

BEFORE THE KANSAS BOARD OF PHARMACY

KANSAS BOARD OF PHARMACY,)
)
 Plaintiff,)
)
 vs.)
)
 DARIN ROHR, R.PH.)
)
 Kansas License No. 1-15399)
)
 Defendant.)
 _____)

Filed By
JAN 9 2015
KANSAS STATE
BOARD OF PHARMACY

Case No. 14-11B

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Darin Rohr, R.Ph. ("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 his attorney, Donald Hoffman of Dreiling, Bieker & Hoffman, 111 West 13th Street, Hays, KS 67601.

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. 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 1-15399 ("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:

A. At all time relevant hereto, Respondent was the Pharmacist-in-Charge ("PIC") of the Wal-Mart Pharmacy #10-0664 located at 4301 Vine Street, Hays, Kansas (the "Wal-Mart Pharmacy").

B. On or about November 6, 2013 Dr. Randy Cook of the Medical Specialist Clinic in Hays Kansas issued a prescription for patient HW for Xarelto 15mg. Dr. Cook, for medical reasons, had determined not to prescribe Coumadin for patient HW. The Xarelto prescription was called in to the Wal-Mart Pharmacy.

C. A staff pharmacist at the Wal-Mart Pharmacy, without the knowledge or authorization of Dr. Cook, the Medical Specialist Clinic or Respondent, knowingly failed to fill and dispense the Xarelto prescription, but rather dispensed Coumadin to patient HW.

D. The staff pharmacist incorrectly advised patient HW that her insurance would not pay for Xarelto and advised her to take the Coumadin that was dispensed even after being informed by the patient that the patient's doctor did not want her to take Coumadin, endangering the health of patient HW.

E. The dispensing of Coumadin to patient HW rather than the Xarelto that had been prescribed by Dr. Cook was a “reportable incident”, as defined by K.A.R. 68-7-12b (a), requiring that the Respondent, as PIC, insure that an “Incident Report”, as required by K.A.R. 68-7-12b(c), be prepared as soon as possible.

F. Respondent failed to prepare and Incident Report at the direction of the Wal-Mart District Manager Chris Crispin.

G. Only after a complaint had been made to the Board and an investigation begun, did Respondent cause an Incident Report to be prepared.

H. The Licensee has acted and failed to act , as specified herein, in a way that would justify disciplinary action against his license, pursuant to K.S.A. 65-1627 (a)(8), in that he intentionally violated the requirements of the Pharmacy Law, including regulations adopted by the Board.

Upon motion duly made, seconded and passed, the Board finds and concludes that Respondent's conduct, as described 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)(8).

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. ADMINISTRATIVE FINE. Within 10 days of the effective date of the Consent Order contemplated hereby, Respondent shall pay to the Board an administrative fine in the amount of One Thousand Dollars (\$1,000.00).

B. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Final Agency Order he must, and the Board further orders the Respondent to:

1. Comply fully with this Stipulation and Final Agency Order;
2. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws relating to Kansas pharmacies;
3. *Advise the Board's Executive Secretary within 10 days of being charged with any crime.*
4. *Personally appear at the Board meeting at the time this Stipulation and Consent Order is considered by the Board. It shall be the Respondent's responsibility to contact the Board's Executive Director to determine when and where to appear.*

7. 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 Final Agency 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 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.

8. 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 Investigation Member or its 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.

9. 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, 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 Procedures 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 Final Agency Order and the Final Order provided for herein.

12. 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.

13. 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.

14. 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.

15. Upon approval and entry of the Final Order by the Board, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

16. 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.

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 Debra Billingsley, its Executive Secretary at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.


ENTERED AND EFFECTIVE this 9th day of January, 2015.

KANSAS BOARD OF PHARMACY

By: 
DR. ROBERT HANEKE
President

[Signatures of Agreement and Approval on Following Page]

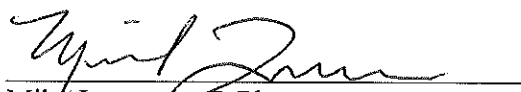
AGREED AND APPROVED BY:



Darin Rohr, R.Ph.

1/6/15

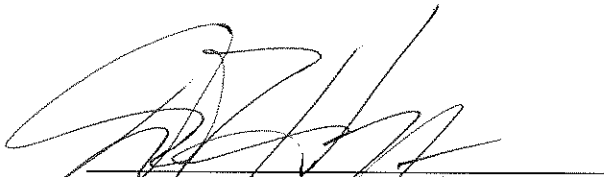
Date



Mike Lonergan, R.Ph.
Investigation Member

1-9-15

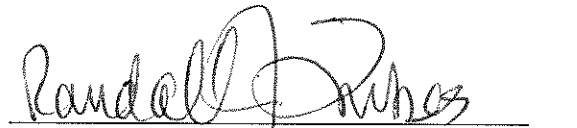
Date



Donald Hoffinan # 9502
DREILING, BIEKER & HOFFMAN
111 West 13th Street
Hays, KS 67601
Counsel for Darin Rohr, R.Ph.

1/6/15

Date



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

1/9/2015

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 12 day of January, 2015 addressed to:

Randall J. Forbes
FRIEDEN, UNREIN & FORBES, LLP
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Debra Billingsley
Executive Director
KANSAS BOARD OF PHARMACY