

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
Cesar Miller, R.P.H.)
Kansas License No. 1-11729) Case No. 17-122

STIPULATION AND CONSENT ORDER

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

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Unrein & Forbes, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by his attorney, Brian C. Wright

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.*, (the "Act") 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 1-11729 ("Kansas License"). 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. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board, and upon motion duly made, seconded and passed, the Board finds as follows:

A. Respondent previously entered into a Consent Agreement and Final Order with the Board, Case No. 09-52 and 10-10, whereby Respondent agreed to comply with the

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Kansas Pharmacy Act for the entirety of a five year probationary period from the date of the Order, or until September 14, 2017.

B. At all times relevant hereto, Respondent worked as a Pharmacist at Goodland Medical Arts Pharmacy at 520 Main St Goodland, KS 67735 (“Pharmacy”) and functioned as managing pharmacist and the Pharmacist-in-Charge (“PIC”) for the Pharmacy.

C. On December 13, 2016, the Board’s investigative member completed a compliance inspection of Respondent’s pharmacy. The findings of the compliance inspection resulted in a February 7, 2017 records request from Respondent to address concerns involving improperly documented CQI meetings and missing or incomplete incident reports.

D. On or about February 15, 2017, Respondent submitted the requested documents to the Board’s investigative member.

E. Upon inspection of Respondent’s pharmacy in March, 2017, the Board’s Investigative Member observed the following:

- i. In violation of K.A.R. 68-7-12(b), Respondent failed to date several incident reports, and failed to include the name and signature of the technician involved with dispensing errors on multiple occasions.
- ii. In violation of K.A.R. 68-7-12(b), a pharmacy technician prepared an incident report after a dispensing error, instead of Respondent or a PIC.
- iii. In violation of K.A.R. 68-7-14, several patients received prescriptions that did not list drug strength on the prescription label. Respondent disclosed that this had occurred over several months.
- iv. In violation of K.S.A. 65-1637(g), a patient was dispensed a dosage at triple the strength of what was prescribed to the patient. Therefore, the

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prescription was not filled in strict conformity with any directions of the prescriber. Prescriber was not notified after patient complained of feeling dizzy after taking incorrect dosage.

- v. In violation of K.A.R. 68-7-12(a), while functioning as PIC for the Pharmacy, Respondent failed to ensure that the Pharmacy maintained records and kept proper inventories as required by K.A.R. 68-20-16(a).
- vi. While functioning as a pharmacist and PIC for the Pharmacy, Respondent failed to create records for some Pharmacy's Continuous Quality Improvement meetings as required by K.S.A. 65-1695(d) and K.A.R. 68-19-1(c)(3).

F. On October 30, 2017, the Board received a letter from Respondent's attorney requesting that Respondent be released from probation.

5. Upon motion duly made, seconded and passed, the Board finds and concludes that Respondent's conduct, as described above, violates the Act and such conduct warrants the imposition of appropriate disciplinary action against Respondent's Kansas License under the provisions of pursuant to K.S.A. 65-1627 (a)(3), as defined by K.S.A. 65-1626 (xx)(1) and (3); and K.S.A. 65-1627 (a)(5), (a)(6), and (a)(8).

6. The Respondent agrees and consents and the Board finds concludes and orders that the following disposition is just and appropriate under the circumstances:

A. PROBATION. Respondent's Kansas licensure to practice pharmacy is to retain probationary status for an additional 24 months from September 14, 2017, or until September 14, 2019. During this time, Respondent shall continue to comply with the Kansas Pharmacy Act, as well as any rules and regulations promulgated thereunder.

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B. INSPECTIONS. Respondent shall permit semiannual inspections, the findings of which shall be required to satisfactorily meet the standards required by the Kansas Pharmacy Act.

8. Respondent agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and or its attorney regarding the investigation which lead 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 Consent Order and the Final Order provided for herein, with or without the presence of the Respondent or its attorney. In the event that this Stipulation and Consent 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 Consent 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.

9. The stipulations contained herein shall not become binding until this Stipulation and Consent Order 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 Investigation Member or its attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Consent Order or the Final Order provided for herein.

10. The Respondent agrees that this Stipulation and Consent 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, for purposes of this matter, that the

Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.* is constitutional on its face and as applied in this case.

11. 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.

12. 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 or its designee making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing; and

(d) To take advantage of all applicable provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.* and the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

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 Consent Order and the Final Order provided for herein.

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

14. Time is of the essence to this Stipulation and Consent Order. Respondent acknowledges and agrees that any violation of this Stipulation and Consent 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 Consent Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Consent Order.

15. This Stipulation and Consent Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Consent Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Stipulation and Consent Order shall be given full force and effect.

16. Upon approval and entry of the Final Order by the Board, this Stipulation and Consent Order shall be a public record in the custody of the Board.

17. This Stipulation and Consent 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 and shall supersede the terms of the 2013 Consent Order.

18. 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 Shawnee County, Kansas in accordance with the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.* and to serve such a petition for judicial review on the Kansas Board of Pharmacy by serving Alexandra Blasi, JD, MBA, its Executive Director at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.

ENTERED AND EFFECTIVE this 8th day of March, 2018.

KANSAS BOARD OF PHARMACY

By:



DR. JOHN WORDEN
President

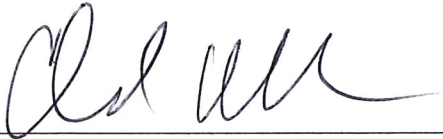
AGREED AND APPROVED BY:



Cesar Miller, R.Ph.

2-22-18

Date



Chad Ullom, R.Ph.
Investigation Member

3/8/18

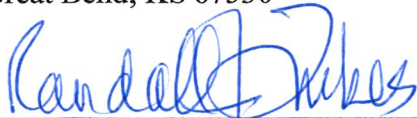
Date



Brian C Wright
Attorney for Respondent
4312 10th St Place
Great Bend, KS 67530

2/26/18

Date



Randall J. Forbes, KS#09089 MO#64335
FRIEDEN, UNREIN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604
(785) 354-1100

3/8/18

Date


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND CONSENT ORDER was served by depositing same in the United States mail, postage prepaid, this 12th day of March, 2018 addressed to:

Randall J. Forbes
FRIEDEN, UNREIN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604

Cesar Miller
925 Fountain View Ct
Goodland, KS 67735

Brian C Wright
4312 10th St Place
Great Bend KS 67530



Representative of the
KANSAS BOARD OF PHARMACY