

800 SW Jackson St., Suite 1414
Topeka, KS 66612



Phone: (785) 296-4056
Fax: (785) 296-8420
pharmacy@ks.gov
www.pharmacy.ks.gov

Alexandra Blasi, Executive Secretary

Laura Kelly, Governor

September 13, 2019

David Mahanna
1341 Sheridan Ave
Hoxie KS 67740

RE: Case No. 19-041 A

Dear Mr. Mahanna:

Enclosed you will find a copy of the final Stipulation and Consent Order approved by the Kansas Board of Pharmacy in the above-referenced matter. Please read the order in its entirety. In addition, 10 hours of CE are due and a civil fine has been assessed totaling \$4,650.00. Please make all checks payable to the Kansas Board of Pharmacy and include your case number in the memo.

If you have any questions, feel free to contact the Board at Pharmacy.Compliance@ks.gov.

Sincerely,

Kansas Board of Pharmacy

Enclosure

Filed By

SEP 13 2019

KANSAS STATE BOARD OF PHARMACY

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
DAVID MAHANNA, R.PH.)
)
Kansas License No. 1-11138)

Case No. 19-041

STIPULATION AND CONSENT ORDER

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

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden & Forbes, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by his attorney,

_____.

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 license to practice pharmacy.

3. The Respondent is presently entitled to engage in the practice of pharmacy in the State of Kansas by reason of the Board having issued him Kansas license number 1-11138 ("Kansas License"). At all times relevant hereto, the Respondent has held a current license to engage in the practice of pharmacy in the State of Kansas.

4. The Board's Investigation Member has received certain information, investigated and determined that there are reasonable grounds to believe that Respondent has committed one or more acts in violation of K.S.A. 65-1627(a) which would justify the

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revocation or imposition of other disciplinary action against his Kansas License under the provisions of K.S.A. 65-1627(a) and the assessment of an appropriate fine against Respondent under the provisions of K.S.A. 65-1658.

5. Respondent hereby admits 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:

A. At all times relevant hereto, Respondent was the owner and pharmacist-in-charge of the Mahanna Pharmacy located at 1341 Sheridan Ave., Hoxie, Kansas ("Pharmacy").

B. On April 2, 2018 Respondent hired JW to work as a Pharmacy Technician at the Pharmacy. In violation of K.S.A. 65-1663(a), Respondent allowed JW to work as a Pharmacy Technician at the Pharmacy from April 2, 2018 through January 25, 2018 without JW having obtaining a Pharmacy Technician Registration issued by the Board ("Violation 1").

C. On January 25, 2019, a Board Inspector discovered that JW was working as a Pharmacy Technician at the Pharmacy without JW having obtaining a Pharmacy Technician Registration issued by the Board. On that same date, the Board's Inspector advised both JW and Respondent that JW could no longer work as a Pharmacy Technician at the Pharmacy without JW obtaining a Pharmacy Technician Registration issued by the Board.

D. On March 11, 2019, the Board's Inspector returned to the Pharmacy and found that on that date, Respondent had again, in violation of K.S.A. 65-1663(a), allowed JW to work as a Pharmacy Technician without having obtained a Pharmacy Technician Registration issued by the Board ("Violation 2").

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6. Upon motion duly made, seconded and passed, the Board finds and concludes that Respondent's conduct, as described above, violates the Act and such conduct warrants the imposition of appropriate disciplinary action against Respondent's Kansas License pursuant to K.S.A. 65-1627 (a)(8).

7. The Respondent agrees and consents and the Board finds concludes and orders that the following disposition is just and appropriate under the circumstances:

A. ADMINISTRATIVE FINE. Within 10 days of the effective date of the Consent Order contemplated hereby, Respondent shall pay to the Board an administrative fine in the total amount of Four Thousand Six Hundred Fifty Dollars (\$4,650.00) comprised of Two Thousand One Hundred Fifty Dollars (\$2,150.00) for Violation 1 and Two Thousand Five Hundred Dollars (\$2,500.00) for Violation 2.

B. ADDITIONAL ACPE. Within 6 months of the effective date of the Consent Order Contemplated hereby, Respondent shall submit to the Board proof of having successfully completed no less than ten (10) hours of live continuing pharmacist education approved by the Board, which ten (10) hours shall include at least one (1) course in Pharmacy Law and Ethics ("Additional ACPE"). The cost of the Additional ACPE shall be paid by the Respondent. None of the Additional ACPE may be used by the Respondent to meet any requirement to renew his Kansas License.

C. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Consent Order he must, and the Board further orders the Respondent to:

1. Comply fully with this Stipulation and Consent Order;

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

8. 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 Consent Order, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Consent Order is 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.

9. The stipulations contained herein shall not become binding until this Stipulation and Consent Order is approved and entered as a final order 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.

10. The Respondent agrees that this Stipulation and Consent Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it as a final order of the Board. 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.

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11. 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.

12. The Respondent acknowledges that he has the following rights:

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

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

13. The Respondent acknowledges that he enters into this Stipulation and Consent Order freely and voluntarily after consultation with or an opportunity to consult with counsel of his choosing. The Respondent further acknowledges that he has read this Stipulation and Consent Order in its entirety, that he understands its legal consequences and that he agrees that none of its terms are unconscionable, arbitrary or capricious.

14. 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 him. 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.

15. 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.

16. Upon approval and entry of the Stipulation and Consent Order as a final order of the Board, this Stipulation and Consent Order shall be a public record in the custody of the Board.

17. 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.

18. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Consent Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Consent 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 12th day of September, 2019.

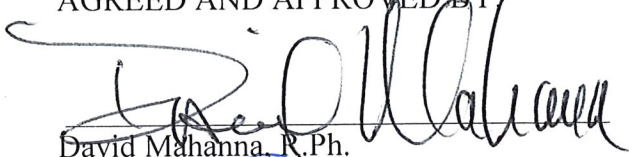
KANSAS BOARD OF PHARMACY

By:



DR. JOHN WARDEN
President

AGREED AND APPROVED BY:



David Mahanna, R.Ph.
1341 Sheridan Ave.
Hoxie, KS 67740

8-13-19
Date

Bill Walden, R.Ph.
Investigation Member

9/12/19
Date

Respondent's Attorney's Name & Address

Date



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

08/20/2019
Date

Counsel for the Kansas Board of Pharmacy

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 13th day of September, 2019 addressed to:

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

David Mahanna, R.Ph.
1341 Sheridan Ave.
Hoxie, KS 67740



Representative of the
KANSAS BOARD OF PHARMACY