prescription Rx 938313-02888 at Walgreens Pharmacy in Topeka. Claravis 40 mg. capsules were dispensed for Amnesteem 40 mg. capsules without physician authorization.

3. The Board conducted an investigation concerning Licensee's violation of statutes and regulations.
4. As a result of the investigation, the Board investigative member determined that reasonable grounds exist to believe the Licensee violated K.S.A. 65-1637 (a)(1), in the case of a prescription signed by the prescriber and written on a blank form containing two signature lines, signs the signature line following the statement "dispense as written" on the prescription; K.S.A. 65-1627. (a)(6), filled a prescription not in strict accordance with the directions of the practitioner; and K.A.R. 68-7-12b. Incident Reports. (b) as soon as possible after discovery of the incident, the pharmacist shall prepare a report.

HOWEVER, Licensee and the Board mutually desire to enter into the Consent Agreement and Order in lieu of adjudicative proceedings to resolve the report of alleged violations.

5. WHEREFORE, Licensee and the Board acknowledge and agree that this Consent Agreement and Order is not to be construed as an admission of fault, liability, or any error on the part of Licensee with respect to any claim asserted by any person, corporation, or entity, against Licensee and that such is the intention of Licensee, such allegations being expressly denied, nor will the terms of this Consent Agreement and Order have any bearing or application on any report, claim, incident or investigation relating to any other pharmacist employed by Walgreens Stores, Inc.

WHEREFORE, Licensee waives all rights to an adjudication of facts and law, which could be determined pursuant to a hearing conducted in accordance with the Kansas administrative procedure act in relation to this matter.

WHEREFORE, Licensee waives the right to file a motion for reconsideration and all rights to appeal pursuant to the Kansas act for judicial review in relation to this matter.

WHEREFORE, Licensee consents to:

- (a) FINE. Respondent hereby agrees and consents to the Board's entry of an order within ten (10) days of the Board entering the Final Agency Order provided herein, he shall pay to the Kansas Board of Pharmacy an administrative fine of five hundred dollars (\$500.00).
- (b) PROBATION. Respondent hereby agrees and consents to the Board's entry of an order placing Respondent's license on probation for a period of one year from the date of the Stipulation and Order. If, during the one year probationary period, the Board's Investigative Member has reasonable grounds to believe that Respondent has again violated K.S.A. 65-1637 (a)(1) and K.A.R. 68-7-12b. The Board's Investigative Member will issue a summary order indefinitely suspending Respondent's license. In the event of the issuance of a Summary Order, and subsequent timely request by Respondent for hearing on the Summary Order, the issues to be addressed at such a hearing shall be limited solely to: (1) whether the Respondent committed violations believed by the Board to

have occurred, and (2) what disciplinary sanctions should be imposed in addition to the summary lifting of the stay of the suspension.

6. Respondent agrees that all information in the possession of the Board or its attorney 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 forms of this Stipulation and Final Agency Order and the Final Order provided for herein, with or without the present of the Respondent and his attorney. In the event that this Stipulation and Final Agency Order and the Final Order provided 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 unless 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. The Respondent further agrees that the Kansas Pharmacy Act, K.S.A. 65-1625 *et seq.* is constitutional on its face and as applied in this case.
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 the 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 Board's limiting the disciplinary action taken against him to those provided for 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. 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 constitute a willful violation of a lawful Board order and 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.

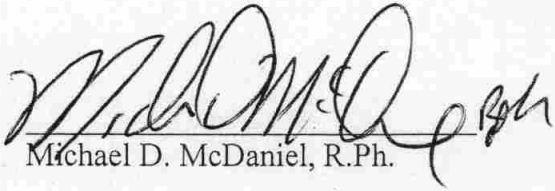
13. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:

- A. Adverse Action Classification: "1172 Administrative Fine."
- B. Basis for Action: "Other- Illegal substitution on a *Dispense as Written* prescription and no incident report."

14. The following statement will be made in the Board's newsletter: "Michael D. McDaniel R.Ph. of Topeka, Kansas. The Board entered an order assessing an administrative fine of \$500 and probation for a period of one year for violation K.S.A. 65-1637 (a)(1) - substitution on a Dispense as Written prescription and K.A.R. 68-7-12b.- no incident report.

15. 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.
16. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.
17. 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.
18. 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 Debra Billingsley, its executive secretary. The Respondent hereby waives those rights.

AGREED AND ACCEPTED BY:


Michael D. McDaniel, R.Ph.

4-8-4
Date

APPROVED BY:

Respondent's Attorney's Name and Address

Date

Marty M. Snyder
Assistant Attorney General
Kansas State Attorney General's Office

Date

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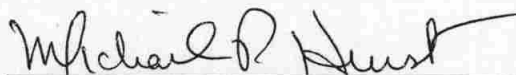
FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas Board of Pharmacy (the "Board") approves and accepts the within CONSENT AGREEMENT AND ORDER and incorporates the provisions thereof as the Final Order of the Board.

ENTERED AND EFFECTIVE THIS 14 day of March 2004.

KANSAS BOARD OF PHARMACY

By:



Michael R. Hurst, R.Ph.
President