

May 18, 2023

Emily Day  
12826 S Twilight Dr  
Olathe KS 66062

RE: Case No. 23-234

To whom it may concern:

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 \$1,500. 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](mailto:Pharmacy.Compliance@ks.gov).

Sincerely,

Kansas Board of Pharmacy

Enclosure

BEFORE THE KANSAS STATE BOARD OF PHARMACY

In the Matter of	)	
	)	Case No. 23-234
Emily Day	)	
	)	
<u>License Number 1-103647</u>	)	

**SUMMARY ORDER**

NOW, on this 18th day of May 2023, comes before the Kansas Board of Pharmacy (the “Board”), through its Executive Secretary, the matter of Emily Day ("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. 1-103647 which entitles Respondent to function as a pharmacist in the State of Kansas (“Respondent’s Registration”).
2. On March 8, 2023, the Board received a DEA 106 Report of Theft or Loss of Controlled Substances form from Walgreens Pharmacy #11370 (the “Pharmacy”) for a consumer theft of Oxycodone HCL (IR) 10mg tablets, #40, which occurred on February 2, 2023.
3. On March 10, 2023, the Board’s inspector conducted an onsite investigation of the Pharmacy.
4. On February 2, 2023, a consumer picked up medication, including Oxycodone 10mg tablets, from the Pharmacy via the drive-through by confirming the patient’s information. Later, the

consumer came back to the Pharmacy reporting the patient no longer needed/wanted the medication and returned the medication. Respondent received the returned medication and quarantined the medication for later disposal.

5. The patient received notification of their medication being ready for pickup, and then notification it was no longer available. The patient called the Pharmacy and reported they did not authorize the consumer to pick up the medication on their behalf.

6. Respondent later discovered that 40 tablets of Oxycodone 10mg were missing from the returned medication package.

7. Respondent later filled and dispensed 120 tablets of Oxycodone 10mg to the patient. Respondent admitted that she reused 80 tablets of the previously returned and quarantined Oxycodone 10mg tablets in dispensing the medication to the patient.

8. Respondent created an incident report in the Pharmacy's STARS system for the dispensing incident and medication theft. Respondent also generated the DEA 106 Form. The incident report did not include the date of the incident or Respondent's license number.

#### 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)(3), the Board may take action against the license of a pharmacist upon a finding that the licensee is found by the Board to be guilty of unprofessional conduct.

3. Pursuant to K.S.A. 65-1626(vvv)(2), "unprofessional conduct" means intentional adulteration of any drug, medicine, chemical or poison.

4. Pursuant to K.S.A. 65-1627(a)(5), the Board may take action against the license of a pharmacist upon a finding that the licensee has violated a provision of the federal or state food, drug and cosmetic act or any rule and regulation adopted under the act.

5. 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.

6. Pursuant to K.A.R. 68-7-12b(c), as soon as possible after discovery of the incident, the pharmacist shall prepare a report containing the following information: (2) the name of each pharmacy employee and the license number of each licensee involved; and (3) the date of the incident and the date of the report.

7. Pursuant to K.S.A. 65-668(a), a drug shall be deemed to be adulterated if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it has been produced, prepared, packed or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health.

8. At all times the dispensed Oxycodone 10mg tablets were in the possession of the consumer, they could have been tampered with, contaminated by filth, allowed to decompose, or held under insanitary conditions which would have rendered the medication injurious to the patient's health, pursuant to K.S.A. 65-668(a).

9. Respondent should have and did initially identify the returned medication as adulterated, since it left the pharmacy and was outside the control of the pharmacist where adulteration should have been assumed to have occurred. Additionally, Respondent knew the returned medication was adulterated because it was returned missing 40 tablets of Oxycodone 10mg,

which indicates the consumer opened the medication, tampered with it, and contaminated it prior to the medication being returned.

10. Respondent received the returned Oxycodone 10mg from the consumer and, though initially acting appropriately to quarantine the returned medication for disposal, later used that medication to fill a prescription for the patient and dispensed the returned Oxycodone 10mg to the patient, which is a violation of K.S.A. 65-668 and a basis to take action against Respondent's Registration pursuant to K.S.A. 65-1627(a)(5).

11. Furthermore, Respondent's actions in filling the patient's prescription with returned, adulterated medication, which she originally placed in quarantine for disposal, was an intentional act concerning the dispensing of adulterated medication and considered unprofessional conduct likely to harm the public, and is a basis to take action against Respondent's Registration pursuant to K.S.A. 65-1627(a)(3).

12. In completing the incident report, Respondent failed to include the license number of the pharmacist involved in the incident (her own), as well as the date of the incident, in violation of K.A.R. 68-7-12b. Therefore, Respondent operated in violation of the regulations of the pharmacy act of the state of Kansas which is a basis 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 \$1,500. Respondent has 30 days from the date of this order to pay the fine.

### **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.

5/18/2023

Date



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

CERTIFICATE OF SERVICE

I hereby certify that I did, on the 18th 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:

Emily Day  
12826 S Twilight Dr  
Olathe KS 66062

  
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Kansas Board of Pharmacy Staff