

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
KENNETH R. MULLINS) Case No. 18-438
Kansas License No. 1-16623)

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Kenneth R. Mullins ("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 his attorney,

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

3. 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 1-16623 ("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 his 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 as follows:

A. On or about April 10, 2018, the Missouri Board of Pharmacy, with the consent and agreement of Respondent, entered a disciplinary order entitled *Settlement Agreement* ("Missouri Order") whereby Respondent's Missouri license to practice pharmacy was disciplined. A true and correct copy of the Missouri Order is marked Exhibit A, attached hereto and incorporated herein by reference.

B. The Missouri Order found, in relevant part, that while Respondent was the pharmacist-in-charge ("PIC") at St. Mary's Hospital Pharmacy-Audrain, 620 E. Monroe, Mexico, Missouri 65265 ("St. Mary's") Respondent collected money from the sale of over-the-counter products to employees without reimbursing the hospital and instead kept the payments in a "petty cash" fund use for fundraisers, holiday projects, reference books, customer service recovery items, gas cards for patients and their families, and employee incentives including candy bars for nurses and staff lunches.

C. Moreover, the Missouri Order found, in relevant part, that Respondent had valid prescriptions from his physician which he personally filled from hospital stock from 2006 to 2014. No controlled substances were dispensed to respondent. Respondent made full payment for the purchase of the prescription medications to the petty cash fund. The prescription

medications Respondent received in this manner were kept in their original manufacturer's bottle with the manufacturer's label and were not labeled as required by Missouri law.

D. Respondent agreed by and through the Missouri Order that his conduct violated Missouri law as fully described in the Missouri Order.

E. The Missouri Order suspended Respondent's Missouri license number 040303 for 60 days and placed Respondent's Missouri license on Probation for a period of 3 years ("Probation Period"). The Missouri Order further ordered that during the Probation Period, Respondent was required to comply with the requirements set forth in 21 numbered paragraphs found on pages 10 through 14 of the Missouri Order ("Missouri Order Requirements").

F. Pursuant to K.S.A. 65-1627(a)(12), the Board may revoke, suspend, place in a probationary status the license of any pharmacist who has had any disciplinary action taken against a license to practice pharmacy by the proper licensing authority of another state.

6. Upon motion duly made, seconded and passed, the Board finds and concludes that Respondent's conduct, as described in paragraph 5 above, violates the Act and such conduct warrants the imposition of appropriate disciplinary action against Respondent's Kansas License under the provisions of pursuant to K.S.A. 65-1627(a)(12).

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. COMPLIANCE WITH THE MISSOURI ORDER. The Respondent hereby agrees and consents and the Board orders that Respondent shall remain in full compliance with all provisions of the Missouri Order, including each of the Missouri Order Requirements.

B. PROBATION. Respondent hereby agrees and consents and the Board orders that Respondent's Kansas license shall be placed on probationary status for a period

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concurrent with the probationary period imposed by the Missouri Order (the "Probationary Period"). During the Probationary Period, Respondent agrees and consents and the Board orders that Respondent shall comply with the following requirements (the "Probationary Requirements"):

- i. Respondent shall not serve as a pharmacist-in-charge or preceptor at any Kansas pharmacy during the Probationary Period.
- ii. Respondent shall not accept employment during the Probationary Period at any pharmacy in Kansas and shall not change location of employment in Kansas which requires a pharmacist license without first obtaining the written consent of the Board.

C. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Consent Order he must, and the Board further orders the Respondent to

- i. Comply fully with this Stipulation and Consent Order;
- ii. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws relating to Kansas pharmacies;

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 and the Final Order provided for herein, with or without the presence of the Respondent or its attorney. In the event that this Stipulation and Consent 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 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 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 Investigation Member or its attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Consent Action or the Final Order provided for herein.

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 and enter the Final Order provided for herein. 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 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 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 Procedure 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 him 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 Final Order provided for herein.

13. The Respondent acknowledges that he enters into this Stipulation and Consent Order freely and voluntarily after consultation with counsel of his choosing. The Respondent further acknowledges that he has read this Stipulation and Consent order in its entirety, that he understands its legal consequences and that he 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 him. 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.

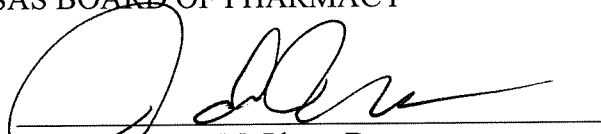
17. This Stipulation and Consent Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative and shall supersede the terms of the 2013 Consent Order.

18. 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 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 Director at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.

ENTERED AND EFFECTIVE this 8th day of February, 2019.


KANSAS BOARD OF PHARMACY

By:

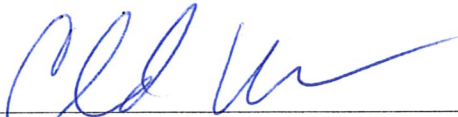


JOHN WORDEN, PharmD
President

AGREED AND APPROVED BY:


Kenneth R. Mullins


1/10/19
Date


Chad Ullom, R.Ph.
Investigation Member

2/8/19
Date

Respondent's Attorney's Name & Address

Date

FOR  #25064
Randall J. Forbes, KS#09089 MO#64335
FRIEDEN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604
(785) 354-1100


1-15-19
Date

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 27 day of February, 2019 addressed to:

Kenneth R. Mullins
21 Roxey Dr.
Fayetteville, TN 37334

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



Representative of the
KANSAS BOARD OF PHARMACY