

**BEFORE THE KANSAS STATE BOARD OF PHARMACY**

In the Matter of )  
 )  
Bloodhart Drug )  
621 S. Main St., P.O. Box 999 )  
Hugoton, KS 67951 )  
Kansas Registration No. 2-09978 )  
\_\_\_\_\_ )

Case Nos. 09-08 and 09-10

**STIPULATION AND FINAL AGENCY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas State Board of Pharmacy Board (the "Board") and Bloodhart Drug, 621 South Main Street, P.O. Box 999, Hugoton, KS 67951 ("Respondent" or "Registrant"), 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. The Respondent is represented herein by its attorney, Mark W. ARENSBERS.

2. The Board is the Kansas agency vested with the authority to carry out and enforce the provisions of the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas registration to operate a pharmacy.

3. Respondent is presently authorized to operate a pharmacy at 621 South Main Street, Hugoton, Kansas 67951 as the holder of Kansas registration number 2-09978 issued by the Board. At all times relevant hereto, Respondent has held a current registration to operate a pharmacy in the State of Kansas.

4. The Board has received and investigated separate complaints against Respondent in connection with the filling of two (2) prescription orders for 50 mcg capsules of C-Liothyronine SR, a prescription drug used to treat hypothyroidism,. Based on its investigation, the Board has determined that there are reasonable grounds for believing that Respondent has operated in a manner which violates the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.* (the "KPA" or the "Act") and that Respondent is accordingly subject to appropriate disciplinary action under applicable provisions of the Act, including K.S.A. 65-1627(e)(1) and K.S.A. 65-1658.

5. Respondent hereby agrees not to contest and shall not contest, in this and any other proceeding initiated by or before the Board, any of the following matters:

A. Case No. 09-08: On or about December 18, 2008, one or more of Respondent's employees improperly refilled a valid prescription order (Prescription No. 60474) for 50 mcg capsules of C-Liothyronine SR, a prescription drug used to treat hypothyroidism, received from or on behalf of patient MB. This prescription was mistakenly refilled with capsules containing more than 50 mcg of C-Liothyronine SR per capsule due to internal operating errors in compounding, branding and/or labeling the medication for which Respondent is responsible under the KPA. Subsequent use of this miscompounded and misbranded

medication adversely affected the health and well-being of MB, necessitated her hospitalization, and caused the patient to sustain personal injury and loss.

B. Case No. 09-10: On or about January 2, 2009, one or more of Respondent's employees improperly refilled a valid prescription order (Prescription No. 63823) for 50 mcg capsules of C-Liothyronine SR, a prescription drug used to treat hypothyroidism, received from or on behalf of patient CM. This prescription was mistakenly refilled with capsules containing more than 50 mcg of C-Liothyronine SR per capsule due to internal operating errors in compounding, branding and/or labeling the medication for which Respondent is responsible under the KPA. Subsequent use of this miscompounded and misbranded medication adversely affected the health and well-being of CM, necessitated her hospitalization, and caused the patient to sustain personal injury and loss.

C. The Board hereby finds, concludes and otherwise determines that Respondent's conduct, as described in Paragraph 5.A (Case No. 09-08) and Paragraph 5.B (Case No. 09-10) of this Stipulation and Final Agency Order, constitutes reasonable grounds for disciplinary action under the KPA, including the provisions of K.S.A. 65-1627(e)(1). The Board further expressly finds, concludes and otherwise determines that such conduct also constitutes reasonable grounds under K.S.A. 65-1658 for the assessment of an appropriate civil fine against Respondent in a total amount not to exceed \$5,000 for each violation of the KPA or the rules and regulations of the Board adopted under the Act.

6. The Board and Respondent expressly understand, stipulate and agree, and the Board hereby finds, concludes and otherwise determines, that the following disposition of Case Nos. 09-08 and 09-10 is just and appropriate under the circumstances:

A. FINE. Respondent hereby stipulates, agrees and consents to the Board's entry of an order requiring that, within ten (10) days of the Board entering the Final Agency Order provided for herein, Respondent shall pay to the Kansas State Board of Pharmacy a civil fine in the total amount of Three Thousand Dollars (\$3,000). This total amount payable is based upon a civil fine of One Thousand Five Hundred Dollars (\$1,500) for Case No. 09-08 and a civil fine of One Thousand Five Hundred Dollars (\$1,500) for Case No. <sup>09-10</sup> ~~09-08 of Two Hundred Fifty~~ <sup>KB</sup> Dollars ~~(\$250.00)~~.

B. OTHER REQUIREMENTS. Respondent further understands, stipulates and agrees that, as additional conditions of this Stipulation and Final Agency Order, Respondent must: (i) fully comply with all provisions of this Stipulation and Final Agency Order, including the time and amount of payment requirements specified in Paragraph 6.A above; and (ii) fully comply with all federal and state laws, including the Kansas Pharmacy Act and the Board's rules and regulations, relating to the operation of pharmacies in the State of Kansas.

7. Respondent stipulates and agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and/or its attorneys 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 Agency Order provided for herein, with or without the presence of Respondent or its attorney. In the event that this Stipulation and Final Agency Order and the Final Agency Order provided for herein are not accepted and approved by the Board, 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 right and/or claim of right under any provision of law, including any actual or alleged entitlement to due process of law, to seek or obtain the disqualification of any Board member as a result of the Board member's consideration of said document and information.

8. Except as provided in Paragraph 7 above, the stipulations and agreements set forth herein shall not become binding until this Stipulation and Final Agency Action is approved by the Board and the Final Agency Order provided for herein is entered by the Board. Respondent acknowledges that the approval of the Board's Investigation Member or its attorney shall not constitute the approval of the Board nor obligate the Board to approve this Stipulation and Final Agency Action or the Final Order provided for herein.

9. 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. Respondent further agrees 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 and Final Agency Order constitutes the entire agreement of the parties and no term, condition or provision hereof may be altered, modified or amended except pursuant to a subsequent written agreement signed by the parties. This Stipulation and Final Agency Order shall be governed by and interpreted in accordance with the laws of the State of Kansas.

11. 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 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 and the Act for Judicial Review and Civil Enforcement of Agency Action.

Respondent freely waives these rights and acknowledges that said waiver is made voluntarily and in consideration of the Board's agreement to limit any disciplinary action against Respondent in Case Nos. 09-08 and 09-10 in accordance with the terms and conditions of this Stipulation and Final Agency Order. Respondent further waives any and all rights it has or may have to seek administrative reconsideration, to seek judicial review by any court, or to otherwise contest this Stipulation and Final Agency Order and the Final Order provided for herein.

12. Respondent acknowledges that it enters into this Stipulation and Final Agency Order freely and voluntarily after consultation or a reasonable opportunity to consult with counsel of its choosing. Respondent further acknowledges that it has caused an authorized representative to read this Stipulation and Final Agency Order in its entirety and that such authorized representative understands its legal consequences. Respondent stipulates and agrees that none of the terms, conditions or provisions of this Stipulation and Final Agency Order are unconscionable, arbitrary, capricious or otherwise unreasonable.

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 be deemed to be a willful violation of a lawful Board order and constitutes reasonable grounds for

further disciplinary action against it. 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 that any term, condition or provision of this Stipulation and Final Agency Order is held to be invalid or unenforceable by a court of competent jurisdiction, it shall be severed and all remaining terms, conditions and/or provisions of this Stipulation and Final Agency Order shall be given full force and effect.

15. Upon execution by all parties, this Stipulation and Final Agency Order shall be classified and maintained as a public record of the Kansas State Board of Pharmacy.

16. This Stipulation and Final Agency Order shall become effective on the day it is approved, accepted and made an order of the Board as a result of the execution and issuance of the Final Agency Order provided for herein.

17. Respondent acknowledges that it has been advised by the Board that it would have the right within 15 days after service of the Final Agency Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Agency Order provided for herein to file a petition for judicial review in the District Court of Shawnee County, Kansas in accordance with the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.*, and to serve such a petition for judicial review on the Kansas Pharmacy Board by serving Debra Billingsley, its Executive Secretary, at 900 SW Jackson Street, Topeka, Kansas 66612-1231. The Respondent hereby expressly waives all such rights.

**AGREED TO AND ACCEPTED BY:**

Bloodhart Drug  
621 S. Main St., P.O. Box 999  
Hugoton, KS 67951  
Kansas Registration No. 2-09978

By: Robert Winters  
Signature Authorized Representative  
of Respondent Bloodhart Drug

\_\_\_\_\_  
Date

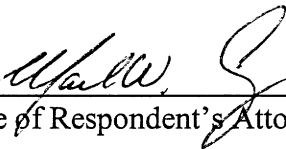
Robert Winters, Chairman  
Name and Title of Respondent's  
Authorized Representative

Shirley Arck  
Shirley Arck, Pharm. D.  
Investigative Member of the Board

\_\_\_\_\_  
Date



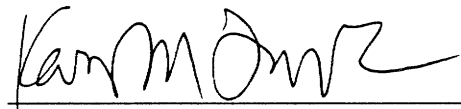
**APPROVED BY:**

  
\_\_\_\_\_  
Signature of Respondent's Attorney

9/16/09  
\_\_\_\_\_  
Date

Mark W. Avonsberg  
\_\_\_\_\_  
Name of Respondent's Attorney

8000 Foster St. Overland Park, KS  
\_\_\_\_\_  
Address of Respondent's Attorney 66206

  
\_\_\_\_\_  
Kevin M. Fowler    KS #11227  
FRIEDEN & FORBES  
555 S. Kansas Avenue, Suite 303  
Topeka, Kansas 66603  
TEL: 785/232-7266  
FAX: 785/232-5841  
DISCIPLINARY COUNSEL FOR THE BOARD

9/18/2009  
\_\_\_\_\_  
Date

**BEFORE THE KANSAS STATE BOARD OF PHARMACY**

In the Matter of )  
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Bloodhart Drug )  
621 S. Main St., P.O. Box 999 )  
Hugoton, KS 67951 )  
Kansas Registration No. 2-09978 )  
\_\_\_\_\_ )

Case Nos. 09-08 and 09-10

**FINAL AGENCY ORDER**

Upon motion duly made, seconded and passed, the Kansas State Board of Pharmacy (the "Board") approves and accepts the within Stipulation and Final Agency Order and hereby fully incorporates by this reference all provisions, findings, conclusions, terms and conditions therein as the final order of the Board in Case Nos. 09-08 and 09-10.

ENTERED AND EFFECTIVE this 1<sup>st</sup> day of December, 2009.

KANSAS STATE BOARD OF PHARMACY

By: Karen Szarna  
President

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a genuine copy of the above and foregoing **STIPULATION AND FINAL AGENCY ORDER** was served by depositing same in the United States mail, postage prepaid, on this 4 day of December, 2009, properly addressed to:

Robert Winters  
(Name of Authorized Representative)  
Bloodhart Drug  
621 South Main Street  
P.O. Box 999 )  
Hugoton, Kansas 67951

MARK W. ARNSBERG  
(Name of Respondent's Attorney)  
8000 Foster St.  
(Street Address or P.O. Box)

Overland Park, KS 66204  
(City, State and Zip Code)

Randall J. Forbes  
FRIEDEN & FORBES  
555 S. Kansas Avenue, Suite 303  
Topeka, Kansas 66603

Debra Billingsley  
Debra Billingsley  
Executive Secretary  
Kansas State Board of Pharmacy