BEFORE THE KANSAS STATE BOARD OF PHARMACY

| In the Matter of |) | | |
|--|-------------|----------------|-----------------------------------|
| TAYLOR DRUG 201 South Summit Arkansas City, Kansas 67005 |))) | Case No. 09-39 | Filed 4, 2009 December 4, 2009 |
| Kansas Registration No. 2-06683 |)) | | KANSAS JUATE Board of Pharmacy |

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED, UNDERSTOOD AND AGREED by and between the Kansas State Board of Pharmacy (the "Board") and Taylor Drug, 201 South Summit, Arkansas City, Kansas 67005 (the "Respondent"), as follows:

- 1. The Board is represented herein by its attorney, Kevin M. Fowler of Frieden & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. 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 Act, K.S.A. 65-1626 *et seq.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas registration to operate a pharmacy.
- 3. The Respondent is presently authorized to operate a pharmacy at 201 South Summit, Arkansas City, Kansas 67005 as the holder of Kansas registration number 2-06683 issued by the Board. Taylor Drug is owned by Fred Taylor, R.Ph., who also

serves as the Respondent's pharmacist-in-charge. At all times relevant hereto, the Respondent has held a current registration to operate a pharmacy in the State of Kansas.

- 4. The Board has received certain information, has investigated and has determined that there are reasonable grounds to believe that, for a period of time not exceeding 30 days during the Fall of 2008, the Respondent violated the Kansas Pharmacy Act or rules and regulations of the Board by authorizing, directing or otherwise causing one of its employees to function as a pharmacy technician without a current pharmacy technician's registration issued by the Board as required under the provisions of K.S.A. 65-1663.
- 5. The Respondent hereby stipulates, admits, and waives any further proof in this or any other proceeding before or initiated by the Board, that for a period of time not exceeding 30 days during the Fall of 2008, Respondent authorized, directed or otherwise caused one of its employees to function as a pharmacy technician without a current pharmacy technician's registration issued by the Board as required under the provisions of K.S.A. 65-1663.
- 6. Upon the Respondent's execution and the Board's approval of this Stipulation and Final Agency Order, all stipulations, understandings and agreements expressed herein shall become fully binding upon each of the parties, and the Board may enter its enforcement order based upon such stipulations, understandings and agreements without the necessity of filing any formal charges or holding hearings in these proceedings. The stipulations and agreements set forth in Paragraph 9 below shall become fully binding and effective immediately upon the Respondent's execution of this Stipulation and Final Agency Order.

- 7. The Board finds and concludes that the Respondent's conduct described in
- Paragraphs 4 and 5 above constitutes grounds for disciplinary action pursuant to K.S.A.
- 65-1627(e)(1), including the assessment of a civil fine not to exceed \$5,000 for each

violation.

- 8. The Board finds and the Respondent stipulates and agrees that the
- following disposition is lawful, just and appropriate under the circumstances:
 - A. CIVIL FINE. The Respondent shall pay to the Kansas Pharmacy
- Board an administrative fine in the amount of Five Hundred Dollars (\$500.00) within ten
- (10) days of the date upon which the Board approves and enters the Final Agency Order

provided for herein.

- B. OTHER REQUIREMENTS. As a further condition of this
- Stipulation and Final Agency Order, the Respondent must fully comply with the Kansas

Pharmacy Act, the Board's rules and regulations and all state and federal laws applicable

to Kansas pharmacies;

9. The Respondent stipulates and 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 Final Agency Order and the

Final Order provided for herein, with or without the presence of the Respondent or its

attorney. The Respondent further stipulates and agrees that in the event this Stipulation

and Final Agency Order and the Final Order provided for herein are not accepted and

approved by the Board, the Respondent 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 a due process violation

or any right to seek disqualification of any Board member as a result of the Board

member's consideration of said document and information.

10. Except for the stipulations and agreements set forth in Paragraph 9 above,

the stipulations, understandings and agreements 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.

11. The Respondent stipulates and 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. 65-1626 et seq. is constitutional on

its face and as applied in this case.

12. This Stipulation and Final Agency Order constitutes the entire agreement

of the parties and may only be modified by a subsequent writing signed by them. The

stipulations, understandings and agreements expressed herein are contractual and shall be

interpreted in accordance with the laws of the State of Kansas.

13. The Respondent acknowledges that, as a registered pharmacy in the State

of Kansas, 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; and

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 knowingly, intelligently and voluntarily waives these rights and

acknowledges that said waiver is made in adequate and sufficient consideration of the

limited disciplinary action provided for herein. In further consideration hereof, the

Respondent also waives any right to contest or otherwise challenge this Stipulation and

Final Agency Order, including the terms, conditions and Final Order provided for herein,

in any direct or collateral proceeding which seeks administrative review or

reconsideration by the Board or judicial review by any court.

14. The Respondent acknowledges that it enters into this Stipulation and Final

Agency Order knowingly, intelligently and voluntarily after the opportunity to consult

with counsel or consultation with counsel of its choosing. The Respondent further

acknowledges that it has read this Stipulation and Final Agency order in its entirety, that

the Respondent understands its legal consequences; and that the Respondent stipulates

and agrees that none of its terms are unconscionable, fraudulent, oppressive, arbitrary,

capricious or otherwise unreasonable.

Respondent acknowledges 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

Time is of the essence to this Stipulation and Final Agency Order. The

of an alleged violation of this Stipulation and Final Agency Order shall not affect the

obligation of the Respondent to comply with all terms and conditions of this Stipulation

and Final Agency Order.

15.

16. 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.

17. Upon execution by all parties, this Stipulation and Final Agency Order

shall be a public record in the custody of the Board.

18. 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.

19. The Respondent acknowledges that he has been advised by the Board that

he 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 Susan Linn, its Executive Secretary. The Respondent hereby waives those rights.

AGREED TO AND ACCEPTED BY:

| AGREED TO AND ACCELTED DT. | |
|---|--|
| Taylor Drug 201 South Summit Arkansas City, Kansas 67005 Kansas Registration No. 2-06683 By: | 5/29/09 |
| Fred Taylor, R.Ph. | Date |
| Owner and Pharmacist-In-Charge | , and the second |
| APPROVED BY: | |
| Signature of Respondent's Attorney | Date |
| Printed Name of Respondent's Attorney | |
| Address of Respondent's Attorney | |
| Kim Omz | June 1 2009 |

Kevin M. Fowler KS Bar #11227

FRIEDEN & FORBES 555 South Kansas Avenue, Suite 303

Topeka, KS 66603 Tel: (785) 232-7266

Fax: (785) 232-5841

Counsel for the Kansas State Board

of Pharmacy

Date

BEFORE THE KANSAS STATE BOARD OF PHARMACY

| In the Matter of |) | |
|---------------------------------|---|-----------------|
| TAYLOR DRUG |) | Case No. 09-39 |
| TAYLOR DRUG |) | Case 140. 05 55 |
| 201 South Summit |) | |
| Arkansas City, Kansas 67005 |) | |
| Kansas Registration No. 2-06683 |) | |
| |) | |

FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas Pharmacy Board (the "Board") approves and accepts the Stipulation and Final Agency Order as set forth above and fully incorporates the provisions thereof as the Final Order of the Board.

ENTERED AND EFFECTIVE this 10 day of 1009.

KANSAS STATE BOARD OF PHARMACY

Acting President

CERTIFICATE OF SERVICE

| The undersigned | hereby certif | ies that a copy of the | foregoing STIPULATION |
|------------------------|---------------|------------------------|---------------------------|
| AND FINAL AGENCY | ORDER was | s served by depositing | same in the United States |
| mail, postage prepaid, | this 🔀 | day of Jame | , 2009, properly |
| addressed to: | H | December | r |

Taylor Drug c/o Fred Taylor, R.Ph. 201 South Summit Arkansas City, Kansas 67005

Kevin M. Fowler FRIEDEN & FORBES 555 South Kansas Avenue, Suite 303 Topeka, KS 66603

Debra Billingsley

Executive Secretary

Kansas State Board of Pharmacy