

BEFORE THE KANSAS BOARD OF PHARMACY

Filed By

In the Matter of)
)
MIDWEST SUPPLY CHAIN)
Kansas Registration No. 5-01935)

Case No. 18-480

CFP 062018
KANSAS STATE
BOARD OF PHARMACY

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Midwest Supply Chain located at 10405 W 79th Street, Shawnee, KS 66214 ("Respondent") as follows:

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

*Sandy Smith; Wojstoffs; Cantrell LLP; 4740 Grand Ave
Kansas City, Mo 64112*

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 registration to operate a pharmacy.

3. The Respondent is presently entitled to operate a wholesale distributor pharmacy in the State of Kansas by reason of the Board having issued it Kansas registration number 5-01935 ("Kansas Registration"). At all times relevant hereto, the Respondent has held a current registration to operate a wholesale distributor pharmacy at 10405 W 79th Street, Shawnee, KS 66214 (the "Facility").

4. The Board's Investigation Member has received certain information, investigated and determined that there are reasonable grounds to believe that Respondent has operated in a manner that violates the Act.

5. Respondent hereby waives any further proof in this or any other proceeding before or initiated by the Board with respect to this matter, and upon motion duly made, seconded and passed, the Board finds the following:

A. Midwest Supply Chain had a drug distributor license in the State of Missouri from 2005 until it expired on October 31, 2017. Midwest Supply Chain continued to ship legend drugs and devices from its current location from November 1, 2017, until December 4, 2017. Midwest Supply Chain's records reflect that it delivered approximately 406,000 orders of legend drugs and devices to hospitals in Missouri without a valid distributor license. Midwest Supply Chain received a probationary license from the Missouri Board of Pharmacy in lieu of a denial pursuant to a Missouri Board Order dated May 7, 2018.

B. Based on information received by the Board, the Board concluded Midwest Supply Chain engaged in conduct which would be grounds for denying Midwest Supply Chain a registration, or if currently registered by the Board, disciplinary action by the Board against its wholesale distributor registration.

6. Midwest Supply Chain's conduct as alleged above is cause for the Board to deny Midwest Supply Chain registration as a wholesale distributor pursuant to K.S.A. 65-1627(e)(4), which states that the Board may revoke, suspend, place in a probationary status or deny a renewal of the registration of a pharmacy upon a finding that the registrant has had a registration revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for registration denied, by the proper registering authority of another state, a

certified copy of the record of the act in of the other jurisdiction being conclusive evidence thereof.

7. Upon motion duly made, seconded and passed, the Board finds and concludes that the events described in paragraph 5 above, constitute the operation of a pharmacy in a manner that violates the Act and the Regulations of the Board and is therefore grounds for disciplinary action against the Respondent's Kansas Registration pursuant to K.S.A. 65-1627 (e)(1) and K.S.A. 65-1627(e)(4).

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

A. PROBATION. Respondent's Kansas Registration shall be on probation status for a period of two (2) years from the effective date of the Consent Order contemplated hereby ("Probation Period"). As soon as practical during the Probation Period, Respondent shall comply with the following requirements:

i. Respondent shall pay all required fees for registration to the Board and shall renew its wholesale distributor registration prior to June 30 of each licensing year.

ii. If, after disciplinary sanctions have been imposed, the Respondent fails to keep its wholesale distributor registration current, the period of unlicensed status shall not be deemed or taken as any part of the time of discipline so imposed.

iii. Respondent shall comply with all requirements of the Missouri Board Order dated May 7, 2018 and report any change in license status to the Board within ten (10) days.

iv. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Order.

C. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Consent Order it 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 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 Consent 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 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 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 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 and enter the Final Order provided for herein. 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.

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

13. The Respondent acknowledges that it enters into this Stipulation and Consent Order freely and voluntarily after consultation with counsel of its choosing. The Respondent

further acknowledges that it has read this Stipulation and Consent Agency order in its entirety, that it understands its legal consequences and that it 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 it. 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 Final Order by the Board, this Stipulation and Consent Order shall be a public record in the custody of the Board.

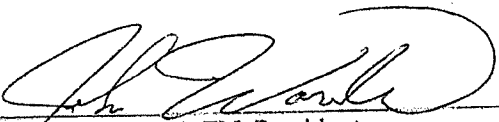
17. This Stipulation and Consent Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

18. The Respondent acknowledges that 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 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 4th day of December, 2018.

KANSAS BOARD OF PHARMACY

By: 
DR. JOHN WORDEN, President

AGREED AND APPROVED BY:

Midwest Supply Chain
10405 W 79th Street
Shawnee, KS 66214

By: Michelle Overton

9/24/18
Date

Chad Ullom

Chad Ullom, R.Ph.
Investigation Member

Date

Sandy Smith
Respondent's Attorney's Name & Address

9/24/18
Date

Sandy Smith
Wagstaff & Eastman LLP
4748 Grand Ave Kansas City Mo 64112

12/06/2018
Date

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

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 10 day of December, 2018 addressed to:

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

Midwest Supply Chain
10405 W 79th Street
Shawnee, KS 66214



Representative of the
KANSAS BOARD OF PHARMACY