

BEFORE THE STATE BOARD OF PHARMACY

STATE OF COLORADO

Case Nos. 2018-5398

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**STIPULATION AND FINAL AGENCY ORDER**

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IN THE MATTER OF DISCIPLINARY PROCEEDINGS REGARDING THE LICENSE TO PRACTICE PHARMACY IN THE STATE OF COLORADO OF DONNA MARIE SHERWOOD, R. Ph., LICENSE NO. PHA.0014671

Respondent.

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IT IS HEREBY STIPULATED AND AGREED by and between the Colorado State Board of Pharmacy ("Board"), and Donna Marie Sherwood, R.Ph. ("Respondent") to resolve all matters pertaining to Board Case Number 2018-5398 as follows:

**FINDINGS AND CONCLUSIONS**

1. The Board has jurisdiction over Respondent, her license to practice pharmacy, and the subject matter of this Stipulation and Final Agency Order ("Final Agency Order") pursuant to provisions of the Pharmacists, Pharmacy Business, and Pharmaceuticals Act at Title 12, Article 42,5, C.R.S. (2017).
2. Respondent was originally licensed to practice as a pharmacist in the State of Colorado on or about May 22, 1996, being issued license number PHA 14671 and has been so licensed at all times relevant to this disciplinary action.
3. Respondent admits these findings and hereby waives further proof in this or any other proceeding before the Board regarding the following facts.
4. Respondent was the pharmacist manager of Ridgway Pharmacy, PDO 550.
5. Ridgway Pharmacy ceased to maintain minimum hours of operation beginning on or about January 17, 2018.
6. Respondent completed, attested to, and notarized a Board issued Notification: Closure of Pharmacy form on March 7, 2018.

7. Respondent failed to complete any of the requirements that were attested to have been completed in the Notification: Closure of Pharmacy form.

8. Respondent completed, attested to, and notarized a Board issued Notification: Closure of Pharmacy form on May 15, 2018.

9. Respondent had not delivered the pharmacy records as attested.

10. A review of the records, once delivered, demonstrated that Respondent had dispensed numerous controlled substances pursuant to invalid prescription orders.

11. Specifically, Ridgway Pharmacy dispensed controlled substances on over 900 orders issued by a physician whose license to practice medicine had expired.

12. Respondent violated the lawful rules of the Board.

13. Respondent violated any state or federal law pertaining to drugs.

14. Respondent failed to meet generally accepted standards of pharmacy practice.

15. Respondent admits that her conduct as set forth above constitutes violations of the following sections of the Colorado Revised Statutes and Board Rules, and provides grounds for disciplinary action against Respondent's Colorado pharmacist license:

### **Colorado Revised Statutes**

#### **12-42.5-123. Unprofessional conduct – grounds for discipline.**

(1) The board may suspend, revoke, refuse to renew, or otherwise discipline any license or registration issued by it, after a hearing held in accordance with the provisions of this section, upon proof that the licensee or registrant:

(c) Has violated:

(I) Any of the provisions of this article, including commission of an act declared unlawful in section 12-42.5-126;

(II) The lawful rules of the board; or

(III) Any state or federal law pertaining to drugs;

(k) Has failed to meet generally accepted standards of pharmacy practice;

(o) Has willfully deceived or attempted to deceive the board or its agents with regard to any matter under investigation by the board;

**12-42.5-124. Disciplinary actions.** (1) The board may deny or discipline an applicant, licensee, or registrant when the board determines that the applicant, licensee, or registrant has engaged in activities that are grounds for discipline.

**12-42.5-126. Unlawful acts – civil fines.**

(1) It is unlawful:

(c) To willfully make a false statement in any order, report, application, or record required by this article;

(g) To sell, compound, dispense, give, receive, or possess any drug or device unless it was sold, compounded, dispensed, given, or received in accordance with sections 12-42.5-118 to 12-42.5-122;

**18-18-414. Unlawful acts – licenses – penalties**

(1) Except as otherwise provided in this article or in article 42.5 of title 12, C.R.S., the following acts are unlawful:

(b) Except as provided in subsection (2) of this section, the dispensing of any schedule II controlled substance unless such substance is dispensed:

(I) From a pharmacy pursuant to a written order or an order electronically transmitted in accordance with 21 CFR 1311; or

(II) By any practitioner in the course of his or her professional practice;

(c) The dispensing of any schedule III, IV, or V controlled substance unless such controlled substance is dispensed from a pharmacy pursuant to a written, oral, mechanically produced, computer generated, electronically transmitted, or facsimile transmitted order or is dispensed by any practitioner in the course of his or her professional practice;

**Pharmacy Board Rules and Regulations**

1.00.11 A pharmacist shall at all times conduct his/her profession in conformity with all federal and state drug laws, rules and regulations; and shall uphold the legal standards of the current official compendia.

1.00.12 A pharmacist shall not be a party or accessory to nor engage in any fraudulent or deceitful practice or transaction in pharmacy, nor knowingly participate in any practice which detrimentally affects the patient, nor discredit his/her profession.

3.00.21 A pharmacist shall make every reasonable effort to ensure that any order, regardless of the means of transmission, has been issued for a legitimate

medical purpose by an authorized practitioner. A pharmacist shall not dispense a prescription drug if the pharmacist knows or should know that the order for such drug was issued without a valid preexisting patient-practitioner relationship. Such relationship need not involve an in-person encounter between the patient and practitioner if otherwise permissible under Colorado law. A pharmacist may, in good faith, dispense an opiate antagonist pursuant to an order that was issued without a valid preexisting patient-practitioner relationship under the following conditions:

- a. The opiate antagonist is not a controlled substance; and
- b. The opiate antagonist is approved by the Federal Food and Drug Administration for the treatment of a drug overdose.

### 3.00.50 Initial Interpretation and Final Evaluation.

a. Initial interpretation means the review of an order accompanied by order entry. The pharmacist(s) conducting the initial interpretation shall be held accountable for the accuracy of the electronic order entry/manual transcription and for drug regimen review.

b. Final evaluation means the review of the final prescription to ensure that the ordered medication is properly prepared and placed in a suitable container with appropriate labeling. The pharmacist(s) conducting the final evaluation shall be held accountable for assuring that the identity of the drug that appears on the prescription label corresponds with identity of drug contained therein. When refills are dispensed, the pharmacist conducting the final evaluation shall be held accountable for the appropriate dispensing of refills including all drug utilization reviews as they pertain to refill dispensing.

c. Drug regimen review includes but is not limited to the evaluation of order(s) and patient records(s) for:

- 1) Known allergies;
- 2) Rational therapy and contraindications;
- 3) Reasonable dose, duration of use, and route of administration considering age, gender, and other patient factors;
- 4) Reasonable directions for use;
- 5) Potential or actual adverse drug reactions;
- 6) Drug-drug interactions;
- 7) Drug-food interactions;

- 8) Drug-disease contraindications;
- 9) Therapeutic duplication;
- 10) Proper utilization (including over- or under-utilization) and optimum therapeutic outcomes; and
- 11) Abuse/misuse.

5.00.60 Closure.

a. Closure shall mean the permanent cessation of the practice of pharmacy in any in state or non-resident prescription drug outlet. For in-state prescription drug outlets, closure shall also be deemed to have occurred if the compounding/dispensing area is not open for business the minimum hours specified in 5.01.40(a).

b. Upon the closure of any in-state or non-resident prescription drug outlet, it shall be the responsibility of the last pharmacist manager of record to remove the prescriptions and/or chart orders to another prescription drug outlet where patrons and/or practitioners are afforded reasonable access to a pharmacist's interpretation of such orders. Such relocation of records shall be made within 72 hours after closure. The pharmacist manager shall submit a notice, on a form and manner approved by the Board, detailing the closure of the prescription drug outlet or nonresident prescription drug outlet within 72 hours after closure. If the last pharmacist manager of record fails to relocate the records as required herein, the Board may direct the removal of the records to a suitable location. The last pharmacist manager of record shall make a reasonable effort to inform patrons of the prescription drug outlet of the location of the records.

c. The Board on request shall provide the owner of any prescription drug outlet an instruction sheet applicable to the transaction prior to closure, or conducting bankruptcy proceedings, or transferring or selling the prescription drug inventory.

7.00.30 Compliance of Outlet:

a. The manager of a prescription drug outlet is responsible for the operation of the outlet in compliance with all state and federal laws, rules, and rules.

**DISPOSITION**

16. **Relinquishment of license.** Respondent consents to the Board's entry of this Final Agency Order whereby Respondent's license to practice pharmacy in the State of Colorado shall be relinquished and cancelled. Upon the effective date of this Final Agency Order, Respondent shall promptly surrender to the Board all indicia of her

Colorado pharmacist license. Such relinquishment shall have full force and effect as a revocation ordered by the Board and Respondent shall not reapply for licensure in this state for a minimum of two (2) years. Any future application will be handled in the normal course of business. Respondent understands and acknowledges that the right to reapply for licensure in two (2) years does not guarantee a license will be granted at that time.

17. **Agreement to Cease Work in Any Pharmacy Outlet, Wholesale Outlet, or Other Pharmaceutical Business.** Respondent shall cease working in any capacity for any prescription drug outlet, wholesale outlet, other outlet, and any other business requiring licensure or registration with the State of Colorado under the Pharmacists, Pharmacy Businesses, and Pharmaceuticals Practice Act, and shall not thereafter work in any such capacity unless and until such time as Respondent obtains a new license.

18. **Other Requirements.** Respondent acknowledges and agrees that, as a condition of this Final Agency Order, Respondent shall:

- a. Promptly pay all Respondent's own fees and costs associated with this Final Agency Order;
- b. Comply fully with this Final Agency Order; and
- c. Comply fully with the Pharmacists, Pharmacy Businesses, and Pharmaceuticals Act, all Board rules and regulations, and any other state and federal laws and regulations related to pharmaceuticals and pharmacists in the State of Colorado.

19. **Violations.** It is the responsibility of Respondent to take all appropriate steps to comply fully with this Final Agency Order. Respondent acknowledges and agrees that any violation of this Final Agency Order shall constitute a willful violation of a lawful Board order, and may be sanctioned as provided under § 12-42.5-124(4), C.R.S. If Respondent is found in violation of this Final Agency Order, Respondent's license shall be revoked. The pendency of any suspension or disciplinary action arising out of an alleged violation of this Final Agency Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Final Agency Order.

20. **Advisements and Waivers.** Respondent enters into this Final Agency Order freely and voluntarily, after having the opportunity to consult with legal counsel and/or choosing not to do so. Respondent acknowledges her understanding that she has the following rights:

- a. To have a formal notice of hearing and charges served upon her;
- b. To respond to said formal notice of charges;

- c. To have a formal disciplinary hearing pursuant to § 12-42.5-123 and 12-42.5-124, C.R.S.; and
- d. To appeal this Board order.

Respondent freely **waives** these rights, and acknowledges that such waiver is made voluntarily in consideration for the Board's limiting the action taken against her to the sanctions imposed herein.

21. **Acknowledgments.** Respondent has read this Final Agency Order in its entirety and acknowledges, after having the opportunity to consult with legal counsel and/or choosing not to do so, that Respondent understands the legal consequences and agrees that none of the terms or conditions herein is unconscionable. Respondent is not relying on any statements, promises or representations from the Board other than as may be contained in this Final Agency Order. Respondent further acknowledges that she is not entering into this Final Agency Order under any duress.

22. **Integration and Severability.** Upon execution by all parties, this Final Agency Order shall represent the entire final agreement of and between the parties in this case. In the event any provision of this Final Agency Order is deemed invalid or unenforceable by a court of law, it shall be severed and the remaining provisions of this Final Agency Order shall be given full force and effect.

23. **Public Record.** Upon execution by all parties, this Final Agency Order shall be a public record, maintained in the custody of the Board.

24. **Board Order.** This Final Agency Order shall become an order of the Board when it is accepted and signed by the Program Director or authorized Board representative.

25. **Effective Date.** This Final Agency Order shall become effective upon (a) mailing by first-class mail to Respondent at Respondent's address of record with the Board, or (b) service by electronic means on Respondent. Respondent hereby consents to service by electronic means if Respondent has an electronic address on file with the Board.

*Left intentionally blank*

ACCEPTED AND AGREED BY

Respondent

Donna Sherwood

Dated: 11-21-18

Donna Marie Sherwood, R.Ph

Subscribed and sworn to before me in the County of Ouray, State of Colorado, this 21 day of Nov, 2018, by Donna Marie Sherwood.

Rebecca Suppeland

Notary Public

My commission expires: 9-12-2022

REBECCA SUPPELAND  
NOTARY PUBLIC - STATE OF COLORADO  
NOTARY ID 20144035218  
MY COMMISSION EXPIRES SEP 12, 2022

FINAL AGENCY ORDER

Wherefore, the within Stipulation and Final Agency Order is approved, accepted, and hereby made an Order of the Board.

Done and effective this 26<sup>th</sup> day of November, 2018.

STATE BOARD OF PHARMACY

[Signature]

Joseph Liber  
Interim Program Director:



APPROVED AS TO FORM:

CYNTHIA H. COFFMAN  
Attorney General



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