

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
SHOPKO PHARMACY #2696) Case No. 17-240
Kansas Registration No. 2-10415)

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Shopko Pharmacy #2696 located at 505 W. Holme St., Norton, KS 67654 ("Respondent") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden & Forbes, LLP, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. 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 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 pharmacy in the State of Kansas by reason of the Board having issued it Kansas registration number 2-10415 ("Kansas Registration"). At all times relevant hereto, the Respondent has held a current registration to operate a pharmacy at 505 W. Holme St., Norton, KS 67654 (the "Pharmacy").

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 K.S.A. 65-1627(e) which would justify the imposition of

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disciplinary action against Respondent's registration under the provisions of K.S.A. 65-1627(e) and the assessment of an appropriate fine against Respondent pursuant to K.S.A. 65-1658.

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. In November of 2017, the Board received a complaint of numerous and increasing dispensing errors at the Respondent. The complaint included six (6) incidents of dispensing errors, including but not limited to no verification calls made to ordering provider, the filling of a prescription weeks in advance without notifying provider, the re-filling of prescriptions at an incorrect dosage, and incorrect providers were assigned to medications dispensed by Respondent.

b. As a result, the Board's investigators reviewed the records of Respondent and determined that from February of 2017 through July of 2017, twenty-seven (27) C-II prescriptions dispensed by Respondent contained errors, including but not limited to incorrect drug strength, incorrect prescribers, incorrect addresses for prescribers, and the filling of a prescription before the prescriber's "fill on" date.

c. Moreover, the Board's investigators reviewed Respondent's incident reports and CQI reports on file, and determined that none of the twenty-seven (27) prescriptions reviewed and obtained has associated incident reports.

6. 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), for filling prescriptions other than in strict conformity with the directions of a prescriber in violation of K.S.A. 65-1637(g) (including its pharmacists dispensing C-II substances other than in strict conformity with the directions of a prescriber as required by K.A.R. 68-20-19(a)), for failure to create incident reports or have procedures in place to ensure reporting of reportable incidents in violation of K.A.R. 68-7-12b, and for failure to create labels for prescription drugs with the information required by K.A.R. 68-7-14(a) and K.A.R. 68-20-19(d).

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. PROBATION. Respondent hereby agrees and consents and the Board orders that Respondent's registration to operate a pharmacy shall be placed on probationary status for a period three (3) years from the date this Stipulation and Consent Order is entered by the Board (the "Probationary Period"). During the Probationary Period, Respondent agrees and consents and the Board orders that Respondent shall comply with the following requirements (the "Probationary Requirements"):

i. DOCUMENTED RETRAINING. Within thirty (30) days of the entry of this Stipulation and Consent Order, Respondent shall conduct a retraining of its entire staff on the proper processing of prescriptions with an emphasis on decreasing errors in filling and completing required information. Respondent shall document the retraining in detail and shall provide the Board's Executive Director with a written report regarding the retraining within ten (10) days of the date the retraining takes place.

ii. REEVALUATE WORKFLOW. Respondent shall reevaluate its workflow processes with an emphasis on decreasing errors in filling and completing required information. Within thirty (30) days of the entry of this Stipulation and Consent Order,

Respondent shall provide a detailed report to the Board's Executive Director regarding its workflow reevaluation, including any modifications and additions made by Respondent to its workflow processes.

iii. CQI. Respondent shall conduct monthly Continuous Quality Improvement ("CQI") meetings in accordance with KSA 65-1695 and KAR 68-19-1 to address all errors in documentation and incidents reportable since the previous CQI meeting, and shall create a CQI Report for each CQI meeting in compliance with KSA 65-1695 and KAR 68-19-1. Respondent shall retain all CQI Reports and all documents related to each CQI meeting for inspection by the Board, and shall provide the Board's Executive Director with its written CQI reports within ten (10) days of the date each CQI meeting takes place. In the event Respondent has three (3) consecutive months without a documentation error and without an incident, then upon Respondent's written notice to the Board and the written approval of the Board, Respondent can reduce the frequency of its CQI meetings to every other month. In the event the Board approves the reduction of CQI meetings to every other month, and subsequent thereto, Respondent then has three (3) consecutive months without a documentation error and without an incident, then upon Respondent's written notice to the Board and the written approval of the Board, Respondent can reduce the frequency of its CQI meetings to regular quarterly meetings. However, if Respondent experiences more than two (2) combined errors in documentation or incidents in a month, then Respondent shall return to a higher tier of frequency for CQI meetings. In other words, if Respondent is approved to conduct CQI meetings every other month and experiences more than two (2) combined errors in documentation or incidents in a month, then Respondent shall return to monthly CQI meetings. If Respondent experiences more than two (2) combined errors in documentation or incidents in

a month after Respondent is approved to conduct quarterly CQI meetings, then Respondent shall return to CQI meetings every other month.

iv. COMPLETE DOCUMENTATION. Respondent shall maintain complete and accurate documentation in accordance with the Act, including any documentation Respondent is required to create and/or maintain pursuant to this Stipulation and Consent Order.

v. Respondent must comply with all terms and conditions of this Stipulation and Consent Order.

B. ADMINISTRATIVE FINE. Respondent hereby agrees and consents and the Board orders that Respondent shall pay to the Board an administrative fine of Five Thousand Dollars (\$5,000.00) within ten (10) days of the entry of this Stipulation and Consent Order. However, Respondent's agreement and obligation to pay the administrative fine shall be suspended pending successful completion of the Probationary Period. In the event Respondent violates any of the Probationary Requirements or any of the terms and conditions of this Stipulation and Consent Order, then Respondent agrees and consents and the Board orders that Respondent shall pay the administrative fine within ten (10) days of the Board notifying Respondent of the violation.

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:

- i. Comply fully with this Stipulation and Consent 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;

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 8th day of February, 2019.

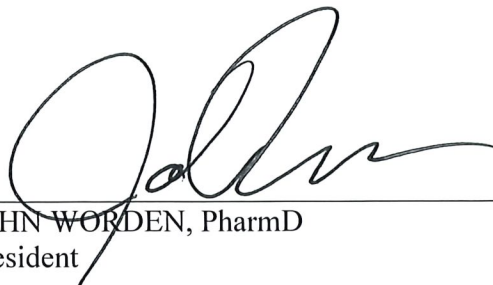
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By:



JOHN WORDEN, PharmD
President

AGREED AND APPROVED BY:

Shopko Pharmacy #2696
505 W. Holme St.
Norton, KS 67654

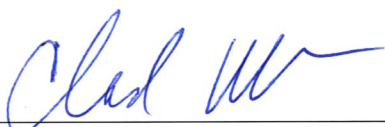
By: 

1/10/19

Date

Printed Name: Robert Sweet

Title: Director of Pharmacy




Chad Ullom, R.Ph.
Investigation Member

2/8/19

Date

Respondent's Attorney's Name & Address

Date

FOR  #25064

Randall J. Forbes, KS#09089 MO#64335
FRIEDEN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
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(785) 354-1100
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Attorney for the Kansas Board of Pharmacy

1-15-19

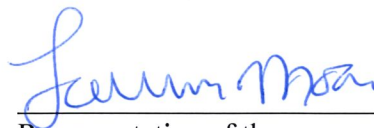
Date

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 27 day of February, 2019 addressed to:

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

Shopko Pharmacy #2696
Attn: David Todd Traylor, PharmD
505 W. Holme St.
Norton, KS 67654



Representative of the
KANSAS BOARD OF PHARMACY