

BEFORE THE KANSAS STATE
BOARD OF PHARMACY

JAN 3 2000

In the Matter of)
)
Miguel Dairy Service)
)
Kansas Registration No. 5-01144)

Case No. 99-88

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas State Board of Pharmacy (the "Board") and Miguel Dairy Service, 201 South Barber, Syracuse, Kansas 67878 (the "Respondent") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Haynes & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by its attorney, _____

2. The Board is the Kansas agency vested with the authority to carry out and enforce the provisions of the Kansas Pharmacy Act, K.S.A. 65-1625 *et seq.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas registration to distribute drugs in Kansas at wholesale.

3. The Respondent is presently entitled to distribute drugs in Kansas at wholesale under the name Miguel Dairy Service and at 201 South Barber, Syracuse, Kansas 67878 by reason of the Board having issued it Kansas registration number 5-01144.

4. 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.*

5. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board that on 54 different instances on various dates during 1999, but prior to October 1, 1999, it sold and distributed directly and not at wholesale various prescription/animal legend drugs for use in animals owned or controlled by various dairy operations without a valid written prescription for the drug having been issued.

6. The Board finds and concludes that Respondent's conduct, as described above, is in violation of the Kansas Pharmacy Act and more particularly K.S.A. 65-1636 and is grounds for disciplinary action against the Respondent's registration in the State of Kansas

7. The Board finds and the Respondent agrees that an administrative fine in the amount of Two Hundred Seventy Thousand Dollars (\$270,000.00) is just and appropriate under the circumstances and that it should be paid with ten (10) days of the Board entering the Final Order provided for herein.

8. Respondent agrees that all information in the possession of the Board or its attorney regarding the complaints which led to this disciplinary action, the investigation of the complaints 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.

9. 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 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.

10. 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. 65-1625 *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 making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing.

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.

13. The Respondent acknowledges that it enters into this Stipulation and Final Agency Order freely and voluntarily after consultation or an opportunity for consultation with counsel of its choosing. The Respondent further acknowledges that it has read this Stipulation and Final 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. The Respondent represents that the person signing this document on its behalf is fully authorized to do so and to bind the Respondent to the terms hereof.

14. Time is of the essence to this Stipulation and Final Agency Order. Respondent acknowledged 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.

15. 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.

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

17. 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.

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 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 Larry Froelich, its Executive Secretary. The Respondent hereby waives those rights.

AGREED AND ACCEPTED BY:

Miguel Dairy Service
201 South Barber
Syracuse, Kansas 67878

By: _____

Date

APPROVED BY:

Date

Randall J. Forbes, #09089
FRIEDEN, HAYNES & FORBES
555 S. Kansas Avenue, Suite 303
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(785) 232-7266
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Attorney for the Kansas State Board of Pharmacy

Date

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FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas State Board of Pharmacy (the "Board") approves and accepts the within Stipulation and Final Agency Order and incorporates the provisions thereof as the Final Order of the Board. The Respondent shall pay the administrative fine as provided for therein.

ENTERED AND EFFECTIVE this ____ day of _____, 2000.

KANSAS STATE BOARD OF PHARMACY

By: _____
Dan Katzer, President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND FINAL AGENCY ORDER was served upon counsel by depositing same in the United States mail, postage prepaid, this _____ day of _____, 2000, addressed to:

Randall J. Forbes
FRIEDEN, HAYNES & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603
(785) 232-7266
(785) 232-5841 FAX
Attorney for the Kansas State Board of Pharmacy

Miguel Dairy Service
201 South Barber
Syracuse, Kansas 67878

Larry Froelich
Administrative Secretary
KANSAS STATE BOARD OF PHARMACY