

**BEFORE THE KANSAS STATE BOARD OF PHARMACY**

Filed By  
MAY 28 2014

KANSAS STATE  
BOARD OF PHARMACY

*In Re:* )  
 )  
ROBERT C. SIMS, R.Ph. )  
License No. 1-10882 )  
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KBOP Docket No. 13-157

**FINAL AGENCY ORDER REVOKING LICENSE**

On April 25, 2014, the Kansas State Board of Pharmacy (“the Board”) held a hearing on a petition to revoke the pharmacy license of Robert C. Sims, R.Ph. (“Respondent”), filed in the above-captioned matter through its Counsel, Mark Q. Brinkworth of Brinkworth Westerhaus LLC, and its Investigative Member, Chad Ullom, R.Ph. After considering the entirety of the presented evidence, including the allegations contained in the petition and statements made by Counsel and Respondent during the hearing, the Board enters the following Final Agency Order:

**I. FACTUAL BACKGROUND**

1. On June 26, 1985, the State of Kansas issued Respondent a license, number 1-10882, to practice pharmacy in the State of Kansas.
2. On June 9, 1988, Respondent voluntarily surrendered his Kansas pharmacy license.
3. On August 17, 1989, Respondent entered into a Voluntary Stipulation and Agreement, whereby his license to practice pharmacy in the State of Kansas was reinstated on a probationary status for a period of five (5) years on the condition that he remain in the Kansas Impaired Pharmacist Program during the probationary period.
4. On September 9, 1991, Respondent entered into a Stipulation in Lieu of Formal Hearing, whereby his license was placed on probation for five (5) years on various conditions, including active participation and cooperation in an impaired drug program.

5. On February 19, 1992, the Board filed a Petition for the Revocation, Suspension, Probation, and Non-Renewal of License against Respondent, alleging that he failed to actively participate and cooperate in an impaired drug program.

6. On March 20, 1992, the Board entered an Agreed Order, whereby Respondent agreed to the indefinite suspension of his license for failure to comply with the conditions of probation as set out in the 1991 Stipulation. Respondent executed the Agreed Order on March 12, 1992.

7. On December 5, 2006, the Board heard Respondent's petition for reinstatement of his license, Case No. 06-93. On January 30, 2007, the Board entered a Final Agency Order denying Respondent's request for reinstatement, indicating that it would not consider such an application until Respondent came into compliance with the 1992 Agreed Order.

8. The Board held another reinstatement hearing on June 12, 2007, where it noted that Respondent had since come into compliance with the 1992 Agreed Order. The Board granted Respondent's petition for reinstatement on October 9, 2007, conditioned upon Respondent providing proof of his passing the NAPLEX and MPJE examinations and his continued compliance with the requirements imposed upon him by the Pharmacy Impaired Provider Program (now the Kansas Pharmacy Recovery Network ("KsPRN")) and Heart of America Professional Network.

9. On June 11, 2008, Respondent petitioned the Board to reconsider the restrictions imposed in the October 2007 reinstatement order, which the Board denied after considering the entirety of Respondent's past compliance and disciplinary history.

10. On December 19, 2013, Debra Billingsley, Executive Secretary for the Board, received a phone call from Vicki Whitaker, Program Director of KsPRN and a member of the Kansas Pharmacists Association's Committee on Impaired Pharmacy Practice ("CIPP"). Ms. Whitaker

reported that Respondent's employer, John Kollhoff of Valley Falls Pharmacy,<sup>1</sup> had discovered fabricated and fictitious oxycodone prescriptions handled exclusively by Respondent.

11. That same day, Ms. Billingsley drafted a letter informing Respondent of a drug discrepancy report at Valley Falls Pharmacy. She enclosed a Consent Agreement which required Respondent to immediately cease practicing pharmacy in the State of Kansas and enter into an evaluation and treatment program administered by KsPRN. The letter also required Respondent to indicate his assent to or rejection of this Consent Agreement within ten (10) days; Respondent signed and returned the Consent Agreement to Ms. Billingsley on December 27, 2013.

12. Further investigation by Mr. Kollhoff on the evening of December 19 revealed a shortage of over 1,000 oxycodone tablets of varying dosages since his purchase of the pharmacy on November 6, 2013, and he immediately terminated Respondent's employment.

13. Ms. Billingsley referred the case to investigator Jim Kinderknecht, R.Ph., whose investigation into the matter, summarized in an April 4, 2014 report, revealed additional oxycodone shortages. An audit from February 17, 2013 to November 5, 2013, the eight-and-a-half month period preceding Mr. Kollhoff's purchase of the pharmacy, showed a total shortage of at least 9,302 oxycodone tablets of varying dosages<sup>2</sup> – an average shortage of 36 pills per day.

14. On December 20, 2014, Ms. Whitaker sent Respondent a CIPP referral letter notifying him of his need for a CIPP evaluation, with instructions to return the documents to her by January 2, 2014. A follow-up CIPP letter, dated January 9, 2014, provided details of Respondent's CIPP evaluation appointment, scheduled for 8:00AM on January 20, 2014, with Duane L. Olberding, LSCSW, LCAC of Professional Treatment Services, LLC.<sup>3</sup>

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<sup>1</sup> Valley Falls Pharmacy, License No. 2-12999, is located at 320 Broadway Street in Valley Falls, KS.

<sup>2</sup> Mr. Kinderknecht noted in his report that the "actual shortage is larger than shown" because of the unknown beginning inventory amount. "If [the] actual beginning inventory was known, [it] would increase total shortage."

<sup>3</sup> Professional Treatment Services is located at 3205 Clinton Parkway Court in Lawrence, KS.

15. In his evaluation interview, Respondent acknowledged his past addictions to opiates and alcohol, and admitted to the drug diversion that led to his termination. He reported being distrustful of himself around drugs, so he took one pill in February, 2013 “to test [him]self and everything took off,” resulting in daily opiate diversion and self-administration.

16. Mr. Olberding’s report classified Respondent as having a high probability of having a substance abuse disorder, noting that Respondent’s relapse was partially predicated on his denial of need for complete abstinence and his failure to maintain and utilize available recovery supports. He concluded that Respondent’s “thinking errors in combination with his mood disorders lead to a high problem potential,” and recommended that Respondent enter into an intensive outpatient treatment program (“IOT”), begin a 12-step treatment program, and practice lifetime abstinence from all mood-altering and intoxicating substances. Compliance on all of these recommendations was to be monitored by CIPP over a five year monitoring period.

17. On March 27, 2014, Respondent submitted to a random urinalysis test drug and alcohol screening as part of his CIPP monitoring agreement. Respondent’s screening tested positive for ethyl glucuronide and ethyl sulfate, indicating recent usage of alcohol. This positive test was reported to CIPP and the Board on April 2, 2014.

18. Respondent initially denied usage of alcohol to Mr. Olberding and blamed the positive test on his usage of hand sanitizer.<sup>4</sup> After being confronted with the fact that the reported ethyl glucuronide amount was sufficient to negate the possibility of a false positive,<sup>5</sup> Respondent eventually admitted his consumption of alcohol to Ms. Whitaker and Ms. Billingsley, claiming he consumed half a drink the night before his urinalysis.

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<sup>4</sup> Usage of hand sanitizer also would have constituted a violation of his CIPP agreement.

<sup>5</sup> Respondent’s ethyl glucuronide amount was 5030 ng/ml, just over ten times higher than the threshold for a positive test result (500 ng/ml).

19. In the April 25 hearing, Counsel presented all of the above-listed factual background, much of which was also alleged in the petition to revoke, and which was substantiated by the oral testimony of Mr. Kinderknecht and Ms. Whitaker, an affidavit from Mr. Kollhoff, Respondent's statements and answers, and the production of inventory records, investigative and lab reports, and other documents.

20. Respondent, appearing *pro se*, asked no questions of Mr. Kinderknecht or Ms. Whitaker. However, in a statement to the Board, he readily admitted to past and present addiction to narcotics. Respondent also acknowledged his diversion of oxycodone for personal ingestion, the falsification of prescriptions to conceal his diversion, and the positive urinalysis test for alcohol in violation of his most recent consent agreement.

21. Respondent did appear cooperative and remorseful. He apologized to the Board the profession at large, and answered direct questions from Board members about his addiction and theft. However, his answers – particularly in regard to his responsibilities over inventory at the pharmacy – were sometimes incomplete or contradicted by the evidence presented by Counsel.

## II. APPLICABLE LAW

1. The Board is the state agency empowered to enforce the Kansas Pharmacy Act, K.S.A. 65-1625 *et seq.* (“the Act”), including the use of disciplinary actions to suspend, revoke, or limit the licenses of Kansas pharmacists who violate the Act.

2. Section 1627 of the Act permits the Board to:

(a) . . . revoke, suspend, place in a probationary status or deny a renewal of any license of any pharmacist upon a finding that . . . (3) the licensee is found by the board to be guilty of unprofessional conduct or professional incompetency; (4) the licensee is addicted to the liquor or drug habit to such a degree as to render the licensee unfit to practice the profession of pharmacy; (5) the licensee has violated a provision of the federal or state food, drug and cosmetic act, the uniform controlled substances act of the state of Kansas, or any rule and regulation adopted under any such act; . . . [or] (8) the licensee has violated any of the

provisions of the pharmacy act of the state of Kansas or any rule and regulation adopted by the board pursuant to the provisions of such pharmacy act[.]

In this context, Section 1626(ccc) of the Act defines “unprofessional conduct,” in part, as “(4) intentionally falsifying or altering records or prescriptions” or the “(5) unlawful possession of drugs and unlawful diversion of drugs to others[.]” Additionally, Section 1626(xx) defines “professional incompetency,” in part, as “(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes ordinary negligence” or “(3) a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy.”

3. Section 1637 of the Act permits the Board to suspend, revoke, or otherwise limit a pharmacist’s license if they dispense medication without a valid prescription, and the Board may also issue a monetary sanction of up to five thousand dollars (\$5,000) per violation of this Section.

4. The Board is the also state agency empowered to enforce the Kansas Uniform Controlled Substances Act, K.S.A 65-4101, *et seq.*, (“the KsUCSA”). Oxycodone is a Schedule II drug under Section 65-4107(b)(1)(N) of the KsUCSA.

5. Section 65-4123(b),(d) of the KsUCSA prohibits pharmacists from dispensing controlled substances, including those on Schedule II, “except by a valid prescription order as defined in K.S.A 65-1626, and amendments thereto”; Schedule II drugs may only be dispensed by a “written or electronic prescription of a prescriber.”

### III. CONCLUSIONS OF LAW AND FACT

The Board finds that the allegations set forth in the petition to revoke Respondent’s pharmacist license are substantially accurate. This conclusion is based on the factual, physical, and testimonial evidence presented by Counsel, as well as Respondent’s own statements of

admission and culpability. As a result, the Board concludes that Respondent violated K.S.A. §§ 65-1627(a)(3)–(5),(8), 65-1637, and 65-4123(b),(d), noting that his unprofessional conduct and drug addiction render him unfit to practice pharmacy at this time. Revocation of his pharmacy license is both warranted and necessary under the circumstances to protect public health and safety.

**IT IS THEREFORE ORDERED** that Respondent’s license to practice pharmacy in Kansas, license number 1-10882, is hereby **REVOKED**.

**IT IS SO ORDERED.**

5/22/14  
Date

David Schoech  
David Schoech, R.Ph.  
President, Kansas Board of Pharmacy

#### NOTICES

1. This is a Final Order, and becomes effective upon service.
2. **Within fifteen (15) days** after service of the Final Agency Order, any party may file a Petition for Reconsideration pursuant to K.S.A. § 77-529.
3. Either party to this agency proceeding may seek judicial review of the Final Order by filing a timely petition in the District Court as authorized by K.S.A. § 77-613. Reconsideration of the Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed **within thirty (30) days** following service of the Final Order.

4. Respondent may apply for reinstatement of their pharmacy license after the expiration of one year, pursuant to K.S.A. § 65-1627(f).

5. A copy of any petition for judicial review or reinstatement application must be served upon the Kansas Board of Pharmacy. The agency officer designated to receive service of a judicial review or reinstatement petition is:

Debra L. Billingsley  
Executive Secretary  
Kansas State Board of Pharmacy  
800 SW Jackson #1414  
Topeka, KS 66612-1244



**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing **FINAL ORDER OF REVOCATION** was mailed on this 28 day of May, 2014 by sending the same in the United States Mail, certified mail return receipt requested, and addressed to:

Robert Sims  
1188 E. 1067 Rd  
Lawrence, KS 66047

  
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Kansas Board of Pharmacy