

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)	
)	Case No. 20-016
EMILY WAGNER, R.PH.)	
<u>Kansas License No. 1-100082</u>)	

STIPULATION AND CONSENT ORDER

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

1. The Board is represented herein by its attorney, Brenda L. Head of Frieden & Forbes, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by her attorney, Gary A. Peters, Senior Counsel, Walgreen Co., 104 Wilmot Rd. – MS #144N, Deerfield, Illinois 60015.

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 her Kansas license number 1-100082 ("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. The Board's Investigation Member has received certain information, investigated and determined that there are reasonable grounds to believe that Respondent has committed one or more acts in violation of K.S.A. 65-1627(a) which would justify the revocation or imposition of other disciplinary action against her Kansas License under the provisions of K.S.A. 65-1627(a)

and the assessment of an appropriate fine against Respondent under the provisions of K.S.A. 65-1658.

5. 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:

A. During the period from March 1, 2019 to the present time, Respondent was the Pharmacist-in-Charge ("PIC") of Walgreens #6920 pharmacy located at 8681 West 135th Street, Overland Park, Kansas ("Pharmacy").

B. K.A.R. 68-19-1 requires, that as part of a pharmacy's required Continuous Quality Improvement program, among other things, the pharmacy must meet at least quarterly to discuss the previous quarters incident reports. The PIC must attend such meetings and a written report of the meeting must be made and maintained.

C. Respondent did not prepare a report of a Continuous Quality Improvement Program meeting for two quarters in 2019, each time in violation of the requirements of K.A.R. 68-19-1.

D. Pursuant to K.A.R. 68-7-12b, Respondent, as PIC of the Pharmacy, was required to complete Incident Reports to include report date, signatures of all employees involved and license/registration of all employees involved.

E. Respondent failed to ensure that the Pharmacy had complete Kansas Incident Reports as required.

F. Pursuant to K.A.R. 68-7-12(a), Respondent, as PIC of the Pharmacy, was responsible to develop, supervise and coordinate all pharmaceutical services carried on in the

Pharmacy to ensure compliance with the Act and the Board's regulations. Respondent failed to ensure the Pharmacy's compliance with the Act and the Board's regulations.

G. On December 16, 2020, a patient prescription for MigreLief tabs was misfilled with Walgreen's Migraine Relief by a pharmacy technician and the Respondent, as PIC of the Pharmacy, completed the drug utilization review and product verification and failed to recognize the misfilled prescription. The pharmacy label, which was improperly manually altered to change the name of the manufacturer, was placed on the bag and not on the medication. The barcode scale was bypassed during the misfill and noted as the root cause analysis on the Incident Report subsequently prepared upon Board request. The misfilled prescription was returned and refunded on December 22, 2020 without the completion of an Incident Report as required by K.A.R. 68-7-12(c)(2).

H. Pursuant to K.S.A. 65-1637(g), all prescriptions shall be filled or refilled in strict conformity with any directions of the prescriber. As PIC of the Pharmacy, Respondent failed to refill the prescription in strict conformity with the directions of the prescriber.

I. Pursuant to K.A.R. 68-7-12(c)(2), any incident that occurs as a result of an alleged or real errors in filling or dispensing a prescription or medication order is to be brought to the attention of the PIC and completely documented in accordance with the requirements of K.A.R. 68-7-12b. As PIC of the Pharmacy, Respondent failed to comply with K.A.R. 68-7-12b.

J. After the Board requested Respondent to submit an Incident Report on the misfilled prescription, the Incident Report submitted by Respondent was inaccurate and incomplete. The Respondent provided an incorrect fill date (9/25/2020, instead of 12/16/2020) on Incident Report 1276590.

K. K.A.R. 68-7-12b(c) requires an Incident Report to include the names of each pharmacy employee, the license number of each licensee involved, the date of the incident, the date of the report and signatures of all pharmacy employees involved in the incident. Respondent, as PIC of the Pharmacy, failed to provide the required information in violation of K.A.R. 68-7-12b(c).

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 pursuant to K.S.A. 65-1627(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. ADMINISTRATIVE FINE. Within 10 days of the effective date of the Consent Order contemplated hereby, Respondent shall pay to the Board an administrative fine in the amount of Fifteen Hundred Dollars (\$1,500.00).

B. EDUCATION. Respondent hereby agrees and consents that within the time period of four (4) months before through eight (8) months after the entry of this Stipulation and Consent Order, she shall obtain no less than fifteen (15) hours of ACPE approved continuing education on the topic of reduction of prescription filling errors. Respondent must submit copies of the individual certificates for each of the completed courses to the Board indicating that Respondent has successfully completed the course. The continuing education hours contemplated herein shall not count toward continuing education required for biennial licensure renewal.

C. PROBATION. Pursuant to K.S.A. 65-1627(a), Respondent's license shall be placed on probation for a period of twelve (12) months from the effective date of this Stipulation and Consent Order. During the period of probation, Respondent will be entitled to practice the profession of pharmacy pursuant to Chapter 65, Article 16 of the Kansas Statutes Annotated provided she adheres to the following terms and conditions of probation:

(i) All future Incident Reports shall be provided to the Board within three (3) business days consistent with all of the requirements of K.A.R. 68-7-12b(c).

(ii) Respondent shall keep the Board apprised of her current home and work addresses and telephone numbers. If at any time Respondent is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes of work location, she must provide the Board with all scheduled places of employment in writing prior to any scheduled work time.

(iii) If, at any time after the effective date of this Stipulation and Consent Order and before expiration of the period of probation, Respondent ceases to keep her Kansas license current or fails to keep the Board advised of her current place of employment and residence, any and all such periods of time shall be excluded in computing and determining the expiration date of the twelve (12) months of probation prescribed herein.

(iv) Respondent's failure to comply with any provision set forth in this Stipulation and Consent Order constitutes a violation of the terms or conditions of probation.

(v) Respondent shall provide all current and future pharmacy and drug distributor employers and/or pharmacists-in-charge a copy of this Stipulation and Consent Order within five (5) business days of the effective date hereof and/or the beginning date of each employment. If at any time Respondent is employed by a temporary employment agency, she

must provide each pharmacy and drug distributor employer and pharmacist-in-charge a copy of this Stipulation and Consent Order prior to or at the time of any scheduled work assignments.

(vi) Upon successful completion and expiration of the period of probation specified above, Respondent's license as a pharmacist in Kansas shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Respondent has violated any term or condition of this Stipulation and Consent Order, the Board may, in its discretion, initiate and take such additional disciplinary action against Respondent or Respondent's license as the Board deems necessary or appropriate to protect the public health, safety or welfare. If the Board determines that Respondent has violated a term or condition of this Stipulation and Consent Order and such violation would be independently actionable under the Kansas Pharmacy Act, the Board may elect to pursue any lawful remedies or procedures available under Kansas law and the Board shall not be bound by this Stipulation and Consent Order in its determination of appropriate legal actions concerning any such violation.

D. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Consent Order she must, and the Board further orders the Respondent to:

1. Comply fully with this Stipulation and Consent Order;
2. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations and all state and federal laws relating to Kansas pharmacies;

7. 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, with or without the presence of the Respondent or her attorney. In the event that this Stipulation and Consent Order is 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 sentences 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.

8. The stipulations contained herein shall not become binding until this Stipulation and Consent Order is approved and entered as a final order 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.

9. 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 as a final order of the Board. 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.

10. 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.

11. The Respondent acknowledges that she has the following rights:

- (a) To have formal notice of charges served upon her;
- (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 her 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 Consent Order provided for herein.

12. The Respondent acknowledges that she enters into this Stipulation and Consent Order freely and voluntarily after consultation with or an opportunity to consult with counsel of her choosing. The Respondent further acknowledges that she has read this Stipulation and Consent Order in its entirety, that she understands its legal consequences and that she agrees that none of its terms are unconscionable, arbitrary or capricious.

13. 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 her. 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.

14. 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.

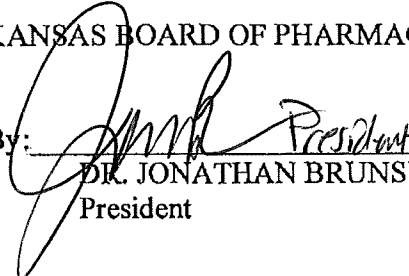
15. Upon approval and entry of the Final Order by the Board, this Stipulation and Consent Order shall be a public record in the custody of the Board.

16. 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.

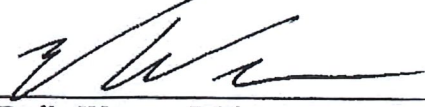
17. The Respondent acknowledges that she has been advised by the Board that she would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Order provided for herein 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 Secretary at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.

ENTERED AND EFFECTIVE this 18 day of February, 2022.

KANSAS BOARD OF PHARMACY

By:  President
DR. JONATHAN BRUNSWIG
President

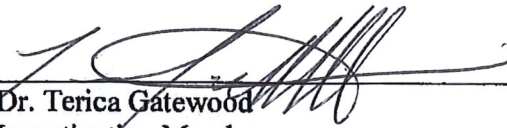
AGREED AND APPROVED BY:



Emily Wagner, R.Ph.

2-9-22


Date



Dr. Terica Gatewood
Investigation Member

2/18/22

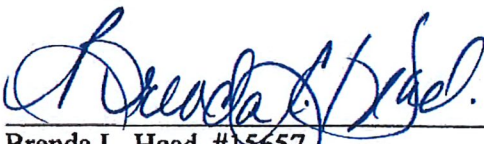
Date



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Respondent's Attorney

2/10/2022

Date



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bhead@fflawllp.com
Counsel for the Kansas Board of Pharmacy

2-10-2022

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 21st day of February, 2022 addressed to:

Brenda L. Head
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Representative of the
KANSAS BOARD OF PHARMACY