

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
ALIXA RX LLC) Case No. 17-143
Kansas Registration No. 2-10419)

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Alixa Rx LLC located at 11286 Renner Blvd., Lenexa, Kansas 66219 ("Respondent") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Unrein & Forbes, LLP, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by its corporate representative, R. Blake Griese, 6400 Pinecrest Drive, Suite 200, Plano, Texas 75024.

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 registration to operate a pharmacy.

3. The Respondent is presently entitled to operate a pharmacy in the State of Kansas by reason of the Board having issued it Kansas registration number 2-10419 ("Kansas Registration"). At all times relevant hereto, the Respondent has held a current registration to operate a pharmacy at 11286 Renner Blvd., Lenexa, Kansas 66219.

4. The Board's Investigation Member has received certain information, investigated and determined that there are reasonable grounds to believe that Respondent may have operated in a manner that violates the Act.

5. Respondent hereby, neither admits nor denies any wrongdoing, 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, that:

A. Respondent operates a long term care pharmacy that services long term care facilities (“LTCF”) in three states, including 10 LTCFs in Kansas. At all relevant times, for its operations in South Dakota, Respondent properly used pharmacy technicians in the State of South Dakota to handle drugs belonging to Respondent in that jurisdiction.

B. A South Dakota pharmacy technician admitted that during the period from January 2017 through May 2017 she diverted numerous Hydrocodone and Oxycodone from certain LTCF locations in South Dakota serviced by Respondent. The diversions may have been possible due to Respondent’s failure to provide effective controls and procedures to guard against theft and diversion of controlled substances as required by K.A.R. 68-20-15a.

6. Upon motion duly made, seconded and passed, the Board finds and concludes that the events described in paragraph 5 above, constitute the operation of a pharmacy in a manner that violated the Act and the Regulations of the Board and is therefore grounds for disciplinary action against the Respondent’s Kansas Registration pursuant to K.S.A. 65-1627 (e)(1).

7. Respondent neither admits nor denies the conduct outlined above, but in order to resolve this matter, does not contest the Board’s findings and agrees that the following disposition is just and appropriate under the circumstances:

A. ADMINISTRATIVE FINE. Within ten (10) days of the Board entering the Consent Order provided for herein, Respondent shall pay to the Kansas Pharmacy Board an administrative fine in the amount of Two Thousand Dollars (\$2,000.00).

B. ROUTINE AUDITS. Respondent shall adopt and maintain a policy requiring one or more pharmacists conduct a weekly audit of all controlled substances canisters which are removed from the remote automated dispensing equipment and sent back to Respondent's Lenexa, Kansas pharmacy.

C. REPORTING ON POLICIES AND PROCEDURES. At the end of each of the four (4) quarters following entry of the Consent Order provided for herein, Respondent shall submit to the Board a written report outlining the policies and procedure that have or will be implemented to prevent future diversion of drugs and the effectiveness of those policies and procedures.

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

- i. Comply fully with this Stipulation and Final Agency Order;
- ii. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws relating to Kansas pharmacies;

8. In mitigation, it is Respondent's position that: Respondent self-reported this incident to the Board; Respondent reported the incident to local law enforcement; Respondent at all times acted in good faith, and fully cooperated with the Board in connection with the Board's investigation into the activities outlined; Respondent has taken reasonable and appropriate measures to prevent subsequent loss from remote sites; and Respondent's conduct did not harm the well-being of any patient for whom it provided pharmacy services

9. 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 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.

10. The stipulations contained herein shall not become binding until this Stipulation and Consent Order 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 Consent Order.

11. 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.

12. 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.

13. The Respondent acknowledges that it has the following rights:

(a) To have formal notice of charges served upon it;

(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 it to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Consent Order provided for herein.

14. The Respondent acknowledges that it enters into this Stipulation and Consent Order freely and voluntarily after consultation with counsel of its choosing. The Respondent further acknowledges that it has read this Stipulation and Consent Agency order in its entirety, that it understands its legal consequences and that it agrees that none of its terms are unconscionable, arbitrary or capricious.

15. 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 it. 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.

16. 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.

17. 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.

18. 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.

19. The Respondent acknowledges that it has been advised by the Board that it 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 Secretary at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.

ENTERED AND EFFECTIVE this 13th day of June, 2018.

KANSAS BOARD OF PHARMACY

Matter of Alixa Rx LLC, No. 17-143 (Kan. Bd. of Pharmacy)


STIPULATION AND CONSENT ORDER

By: 
Dr. John Worden, President

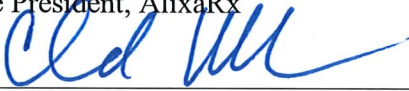
[Agreement and Approvals on Following Page]

AGREED AND APPROVED BY:


Alixo Rx LLC
11286 Renner Blvd.
Lenexa, Kansas 66219

By: 
Paul Walters
Vice President, AlixaRx

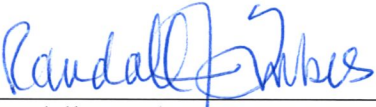
3/27/18
Date


Chad Ullom, R.Ph.
Investigation Member

6/13/18
Date


Respondent's Corporate Representative
R. Blake Griese

3/27/18
Date


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

3/29/2018
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 19th day of June, 2018 addressed to:

Randall J. Forbes
FRIEDEN, UNREIN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604

Alix Rx LLC
Attn.: Kimberly G. Harrison, PharmD., Pharmacist-in-Charge
11286 Renner Blvd.
Lenexa, KS 66219



Representative of the
KANSAS BOARD OF PHARMACY