

BEFORE THE KANSAS STATE BOARD OF PHARMACY

In the Matter of)
 the Renewal Application of)
)
 Frank Porter)
 License No. 1-10233)
 _____)

Case No. 18-016

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Frank Porter ("Respondent") as follows:

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

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, including imposing an administrative fine or penalty.

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 Respondent Kansas license number 1-10233 ("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. Respondent hereby 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:

- On June 27, 2017, Respondent submitted a renewal application to engage in the practice of pharmacy in the State of Kansas.
- In the renewal application, Respondent requested to renew the license on active status.

- At the end of the renewal application, Respondent agreed to the following statement prior to submitting the completed renewal application: "I hereby attest that I have completed all continuing education hours required by law to renew my license."
 - Respondent's renewal application was selected for an audit to provide proof of Respondent's continuing education certificates or a transcript of completion of required hours.
 - Respondent only provided proof of continuing medical education hours but did not provide proof of any continuing pharmacy education hours to renew Respondent's pharmacy license and indicated Respondent wanted to change to inactive status, which does not require continuing education.
 - Pursuant to K.A.R. 68-1-1b, 30 hours of continuing education shall be required for renewal of a pharmacist license during each licensure period, which must be obtained in the two-year licensure period ending on the June 30 expiration date of each license.
 - Respondent was required to provide proof of completion of 30 hours of continuing education earned between July 1, 2015 and June 30, 2017 to maintain an active license.
5. Upon motion duly made, seconded and passed, the Board finds and concludes that Respondent's conduct, as described above, failed to comply with the continuing education requirements of the Board for license renewal under K.S.A. 65-1627(a)(9).
6. The Respondent agrees and consents and the Board finds concludes and orders that the following disposition is just and appropriate under the circumstances:
- A. Respondent's Kansas license to practice pharmacy is retroactively placed on inactive status beginning July 1, 2017.
 - B. If Respondent seeks to change the license to active status in the future, Respondent shall be required to pay a \$3,000 fine and provide proof of an additional 120 hours of completed

continuing education, in addition to any other fees and requirements established by law. Completion of these hours shall not count toward any subsequent continuing education requirement for Respondent's Kansas license.

7. Respondent agrees that all information in the possession of the Board's Executive Secretary, its staff, its investigators and or its attorney regarding the investigation which lead to this action and all information discovered during the pendency of the 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.

8. 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 Executive Secretary 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

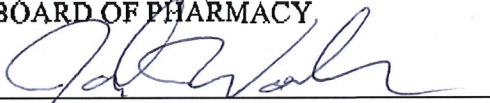
16. This Stipulation and Consent Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

17. 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 March, 2018.

KANSAS BOARD OF PHARMACY

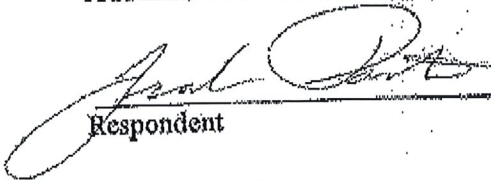
By:




DR. JOHN WORDEN

President


AGREED AND APPROVED BY:


Respondent

02-07-2018
Date



Alexandra Blasi
Executive Secretary

3/8/18
Date


Respondent's Attorney's Name & Address

2/12/18
Date

BRIAN P. DUNCAN 22474
PO Box 270 VATES CENTER, KS 66783



3/8/18
Date

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


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 12th day of March, 2018 addressed to:

FRANK PORTER
1408 EAST STREET
IOLA KS 66749

BRIAN P DUNCAN
111 S STATE STREET
PO BOX 270
YATES CENTER KS 66783

BRIAN P DUNCAN
101 W MAIN ST
PO BOX 667
CHANUTE KS 66720



Kansas Board of Pharmacy Staff