

February 16, 2023

CVS Pharmacy #8573
Attn: Pharmacist in Charge Fogwe
11900 W 135th St
Licensing MC 1160
Overland Park KS 66221

RE: Case No. 22-236

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 \$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. 22-236
CVS Pharmacy #8573)	
)	
<u>Pharmacy Registration Number 2-10056</u>)	

SUMMARY ORDER

NOW, on this 16th day of February 2023, comes before the Kansas Board of Pharmacy (the “Board”), through its Executive Secretary, the matter of CVS Pharmacy #8573 (“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 Registration No. 2-10056 which entitles Respondent to function as a Pharmacy in the State of Kansas (“Respondent’s Registration”).
2. On July 28, 2022, the Board received a consumer complaint regarding a medication error when pharmacy staff dispensed comingled Guanfacine 1mg and Tizanidine 2mg to a pediatric patient who was prescribed Guanfacine 1mg. The complaint alleged that the patient experienced negative side effects.
3. On May 3, 2022, Respondent’s pharmacy software recorded the initial prescription for the patient. The Pharmacist-in-Charge (“PIC”) performed the drug utilization review and, on May 4, 2022, the pharmacy technician captured a prescription image in Respondent’s pharmacy software

verifying #90 tablets of Guanfacine 1mg. This prescription was not dispensed to the patient and pharmacy staff suggested the prescription was returned to stock for possible insurance issues.

4. On May 22, 2022, the PIC performed a data entry verification, warning verification, and product verification for the prescription. Respondent was unable to provide the Board a copy of the prescription image for the #270 comingled tablets that were filled by the PIC on May 22, 2022 and dispensed to the patient.

5. On May 25, 2022, the patient's parent picked up the prescription from Respondent's pharmacy and counseling was not offered or provided.

6. On June 9, 2022, an incident report was created for the dispensing error. The incident report included inaccurate information, including errors in the dates and the description of the incident.

7. During the onsite investigation, the Board's investigator asked the pharmacy technician who was working in the point-of-sale area at the drive-through window and walk-up counter how the pharmacy technician knew to call for counseling. The pharmacy technician was unsure how to answer the question. The Board's investigator then asked if the pharmacy technician could explain what counseling was and the pharmacy technician replied that it occurred when a customer had a question about a prescription. The Board's investigator also asked the pharmacy intern working in Respondent's pharmacy the same questions, who was able to provide an appropriate answer to both questions.

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(e)(1), the Board may take action against a pharmacy upon a finding that the pharmacy has been operated in such a manner that violates the pharmacy act of the state of Kansas or any regulation adopted by the Board.

3. 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.

4. 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 date of the incident and the date of the report, and a pharmacist's description of the incident.

5. In dispensing the prescription on May 25, 2022, Respondent's pharmacist and pharmacy intern failed to personally offer counseling to the patient's agent (parent), in violation of K.A.R. 68-2-20.

6. In completing the incident report for the medication dispensing error, Respondent failed to include an accurate and complete description of the incident and identified inaccurate dates in the incident report, in violation of K.A.R. 68-7-12b.

7. Based on the above, Respondent operated the pharmacy 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(e)(1).

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.

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.

2/16/2023

Date

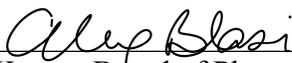


Alexandra Blasi, JD, MBA
Executive Secretary
Kansas Board of Pharmacy

CERTIFICATE OF SERVICE

I hereby certify that I did, on the 16th day of February 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:

CVS Pharmacy #8573
11900 W 135th St
Licensing MC 1160
Overland Park KS 66221



Kansas Board of Pharmacy Staff