

Filed By

SEP 13 2019

KANSAS STATE BOARD OF PHARMACY

BEFORE THE KANSAS BOARD OF PHARMACY

|  |   |                  |
|--|---|------------------|
| In the Matter of                       | ) |                  |
|  | ) |                  |
| CVS PHARMACY #8237                     | ) | Case No. 18-442A |
| <u>Kansas Registration No. 2-09985</u> | ) |                  |

**STIPULATION AND CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and CVS Pharmacy #8237 located at 5001 West 135<sup>th</sup> Street, Leawood, KS 66224 ("Respondent") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden & Forbes, LLP, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by its attorney, Jeffrey S. Sinko of CVS Health.

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 registration to operate a pharmacy.

3. The Respondent is presently entitled to operate a pharmacy in the State of Kansas by reason of the Board having issued it Kansas registration number 2-09985 ("Kansas Registration"). At all times relevant hereto, the Respondent has held a current registration to operate a pharmacy at 5001 West 135<sup>th</sup> Street, Leawood, KS 66224 ("Pharmacy").

4. The Board's Investigation Member has received certain information, investigated and determined that there are reasonable grounds to believe that Respondent has operated in a manner that violates the Act.

5. Respondent hereby waives any further proof in this or any other proceeding before or initiated by the Board with respect to this matter, and upon motion duly made, seconded and passed, the Board finds the following:

A. On April 10, 2018 a Board Inspector went to Respondent's Pharmacy to perform a routine inspection.

B. During the process of inspection the Board's Inspector determined that on May 13, 2018 Smit Mehta, Pharm D resigned as the Pharmacist-in-Charge ("PIC") for Respondent, but did not perform a controlled substance inventory at the time of leaving the PIC position as required by K.A.R. 68-7-12(e).

C. The Board's Inspector also determined that the Respondent did not have reports of Continuous Quality Improvement Program meetings for 4 quarters of 2017 and the first quarter of 2018 in violation of the requirements of K.A.R. 68-19-1.

D. The Board's Inspector also determined that the Respondent did not have completed Kansas Dispensing Incident Reports for 2017 and 2018 in violation of the requirements of K.A.R. 68-7-12b.

6. Upon motion duly made, seconded and passed, the Board finds and concludes that the events described in paragraph 5 above, constitute the operation of a pharmacy in a manner that violates the Act and the Regulations of the Board and is therefore grounds for disciplinary action against the Respondent's Kansas Registration pursuant to K.S.A. 65-1627 (e)(1).

7. 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 ten (10) days of the Board entering the Consent Order provided for herein, Respondent shall pay to the Kansas Pharmacy Board an administrative fine totaling Five Thousand Dollars (\$5,000.00).

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

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

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 Consent Order provided for herein is entered by the Board. The Respondent acknowledges that the approval of the Board's Investigation

*Matter of CVS Pharmacy #8237, No. 18-442A (Kan. Bd. of Pharmacy)*

**STIPULATION AND CONSENT ORDER**

Page 3 of 8

Member or its attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Consent Order.

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 it has the following rights:

- (a) To have formal notice of charges served upon it;
- (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 it to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Consent Order provided for herein.

13. The Respondent acknowledges that it enters into this Stipulation and Consent Order freely and voluntarily after consultation with counsel of its choosing. The Respondent further acknowledges that it has read this Stipulation and Consent Agency order in its entirety, that it understands its legal consequences and that it 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 it. 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.


18. The Respondent acknowledges that it has been advised by the Board that it 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 12<sup>th</sup> day of September, 2019.

KANSAS BOARD OF PHARMACY

By:

  
DR. JOHN WORDEN, President

AGREED AND APPROVED BY:

CVS Pharmacy #8237  
5001 West 135<sup>th</sup> Street  
Leawood, KS 66224

By:



Leo Kariviere Director Regulatory Affairs

7/22/19

Date

~~Chad Ullom, R.Ph.~~ *Bill Warner*  
Investigation Member

9/12/19

Date



Jeffrey S. Sinko, SVP & Asst. Gen. Counsel  
200 Campus Drive  
Florham Park, NJ 07932  
(401) 772-8032

07/17/19

Date

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

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 13<sup>th</sup> day of September, 2018 addressed to:

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

CVS Pharmacy #8237  
C/O Juliet Ryan, R.Ph, Pharmacist-in-Charge  
5001 West 135<sup>th</sup> Street  
Leawood, KS 66224

\_\_\_\_\_ the

  
\_\_\_\_\_  
Representative of  
Executive Director  
KANSAS BOARD OF PHARMACY