

BEFORE THE KANSAS BOARD OF PHARMACY

Received
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Kansas State
Board of Pharmacy

IN THE MATTER)
)
OF)
)
VALJEAN VAN WINKLE, R.Ph.)
LICENSE NO. 11027)
_____)

Case No: 03-06

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and ValJean Van Winkle, R.Ph. (the "Respondent") as follows:

1. The Board is represented herein by its attorneys, Steve Phillips and Marty M. Snyder, Assistant Attorneys General of the Kansas Attorney General's Office, 120 SW 10th Avenue, Topeka, Kansas 66612-2215. The Respondent is represented herein by his attorney James P. Colgan.

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.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas license to practice pharmacy.

3. The Respondent is currently entitled to engage in the practice of pharmacy in the State of Kansas by reason of the Board having issued his Kansas license number 12306. At all times relevant hereto, the Respondent has held a current license to

engage in the practice of pharmacy in the State of Kansas, subject to a voluntary Consent Agreement originally dated March 12, 2003.

4. Respondent's address is 15222 W. 139th Terrace, Olathe, KS 66062.

5. Respondent diverted and consumed hydrocodone and Ritalin while working as a pharmacist at Sam's Club Pharmacy in Lenexa. Respondent ultimately pled guilty to one count of violating K.S.A. 65-4160 and 65-4109(d)(16), conspiracy to possess hydrocodone, a drug severity level 4 felony.

6. Respondent hereby admits and waives any further proof in this or any other proceeding that Respondent's conduct, as described in paragraph 5 above, violates various provisions of the Pharmacy Act of the State of Kansas pursuant to K.S.A. 65-1625, *et seq.*, and specifically K.S.A. 65-1627(a)(3) [unprofessional conduct - defined by K.S.A. 65-1626(hh)(5) as the "unlawful possession of drugs and unlawful diversion of drugs to others"], K.S.A. 65-1626(hh)(7) [unprofessional conduct - conduct likely to deceive, defraud or harm the public], K.S.A. 65-1627(a)(4) [addiction rendering licensee unfit to practice profession of pharmacy] and K.S.A. 65-1627(a)(13) [self-administration of a controlled substance without a practitioner's prescription order].

7. Respondent has signed up for the CIPP program, and based on a letter of June 10, 2003, which is attached as Exhibit 1 to this Stipulation and Final Agency Order, has been evaluated and successfully completed the intensive out-patient treatment program and is deemed safe to practice, subject to a monitoring agreement for five years containing certain terms and conditions summarized in Exhibit 1.

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

a. Respondent's license shall be placed on probation for a period of five (5) years, on the following circumstances and conditions:

(i) Respondent shall remain fully compliant with his monitoring contract with the CIPP program. Respondent shall remain in the program for a period of no less than five (5) years from the effective date he entered the program, with the probation of his license to run for the same period. Respondent shall fully cooperate with the recommendations and requirements of the persons managing and implementing CIPP as well as the recommendations and requirements of the persons managing and implementing the evaluation and treatment programs recommended or required by CIPP. Respondent shall authorize CIPP and any other evaluators, monitors and treaters to provide compliance documentation and records, including all drug analysis reports regardless of whether the results are positive or negative, to the Board on a quarterly basis throughout the probationary term.

(ii) Respondent shall not be a Pharmacist in Charge during the term of this Consent Agreement.

(iii) The Respondent shall not work as a pharmacist other than in the presence of another person age 18 or older, except in unusual

circumstances beyond Respondent's control, which situation shall be reported to the Board and Respondent's Pharmacist-In-Charge as soon as possible.

(iv) If, during the five-year probationary period, the Board's Investigative Member has reasonable grounds to believe that Respondent has again diverted or consumed prescription drugs without a prescription, the Board's Investigative Member will issue a Summary Order indefinitely suspending Respondent's license. In the event of the issuance of a Summary Order and subsequent timely request by Respondent for a hearing pursuant to the Kansas Administrative Procedure Act on the Summary Order, the issues to be addressed at such hearing shall be limited solely to: (1) whether the Respondent committed the violations believed by the Board to have occurred, and (2) what disciplinary sanctions should be imposed in addition to the summary lifting of the stay of suspension.

- b. **OTHER REQUIREMENTS.** Respondent acknowledges and agrees that as a condition of this Stipulation and Final Agency Order he must:
- (i) Comply fully with this Stipulation and Final Agency Order;
 - (ii) Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws relating to Kansas pharmacists.

9. Respondent agrees that all information in the possession of the Board or its attorney regarding the investigation which led to this disciplinary action and all information discovered during the pendency of the disciplinary action may be disclosed to and considered by the Board prior to the Board meeting and as part of the presentation and consideration of the proposal of settlement in the form of this Stipulation and Final Agency Order provided for herein, with or without the presence of the Respondent and his attorney. In the event that this Stipulation and Final Agency 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.

10. The stipulations contained herein shall not become binding unless this Stipulation 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 or the Final Order provided for herein.

11. 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 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 Respondent and the authorized representative of the Board. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

13. The Respondent acknowledges that he has the following rights:

- a. To have formal notice of charges served upon him;
- 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 Actions.

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 him 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.

14. The Respondent acknowledges that he enters this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of his choosing. The Respondent further acknowledges that he has read this Stipulation and Final Agency Order in its entirety, that he understands its legal consequences and that he agrees that none of its terms are unconscionable, arbitrary or capricious.

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

16. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:

- a. Adverse Action Classification: 1125 Probation of License
- b. Basis for Action: 10 Unprofessional Conduct

17. The following statement will be made in the Board's newsletter: ValJean Van Winkle, R.Ph. of Olathe, was disciplined by the Board by being placed on probation for five years subject to conditions.

18. 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.

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

20. 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.

21. The Respondent acknowledges that he has been advised by the Board that he would have the right within fifteen (15) days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within thirty (30) days after service of the final order provided for herein to file a petition for judicial review in the District Court 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 Debra Billingsley, its Executive Director. The Respondent hereby waives those rights.

WHEREFORE, Respondent consents to the submission of the Stipulation and Final Agency Order to the Kansas Board of Pharmacy and understands that upon approval of the Board, the Stipulation and Final Agency Order becomes a Final Order of the Board.

WHEREFORE, the provisions above are consented to and are hereby made the Final Order of the Kansas Board of Pharmacy which becomes effective on the date indicated in the below Certificate of Service.

APPROVED AND CONSENTED TO:

~~ValJean~~ ValJean Van Winkle

_____ 10/11/03
(date)

APPROVED AS TO FORM AND SUBSTANCE:

James P. Colgan //
Attorney for Respondent
ValJean Van Winkle

_____ 10/21/03
(date)

_____ Steve Phillips or Marty M. Snyder
Assistant Attorney General

_____ 10-30-03
(date)

BEFORE THE KANSAS PHARMACY BOARD

In the Matter of)
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VALJEAN VAN WINKLE, R.P.H.)
Kansas License No. 11027)
_____)

Case No. 03-06

FINAL ORDER

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

ENTERED AND EFFECTIVE this 2 day of November, 2003.

KANSAS PHARMACY BOARD _____

By: Mike Hurst, R. Ph.
President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above an foregoing Stipulation and Final Agency Order and Final Order was placed in the U.S. mail postage prepaid this 5 day of November, 2003, and addressed to:

James P. Colgan, Esq.
New Brotherhood Building
753 State Avenue, Suite 765
Kansas City, KS 66101

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