

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of

Active Lifestyle Pharmacy

Kansas Registration Nos. 2-109379 and 2-114048

Case Nos. 21-086 and 21-088

OAH No. 22BP0001 PHAR

FINAL ORDER

Decision

The Kansas Board of Pharmacy (Board) has carefully considered the evidence presented and reviewed the applicable statutes, regulations and policies, and hereby reverses the May 31, 2022 Amended Summary Order of Revocation and Denial and hereby approves renewal of registration 2-114048 to Active Lifestyle Pharmacy (ALP), subject to the terms and conditions set forth hereinbelow.

Statement of Case

This matter comes on for hearing on October 19, 2022 before the Board upon the request by ALP for a hearing to review the Amended Summary Order of Revocation and Denial revoking ALP's registration 2-109379 and denying ALP's application for renewal of its registration 2-114048.

Appearing for the Board were: Jonathan Brunswig, PharmD, President; and members, Bill Walden, R.Ph; Terica Gatewood, PharmD; Tiffany Strohmeyer, PharmD; Erick Axcell, PharmD ; Andrew Truong, PharmD; and, Lucinda Noches Talbert, Public Member. Loren F. Snell, Jr., Administrative Law Judge, was appointed and served as the Presiding Officer over the evidentiary hearing.

ALP was represented by Diane Belquist, counsel for ALP; Jacob Lickteig (JLickteig), Owner and President of Active Lifestyle Holdings, LLC (ALH); and Fawn Lickteig (FLickteig), spouse of JLickteig and Compliance Officer and Pharmacy Technician for ALP.

Brenda Head appeared as the Board's disciplinary counsel. Alexandra Blasi (Blasi), Executive Secretary for the Board, and Melissa Martin (Martin), Kansas Board of Pharmacy Compliance Inspector, appeared and provided testimony for the Board.

Evidentiary Rulings

The Board offered Exhibits 1 through 15 for admission as evidence. ALP had no objection to admission of Exhibits 1, 2, 3, 5-10 and 14. Board's Exhibits 1, 2, 3, 5-10 and 14 were admitted.

ALP objected to Exhibits 4, 11, 12, 13 and 15, as set forth in the Respondent's Objections to Board's Exhibits filed on October 10, 2022. Having reviewed the ALP's objections, the exhibits in question and having heard the arguments of the parties, the Presiding Officer admitted Exhibits 4, 11, 12 and 13. Exhibit 15 was not admitted.

ALP offered Exhibits A through GG and SS through CCC for admission as evidence.¹ The Board's disciplinary counsel had no objection to admission of ALP Exhibits A through GG and SS through CCC. ALP Exhibits A through GG and SS through CCC were admitted.

It was noted by counsel that certain exhibits might contain identifiable protected health information (PHI) and should be sealed. The Board identified Exhibits 4-8 and 14 as containing PHI and requested that those exhibits be sealed. Exhibits 4-8 and 14 are sealed. Exhibits II, YY and ZZ were identified as containing PHI and were sealed. Furthermore, any other Exhibits, offered by either party, that are found to contain PHI are hereby sealed.

Summary Judgment

On June 10, 2022 ALP filed a Motion for Partial Summary Judgment. The Board did not file a response or otherwise object to ALP's motion.

ALP's Motion for Partial Summary Judgment is granted. It is the finding of the Presiding Officer, and the Board that:

- I. ALP did not falsify information in its original application for or any renewal application for registration 2-109379.
- II. ALP operated with a proper registration.
- III. ALP did not violate its duty of notification concerning an ownership change.

Findings of Fact

1. The Kansas Board has previously issued Applicant pharmacy registration number 2-109379 on December 19, 2019. (Exhibit 11, page KBOP/ACT225). The application for the registration identified ALH as the owner of ALP and Brad Heide (Heide) as the Authorized Agent of ALH. (Exhibit 10, pages KBOP/ACT070-074). The Pharmacist-In-Charge (PIC) Certification was signed by Logan Arkenberg (Arkenberg). (*Id.*).

2. Blasi testified that when a pharmacy is owned by a LLC the pharmacy must provide additional information concerning ownership of the LLC. A Form S-320, Supplemental Application: LLC Ownership (Form S-320) is required.

¹ Prior to the start of the hearing ALP withdrew Exhibits HH through RR.

3. Minutes from meeting of ALP and ALH held on November 13, 2019 indicate Heide decided to resign from ownership of ALP and ALH and give full control to JLickeig and FLickeig. (Exhibit 2, pages KBOP/ACT015-016).

4. Minutes from meeting of ALP and ALH held on December 11, 2019 indicate JLickeig was named president, owner and chief manager of the LLC².(Exhibit 2, pages KBOP/ACT017-018).

5. On December 27, 2019 a Certificate of Correction was filed with the Kansas Secretary of State correcting the Articles of Incorporation to remove Heide as the organizer of ALP and name JLickeig as the organizer. (Exhibit 2, pages KBOP/ACT019-020).

6. On December 27, 2019 a Certificate of Correction was filed with the Kansas Secretary of State correcting the Articles of Incorporation to remove Heide as the organizer of ALH and name JLickeig as the organizer. (Exhibit 2, pages KBOP/ACT027-028).

7. On January 4, 2020 electronic filings were made with the Kansas Secretary of State changing the Resident Agents of ALH and ALP to Pharmacy Consulting LLC and changing the Registered Office addresses. (Exhibit 2, pages KBOP/ACT021-026).

8. By letter dated January 20, 2020 reportedly prepared by Arkenberg,³ the Board was notified there had been a change in “authorized agent” for ALP and that Heide was no longer affiliated with ALP. JLickeig was named the “responsible party” for ALP. JLickeig was also identified as the “managing member” for ALH. The letter was attached to an email dated January 20, 2020 from ALP. (Exhibit 11, pages KBOP/ACT194-195).

9. On May 27, 2020 ALP submitted a renewal application to the Board for registration number 2-109379. (Exhibit I, pages ALP 000025-32). The application listed Heide as the President and authorized agent.

10. Registration number 2-109379 was renewed by the Board. (Exhibit J, page ALP 000033).

11. In June of 2020 Applicant started servicing patients under Kansas registration number 2-109379 which was issued with Brad Heide as the President and authorized agent. (Exhibit 2, pages KBOP/ACT011-012).

12. On February 8, 2021 Arkenberg was notified by email from Blasi that a change in ownership had not been submitted to the Board. A request was made for a completed application for change of ownership to be submitted to the Board. (Exhibit 2, pages KBOP/ACT033-034).

² Although the meeting was conducted for both ALP and ALH, the minutes do not indicate which LLC JLickeig was named president, owner and chief manager of.

³ Arkenberg denied writing the letter to the Board. However, FLickeig testified that while she prepared the letter that was sent to the Board, Arkenberg reviewed it before it was sent.

13. On February 11, 2021 the Board received ALP's change in ownership application, reflecting an effective date for the change in ownership on January 20, 2020. (Exhibit 11, pages KBOP/ACT204-212). The application listed ALP as the Owner of the pharmacy and JLickeig as the authorized agent. An attached S-320 included with the application listed JLickeig as the LLC Manager and ALH as the sole LLC Member and 100% owner of ALP.

14. ALP did not submit a Form S-320 regarding the ownership of ALH.

15. The Kansas Board assigned registration number 2-114048 to ALP; however, the change in ownership application was not formally approved by the Board.

16. By email dated March 15, 2021 ALP emailed the Board the requested S-320 information, a letter setting forth a timeline and documentation regarding ownership of the pharmacy. ALP indicated they were not able to obtain Power of Attorney documentation from Heide, as had been requested by the Board. (Exhibit 2, pages KBOP/ACT011-012 and Exhibit 11, page KBOP/ACT220).

17. Blasi testified the Board did not receive the Power of Attorney documentation that was requested.

18. On April 7, 2021 Heide emailed the Board to notify it that ALP had used his name to open the pharmacy without his knowledge. (Exhibit 2, page KBOP/ACT040).

19. On May 4, 2021 ALP submitted a renewal application to the Board for registration number 2-109379. (Exhibit 9, pages KBOP/ACT055-062). The application listed Heide as the President and authorized agent.

20. On November 9, 2021 a Summary Order of Revocation and Denial was issued by the Board.

21. On or about November 16, 2021 ALP prepared a Change in PIC form reporting that Arkenberg's last day as the PIC at ALP was November 11, 2021. (Exhibit 11, pages KBOP/ACT223).

22. Arkenberg testified he had been employed as a PIC at ALP from June of 2020 until November of 2021.

23. Arkenberg testified that he allowed FLickeig to have access to his email in order to respond to the Board but that he himself had not communicated with the Board.

24. On November 22, 2021 ALP requested a hearing.

25. On December 10, 2021 the Board received a Change in PIC form naming Sara Metzger (Metzger)⁴ as the PIC for ALP beginning December 6, 2021. (Exhibit 11, page KBOP/ACT224).

26. On February 15, 2022 the Board received a Complaint Form from Samara Prevost-Frelich, Senior Fraud and Waste Investigator, Humana Healthcare's (Humana) Special Investigation Unit. (Exhibit 4, pages KBOP/ACT359-365). Humana had identified two (2) medication shortages for Diflorasone 0.05% Ointment and Novolog 100 unit/ML Flexpen.

27. On February 16, 2022 Humana sent a certified letter with a request for a Corrective Action Plan (CAP) to ALP based on ALP's failure to mitigate the two (2) medication shortages for Diflorasone 0.05% Ointment and Novolog 100 unit/ML Flexpen, identified by Humana. (Exhibit 4, pages KBOP/ACT366-420).

28. On an unknown date ALP responded to the letter sent by Humana. (Exhibit 4, pages KBOP/ACT421-422). ALP asserted that Arkenberg incorrectly billed the Novolog Flexpen for prescription (Rx) number 600649 when he substituted Insulin Aspart Flex 100 unit/ML for dispensing when the prescriber signed the prescription as "Dispense as written" with no substitution permitted. ALP asserted that Arkenberg was coached regarding the dispensing error on Rx number 600649.

29. An Rx Incident Report Form concerning the incorrect dispensing of medication on November 25, 2020 relating to Rx number 600649, as well as another incident on January 8, 2021 relating to Rx number 600994, was prepared. (Exhibit V). Arkenberg was no longer employed by ALP at the time the incident report was completed. It was noted in the report that no incident report had been filed by the prior PIC, Arkenberg.

30. Arkenberg testified that he had not completed the incident report because he was not aware of the incident(s).

31. A Continuous Quality Improvement (CQI) Meeting Report was prepared concerning the incidents from November 25, 2020 and January 8, 2021, nearly eighteen (18) months after the first incident and almost three (3) months after the incident report was prepared. (Exhibit V).

32. It was noted in the CQI that ALP had been subject to a break in. The exact date of the break in was not provided.

33. JLickeig reported that ALP had a break in and that the suspect had been apprehended. JLickeig testified that as a result of the break in ALP reinforced the doors (shatter resistant glass) and added security to the business.

34. Information concerning the break in had not been submitted to the Board.

⁴ Sara Metzger was also known as Sara Rehm.

35. Jihan Gallegos (Gallegos) testified she pulled the incident reports and CQIs that had been submitted to the Board based on the date reported, not the date of the incident.

36. ALP entered into a CAP with Humana on or about March 1, 2022. (Exhibit 4, pages KBOP/ACT236).

37. On March 23, 2022 the Board received a Change in PIC form from ALP reporting that Metzger's last day as PIC was March 21, 2022 and Gallegos was the new PIC beginning March 22, 2022. (Exhibit 11, pages KBOP/ACT228).

38. Gallegos testified she became the PIC at ALP in March of 2022 and prior to that had been a PIC at another pharmacy.

39. On March 24, 2022 Martin requested that ALP provide copies of all incident reports and corresponding CQI report for the month of November 2020. Gallegos, as PIC for ALP, provided documentation to the Board on March 24, 2022; however, ALP did not produce an Incident or CQI report to the Board relating to the incident involving Rx number 600649. (Exhibit 4, pages KBOP/ACT423-438).

40. Arkenberg, Metzger, and Relief Pharmacist Nam Vu (Vu) administered COVID, Influenza and Shingles vaccines while employed by ALP and ALP billed insurance for said vaccinations.

41. The Kansas Statewide Protocol for Administration of Vaccines (Protocol), which requires the Pharmacist signature, and the Federal Public Readiness and Emergency Preparedness (PREP Act) authorize Pharmacist ordering and administration of certain vaccinations. Arkenberg signed the Protocol on November 22, 2019, Metzger signed the Protocol February 15, 2022 and Vu signed the Protocol October 1, 2021.

42. The Protocol set forth documentation requirements for vaccination records that were required to be maintained for the vaccine administered. (Exhibit 5, pages KBOP/ACT387-388).

43. On March 28, 2022 Martin requested a dispensing report from ALP "to include ALL prescriptions dispensed between the time period of 12/6/2021 through 3/21/2022." (Exhibit 6, pages KBOP/ACT565-566).

44. On March 29, 2022 Gallegos provided a detailed dispensing report, as well as Daily Signature Log for Pharmacist forms for the period from December 2021 through March 2022. (Exhibit 8, pages KBOP/ACT1471-1506 and Exhibit 6, pages KBOP/ACT406-413).

45. Gallegos testified that she tailored the report to Martin's request and only included what was requested.

46. On April 1, 2022 Gallegos submitted a spreadsheet of the dates that pharmacists worked at ALP, in response to a follow up email by Martin. (Exhibit 6, pages KBOP/ACT488-490).

47. Utilizing a detailed dispensing report provided by ALP for the period from December 6, 2021 through March 21, 2022, the Agency conducted a review of the vaccinations administered by staff at ALP. (Exhibit 8, pages KBOP/ACT1471-1507 and Exhibit 5, pages KBOP/ACT439-462).⁵

48. The dispensing report spreadsheets were then compared to Vaccination Administration Records (VAR) that were prepared by ALP staff and provided by ALP to the Board. (Exhibit 5).

49. Gallegos testified that since she has been PIC the VARs utilized at ALP have been changed.

50. Comparing the VARs to the detailed dispensing report, from December 6, 2021 through March 21, 2022, ALP's records reveal ALP's COVID VARs were incomplete and in violation of the Protocol on three hundred sixty-two (362) occasions. (Exhibit 3).

51. Comparing the VARs to the detailed dispensing report, from December 6, 2021 through March 21, 2022, ALP's records reveal ALP's Influenza VARs were incomplete and in violation of the Protocol on twenty-one (21) occasions. (Exhibit 3).

52. Comparing the VARs to the detailed dispensing report, from December 6, 2021 through March 21, 2022, ALP's records reveal ALP's Shingles VARs were incomplete and in violation of the Protocol on one (1) occasion. (Exhibit 3).

53. VARs were found to be missing required information such as the vaccine name, dose, lot number, and manufacturer name; signed patient consent form; name and license number of the administering practitioner; name of the authorizing prescriber; date of vaccine; injection site location; name, address, telephone number, date of birth, and gender of the individual vaccinated; and primary care provider information and notification.

54. Martin included several examples of the incomplete VARs received from ALP in her investigation report. (*Id.*).

55. FLickteig testified she was unaware that the VARs were missing data and did not understand the VARs had to include all of that information. She also testified that the missing information was documented in the ALP computer system.

⁵ Two columns were added to the spreadsheet in Exhibit 8 by Martin to document the pharmacist on duty when the vaccine was reportedly administered or if there was no pharmacist on duty. A column was added to Exhibit 4 by Martin to identify the location of the corresponding VAR.

56. The Protocol require that the pharmacy report administration of all vaccines to the Kansas Department of Health and Environment's (KDHE) WebIZ program, in accordance with K.S.A. 65-1635a.

57. On April 20, 2022 Martin spoke to Angie Black (Black) at WebIZ. (Exhibit 3, page KBOP/ACT540).

58. Black advised that ALP applied to the WebIZ program in January of 2022 and Black processed the application on February 28, 2022. Black advised that ALP was in the "connectivity stage", or verification stage of the set-up process (on April 20, 2022) and upon completion would be placed in the "data quality" stage for a period of time. Black advised that ALP had not manually uploaded vaccination administration data in to WebIZ program as of April 20, 2022.

59. Arkenberg testified that he had begun the process of registering with WebIZ and that the pharmacy manually reports but there was a lag time because there were so many reports.

60. Gallegos testified she spent the first month of her employment "playing catchup" on the WebIZ reporting.

61. FLickeig testified she was unaware Arkenberg was not reporting to WebIZ.

62. Martin testified that she spoke to Black again on October 18, 2022. During the second conversation Black stated that ALP was in the connectivity stage from February 28, 2022 until May 18, 2022. ALP was in the data quality stage from May 18, 2022 until June 15, 2022. Black also advised that for the period covering December 1, 2021 through March 31, 2022 ALP had submitted five hundred thirty-two (532) out of five hundred sixty-four (564) records. Thirty-two (32) records were missing.

63. ALP maintained a Daily Signature Log for Pharmacist form upon which the Pharmacist on duty signed attesting that the patient, dispensing, and vaccination information entered into the ALP pharmacy management system for that day was accurate. (Exhibit 6, pages KBOP/ACT406-413).

64. From December 7, 2021 through March 16, 2022 ALP's records reveal twenty-nine (29) prescriptions were processed when a Pharmacist was not on duty as required by the Pharmacy Act. (Exhibit 8, pages KBOP/ACT1471-1506 and Exhibit 6, pages KBOP/ACT406-413).

65. From December 6, 2021 through March 21, 2022 two hundred eighty-nine (289) ALP records were identified to have discrepancies as to the pharmacist on duty according to the Detailed Dispensing Report and the pharmacist on duty according to the signatures on the Daily Signature Log for Pharmacists. (Exhibit 8, pages KBOP/ACT1471-1506 and Exhibit 6, pages KBOP/ACT406-413).

66. FLickeig testified that Vu usually did not sign the Daily Signature Log for Pharmacist form.

67. At all relevant times, FLicteig (Registration #14-06668) had access to the ALP's Pharmacy, ALP's Pharmacy software and prescription records without direct supervision by a registered pharmacist.

68. Gallegos testified that FLicteig no longer had access to restricted areas. The key to the restricted area is in a lockbox in FLicteig's office but only she and one (1) or two (2) other pharmacists have the code. Gallegos testified that restricted areas are not accessible if a pharmacist is not present.

69. On December 7, 2021 FLicteig accessed the pharmacy, manipulated pharmacy records, created inaccurate records indicating Metzger was the Pharmacist of record for Rx number 601941 when Metzger was not on duty at the pharmacy on that date.

70. From December 6, 2021 through March 21, 2022 FLicteig created and processed prescriptions for over-the-counter diabetic supplies without direct supervision by a registered pharmacist on twenty-eight (28) separate occasions.

71. The Board obtained an activity report for ALP from the Kansas Prescription Monitoring Program (K-TRACS) on or after May 29, 2022. (Exhibit 14).

72. Blasi testified that a pharmacy is required to submit a report to K-TRACS on a daily basis; however, may file zero reports for seven (7) days at a time.

73. ALP was delinquent in submitting daily reports to K-TRACS during the following periods in 2021:

- a. A zero report was submitted for May 29 -31 but was not submitted until June 4;
- b. A zero report was submitted for June 2 - 9 but was not submitted until June 18;
- c. A zero report was submitted for June 11 - 14 but was not submitted until June 18;
- d. A zero report was submitted for June 16 - 29 but was not submitted until June 29 and covers more than a seven-day period;
- e. A zero report was submitted for July 1 – 5 but was not submitted until July 9;
- f. A zero report was submitted for July 15 but was not submitted until August 16;
- g. A zero report was submitted for July 17 – August 9 but was not submitted until August 16 and covers more than a seven-day period;
- h. A zero report was submitted for August 11 – 12 but was not submitted until August 16;
- i. A zero report was submitted for August 14 – 16 but was not submitted until August 30;
- j. A zero report was submitted for August 18 – 29 but was not submitted until August 30 and covers more than a seven-day period;
- k. A zero report was submitted for August 30 – September 7 but was not submitted until September 8 and covers more than a seven-day period;
- l. A zero report was submitted for September 8 – 20 but was not submitted until September 20 and covers more than a seven-day period;

- m. A zero report was submitted for September 21 but was not submitted until September 23;
 - n. A zero report was submitted for September 23 – 29 but not submitted until October 4;
 - o. A zero report was submitted for October 1 – 2 but not submitted until October 4;
 - p. A zero report was submitted for October 3 – 12 but not submitted until October 26;
 - q. A zero report was submitted for October 14 – 26 but not submitted until October 26 and covers more than a seven-day period; and
 - r. A zero report was submitted for October 28 – 31 but was not submitted until November 2.
74. ALP failed to submit the required daily reports to K-TRACS on the following dates in 2021:
- a. June 1, 10, and 15;
 - b. July 6 and 16;
 - c. August 10, 13, and 17;
 - d. September 22 and 30;
 - e. October 13 and 27; and
 - f. November 1.
75. ALP failed to submit the required daily reports to K-TRACS during the following periods:
- a. November 9, 2021 through March 28, 2022;
 - b. March 30, 2022 through April 13, 2022;
 - c. April 15, 2022 through May 10, 2022; and
 - d. May 13, 2022 through May 15, 2022.
76. Blasi testified that timely reporting, including reporting to K-TRACS, is important because if the reporting is not completed timely it can prohibit a practitioner from obtaining up-to-date information on a patient.
77. Arkenberg testified that as PIC it was his responsibility to make the reports to K-TRACS and that he had kept them up-to-date.
78. Gallegos testified she was ensuring that all K-TRACS reporting was being completed.

Applicable Statutes, Regulations and Policies

“The board may deny an application or renewal, limit, condition, revoke, suspend or place in a probationary status the registration of any pharmacy upon a finding that: (1) Such pharmacy has been operated in such manner that violations of the provisions of the pharmacy act of the state of Kansas or of the rules and regulations of the board have occurred in connection therewith; (7) the registrant has failed to keep, has failed to file with the board or has falsified records required

to be kept or filed by the provisions of the pharmacy act of the state of Kansas, the federal or state uniform controlled substances act or rules and regulations adopted by the board; (8) such pharmacy has been operated in such manner that violations of the provisions of the federal or state food, drug and cosmetic act, the federal or state uniform controlled substances act, or any rule and regulation adopted under any such act have occurred in connection therewith (9) such pharmacy has been operated in such manner that the violations of the provisions of the prescription monitoring program act of the state of Kansas or any rule and regulation of the board have occurred in connection therewith; (10) the registrant has failed to furnish the board, its investigators or its representatives any information legally requested by the board; or (11) the registrant has violated or failed to comply with any lawful order or directive of the board.”⁶

Unprofessional conduct is defined as “(4) intentionally falsifying or altering records or prescriptions; or (7) conduct likely to deceive, defraud or harm the public...”⁷

“All vaccinees will be given a written immunization record for their personal files. The administering pharmacist or pharmacist supervising an administering pharmacy student or intern shall promptly report a record of the immunization to the vaccinee's primary care provider by mail, electronic facsimile, e-mail or other electronic means. If the vaccinee does not have a primary care provider, then the administering pharmacist or pharmacist supervising an administering pharmacy student or intern shall promptly report a record of the immunization to the person licensed to practice medicine and surgery by the state board of healing arts who has entered into the vaccination protocol with the pharmacist. The immunization will also be reported to appropriate county or state immunization registries, except that if the person vaccinated or, if the person is a minor, the parent or guardian of the minor, objects to the report, the report shall not be made.”⁸

“Each pharmacy shall at all times maintain a list of the names of pharmacy technicians employed by the pharmacy. A pharmacy technician shall work under the direct supervision and control of a pharmacist, and while on duty, shall wear a name badge or similar identification with the pharmacy technician's name and designation as a pharmacy technician. It shall be the responsibility of the supervising pharmacist to determine that the pharmacy technician is in compliance with the applicable rules and regulations of the board, and the supervising pharmacist shall be responsible for the acts and omissions of the pharmacy technician in the performance of the pharmacy technician's duties.”⁹

“It shall be the duty of the pharmacist in charge of every premise having a pharmacy registration, to ensure that a registered pharmacist is on duty at all times during which the pharmacy is open.”¹⁰

⁶ K.S.A. 65-1627(e).

⁷ K.S.A. 65-1626(vvv).

⁸ K.S.A. 65-1635a(b).

⁹ K.S.A. 65-1663(i).

¹⁰ K.A.R. 68-1-8.

“Each premises for which a pharmacy registration is issued, except medical care facilities, shall be constructed so that the pharmacy can be secured to prevent access to prescription-only drugs when a pharmacist is not on duty.”¹¹

“Each pharmacist-in-charge shall develop or approve written policies and procedures for the pharmacy that meet all of the following conditions: (1) Adequate accountability and control of drugs in compliance with the Kansas pharmacy act, the Kansas uniform controlled substances act, federal drug laws, and all applicable regulations are provided for. (2) Any incident that occurs as a result of an alleged or real error in filling or dispensing a prescription or medication order is brought to the attention of the pharmacist-in-charge and completely documented in accordance with the requirements of K.A.R. 68-7-12b.”¹²

“Each pharmacy's continuous quality improvement program shall meet the following minimum requirements: (a) Meet at least once each quarter of each calendar year; (b) have the pharmacy's pharmacist-in-charge in attendance at each meeting; and (c) perform the following during each meeting: (1) Review all incident reports generated for each reportable event associated with that pharmacy since the last quarterly meeting; (2) for each incident report reviewed, establish the steps taken or to be taken to prevent a recurrence of the incident; (3) review each board newsletter published since the last quarterly meeting; and (4) create a report of the meeting, including at least the following information: (A) A list of the persons in attendance; (B) a list of the incident reports and newsletters reviewed; and (C) a description of the steps taken or to be taken to prevent recurrence of each incident reviewed.”¹³

“Each dispenser shall file a report with the board for scheduled substances, as defined in K.S.A. 65-1682(g) and amendments thereto, and any drugs of concern dispensed in this state or to an address in this state. This report shall be submitted within 24 hours of the time that the substance is dispensed, unless the board grants an extension as specified in subsection (d). (2) Each dispenser that does not dispense scheduled substances, as defined in K.S.A. 65-1682(g) and amendments thereto, or any drugs of concern in this state or to an address in this state during the reporting period specified in paragraph (a)(1) shall file a zero report with the board. Each zero report shall meet the following requirements: (A) Cover not more than a seven-day period in which no such drugs were dispensed; and (B) be filed the day following the end of the period covered by the zero report.”¹⁴

Decision

The Board considered the information provided and concluded Active Lifestyle Pharmacy has violated the statutes, regulations and policies related to the practice of pharmacy in the State of Kansas. Having carefully considered the evidence presented, the Board concludes Active Lifestyle Pharmacy violated the applicable statutes, regulations and/or policies as follows:

- Active Lifestyle Pharmacy engaged in unprofessional conduct;

¹¹ K.A.R. 68-2-11.

¹² K.A.R. 68-7-12(c).

¹³ K.A.R. 68-19-1.

¹⁴ K.A.R. 68-21-2(a).

- Active Lifestyle Pharmacy failed to complete VARS as required by Kansas Statewide Protocol for Administration of Vaccines;
- Active Lifestyle Pharmacy failed to report to WebIZ according to Kansas Statewide Protocol for Administration of Vaccines;
- Active Lifestyle Pharmacy failed to timely report information to K-TRACS;
- Active Lifestyle Pharmacy processed prescriptions without a pharmacist present;
- Active Lifestyle Pharmacy allowed unauthorized staff to have unsupervised access to the pharmacy;
- Active Lifestyle Pharmacy failed to submit information to the Board in a timely manner; and,
- Active Lifestyle Pharmacy failed to prepare incident reports and CQI reports in a timely manner all in violation of the Kansas Pharmacy Act.

ALP did not deny the various violations of the Kansa Pharmacy Act identified by the Board through the investigation, although testimony was offered that changes have been instituted to avoid similar situations in the future.

The Board voted 6 to 1 to reverse the May 31, 2022 Amended Summary Order of Revocation and Denial and approve Active Lifestyle Pharmacy's application for renewal of registration 2-114048¹⁵, subject to the following terms and conditions:

- Approval was granted subject to Active Lifestyle Pharmacy being placed on probation for a period of five (5) years. The standard conditions of probation apply.
- Active Lifestyle Pharmacy shall complete and submit a LLC Ownership S-320 Form to the Board within ten (10) days of this Final Order.
- Active Lifestyle Pharmacy shall conduct monthly self-inspection using the Board's I-02 Form, to be reported to the Board.
- Active Lifestyle Pharmacy shall be subject to quarterly onsite inspections by the Board at the expense of Active Lifestyle Pharmacy¹⁶.
- The owner of Active Lifestyle Pharmacy shall appear and make a report to the Board annually.
- If the Pharmacist -In-Charge changes for any reason the owner of Active Lifestyle Pharmacy shall appear before the Board.
- Active Lifestyle Pharmacy shall submit a copy of the current policies and procedures to the Board within ten (10) days of this Final Order, to include, but not

¹⁵ The Board did not specifically revoke registration number 2-109379 that had been issued to Active Lifestyle Pharmacy; however, a pharmacy may only have one (1) of the same type of registration. By approving registration number 2-114048 this necessitates that the prior registration number be revoked.

¹⁶ K.S.A. 65-1627L.

limited to, internal audit procedures and corrective measures to be utilized to correct identified problem areas.

- Information concerning the break in, as well as the appropriate forms, shall be presented to the Board within ten (10) days of this Final Order.
- Active Lifestyle Pharmacy shall provide proof of current United States Drug Enforcement Agency (DEA) registration reflecting proof of current ownership, power of attorney documentation, and registrant information to the Board.
- The owner of Active Lifestyle Pharmacy must demonstrate knowledge of the Kansas Pharmacy Act, regulations, and policies, as determined by the Board's inspector.
- Active Lifestyle Pharmacy is subject to the following fines, to be paid according to a payment plan to be entered into by Active Lifestyle Pharmacy and the Executive Director and/or the Board's Investigative Member:
 - \$50,000 for failure to have complete VAR forms as required by the Kansas Statewide Protocol for Administration of Vaccines.¹⁷
 - \$25,000 for processing prescriptions without a pharmacist present.¹⁸
 - \$10,000 for failure to timely report information to K-TRACS.¹⁹
 - \$10,000 for failure to report to WebIZ as required by the Kansas Statewide Protocol for Administration of Vaccines.²⁰
 - \$4,000 for allowing unauthorized access to the pharmacy.²¹
 - \$3,000 due to the improper record keeping of incident reports and Continuous Quality Improvement reports.²²
 - \$1,000 for failure to submit documentation to the Board in a timely manner.²³
 - Pay for costs associated with the investigation and administrative hearing in the amount of \$26,651.²⁴

Jan 3, 2023
Date

Dr. Jonathan W. Brunswig, PharmD
Dr. Jonathan W. Brunswig, PharmD (Jan 3, 2023 22:25 CST)
Jonathan Brunswig, PharmD, President
Kansas Board of Pharmacy

¹⁷ K.S.A. 65-1635a(a).

¹⁸ K.S.A. 65-1663(i) and K.A.R. 68-1-8.

¹⁹ K.S.A. 65-1682 and K.A.R. 68-21-2.

²⁰ K.S.A. 65-1635a(b).

²¹ K.A.R. 68-2-11 and K.A.R. 68-20-15a(d).

²² K.A.R. 68-7-12(c)(2) and K.A.R. 68-19-1.

²³ K.S.A. 65-1627(e)(10).

²⁴ K.S.A. 65-1627h.

Notices

1. This is a Final Order and becomes effective upon service.
2. **Within fifteen (15) days** after service of the Final Agency Order, any party may file a Petition for Reconsideration.²⁵
3. Either party to this agency proceeding may seek judicial review of the Final Order by filing a timely petition in the District Court.²⁶ Reconsideration of the Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed **within thirty (30) days** following service of the Final Order.
4. A copy of any petition for judicial review must be served upon the Kansas Board of Pharmacy. The agency officer designated to receive service of a petition for judicial review is:

Alexandra Blasi, Executive Secretary
Kansas State Board of Pharmacy
800 SW Jackson #1414
Topeka, KS 66612-1244

²⁵ K.S.A. 77-529.

²⁶ K.S.A. 77-613.

Certificate of Service

On January 4, 2023, I certify that a copy of the foregoing was placed in the United States first class mail, postage prepaid, addressed to:

Active Lifestyle Pharmacy
Attention: Jacob Lickteig
7800 Foster
Overland Park, KS 66204

and, I further certify that I caused a copy of the foregoing to be served electronically through OAH's e-filing system to:

Diane L. Bellquist
Joseph, Hollander, & Craft LLC
1508 SW Topeka Blvd
Topeka, KS 66612
Tel: (785) 234-3272

Brenda Head
Frieden & Forbes, LLP
1414 SW Ashworth Pl., Ste 201
Topeka, KS 66604
Tel: (785) 354-1100

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



Staff Person
Office of Administrative Hearings
1020 S. Kansas Avenue
Topeka, KS 66612
Tel: (785) 296-2433
Fax: (785) 296-4848