

CONFIDENTIAL

BEFORE THE KANSAS STATE BOARD OF PHARMACY

In the Matter of)
)
David C. Wendover, R.Ph.) Case No. 05-35
LICENSE NO. 1-13592)
_____)

JUN 27 2005

CONSENT AGREEMENT

THIS CONSENT AGREEMENT is entered into this 24 day of June, 2005 by and between David C. Wendover, R.Ph., (the "Licensee") and the Kansas Board of Pharmacy (the "Board").

WITNESSETH:

WHEREAS, the Licensee presently hold a license to practice pharmacy in the State of Kansas issued by the Board; and

WHEREAS, the Board is the state agency empowered to enforce the Kansas Pharmacy Act, K.S.A. 65-1625, *et seq.* (the "Act"), including the use of disciplinary actions to suspend, revoke or limit the license s of Kansas pharmacists who violate the Act; and

WHEREAS, the Board has received information regarding Licensee's ability to function as a pharmacist that would constitute probable cause to believe that there is a basis for the Board to take action, pursuant to K.S.A. 65-1627(a), regarding the Licensee and his license to practice pharmacy in Kansas; and

WHEREAS, the Board is willing to temporarily withhold initiating an emergency proceeding suspending or otherwise limiting the Licensee's license in return for certain agreements by the Licensee as detailed herein.

THEREFORE, for good and valuable consideration the Licensee and Board agree as follows:

1. The Board will temporarily withhold initiating an emergency proceeding suspending or otherwise limiting the Licensee's Kansas license to practice pharmacy in the State of Kansas based upon the Licensee's agreement, made hereby, to immediately cease practicing pharmacy in Kansas and not again resume the practice of pharmacy in Kansas without the subsequent written agreement of the Board.

2. This agreement shall not constitute an admission by the Licensee that he has violated the Kansas Pharmacy Act.

3. Should the Board determine, in good faith but in its sole and exclusive discretion, that the Licensee has failed to comply with the provision hereof, this agreement shall cease and shall not prevent, in any respect, the Board from initiating an emergency proceeding to suspend or otherwise limit the Licensee's Kansas License to practice pharmacy.

4. This agreement shall not prevent, in any manner, the Board from initiating a nonemergency proceeding to revoke, suspend, or otherwise limit the Licensee's Kansas License to practice pharmacy.

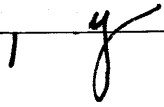
IN WITNESS WHEREOF the parties have caused this agreement to be executed the day and year first above written.

David C. Wendover, R.Ph.

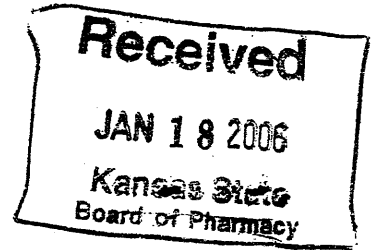
KANSAS PHARMACY BOARD

By:

Debra L. Billingsley
Executive Secretary



BEFORE THE KANSAS BOARD OF PHARMACY



In the Matter of)
)
DAVID C. WENDOVER, R.Ph.)
Kansas License No. 1-13592)

Case No. 05-35

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and David C. Wendover, R.Ph. (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 not represented by an attorney and appears on his own behalf.

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 presently entitled to engage in the practice of pharmacy in the State of Kansas by reason of the Board having issued him Kansas license number 1-13592. At all times relevant hereto, the Respondent has held a current license to engage in the practice of 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 the Respondent has committed an act or acts that would justify discipline of his Kansas pharmacy license pursuant to the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.*

Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board that Respondent took and consumed prescription drugs belonging to his employer and for which Respondent did not have a valid prescription.

The Board finds and concludes that Respondent's conduct, as described above, violates various provisions of the Pharmacy Act and regulations promulgated pursuant to it and is grounds for disciplinary action against his license to practice pharmacy in the State of Kansas pursuant to K.S.A. 65-1627 (a)(3), as defined by K.S.A. 65-1626 (ee)(3) and (hh)(5); K.S.A. 65-1627 (a)(5), and K.S.A. 65-1627 (a)(13).

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

VOLUNTARY SURRENDER OF LICENSE WITH CONDITIONS. The Respondent hereby agrees and consents to the Board's entry of an order accepting the voluntarily surrender of Respondent's license to practice pharmacy in the State of Kansas, with the conditions stated herein. As a condition of the Board accepting the voluntary surrender of his license, in lieu of other disciplinary action, the Respondent further agrees to the Board entering an order that provides if Respondent should ever again apply for licensure as a pharmacist in Kansas, the Respondent shall have the burden to prove, by clear and convincing evidence, that he is rehabilitated and competent to return to the practice of pharmacy in the State of Kansas. As a part of that agreement, it is further agreed that in considering whether Respondent has met his burden of proof, the Board may consider any relevant factors, including, but not limited to, the following:

- a. the moral fitness of the Respondent at the time of the application for licensure;
- b. the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
- c. the extent of Respondent's rehabilitation;
- d. the seriousness of the original misconduct;
- e. conduct subsequent to the voluntary surrender;
- f. the time which has elapsed since the surrender of his license;
- g. the Respondent's character, maturity, and experience at the time of the surrender of his license; and
- h. the Respondent's competence to practice pharmacy as of the time of the application for licensure.

As part of any future application for licensure, the Board shall have the right to require Respondent to submit to any physical and/or mental tests or examinations with providers of the Board's choice and totally at Respondent's expense. If the Board elects to have such testing performed, the Respondent shall authorize the release of all information related to such tests or examinations to the Board or its representative. Should the Board determine to relicense Respondent, the Board may place such conditions on the termination and Respondent's right to practice pharmacy, as the Board may deem, in its discretion, necessary. The Respondent further agrees not to seek relicensure in Kansas for a period of three years from the effective date of the final agency order contemplated hereby.

6. Respondent agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and 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 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 his 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 a 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.

7. 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 or the Board's Investigation Member 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.

8. 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. 65-1626 *et seq.* is constitutional on its face and as applied in this case.

9. 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.

10. 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 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 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.

11. The Respondent acknowledges that he enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of his choosing or an opportunity to do so. 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.

12. 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.

13. The following statement will be made in the Board's newsletter: "David C. Wendover, R.Ph. of Omaha Nebraska voluntarily surrendered his Kansas license to practice pharmacy."

14. 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.

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

16. 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.

17. 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

APPROVED BY:

Date

Randall J. Forbes, #09089
FRIEDEN, HAYNES & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603
(785) 232-7266

1.8.06

Date

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
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DAVID C. WENDOVER, R.Ph.)
Kansas License No. 1-13592)

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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 18 day of January, 2006

KANSAS PHARMACY BOARD

By: _____

Merlyn McFarland, R.Ph. /
President

