

BEFORE THE KANSAS PHARMACY BOARD

Filed By

MAR 06 2007
KANSAS STATE
Board of Pharmacy

In the Matter of)
)
Dighton Drug)
136 E. Long, P.O. Box 548, Dighton, KS)
Kansas Registration No. 2-08520)

Case No. 06-74

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Dighton Drug, 136 E. Long, P.O. Box 548, Dighton, Kansas 67839 (the "Respondent"), as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by its attorney, Craig D Kershner, PO Box 967, 235 E. Pearl,
Dighton KS 67839

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.*, 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 2-08520. At all times relevant hereto, the Respondent has held a current registration to operate a pharmacy in the State of Kansas.

4. The Board has received certain information, has investigated and has determined that there are reasonable grounds to believe that the Respondent has operated in such a manner that violates the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.*

Respondent hereby agrees not to contest in this or any other proceeding before or initiated by the Board the following matters:

A. That on or about May 3, 2006, Respondent dispensed to a patient at Lane County Hospital and Long Term Care Humulin N when Humulin R had been ordered and the label read Humulin R (the "Humulin Incident"). The Respondent failed to prepare an incident report regarding the Humulin Incident, in violation of K.A.R. 68-7-12b;

B. That on or about August 4, 2006, Respondent dispensed to a patient at Lane County Hospital and Long Term Care Levaquin 250 mg, but the label read Levaquin 500 mg (the "Levaquin Incident"). The Respondent failed to prepare an incident report regarding the Levaquin Incident, in violation of K.A.R. 68-7-12b;

C. That on or about August 13, 2006, Respondent dispensed to a patient at Lane County Hospital and Long Term Care a blister pack that was labeled as Lipitor 10 mg, but the blister pack contained Propranolol 40 mg (the "Propranolol Incident"). The Respondent failed to prepare an incident report regarding the Propranolol Incident, in violation of K.A.R. 68-7-12b;

D. That on or about August 14, 2006, Respondent dispensed to a patient at Lane County Hospital and Long Term Care a blister pack that was labeled Warfarin Sodium 2 mg, but the blister pack contained Digitek .125 (the "Digitek Incident"). The Respondent failed to prepare an incident report regarding the Digitek Incident, in violation of K.A.R. 68-7-12b.

The Board finds and concludes that Respondent's conduct, as described above, is grounds for disciplinary action in the State of Kansas pursuant to K.S.A. 65-1627(e)(1).

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

A. FINES. Respondent hereby 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, it shall pay to the Kansas Pharmacy Board an administrative fine of Five Hundred Dollars (\$500) for failing to prepare an incident report for the Humulin Incident; an administrative fine of Five Hundred Dollars (\$500) for failing to prepare an incident report for the Levaquin Incident; an administrative fine of Five Hundred Dollars (\$500) for failing to prepare an incident report for the Propranolol Incident; and an administrative fine of Five Hundred Dollars (\$500) for failing to prepare an incident report for the Digitek Incident.

B. NATIONAL DRUG CODE VERIFICATION. Respondent hereby agrees and consents to the Board's entry of an order requiring the Respondent, as part of the filing process, to verify all medications dispensed using the National Drug Code.

C. CHANGE IN LABELING PROCEDURES. Respondent hereby agrees and consents to the Board's entry of an order requiring that, within ten (10) days of the entry of the Final Agency Order provided for herein, the Respondent shall provide a written explanation to the Board of the changes made to its labeling procedures to avoid mislabeling.

D. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Final Agency Order it must:

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

6. 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 Final Agency 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.

7. 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. 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 Final Agency Action or the Final Order provided for herein.

8. 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 that the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.*, is constitutional on its face and as applied in this case.

9. 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.

10. 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 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.

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 Final Agency Order and the Final Order provided for herein.

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

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 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.

13. The following statement will be made in the Board's newsletter: "A pharmacy in Dighton, Kansas was assessed administrative fines totaling \$2,000 for failing to prepare incident reports regarding the mislabeling of drugs."

14. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any provision 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 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 a public record in the custody of the Board.

16. This Stipulation and Final Agency 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.

17. 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 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 waives those rights.

AGREED AND ACCEPTED BY:

Dighton Drug
136 E. Long
P.O. Box 548
Dighton, Kansas 67839


By: 
Marilyn Mix

2-28-2007
Date


JoAnne Gilstrap, R.Ph.
Investigation Member

3-6-07
Date

APPROVED BY:


Respondent's Attorney's Name & Address
Craig D Kershner # 07150
Attorney at Law
PO Box 967
Dighton KS 67839
(620) 397-2450

2-28-2007
Date


Randall J. Forbes. #09089
FRIEDEN & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, Kansas 66603
TEL: 785/232-7266

3.2.07
Date

FAX: 785/232-5841
DISCIPLINARY COUNSEL

BEFORE THE KANSAS PHARMACY BOARD

In the Matter of)
)
Dighton Drug) Case No. 06-74
136 E. Long, P.O. Box 548, Dighton, KS)
Kansas Registration No. 2-08520)

FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas Pharmacy Board (the "Board") approves and accepts the within Stipulation and Final Agency Order and incorporates the provisions thereof as the Final Order of the Board, including the following:


1. Within ten (10) days of the effective date of this Order, the Respondent shall pay to the Kansas Pharmacy Board an administrative fine of Five Hundred Dollars (\$500) for failing to prepare an incident report for the Humulin Incident; an administrative fine of Five Hundred Dollars (\$500) for failing to prepare an incident report for the Levaquin Incident; an administrative fine of Five Hundred Dollars (\$500) for failing to prepare an incident report for the Propranolol Incident; and an administrative fine of Five Hundred Dollars (\$500) for failing to prepare an incident report for the Digitek Incident.

2. Respondent shall, from and after the effective date of this Order, require that its employees, as part of the filling process, verify all medications dispensed using the National Drug Code.

3. Within ten (10) days of the effective date of this Order, the Respondent shall provide a written explanation to the Board of the changes made to its labeling procedures to avoid mislabeling.

ENTERED AND EFFECTIVE this 6 day of March, 2007.

KANSAS PHARMACY BOARD

By: 
Max Heidrick, R.Ph.
President

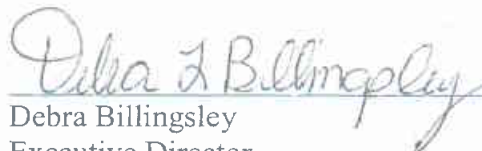
CERTIFICATE OF SERVICE

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 9 day of March, 2007 addressed to:

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

Dighton Drug
136 E. Long
P.O. Box 548
Dighton, Kansas 67839

Craig D. Kerzhner
P.O. Box 967
235 E. Pearl
Dighton, KS 67839


Debra Billingsley
Executive Director
KANSAS PHARMACY BOARD