

BEFORE THE KANSAS BOARD OF PHARMACY

IN THE MATTER)
)
OF)
)
MICRO BEEF TECHNOLOGIES, LTD.)
REGISTRATION NO. 5-00701)

Case No: 00-60

CONSENT AGREEMENT AND ORDER

Now on February 13, 2002, the above-captioned matter comes before the Kansas Board of Pharmacy (Board) by agreement of Micro Beef Technologies, Ltd., (Respondent) and the Board for the purpose of resolving the above-captioned matter.

I. Acknowledgments

Subject to and conditional upon the parties' mutual execution of this Consent Agreement and Order (Consent Agreement), the Board and Respondent hereby acknowledge the following:

1. The Board is duly constituted under the laws of the State of Kansas, specifically the Pharmacy Act of the State of Kansas, K.S.A. 65-1625, et seq.
2. Respondent is presently, and at all times relevant to these proceedings has

been, entitled to distribute drugs in Kansas at wholesale from its registered location at 101 N. 4th Street, Garden City, Kansas by reason of the Board having issued to it registration #5-00701 pursuant to K.S.A. 65-1627. The Respondent's registration will expire on June 30, 2002, unless renewed.

3. Respondent's mailing address last known to the Board is 101 N. 4th, Garden City, Kansas 67846. Respondent may be served with notice by personally serving, or mailing, the Respondent notice at the same address.

4. The Board has the express jurisdiction of the proceedings to revoke or suspend the license of any wholesale distributor licensed under the Kansas Pharmacy Practices Act pursuant to K.S.A. 65-1627. Further, the Board has the express authority to assess civil penalties to persons in violation of the Kansas Pharmacy Act pursuant to K.S.A. 65-1658 as amended by the 1998 Kansas Legislature.

5. The Board has the express jurisdiction to enact rules and regulations promulgated to carry out the Kansas Pharmacy Act. See K.S.A. 65-1630. The Board has the jurisdiction to enforce its rules and regulations. See K.S.A. 65-1627.

6. The Board has received certain information, has investigated, and has determined that there are reasonable grounds to believe that the Respondent has committed an act or acts in violation of the Kansas Pharmacy Act, K.S.A. 65-1625, *et seq.*

7. Respondent has been informed of the reported information, and has determined that there are reasonable grounds to believe that Respondent has legal and equitable defenses to the allegations.

8. The Board and Respondent deem it to be in the public interest to settle and resolve this matter by entering into this Consent Agreement to avoid the cost, inconvenience and uncertainty associated with formal adjudication.

9. For the purposes of this Consent Agreement, the Board has a good faith basis to believe that the following factual and legal contentions are true and valid:

II. Factual and Legal Contentions

a. At all times material to this matter, an individual named Craig Hitchcock was an employee of respondent. The factual allegations made against Respondent that follow relate to acts or omissions of Craig Hitchcock. Respondent has asserted that these alleged acts or omissions were neither authorized nor ratified by Respondent and are directly contrary to Respondent's internal policies and procedures. Shortly after receiving notice from the Board of the alleged violations, Respondent terminated its employment relationship with Craig Hitchcock.

b. On or about June 15, 2000, Gerald L. Gibson, D.V.M. of the Gibson Veterinary Clinic, 404 West Texcoco, Montezuma, Kansas 66547-0242, wrote prescriptions on file with Respondent and intended for Penner Cattle, Ingalls. Craig Hitchcock materially altered said prescription by adding the drugs Banamine and Lasix, and changing the date on the prescription to "6-1-00". . . Neither Gerald L. Gibson, D.V.M., nor any one acting on his behalf, authorized said material alteration.

c. On or about June 29, 2000, Craig Hitchcock, in violation of K.A.R. 68-

14-8(a)(1) and (2), distributed six (6) containers of Banamine (\$390.00), among other drugs, by invoice #518, to Penner Cattle, Inc., based on the 6/15/00 altered prescription

d. On or about July 6, 2000, Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed one (1) container of Lasix (\$7.85), among other drugs, by invoice #521, to Penner Cattle, Inc., based on the 6/15/00 altered prescription.

e. On or about July 13, 2000, Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed six (6) containers of Banamine (\$390.00), among other drugs, by invoice #524, to Penner Cattle, Inc., based on the altered 6/15/00 prescription.

f. On or about July 24, 2000, Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed six (6) containers of Banamine (\$390.00), among other drugs, by invoice #528, to Penner Cattle, Inc., based on the altered 6/15/00 prescription.

g. On or about August 14, 2000, Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed six (6) containers of Banamine (\$390.00), among other drugs, by invoice #536, to Penner Cattle, Inc., based on the altered 6/15/00 prescription.

h. On or about December 1, 2000, Gerald L. Gibson, D.V.M. of the Gibson Veterinary Clinic, 404 West Texcoco, Montezuma, Kansas 66547-0242, wrote prescriptions on file with Respondent and intended for Penner Cattle,

Ingalls, Kansas. At a time when said "12/1/00" prescription made by Gerald L. Gibson, D.V.M. was on file at Respondent's Garden City wholesale distributor location, Craig Hitchcock materially altered said prescription by changing the date on the prescription from "12/1/00" to "1-1-00". Neither Gerald L. Gibson, D.V.M., nor any one acting on his behalf, authorized said material alteration.

i. On or about September 11, 2000, Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed one (1) container of Lasix (\$7.85), among other drugs, by invoice #546, to Penner Cattle, Inc., based on the 12/1/00 altered prescription.

j. On or about November 13, 2000, Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed one (1) container of Lasix (\$7.85), among other drugs, by invoice #568, to Penner Cattle, Inc, based on the 12/1/00 altered prescription.

k. On or about May 15, 2000, Gerald L. Gibson, D.V.M. of the Gibson Veterinary Clinic, 404 West Texcoco, Montezuma, Kansas 66547-0242, wrote prescriptions on file with Respondent and intended for Penner Cattle, Ingalls, Kansas. At a time when said "5/15/00" prescription made by Gerald L. Gibson, D.V.M. was on file at Respondent's Garden City wholesale distributor location, Craig Hitchcock, materially altered said prescription by adding the drug Dexamethone to the prescription and adding a route of administration. Neither Gerald L. Gibson, D.V.M., nor any one acting on his behalf, authorized said material alteration.

l. On or about May 18, 2000, Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed one (1) container of Dexamethone (\$4.50), among other drugs, by invoice #503, to Penner Cattle, Inc., based on the 5/15/00 altered prescription.

m. On or about May 25, 2000, Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed six (6) containers of Banamine (\$390.00), among other drugs, by invoice #505, to Penner Cattle, Inc., based on the 5/15/00 altered prescription.

n. On or about November 21, 2000, on a date before the prescription was issued by Dale Holterman, D.V.M., Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed four (4) containers of Baytril (\$450.00) by invoice #108, to H Lazy E.

o. On or about November 21, 2000, on a date before the prescription was issued by Dale Holterman, D.V.M., Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed eight (8) containers of Dexamethazone (\$36.40), among other drugs, by invoice #181, to H Lazy E.

p. On or about November 21, 1999, on a date before the prescription was issued by Dale Holterman, D.V.M., Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed ten (10) containers of Banamine (\$650.00), among other drugs, by invoice #181, to H Lazy E.

q. On or about November 21, 1999, on a date before the prescription was issued by Dale Holterman, D.V.M., Craig Hitchcock, in violation of K.A.R. 68-14-

8(a)(1) and (2), distributed twelve (12) containers of Lasix (\$93.00), among other drugs, by invoice #181, to H Lazy E.

r. On or about December 4, 1999, on a date before the prescription was issued by Dale Holterman, D.V.M., Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed twelve (12) containers of Dexamethazone (\$46.20), among other drugs, by invoice #146, to H Lazy E.

s. On or about December 4, 1999, on a date before the prescription was issued by Dale Holterman, D.V.M., Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed twelve (12) containers of Lasix (\$93.00), among other drugs, by invoice #146, to H Lazy E.

t. On or about December 4, 1999, on a date before the prescription was issued by Dale Holterman, D.V.M., Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed two (2) containers of Lidocaine (\$3.00), among other drugs, by invoice #146, to H Lazy E.

u. On or about December 4, 1999, on a date before the prescription was issued by Dale Holterman, D.V.M., Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed one (1) container of Albon Bolus (\$83.25), among other drugs, by invoice #146, to H Lazy E.

v. On or about December 4, 1999, on a date before the prescription was issued by Dale Holterman, D.V.M., Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed three (3) containers of Banamine (\$195.00), among other drugs, by invoice #146, to H Lazy E.

w. On or about December 4, 1999, on a date before the prescription was issued by Dale Holterman, D.V.M., Craig Hitchcock, in violation of K.A.R. 68-14-8(a)(1) and (2), distributed two (2) containers of Thiamine (\$7.00), among other drugs, by invoice #146, to H Lazy E.

x. By materially altering the prescriptions made by Gerald L. Gibson, D.V.M., and by distributing the prescription drugs based upon the altered prescriptions as alleged in subparagraphs b-m above, Craig Hitchcock engaged in conduct in violation of K.S.A. 65-1627(f)(5) and K.A.R. 68-14-8(a)(1)(2), thereby constituting grounds for suspension, revocation, placing on probationary status or denial of renewal of Respondent's registration pursuant to K.S.A. 65-1627(f)(5) & (6).

y. By distributing the prescription drugs on a date before the prescriptions for same were issued by Dale Holterman, D.V.M., as alleged in subparagraphs n-w, Craig Hitchcock engaged in conduct in violation of K.A.R. 68-14-8(a)(1)(2), thereby constituting grounds for suspension, revocation, placing on probationary status or denial of renewal of Respondent's registration pursuant to K.S.A. 65-1627(f)(6).

III. AGREEMENT OF THE PARTIES—TERMS AND CONDITIONS

Subject to and conditional upon the parties' mutual execution of this Consent Agreement, the Board and Respondent agree as follows:

10. Respondent waives all rights to an adjudication of facts and law which could be determined pursuant to a hearing conducted in accordance with the Kansas

Administrative Procedure Act in relation to the facts set forth herein, and waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas Act for Judicial Review of Agency Actions in relation to the facts set forth herein.

11. Respondent hereby agrees and consents that its registration no. 5-00701 to distribute prescription drugs at wholesale from its registered location at 101 N. 4th Street, Garden City, Kansas shall be placed on probation for a period of 3 years from the date of the entry of this Consent Agreement.

12. Respondent hereby agrees and consents that its registration to distribute prescription drugs from its registered location at 101 N. 4th Street, Garden City, Kansas shall be suspended for a period of 40 days from the date of execution and approval by the Board of this Consent Agreement. Such suspension shall be stayed, except that 15 days of actual suspension shall be served. Respondent may elect to serve the actual suspension in 3 separate 5-day time blocks, provided that they must be served within 90 days of entry of this Consent Agreement. Respondent or its counsel, within 10 days after entry of this Consent Agreement, shall deliver written notice to the Executive Director of the Board identifying the specific dates for service of said suspension. The remainder of the 40-day suspension shall be stayed and not served if Respondent complies with the conditions of probation set forth herein.

13. Respondent shall be obligated to pay to the Board a settlement sum in the amount of \$90,000.00. The amount of \$45,000.00 shall be due and payable in 6 equal monthly installments, payable at the beginning of each month, beginning on March 1, 2002. The Board shall not be obligated to serve upon Respondent any invoices or

other reminders for the payments due pursuant to this paragraph. The payments shall be delivered by mail and shall be effective as of the date of mailing. The remainder of the settlement sum shall be stayed and shall not be payable at any time if Respondent complies with the conditions of probation set forth herein.

14. During the 3-year term of probation, Respondent shall not:

- a. Materially alter any prescriptions in violation of K.S.A. 65-1627(f)(5) or distribute prescription drugs based upon an altered prescription in a manner that violates K.A.R. 68-14-8;
- b. Distribute prescription drugs before prescriptions for same have been issued in a manner that violates K.A.R. 68-14-8;
- c. Distribute any prescription drug using an invoice that fails to identify the address of the location from which the drug was shipped in a manner that violates K.A.R. 68-14-7(f)(1)(A);
- d. Commit any willful and serious violation of the Kansas Pharmacy Act, K.S.A. 65-1625, et seq.; or,
- e. Violate the material requirements of this Consent Agreement.

15. If, during the 3-year term of probation, Respondent is adjudicated to have committed a violation of the conditions listed in paragraph 14(a) through (e):

- a. Respondent shall be deemed to have admitted to the factual and legal contentions in paragraph 9(a) through (y) and to have violated the act accordingly; and,
- b. The Board will issue and serve upon Respondent a Summary

Order lifting the 25-day stayed suspension and the \$45,000.00 stayed monetary penalty, and Respondent will be required to serve the remaining suspension term within 90 days after the entry and service of the Summary Order and to pay the remaining monetary penalty within 30 days after the entry and service of the Summary Order.

In the event of the issuance of such a Summary Order, and subsequent timely request by Respondent for hearing on the Summary Order, the issues to be addressed at such hearing shall be limited solely to whether Respondent violated the terms of this Consent Agreement.

16. If, at the end of the 3-year probation, Respondent has complied with the terms of this Consent Agreement, the Petition filed in this matter shall be deemed to be dismissed with prejudice.

17. The parties acknowledge that they have read the Consent Agreement in its entirety and affirm that they enter into it voluntarily, after the opportunity to consult with counsel of their choice and with full understanding of its legal consequences. The parties execute the Consent Agreement with the acknowledgment that, once it is accepted, approved and made an order of the Board, it shall be given the same force and effect as a Final Order entered as a result of a formal disciplinary proceeding, specifically the pending administrative petition on file with the Board in case number 00-60.

18. Upon execution by all parties, this Consent Agreement shall be an open,

public record in the custody of the Board.

19. The parties acknowledge that the Consent Agreement constitutes the entire agreement between Respondent and the Board, and may be modified or amended only by written agreement signed by Respondent and the Board or a designee of the Board, except as otherwise provided in the Consent Agreement.

20. Respondent acknowledges that it has been advised by the Board that it would have the right within 15 days after service of this Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Order provided 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 for judicial review on the Kansas Pharmacy Board by serving Susan Linn, its Executive Secretary. Subject to, conditional upon and in consideration of the Board's execution of this Consent Agreement and good faith performance of its obligations arising under said agreement, Respondent hereby waives those rights.


21. The provisions above are consented to and are hereby made the order of the Board which becomes effective on the date indicated in the below Certificate of Service.

IT IS SO ORDERED.

2/13/02
Date

Vicki Schmidt
Vicki Schmidt
President, Kansas Board of Pharmacy

APPROVED AND CONSENTED TO:

By 
Micro Beef Technologies, Ltd.
Reg. No. 5-00701

2.11.02
(date)

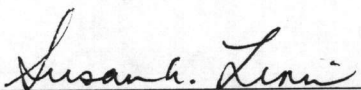
CERTIFICATE OF SERVICE

This to certify that on the 18 day of February, 2002, a true and correct copy of the above and foregoing Consent Agreement and Order was deposited in the U.S. mail, first class postage prepaid, addressed to:

Micro Beef Technologies, Ltd.
101 N. 4th,
Garden City, Kansas 67846

Coy Martin
MOORE MARTIN, L.C.
Farm Credit Bank Building
245 North Waco, Suite 405A
Wichita, KS 67202

Steve Phillips
Assistant Attorney General
120 S.W. 10th Street, Second Floor
Topeka, Kansas 66612-1597


Susan Linn, Executive Director
Kansas Board of Pharmacy