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KANSAS STATE Board of Pharmacy

**BEFORE THE KANSAS PHARMACY BOARD**

In the Matter of )  
)  
Kansas Spine Hospital, L.L.C. )  
3333 N. Webb Road, Wichita, KS )  
Kansas Registration No 2-09907 )

Case No. 08-139

**STIPULATION AND FINAL AGENCY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Kansas Spine Hospital, L.L.C., 3333 N. Webb Road, Wichita, Kansas 67226 (the "Respondent"), as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Unrein, Forbes & Biggs LLP, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by its attorney, Lynn D. Preheim of Stinson Morrison Hecker LLP, 1625 N. Waterfront Parkway, Suite 300, Wichita, Kansas 67206.

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 2-09907. At all times relevant hereto, the Respondent has held a current registration to operate a pharmacy in the State of Kansas. The Board recognizes and gives due consideration to the fact that Respondent contracted with an outside company, Midwest Pharmacy Service, LLC, to operate and manage its Pharmacy.

4. The Board alleges, following its investigation, that the Respondent's pharmacy has been operated in such a manner that violates the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.*

5. Respondent hereby agrees not to contest, in this or any other proceeding before or initiated by the Board, the allegations by the Board pertaining to insufficient, flawed, or incomplete documentation and recordkeeping associated with Respondent's pharmacy's medication management functions. The Board finds and concludes that Respondent's conduct is grounds for disciplinary action in the State of Kansas pursuant to K.S.A. 65-1627(e)(1).

6. The Board finds and the Respondent consents 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 Twenty Five Thousand Dollars and No Cents (\$25,000).

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

- 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;
- iii. Provide by December 1, 2010 policies and procedures for review by the Board specifically addressing:
  - a. Handling of patient home medications and associated documentation;

b. Distribution, handling, and accounting for medications that leave the Respondent's pharmacy for use throughout the Respondent's hospital; and

c. Inventory management of prescription medications.

iv. For the twelve-month period following entrance of the Final Agency Order provided for herein, submit to the Board a monthly inventory of narcotic medications; and

v. Conduct an in-service for Respondent's nursing and pharmacy staff addressing access to and security of Respondent's pharmacy, and directing its staff to follow the pharmacist direction as required by law and hospital policies in connection with pharmacy and drug related procedures.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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 fact 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.

12. 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.

13. 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.

14. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

15. This Stipulation and Final Agency Order shall become effective on the day it is approved, accepted and made an order by the Board by way of signature of the Board's authorized representative.

16. 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. 77-6601 *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:

Kansas Spine Hospital  
3333 N. Webb Road  
Wichita Kansas 67226

By: Thomas S. Schmitt, CEO

11/9/10  
Date

By: Shelly Auld  
Investigation Member

12/1/10  
Date

APPROVED BY:

[Signature]  
Lynn D. Preheim (#13300)  
STINSON MORRISON HECKER LLP  
1625 N. Waterfront Parkway, Suite 300  
Wichita, Kansas 67206  
TEL: (316) 268-7930  
FAX: (316) 268-9780  
*Attorney for Defendant*  
*Kansas Spine Hospital, L.L.C.*

11/16/10  
Date

[Signature]  
Randall J. Forbes (#09089)  
FRIEDEN, UNREIN, FORBES & BIGGS, LLP  
555 South Kansas Avenue, Suite 303  
Topeka, Kansas 66603  
TEL: (785) 232-7266  
FAX: (785) 232-5841  
DISCIPLINARY COUNSEL

11.23.10  
Date

**BEFORE THE KANSAS PHARMACY BOARD**

In the Matter of )  
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Kansas Spine Hospital, L.L.C. )  
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Kansas Registration No. )

Case No. \_\_\_\_\_

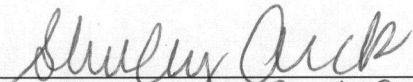
**FINAL ORDER**

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 an order to pay the Board, within 10 days of the effective date of this order, administrative fines totaling \$25,000.

ENTERED AND EFFECTIVE this 2 day of December, 2010.

KANSAS PHARMACY BOARD

By:

  
~~Max Heidrick, R.Ph.~~ Shirley Arek, Pharm D.  
President

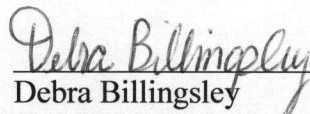
**CERTIFICATE OF SERVICE**

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 6 day of December, 2010 addressed to:

Randall J. Forbes  
FRIEDEN, UNREIN, FORBES & BIGGS LLP  
555 South Kansas Avenue, Suite 303  
Topeka, Kansas 66603

Kansas Spine Hospital  
3333 N. Webb Road  
Wichita Kansas 67226

Lynn D. Preheim  
STINSON MORRISON HECKER LLP  
1625 N. Waterfront Parkway, Suite 300  
Wichita, Kansas 67206

  
\_\_\_\_\_  
Debra Billingsley  
Executive Director  
KANSAS PHARMACY BOARD