

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
OMNICARE OF WICHITA) Case No. 18-060
Kansas Registration No. 2-10356)

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Omnicare of Wichita located at 8200 East 34th Street North, Wichita, Kansas 67226 ("Respondent") as follows:

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

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 2-10356 ("Kansas Registration"). At all times relevant hereto, the Respondent has held a current registration to operate a pharmacy at 8200 E. 34th Street North, Wichita, Kansas 67226 (the "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 February 12, 2018 Patient PD was transferred from Kansas Medical Center in Andover (“Hospital”) to Victoria Falls Skilled Nursing in Andover, a long-term care facility (“Facility”).

B. Patient PD had been a patient of Respondent since prior to Patient PD entering the Hospital. Patient PD’s medication profile history maintained by Respondent for the period prior to her entering the Facility showed prescriptions for 10 Units Tresiba once daily.

C. Upon Patient PD’s entry into the Facility, Respondent received a faxed prescription for Patient PD for 12 Units Tresiba once daily. An employee of Respondent filled the prescription for 112 Units Tresiba once daily. Respondent’s Pharmacist who verified the filled prescription, which was a very high dosage, did not review the faxed prescription and did not review any prior medication profile record for Patient PD. Respondent, pursuant to its existing procedures, did not include Patient PD’s pre-Facility medication profile record when it created a new computer record for her upon her entering the Facility. Therefore, when the verifying Pharmacist reviewed the medication profile record for Patient PD’s when she entered the Facility the medication profile record did not contain all of the medication history Respondent had for patient for the period prior to her entering the Facility, including the prior prescriptions for Tresiba. Had that prior medication history been included in the new computer record for Patient PD upon her entering the Facility, the verifying Pharmacist could have noticed that the dosage was far in excess of what the patient had been prescribed in the past and the Reportable Incident might have been avoided.

D. The filling of Patient's prescription as 112 Units Tresiba once daily was a "reportable incident" as that term is defined in K.A.R. 68-7-12b ("Reportable Incident"). Patient PD was given 112 Units of Tresiba one time a day from February 12, 2018 until she was found unresponsive on February 17, 2018. Respondent's pharmacy personnel became aware of the Reportable Incident on February 19, 2018.

E. On March 22, 2018, the Board's Inspector ("Inspector") spoke with the Pharmacist-in-Charge ("PIC") of Respondent about the Reportable Incident. Respondent's PIC told the Inspector that he had electronically created an Incident Report that was electronically transmitted to Respondent's home office and that it was not available in the Respondent Pharmacy. The Inspector returned to the Respondent Pharmacy April 2, 2018 and was told by the PIC that the electronic Incident Report he had originally created was still not available in the Respondent Pharmacy or available for the Inspector.

F. K.S.A. 65-1642(c)(1) requires a pharmacy to maintain a medication profile record system for persons for whom prescriptions are dispensed. K.S.A. 65-1642(c)(2) requires that upon receipt of a prescription a pharmacist must review the patient's medication profile record before dispensing. K.S.A. 65-1642(c)(3) requires that each medication profile record be maintained for a period of not less than 5 years from the date of last entry. K.A.R. 68-7-10(b)(3)(D) requires that pharmacy based drug distribution systems for long-term care facilities must have a patient medication profile record system maintained for each patient by the supplying pharmacy.

G. K.A.R. 68-7-12b(c) requires that an Incident Report be created as soon as possible after discovery of a Reportable Incident and that the Incident Report be "maintained in the

pharmacy for at least five years in a manner so that the report can be provided to the board or its representative within three business days, upon request.”

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 in the amount of Five Thousand Dollars (\$5,000.00).

B. PROBATION. Respondent’s Kansas Registration shall be on probation status for a period of two (2) years from the effective date of the Consent Order contemplated hereby (“Probation Period”). As soon as practical during the Probation Period, Respondent shall comply with the following requirements:

i. Review and update its Policies and Procedures regarding patient profile review and include as part of the policy that all of its employees be trained on the policies.

ii. Subscribe to ISMP Long Term Care Advise-ERR and document that all pharmacists that provide services to Omnicare of Wichita have read each issue within 15 days of each publication.

iii. Create a policy requiring all intake personnel to link previous patient profile information with a new patient record created when admitting a patient and include as part of the policy that all intake personnel be appropriately trained on the policy.

C. 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:

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;

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 Final 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 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 13 day of September, 2018.

KANSAS BOARD OF PHARMACY

By:


DR. JOHN WORDEN, President

AGREED AND APPROVED BY:

Omnicare of Wichita
8200 East 34th Street North
Wichita, KS 67226

By: Thomas M. Bouquet

9-7-18

Date

Chad Ullom

Chad Ullom, R.Ph.
Investigation Member

9/13/18

Date

Respondent's Attorney's Name & Address

Date

Randall J. Forbes

Randall J. Forbes, KS#09089 MO#64335
FRIEDEN, UNREIN & FORBES, LLP
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09/11/2018

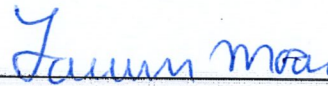
Date

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 14 day of September, 2018 addressed to:

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

Omnicare of Wichita
Attn.: Aaron Befort, R.Ph, Pharmacist-in-Charge
8200 East 34th Street North
Wichita, KS 67226



Representative of the
KANSAS BOARD OF PHARMACY