

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)

CVS PHARMACY #8599)

Kansas Registration No. 2-10064)

Case No. 20-018

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and CVS Pharmacy #8599 located at 5170 Roe Blvd., Prairie Village, Kansas ("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, Brian J. Convery, Sr. Legal Counsel 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 2-10064 ("Kansas Registration"). At all times relevant hereto, the Respondent has held a current registration to operate a pharmacy at 5170 Roe Blvd., Prairie Village, Kansas 66205 ("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.

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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 January 23, 2020 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 that the Respondent did not have reports of Continuous Quality Improvement Program meetings for the last quarter of 2017 and all four quarters of 2018 and 2019 in violation of the requirements of K.A.R. 68-19-1.

C. The Board's Inspector also determined that, in violation of K.A.R. 68-7-12b no Kansas Dispensing Incident Report was prepared for reportable incidents that occurred in 2018 and 2019 or the related Kansas Dispensing Incident Reports failed, in various respects, to contain all the information required by K.A.R. 68-7-12b and were therefore in violation of that regulation.

D. As a result of a 2017 inspection of the Respondent by a Board Inspector it was noted that Respondent was not in compliance with the requirements of Board's regulations for a Continuous Quality Improvement Program.

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 Four Thousand Dollars (\$4,000.00).

B. PROBATION. Respondent's Kansas Registration shall be on probation status for a period of 24 months from the effective date of the Consent Order contemplated hereby ("Probation Period"). During the Probation Period the Respondent shall provide to the Board each completed report of a quarterly Continuous Quality Improvement Program meeting within 10 business days of the date of each such meeting.

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

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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 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.

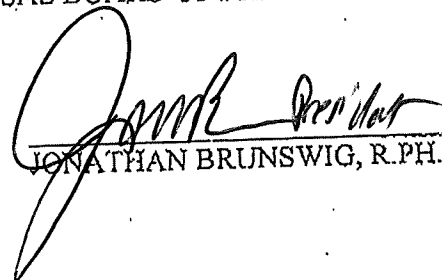
17. This Stipulation and Consent Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

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 Blas 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 10th day of December, 2020.

KANSAS BOARD OF PHARMACY


By:




JONATHAN BRUNSWIG, R.P.H., President

AGREED AND APPROVED BY:

CVS Pharmacy #8599
5170 Roe Blvd.
Prairie Village, KS 66205

By: 

08/31/20
Date



Dr. Terica Gatewood
Investigation Member

11/23/20
Date


Respondent's Attorney's Name & Address

08/31/20
Date

Brian J. Convery, Sr. Legal Counsel
CVS Health - 200 Campus Drive, Suite 310, Florham Park, NJ 07932


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

09/29/2020
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 10th day of December, 2020 addressed to:

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

CVS Pharmacy #8599
c/o Joseph Tarwater, R.Ph., Pharmacist-in-Charge
5170 Roe Blvd.
Prairie Village, KS 66205



Representative of the
KANSAS BOARD OF PHARMACY