

BEFORE THE STATE BOARD OF PHARMACY

STATE OF COLORADO

Case No. 2011-002750

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE IN-STATE PRESCRIPTION DRUG OUTLET REGISTRATION OF KAISER PERMANENTE CENTERPOINT PHARMACY, REGISTRATION NO. PDO 70-7,

RESPONDENT.

IT IS HEREBY STIPULATED by, and between the Colorado State Board of Pharmacy ("Board") and Kaiser Permanente Centerpoint Pharmacy ("Respondent") to resolve all matters pertaining to Colorado State Board of Pharmacy Case Number 2011-002750 as follows:

1. The Board has jurisdiction over Respondent, its registration as an in-state prescription drug outlet, and the subject matter of this Stipulation and Final Agency Order pursuant to the provisions of title 12, article 22, C.R.S., otherwise known as the Pharmaceuticals and Pharmacists Act.
2. Respondent has been registered as an in-state prescription drug outlet in the State of Colorado at all times relevant to this disciplinary action.
3. Respondent admits to these findings and hereby waives any further proof in this proceeding before the Board regarding the following facts.
4. Respondent's address of record with the Board and current location is 14701 East Exposition Avenue, Aurora, CO 80012.
5. Respondent failed to establish adequate security measures for its compounding/dispensing area in that on January 20, 2011, two non-pharmacists gained entry into the pharmacy's compounding/dispensing area when a pharmacist was not present.
6. On or about January 24, 2011, the Board initiated a complaint against Respondent because two non-pharmacists gained entry into the pharmacy's compounding/dispensing area when a pharmacist was not present.
7. Respondent admits that the conduct described above constitutes a violation of sections 12-22-125 (1)(c)(I), (II), and (III), C.R.S., and Regulation 5.01.50(c), (e) and

(f) and that such conduct provides grounds for disciplinary action against the Respondent:

12-22-125. 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 part 1, including but not limited to any acts in section 12-22-126;
- (II) The lawful rules of the board; or
- (III) Any state or federal law pertaining to drugs.

Regulation 5.01.50

5.01.50(c) If a compounding/dispensing area is continually attended by a pharmacist when other people are in the building, the compounding/dispensing area need not be enclosed. However, if other people are in the building when there is not a pharmacist present, every compounding/dispensing area must be enclosed by a barrier as specified in paragraph (e) below.

5.01.50(e) A prescription drug outlet constituting part of a large establishment may be closed while the balance of the establishment is open for business, provided every compounding/dispensing area is enclosed with a secure floor-to-ceiling physical barrier, which shall be a divider or secure total enclosure, in which any openings shall not be large enough to permit removal of items from the compounding/dispensing area. The barrier must be of weight and strength sufficient to prevent it from being readily lifted, removed, penetrated or bent.

5.01.50(f) All entrances to every compounding/dispensing area shall be secured from unauthorized entry when the pharmacist leaves the building. No one other than a pharmacist shall be permitted to enter any compounding /dispensing area except in extreme emergencies, which shall be defined as a threat to property, public disaster or other catastrophe whereby the public is better served by overlooking the security restrictions of drugs and devices. If any compounding/dispensing area is opened in the absence of a pharmacist or left unsecured from unauthorized entry when the pharmacist leaves the building, the pharmacist manager shall notify the Board of Pharmacy in writing within ten days of the discovery of the occurrence. This written notice shall state:

- (1) The name of the person authorizing the opening of the compounding/dispensing area if known, or the name of the pharmacist responsible for securing the compounding/dispensing area from unauthorized entry;
- (2) The name of the person opening the compounding/dispensing area if known; and
- (3) A description of the situation requiring opening of the compounding/dispensing area including the date and time of the opening.

DISPOSITION

\$500.00 Fine with Surcharge and Terms

8. **Fine with Surcharge.** Pursuant to section 12-22-125.2(5), C.R.S., Respondent shall pay a fine of Five Hundred Dollars and No Cents (\$500.00). Respondent understands and acknowledges that, pursuant to section 24-34-108, C.R.S., the Executive Director of the Department of Regulatory Agencies shall impose an additional surcharge of 10% of this fine. Respondent shall therefore pay a total amount of Five Hundred Fifty Dollars and No Cents (\$550.00). The total amount shall be payable to the State of Colorado and shall be remitted in one lump sum to be included when Respondent submits this signed Final Agency Order to the Board.
9. **Compliance.** Respondent shall not at any time allow a non-pharmacist entry into the compounding / dispensing area of the pharmacy when a pharmacist is not in the pharmacy, except in extreme emergencies as defined in Board Rule 5.01.50(f).
10. **Other Requirements.** Respondent acknowledges and agrees that, as a condition of this Stipulation and Final Agency Order, it shall:
 - a. promptly pay all its own fees and costs associated with this Stipulation and Final Agency Order;
 - b. comply fully with this Stipulation and Final Agency Order; and
 - c. comply fully with the Pharmacists and Pharmaceuticals Act, all Board rules and regulations, and any other state and federal laws and regulations related to pharmacists and pharmaceuticals in the State of Colorado.
11. **Acknowledgments.** The undersigned authorized agent for Respondent has read this Stipulation and Final Agency Order in its entirety and acknowledges, whether or not Respondent has consulted with legal counsel, that Respondent understands its legal consequences and agrees that none of its terms or conditions are unconscionable.

12. **Advisements and Waivers**. Respondent enters into this Stipulation and Final Agency Order freely and voluntarily, whether or not it has consulted with legal counsel. The undersigned authorized agent for Respondent acknowledges Respondent's understanding that it has the following rights:

- a. To have formal notice of hearing and charges served upon it;
- b. To respond to said formal notice of charges;
- c. To have a formal disciplinary hearing pursuant to section 12-22-125, 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 it to the sanctions imposed herein.

13. **Violations**. Time is of the essence to this Stipulation and Final Agency Order. It is the responsibility of Respondent to take all appropriate steps to comply fully with this Stipulation and Final Agency Order. Respondent acknowledges and agrees that any violation of this Stipulation and Final Agency Order may be sanctioned as provided under section 12-22-125.2(4), C.R.S., and may be sufficient grounds for additional discipline, including but not limited to revocation of its registration. The pendency of any suspension or 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.

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

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

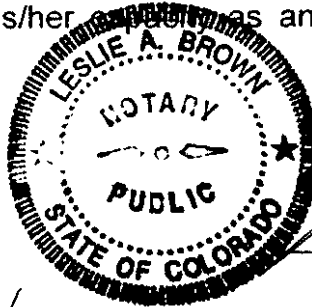
16. **Effective Date**. This Stipulation and Final Agency Order shall become effective upon signature of a Board member or representative.

ACCEPTED AND AGREED BY

[Signature]
Authorized Agent of Respondent Pharmacy

Dated: 3/17/11

Subscribed and sworn to before me in the County of Denver, State of COLORADO, this 17th day of March, 2011 by Bryce Johnson, in his/her capacity as an authorized agent of Kaiser Permanente Centerpoint Pharmacy.



[Signature]
Notary Public

My commission expires: 9/14/2014

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 29th DAY OF March, 2011.

State Board of Pharmacy

BY: [Signature]
Wendy Anderson
Program Director