

BEFORE THE STATE BOARD OF PHARMACY
OF THE STATE OF KANSAS

KANSAS STATE BOARD OF PHARMACY
of the State of Kansas,
Plaintiff,

vs.

HERBERT J. SIMON, License
Number 9003,
Defendant.

STIPULATION OF FINDING OF FACT AND ORDER

This matter comes before the State Board of Pharmacy for the State of Kansas, this 21st day of January, 1990.

The State Board of Pharmacy appears by ~~Walter W. Stahanna~~, ~~Barbara Renick~~, Barbara Renick, Vice-President; Karla Kneebone, Pharmacist; Hoyt Kerr, Pharmacist; Dana Creitz, Pharmacist; and Laurence Hendricks, Consumer Representative. Also appearing are Tom Hitchcock, Executive Secretary, and the attorney for the Board, Dana W. Killinger. The Defendant, Herbert J. Simon appears personally and by his attorney, James R. Orr.

Defendant acknowledges receipt of the Petition herein and the charges and violations of the Pharmacy Practices Act, Kansas Administrative Regulations and Federal Regulations.

Defendant states that he has been advised of his procedural rights under the Pharmacy Practice Act and Administrative Proce-

dure Act.

Defendant states that no issue of fact exists and wishes to stipulate to the following findings of fact and accepts the order of the State Board of Pharmacy, to-wit:

1. That the State Board of Pharmacy has alleged the following:

a. That Defendant, Herbert J. Simon was Pharmacist in Charge of Treasury Drug Center Store #7885, Registration #5544 from October 12, 1977 to September 20, 1989, and that during said period said pharmacy committed the following violations set out in Paragraphs b through w.

b. That the Pharmacy failed to maintain a biennial inventory every two years after the initial inventory, in violation of 21 U.S.C. 827(a), 21 C.F.R. 1304.13 and K.S.A. 65-4121.

c. That the Pharmacy failed to inventory outdated controlled substances during its May 1988 inventory, in violation of 21 U.S.C. 827(a)(1), 21 C.F.R. 1304.17 and K.S.A. 65-4121.

d. That the Pharmacy failed to use a DEA Form 222 to document a Schedule 2 distribution from Treasury Drug #7885 to Treasury Drug Center #7883, in violation of 21 U.S.C. 828 (a), 21 C.F.R. 1307.11(a)(3) and K.S.A. 65-4121.

e. That the Pharmacy failed to indicate the date

on an official order form (DEA Form 222) that Schedule 2 controlled substances were received from the supplier, in violation of 21 U.S.C. 828(a), 21 C.F.R. 1305.09(e) and K.S.A. 65-4121.

f. That the Pharmacy, in two cases, failed to indicate an accurate date of dispensing on Schedule 2 prescriptions, in violation of 21 U.S.C. 829(a), 21 U.S.C. 827(b)(1), 21 C.F.R. 1304.24(d) and K.S.A. 65-4121.

g. That the Pharmacy filled one Schedule 2 prescription and 44 Schedule 3-4 prescriptions without a patient address, in violation of 21 U.S.C. 829(a)(b), 21 U.S.C. 827(b)(1), 21 C.F.R. 1306.05(a), 21 C.F.R. 1304.24(d) and K.S.A. 65-4121.

h. That the Pharmacy filled Schedule 3-4 prescriptions in 83 instances with incomplete prescribing practitioner information and/or incomplete dispensed product information, in violation of 21 U.S.C. 829(b), 21 U.S.C. 827(b)(1), 21 C.F.R. 1306.05(a), 21 C.F.R. 1304.24(d) and K.S.A. 65-4121.

i. That the Pharmacy's Schedule 3-4 prescriptions in four cases failed to indicate the product actually dispensed, and in eight cases failed to indicate the dosage form of the product dispensed, in violation of 21 U.S.C. 829(b), 21 U.S.C. 827(b)(1), 21 C.F.R. 1304.24(a)(b) and K.S.A. 65-4121.

j. That the Pharmacy's Schedule 2 prescriptions in two cases failed to indicate the product actually dispensed, in fifteen cases failed to indicate the dosage form of the

product dispensed, and in two cases failed to indicate the strength of the product dispensed, in violation of 21 U.S.C. 829(a), 21 U.S.C. 827(b)(1), 21 C.F.R. 1304.24(a)(b), and K.S.A. 65-4121.

k. That the Pharmacy, when partially filling one Schedule 2 prescription, failed to document when the balance was filled, and in two cases did not notify the prescribing practitioner that less than the prescribed amount had been filled, in violation of 21 U.S.C. 829(a), 21 U.S.C.827(a)(1), 21 C.F.R. 1306.13(a) and K.S.A. 65-4121.

l. The Pharmacy's Inter-Store Transfer documents in all cases failed to indicate the registered name, address, and DEA registration of either the distributing pharmacy or the receiving pharmacy, in violation of 21 U.S.C. 827(a)(1), 21 C.F.R. 1304.24(c), 21 C.F.R. 1307.11(a)(2), and K.S.A. 65-4121.

m. That the Pharmacy improperly documented the distribution of Schedule 3N controlled substances to a physician for office use by prescription, in violation of 21 U.S.C. 829(b) and 21 U.S.C. 827(b)(1), 21 C.F.R. 1306.04(b) and 21 C.F.R. 1307.11(a)(3), and K.S.A. 65-4121.

n. That the Pharmacy failed to maintain an adequate backup system to the computer refill record, in violation of 21 U.S.C.829(b) and 21 U.S.C. 827(b)(1), 21 C.F.R. 1306.22(b)(5)

and K.S.A. 65-4121.

o. That the Pharmacy's computer refill record in 110 cases provided inaccurate information, in violation of 21 U.S.C. 829(b) and U.S.C. 827(b)(1), 21 C.F.R. 1306.22(b) and K.S.A. 65-4121.

p. That the Pharmacy dispensed in one case an unauthorized refill of Schedule 3-4 controlled substances, in violation of 21 U.S.C. 829(b), 21 C.F.R. 1306.21(a) and K.A.R. 68-2020.

q. That the Pharmacy failed to maintain prescriptions in five cases documenting the dispensing of Schedules 3-4 controlled substances, in violation of 21 U.S.C. 827(b)(3), 21 C.F.R. 1304.04 and K.S.A. 65-4121.

r. That the Pharmacy failed to notify the DEA of its intention to maintain centralized computer refill records, in violation of 21 U.S.C. 827(b)(1), 21 U.S.C. 829(b), 21 C.F.R. 1304.04(e) and K.S.A. 65-4121.

s. That the Pharmacy failed to maintain all records documenting the receipt of Schedule 3-5 controlled substances either separate or readily retrievable from other pharmacy records, in violation of 21 U.S.C. 827(b)(2)(A)(B), 21 C.F.R. 1306.15, 21 C.F.R. 1304.04(h)(2) and K.S.A. 65-4121.

t. That the Pharmacy failed to maintain its Schedule 2 prescriptions in three instances separate from its other

prescriptions, in violation of 21 U.S.C. 829(a), 21 U.S.C. 827(b)(2)(A), 21 C.F.R. 1304.04(h)(1) and K.S.A. 65-4121.

u. That the Pharmacy failed to indicate the supplier's address and DEA registration number and/or date of receipt on all records documenting the receipt of Schedule 3-5 controlled substances from Thrift Drug Company, in violation of 21 U.S.C. 827(b)(1), 21 C.F.R. 1304.24(c) and K.S.A. 65-4121.

v. That the Pharmacy failed to record information required to transfer the refill of a Schedule 4 prescription originally filled at another pharmacy, in violation of 21 U.S.C. 829(b) and 21 U.S.C. 827(b)(1), 21 C.F.R. 1306.26(c) and K.A.R. 68-2-19.

w. That the Pharmacy failed to maintain its Schedule 3-5 prescriptions in eleven instances separate from all other prescriptions, although it had chosen the separate system of maintaining these prescriptions, in violation of 21 U.S.C. 829(b), 21 U.S.C. 827(b)(2)(A), 21 C.F.R. 1306.15, 21 C.F.R. 1304.04(2) and K.S.A. 65-4121.

2. That the Defendant has failed to comply with the statutory requirements imposed by the state upon pharmacists licensed by the State.

3. That the State Board of Pharmacy for the State of Kansas pursuant to K.S.A. 65-1627 (a)(5) & (8) has jurisdiction and power to revoke, suspend or place on probation said Herbert


J. Simon, Licensee.

IT IS THEREFORE ORDERED that Herbert J. Simon, Pharmacy License #9003 be placed on probationary status for a period of three (3) years. That the conditions of said probation are as follows:

(A) That Herbert J. Simon not violate any laws and regulations of the Kansas Pharmacy Practices Act, Kansas Controlled Substances Act, Kansas Food, Drug and Cosmetic Act and Federal Laws and Regulations pertaining to the practice of pharmacy and controlled substances.

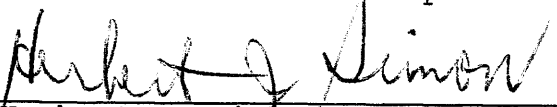
(B) That Herbert J. Simon take and pass with a grade of 75% the Pharmacy Law Examination at the office of the State Board of Pharmacy, Topeka, Kansas. Said examination must be taken within 30 days from the date of this order.

(C) Herbert J. Simon may not during the first year of the probationary period act as Pharmacist in Charge or engage as a preceptor, but may after one (1) year of successful probation apply for a Pharmacist in Charge or preceptor permit.

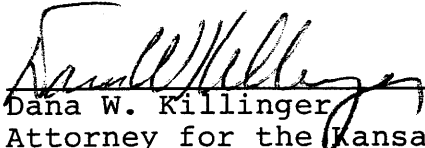

Barbara Renick, Vice-President
State Board of Pharmacy for
the State of Kansas

DATED: 1-22-90.

I, Herbert J. Simon, have hereby read the foregoing Stipulations and Order and fully understand the violations to which I am stipulating to and understand the terms of the probation.

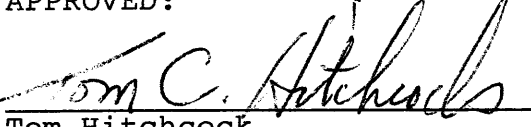

Herbert J. Simon
Licensee #9003

PREPARED BY:



Dana W. Killinger
Attorney for the Kansas
State Board of Pharmacy

APPROVED:



Tom Hitchcock
Executive Secretary for
the Kansas State Board of
Pharmacy



James R. Orr,
Attorney for Herbert J. Simon