

STATE OF KANSAS
BEFORE THE KANSAS STATE BOARD OF PHARMACY

Filed

JUN 21 2011

KANSAS STATE
Board of Pharmacy

In the Matter of)
)
Perry Drug, Inc.)
12200 W. 106th St., Ste., 140)
Overland Park, Kansas, 66215)
Registration No. 2-10204)
_____)

Case No.: 10-103

FINAL ORDER

NOW this 8th day of June, 2011, the above captioned matter comes before the Kansas State Board of Pharmacy (Board) on the respondent's Motion for a Hearing. The Board appears by and through Wm. Scott Hesse, of Wm. Scott Hesse, Attorney at Law, LLC., Disciplinary Counsel for the Board. The respondent (or registrant), Perry Drug, Inc. appears by its owner, Matthew Perry, and by and through Aaron Racine of Monaco, Sanders, Gotfredson, Racine and Barber, LC. After reviewing the file, hearing the statements of counsel and generally being duly apprised of the premises, the Board finds as follows:

1. The respondent has received notice of these proceedings and the Board has jurisdiction over this matter.
2. On March 8, 2011, the Board, through David R. Schoech, its Investigative Board Member, issued a Summary Order to the respondent alleging the respondent had violated four counts of the Kansas Pharmacy Act and proposing to fine the respondent \$6,050.
2. The respondent requested a hearing pursuant to the Kansas Administrative Procedures Act, K.S.A. 77-77-542(a).
3. This matter was scheduled for hearing on June 8, 2011.
4. The parties settled this matter, pending approval of the Board, and presented the proposed settlement to the Board on June 8, 2011.

5. The Board heard a statement from Disciplinary Counsel that a Board investigation on July 29, 2010, the Board's Inspectors found:

a. There were four pharmacy technicians, Laura Walline (14-01748), Kimberley Stiles (14-08944), Daniel Ngigi (14-09135), and Josh Tersinar (14-01742) on duty at Perry Drug, Inc. with only one pharmacist on duty, Matthew Perry (1-11833), pharmacist in charge;

b. Two of the four pharmacy technicians were not wearing their badges identifying them by name;

c. The respondent was compounding drugs in advance of need, but failing to label the drugs properly by failing to attach a name of the drug to the bottle;

d. The respondent pharmacy was compounding drugs in advance of need without placing an expiration date on the bottle of the drug.

6. Disciplinary Counsel then gave the Board mitigating factors on behalf of the respondent:

a. Matthew Perry was cooperative with the Board's Inspectors;

b. The respondent took immediate action to change its business practice to correct the deficiencies;

c. The respondent, through its pharmacist in charge, contacted board inspectors the following day with evidence of the corrective action taken by the registrant.

7. Disciplinary Counsel then explained to the Board the agreement to assess a fine against the respondent in the amount of \$4,050 pursuant to K.S.A. 65-1658.

8. The respondent, through counsel, admitted it had violated the Kansas Pharmacy Act, agreed with the statement of facts, the mitigating factors and the agreement between the parties which were made by Disciplinary Counsel.

9. The Board made the following conclusions of law:

a. The respondent is in violation of 21 CFR 1304.04 and K.A.R. 68-20-16 for failure to keep documentation of a current history of controlled substances since April, 2010 which is a violation of K.S.A. 65-1627;

b. The respondent is in violation of K.S.A. 65-1637(b); K.A.R. 68-20-18(c) and K.A.R. 68-20-20(a) for failure to maintain written records of controlled substances;

c. The respondent failed to provide the Board with a daily printout dispensing log in violation of K.S.A. 68-9-1(a)(9) as defined by K.S.A. 65-1367;

d. The pharmacist to technician ratio was four technicians to one pharmacist which is in violation of K.A.R. 68-5-16 and K.S.A. 65-1367 which calls for three technicians to one pharmacist.

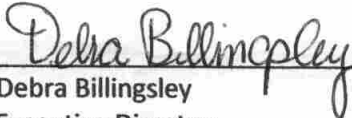
10. The Board after considering the facts presented by counsel, the mitigating factors, the agreement between the parties, then assessed a fine upon the respondent in the amount of \$4,050 pursuant to K.S.A. 65-1658.

WHEREUPON, the respondent is found in violation of the Kansas Pharmacy Act.

THEREFORE, the respondent is fined in the amount of \$4,050 pursuant to K.S.A. 65-1658 payable to the Board on or before July 15, 2011.

IT IS SO ORDERED.

Dated this 10 day of June, 2011.

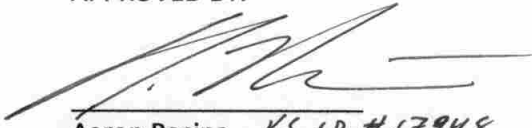

Debra Billingsley
Executive Director

SUBMITTED AND APPROVED BY:



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APPROVED BY:

A handwritten signature in black ink, appearing to read 'A. Racine', with a horizontal line extending to the right from the end of the signature.

Aaron Racine *KS ID #17948*

Monaco, Sanders, Gotfredson, Racine
and Barber, LC

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