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KANSAS STATE
Board of Pharmacy

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
Price Chopper Pharmacy #249) Case No.: 11-40
22210 West 66th St.)
Shawnee, Kansas 66226,)
Registration Number 2-10165.)

**PETITION AND NOTICE OF INTENT TO
ASSESS A CIVIL FINES IN THE SUM OF \$1,000.00**

COMES NOW, the Kansas Board of Pharmacy (“Board”) and reviews the file on Price Chopper Pharmacy #249, of Shawnee, Kansas (“Registrant” or “Defendant”).

THEREUPON, being duly advised in the matter, the Board finds that:

GENERAL

1. The Board is charged with the administration of the Kansas Pharmacy Act (K.S.A. 65-1626, *et seq*) and with the enforcement of the rules and regulations promulgated thereunder (K.A.R. 68-1-1a *et seq*). Further, the Board is authorized to initiate proceedings to assess civil fines for violations of the pharmacy act of the State of Kansas pursuant to K.S.A. 65-1658.

2. Pursuant to laws and regulations pertaining to the pharmacy act of the State of Kansas, the Board is authorized to conduct hearings, summary proceedings, and emergency proceedings under the Kansas Administrative Procedure Act, K.S.A 77-501 *et seq*.

LAWS PERTAINING TO THE REGULATION OF PHARMACIES

3. K.S.A. 65-1643(a) provides in pertinent part that: "It shall be unlawful (a) for any person to operate, maintain, open or establish any pharmacy within this state without first having obtained a registration from the Board. See also K.S.A. 65-1643b(a).

4. K.S.A. 65-1626(aa) provides that a "'Person' means individual, corporation, government, governmental subdivision, or agency, partnership, association or any other legal entity."

5. K.S.A. 65-1627(e)(1) provides "The board may revoke, suspend, place in a probationary status or deny a renewal of the registration of a pharmacy upon 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."

6. K.A.R. 68-7-12b provides that:

... (c) As soon as possible after discovery of the incident, the pharmacist shall prepare a report containing the following information:

- (1) The name, address, age and phone number of any complainant, if available;
- (2) The name of each pharmacy employee and the license number of each licensee involved;
- (3) The date of the incident and the date of the report;
- (4) A pharmacist's description of the incident;
- (5) The prescriber's name and whether or not the prescriber was contacted; and
- (6) The signatures of all pharmacy employees involved in the incident.

....

7. K.A.R. 68-19-1 provides that:

Each pharmacy's continuous quality improvement program shall meet the following 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; and
 - (3) A description of the steps taken or to be taken to prevent recurrence of each incident reviewed.

8. K.S.A. 65-1658 provides that "The state board of pharmacy, in addition to any other penalty prescribed under the pharmacy act of the state of Kansas, may assess a civil fine, after notice and an opportunity to be heard in accordance with the Kansas administrative procedure act, against any licensee or registrant under subsections (a), (c), (d) and (e) of K.S.A. 65-1627, and amendments thereto, for violation of the pharmacy act of the state of Kansas or rules and regulations of the state board of pharmacy adopted under the pharmacy act of the state of Kansas or for violation of the uniform controlled substances act or rules and regulations of the state board of pharmacy adopted under the uniform controlled substances act, in an amount not to exceed \$5,000 for each violation.

9. K.S.A. 65-1627(g) provides that "Orders under this section, and proceedings thereon, shall be subject to the provisions of the Kansas administrative procedures act."

PROPOSED FINDINGS OF FACT

10. The Board has previously issued Respondent Registration No. 2-10165 which entitles Respondent to function as a pharmacy in the State of Kansas ("Respondent's Registration").

11. It has come to the Board's investigative member that on or about April 25, 2011, Ms. Wilma Guilbeau (the "Patient") picked her medication up through Respondent's drive-through window.
12. The Patient's prescription was for Metoprolol 200 mg.
13. The Patient noticed that the pill looked different from her usual medication, but proceeded to take the medication.
14. The Patient returned to Respondent to inquire about the difference in the medication, and was told that it was likely that she (the Patient) had been given Metoprolol 100 mg instead of Metoprolol 200 mg.
15. The Patient was provided a new bottle of Metoprolol 200 mg.
16. The Patient also complained that approximately two (2) months earlier, she had been given another patient's medication rather than her own.
17. Respondent called the Patient within five (5) minutes of her departure and requested that she return so that she could be given the correct medication.
18. Respondent's pharmacist-in-charge prepared incident reports for both incidents involving the Patient.
19. Respondent's incident report for the Patient receiving the wrong level of medication is complete.
20. Respondent has no documentation that the incident wherein the Patient received the wrong level of medication was discussed at the subsequent continuous quality assurance meeting.
21. Respondent's incident report for the Patient receiving another patient's medication is incomplete.

22. Respondent has no documentation that the incident wherein the Patient received the wrong patient's medication was discussed at the subsequent continuous quality assurance meeting.

PROPOSED CONCLUSIONS OF LAW

23. Respondent is a pharmacy registered by the Board with the registration No. 2-10165.

24. The Board has jurisdiction over the above captioned proceedings.

25. On or about April 25, 2011, Ms. Wilma Guilbeau (the "Patient") picked her medication up through Respondent's drive-through window.

26. The Patient's prescription was for Metoprolol 200 mg.

27. The Patient noticed that the pill looked different from her usual medication, but proceeded to take the medication.

28. The Patient returned to Respondent to inquire about the difference in the medication, and was told that it was likely that she (the Patient) had been given Metoprolol 100 mg instead of Metoprolol 200 mg.

29. The Patient was provided a new bottle of Metoprolol 200 mg.

30. The Patient also complained that approximately two (2) months earlier, she had been given another patient's medication rather than her own.

31. Respondent called the Patient within five (5) minutes of her departure and requested that she return so that she could be given the correct medication.

32. Respondent's pharmacist-in-charge prepared incident reports for both incidents involving the Patient.

33. Respondent's incident report for the Patient receiving the wrong level of medication is complete in compliance with K.A.R. 68-7-12b(c).

34. Respondent has no documentation that the incident wherein the Patient received the wrong level of medication was discussed at the subsequent continuous quality assurance meeting, in violation of K.A.R. 68-19-1.

35. Respondent's incident report for the Patient receiving another patient's medication is incomplete in violation of K.A.R. 68-7-12b(c).

36. Respondent has no documentation that the incident wherein the Patient received the wrong patient's medication was discussed at the subsequent continuous quality assurance meeting, in violation of K.A.R. 68-19-1.

37. Violations of K.A.R. 68-19-1 and 68-7-12b(c) are governed by K.S.A. §§ 65-1658 and 65-1657.

38. Respondent is fined in the amount of \$500.00 for its violations of K.A.R. 68-19-1, and \$500.00 for its violation of 68-7-12b(c), pursuant to K.S.A. §§ 65-1658 and 65-1657.

WHEREFORE, for the reasons stated above, petition and notice is hereby given of the Board's intent to assess the Registrant a total \$1,000.00 civil fine and to appear at the Board's next meeting for violation of the Kansas pharmacy act.

RIGHT TO HEARING

Registrant may request a hearing in accordance with the provisions of the Kansas administrative procedures act. A written request for a hearing must be filed within fifteen (15) days of service of this petition and notice as prescribed by K.S.A. 77-542(a). The request must be submitted to the following person at the address shown. Failure to submit a timely request

will result in a waiver of the Registrant's right to a hearing, and this petition and notice will become a final order assessing a \$1,000.00 civil fine.

Debra Billingsley
Executive Secretary
Kansas State Board of Pharmacy
800 SW Jackson Street, Suite 1414
Topeka, KS 66612-1230

IT IS SO ORDERED.

Dated this 18th day of August, 2011.



Investigative Member
Kansas State Board of Pharmacy
800 SW Jackson Street-Suite 1414
Topeka, KS 66612-1230
(785)296-4056
(785)296-8420-FAX

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August, 2011, I deposited a true and correct copy of the above and foregoing "Summary Order and Notice of Intent to Assess Civil Fines in the Amount of \$1,000" in the United States Mail, postage prepaid, and addressed to:

Price Chopper Pharmacy #249
22210 West 66th St.
Shawnee, KS 66226.



Holly L. Fisher, Compliance Counsel