

May 19, 2023

Patrick Budenbender II
1757 E 800 Rd
Lawrence KS 66049

RE: Case No. 23-236

Dear Mr. Budenbender:

Enclosed you will find a Summary Order issued by the Kansas Board of Pharmacy (Board) in the above-referenced matter. Please read the order in its entirety. In addition, a civil fine has been assessed totaling \$500. Please submit a check or money order made payable to the Kansas Board of Pharmacy and include your case number in the check memo.

If you disagree with the findings of fact, you have the right to request a hearing. Instructions for filing a written request are included under the "Notices" section of the order. Hearings are held before the full Board during their regularly scheduled quarterly meetings.

According to KSA 65-1627h, the Board is required to recoup the costs of administrative hearings when the decision is adverse to the licensee. These costs may include charges for services rendered by the Board's disciplinary counsel, an administrative law judge, and, if applicable, a court reporter.

If you have any questions, feel free to contact the Board at Pharmacy.Compliance@ks.gov.

Sincerely,

Kansas Board of Pharmacy

Enclosure

BEFORE THE KANSAS STATE BOARD OF PHARMACY

In the Matter of)	
)	Case No. 23-236
Patrick Budenbender II)	
)	
<u>License Number 1-103794</u>)	

SUMMARY ORDER

NOW, on this 19th day of May 2023, comes before the Kansas Board of Pharmacy (the “Board”), through its Executive Secretary, the matter of Patrick Budenbender II ("Respondent").

Pursuant to the authority granted to the Board by the Kansas Pharmacy Act, K.S.A. 65-1625, *et seq.*, and in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*, the Board enters this Summary Order in the above-captioned matter. After reviewing the application materials and being otherwise duly advised in the premises, the Board makes the following findings, conclusions, and order:

FINDINGS OF FACT

1. The Board has previously issued Respondent License No. 1-103794 which entitles Respondent to function as a pharmacist in the State of Kansas (“Respondent’s Registration”).
2. On March 28, 2023, the Board received a consumer complaint regarding a medication error when Respondent dispensed metronidazole gel for topical use (only) to a patient instead of metronidazole vaginal gel 0.75%, 70 gm. The complaint alleged that the patient identified the error based on the prescription label instructions.
3. On February 23, 2023, the patient’s original prescription for metronidazole vaginal gel 0.75% 70 gm was phoned-in to the pharmacy and assigned a prescription number with directions to insert one applicator at bedtime for five days.

4. On February 24, 2023, pharmacist intern JS did the data entry and incorrectly entered the prescription as metronidazole topical gel 45 gm. Pharmacist SN incorrectly verified the prescription and an incorrect dosage form error occurred. The incorrectly-verified prescription was sent to the pharmacy fulfillment center for automated filling and returned to the pharmacy for dispensing to the patient. The patient did not pick up the medication so it was returned to stock and the prescription placed on hold.

5. On March 24, 2023, the patient called the pharmacy to request her prescription be filled. Pharmacist AA incorrectly entered the data for the prescription previously placed on hold for metronidazole topical gel, and Respondent verified and filled the prescription.

6. On March 27, 2023, the patient picked up her medication from the pharmacy. Respondent, as the pharmacist on duty at the time, did not offer to provide counseling to the patient.

7. Upon arriving home, the patient discovered the instructions on the medication box did not match the instructions on the pharmacy label. She called the pharmacy and pharmacy staff confirmed a dispensing error occurred and later dispensed the correct medication to the patient.

CONCLUSIONS OF LAW

1. Pursuant to K.S.A. 65-1658, the Board may assess a civil fine not to exceed \$5,000, after notice and an opportunity to be heard, to any registrant for violation of the pharmacy act of the state of Kansas or any other rules or regulations of the state board of pharmacy.

2. Pursuant to K.S.A. 65-1627(a)(6), the Board may take action against a pharmacist upon a finding that the licensee is found by the board to have filled a prescription not in strict accordance with the directions of the practitioner or a mid-level practitioner.

3. Pursuant to K.S.A. 65-1627(a)(8), the Board may take action against the license of a pharmacist upon a finding that the licensee has violated any of the provisions of the pharmacy act of

the state of Kansas or any rule and regulation adopted by the board pursuant to the provisions of such pharmacy act.

4. Pursuant to K.A.R. 68-2-20(b)(5), those judgmental functions that constitute the filling or refilling of a prescription shall be performed only by a licensed pharmacist or by a pharmacy student or intern under the direct supervision of a licensed pharmacist and shall consist of personally offering to counsel each patient or the patient's agent with each new prescription dispensed, once yearly on maintenance medications, and, if the pharmacist deems appropriate, with prescription refills.

5. In dispensing metronidazole topical gel 45 gm in lieu of the correct, phoned-in prescription for metronidazole vaginal gel 0.75% 70 gm, Respondent failed to fill the patient's prescription in strict conformity with the directions of a practitioner or mid-level practitioner, in violation of K.S.A. 65-1627(a)(6).

6. In dispensing the prescription on March 24, 2023, Respondent failed to personally offer counseling to the patient in violation of K.A.R. 68-2-20, which is a basis for the Board to take action against Respondent's Registration pursuant to K.S.A. 65-1627(a)(8).

ORDER

Based upon the foregoing findings of fact and conclusions of law, Respondent is ordered to pay a fine to the Board in the amount of \$500. Respondent has 30 days from the date of this order to pay the fine by check or money order.

Furthermore, Respondent shall complete three hours of additional ACPE-approved continuing education on medication errors and shall provide proof of completion to the Board within 60 days of the date of this Order. If Respondent is not already signed up for the NABP CPE monitor (free version), Respondent shall create an NABP CPE monitor profile and shall ensure

that proof of completion of these penalty hours and all future required continuing education appears in the CPE monitor. Completion of penalty hours shall not count toward Respondent's next continuing education renewal requirement.

NOTICES

Respondent is hereby notified as follows:

1. Respondent may request a hearing pursuant to the Kansas Administrative Procedure Act by filing a written request with the Kansas Board of Pharmacy, 800 SW Jackson, Suite 1414, Topeka, KS 66612-1231, within 15 days after service of this Order. If the outcome of the hearing is adverse to Respondent, costs of the proceedings shall be charged to Respondent.

2. If a hearing is not requested as described above, the Order shall become a final order of the Board, effective upon the expiration of the time to request a hearing.

3. Within 15 days after entry of a final agency order, either party may file a petition for reconsideration pursuant to K.S.A. 77-529.

4. Within the time limits established in K.S.A. 77-613, either party may seek judicial review of a final agency order, pursuant to K.S.A. 77-613. The agency officer designated to receive service of a petition for judicial review is:

Alexandra Blasi
Executive Secretary
Kansas Board of Pharmacy
800 SW Jackson, Suite 1414
Topeka, KS 66612

IT IS SO ORDERED.

5/19/2023

Date



Alexandra Blasi, JD, MBA
Executive Secretary
Kansas Board of Pharmacy

CERTIFICATE OF SERVICE

I hereby certify that I did, on the 19th day of May 2023, deposit in business mail a copy of the foregoing Summary Order, which is then placed in the United States Mail, postage prepaid, properly addressed to the following:

Patrick Budenbender II
1757 E 800 Rd
Lawrence KS 66049



Kansas Board of Pharmacy Staff