

Filed
MAR 19 2010
KANSAS STATE
Board of Pharmacy

BEFORE THE KANSAS STATE BOARD OF PHARMACY

In the Matter of)
)
SYBLE THOMPSON, R.Ph.)
)
Kansas License No. 1-11269)
_____)

Case No. 08-144

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas State Board of Pharmacy ("Board") and Syble Thompson, R.Ph. ("Respondent") as follows:

1. The Board is represented herein by its attorney, Kevin M. Fowler of Frieden & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. Respondent is represented herein by her attorney, _____

2. The Kansas State Board of Pharmacy ("Board") is the duly constituted and acting agency of the State of Kansas authorized to administer and enforce the provisions of the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.* ("KPA" or "Act"), including the initiation and conduct of administrative proceedings to revoke, suspend or otherwise discipline a Kansas license to practice pharmacy. Pursuant to applicable provisions of the

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1. The Board is represented herein by its attorney, Kevin M. Fowler of Frieden & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. Respondent is represented herein by her attorney, _____

2. The Kansas State Board of Pharmacy ("Board") is the duly constituted and acting agency of the State of Kansas authorized to administer and enforce the provisions of the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.* ("KPA" or "Act"), including the initiation and conduct of administrative proceedings to revoke, suspend or otherwise discipline a Kansas license to practice pharmacy. Pursuant to applicable provisions of the

KPA and the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.* ("KAPA"), whenever it is established that any licensed pharmacist has committed any of the acts described in K.S.A. 65-1627(a), the Board may revoke, suspend or otherwise discipline the Kansas license to practice pharmacy of such licensee and/or assess a civil fine against the licensee in an amount not in excess of \$5,000.00 per violation. In accordance with K.S.A. 65-1627a, the Board and any person licensed to practice pharmacy in the State of Kansas may enter into a stipulation which shall be binding upon the Board and such person entering into the stipulation, and the Board may enter its enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the proceedings.

3. At all times relevant to this Stipulation and Final Agency Order, Respondent has actively practiced pharmacy in the State of Kansas under the authority of Kansas License No. 1-11269 ("Kansas License") issued by the Board.

4. The Board has received certain information, has investigated and has determined that there are reasonable grounds to believe that Respondent has committed one or more acts identified in the Kansas Pharmacy Act and/or the rules and regulations adopted by the Board pursuant to the KPA, including K.S.A. 65-1627(a)(6), 65-1637(a), 65-1627(a)(8) and K.A.R. 68-7-14(a)(6), that would justify the imposition of disciplinary action against her Kansas License under the provisions of 65-1627(a) and/or the assessment of a civil fine against her under the provisions of K.S.A. 65-1658.

Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board that on or about October 26, 2008:

Respondent incorrectly filled a written prescription order for Flurbiprofen (1 drop 2x a day for 7 days) with Flurbiprofen 100mg (1 tab twice a day for 7 days), which resulted in the patient receiving an incorrect dosage form, an incorrect drug strength and inadequate or incorrect labeling directions, and the dispensing of a prescription-only drug in a situation that resulted in serious harm to the patient.

The Board finds and concludes that Respondent's conduct described above violates K.S.A. 65-1637(a) and K.A.R. 68-7-14(a)(6) and constitutes grounds for disciplinary action against her Kansas License pursuant to K.S.A. 65-1627 (a)(6) and (8) and/or the assessment of a civil fine against Respondent under the provisions of K.S.A. 65-1658.

5. The Board finds and concludes, and Respondent stipulates and agrees, that the following disposition is lawful, just and appropriate under the circumstances:

A. CIVIL FINE. A civil fine is hereby assessed against Respondent in the amount of Two Thousand Dollars (\$2,000.00), which shall be payable as follows: (1) Respondent shall pay Five Hundred Dollars (\$500.00) to the Board within ten (10) days of the effective date of the Final Agency Order provided for herein; and (2) the balance of One Thousand Five Hundred Dollars (\$1,500.00) shall be suspended for as long as Respondent complies with the terms and conditions of this Stipulation and Final Agency Order; provided, however, that if Respondent commits any act or omission during the period of probation specified below that violates any term or condition of this Stipulation and Final Agency Order, this suspension shall be automatically vacated without further action and Respondent shall pay the balance of One Thousand Five

Hundred Dollars (\$1,500) to the Board within ten (10) days of the effective date of any determination that Respondent violated any term or condition of this Stipulation and Final Agency Order. If Respondent successfully completes the period of probation specified below without violating any term or condition of this Stipulation and Final Agency Order, the civil fine represented by the unpaid balance of One Thousand Five Hundred Dollars (\$1,500) shall be vacated and cancelled upon issuance of a certificate of completion.

B. PROBATION. Respondent shall be placed on probation, and Respondent's Kansas license to practice pharmacy shall be placed in probationary status, for a period of eighteen (18) months from the effective date of the Final Agency Order contemplated hereby ("the period of probation"). During the period of probation, for each pharmacy at which Respondent serves as a pharmacist and/or pharmacist-in-charge, Respondent shall furnish the Board a written summary of each meeting held pursuant to the pharmacy's continuous quality improvement program ("CQI"), including a copy of each incident report reviewed, within ten (10) calendar days following every such meeting. This written summary of each CQI meeting shall identify all persons in attendance and all incident reports reviewed, and it shall include a narrative description of the steps taken or to be taken to prevent a recurrence of each incident reviewed.

C. OTHER REQUIREMENTS. Respondent further acknowledges, stipulates and agrees that as a condition of this Stipulation and Final Agency Order, she must: (1) comply fully with this Stipulation and Final Agency Order; and (2) comply

fully with the provisions of the Kansas Pharmacy Act, the Board's rules and regulations, and all state and federal laws applicable to Kansas pharmacists.

D. CERTIFICATE OF COMPLETION. Within a reasonable time following expiration of the period of probation specified above, the Board or its designee shall determine whether Respondent has complied with the terms and conditions of this Stipulation and Final Agency Order. Absent reasonable grounds to believe that Respondent has violated any term or condition of this Stipulation and Final Agency Order, the Board or its designee shall issue a Certificate of Completion which: (1) reflects that Respondent has fulfilled her obligations hereunder; and (2) vacates and cancels the unpaid balance of the civil fine assessed in the total amount of One Thousand Five Hundred Dollars (\$1,500).

6. Respondent agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and its attorney regarding the investigation which led 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 his 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 a 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.

7. Except as provided in paragraph 6 above, 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. Respondent acknowledges that the approval of the Board's attorney or the Board's Investigation Member 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.

8. Respondent stipulates and agrees that this Stipulation and Final Agency Order is in conformity with the constitution and laws of the United States and the State of Kansas. Respondent further stipulates and agrees that the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.* is constitutional on its face and as applied to this case.

9. This Stipulation and Final Agency Order constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by them. This Stipulation and Final Agency Order shall be governed by and interpreted in accordance with the laws of the State of Kansas.

10. Respondent acknowledges that she has the following rights:

- A. To have formal notice of charges served upon her;
- B. To file a response to the charges;
- C. To have notice of and participate in a formal adjudicative hearing with the Board making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing.

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.*

Respondent freely waives these rights and expressly stipulates and agrees that such waiver is knowingly, intelligently and voluntarily made and in consideration of the Board's agreement to limit the disciplinary action taken against her in this case to the terms and conditions specified herein. Respondent further expressly waives her rights to seek reconsideration, administrative review or judicial review, to initiate or pursue any appeal or to otherwise contest this Stipulation and Final Agency Order and the Final Order provided for herein before any administrative and/or judicial tribunal.

11. Respondent expressly acknowledges that she enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of her choosing or a reasonable opportunity to consult with counsel of her choosing. Respondent also expressly acknowledges that she has read this Stipulation and Final Agency Order in its entirety and that she understands the meaning and effect of its terms and conditions. Based upon the foregoing, Respondent further stipulates and agrees that none of the terms or conditions of this Stipulation and Final Agency Order are individually or collectively unconscionable, arbitrary, capricious and/or unreasonable.

12. 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 her. 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.

13. The following statement, or its substantial equivalent, will be made in the Board's newsletter: "Syble Thompson, R.Ph., of Dodge City, Kansas was disciplined by the Board, which assessed a civil fine against her and placed her Kansas license to practice pharmacy in probationary status for a specified period of time."

14. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any term or condition 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 terms and conditions of this Stipulation and Final Agency Order shall be given full force and effect.

15. This Stipulation and Final Agency Order shall become effective on the day it is approved, accepted and made an order of the Board upon entry of the Final Agency Order provided for herein. On such effective date, this Stipulation and Final Agency Order shall be deemed to be an open, public record in the custody of the Board which shall be maintained at the Board's Office in Topeka, Kansas.

16. Respondent acknowledges that she has been advised by the Board that she 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 under the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*, and the right within 30 days after service of the Final Order provided for herein or any order on reconsideration 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 State Board of Pharmacy by serving Debra L. Billingsley, its Executive Secretary at Landon Office Building, 900 SW Jackson, Room 560, Topeka, KS 66612-1231. Respondent hereby expressly waives all such rights.

AGREED TO AND ACCEPTED BY:

Syble Thompson R.Ph.
SYBLE THOMPSON, R.Ph.

1-1-2010
Date

APPROVED BY:

(Signature of Respondent's Counsel)

Date

(Printed Name of Respondent's Counsel)

(Address of Respondent's Counsel)

(Telephone No. of Respondent's Counsel)

APPROVED BY:



Kevin M. Fowler Kan. Sup. Ct. #11227
FRIEDEN & FORBES
555 South Kansas Avenue, Suite 303
Topeka, KS 66603
Tel: (785) 232-7266
Fax: (785) 232-5841

_____ Date

COUNSEL FOR THE KANSAS STATE BOARD
OF PHARMACY

BEFORE THE KANSAS STATE BOARD OF PHARMACY

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FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas State Board of Pharmacy Board approves and accepts the within Stipulation and Final Agency Order and hereby incorporates the provisions, terms and conditions thereof as the Final Order of the Board in this administrative proceedings.

ENTERED AND EFFECTIVE this 10th day of March,
2010.

KANSAS STATE BOARD OF PHARMACY

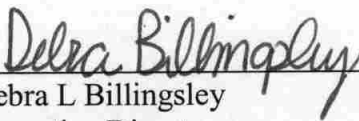
By: Karen Braman
Karen Braman, R.Ph., M.S.
President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND FINAL AGENCY ORDER was served by depositing same in the United States mail, postage prepaid, this 19 day of March, 2010, addressed to:

Syble Thompson, R.Ph.
415 University Drive
Dodge City, KS 67801-2743

Kevin M. Fowler
FRIEDEN & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603



Debra L Billingsley
Executive Director
KANSAS STATE BOARD OF PHARMACY