

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
)
David Carter)
)
License No. 1-13008)

Case No. 24-233

**ORDER DENYING REQUEST FOR HEARING AND
PETITION FOR RECONSIDERATION**

On September 11, 2024, the Kansas Board of Pharmacy, through its Executive Secretary, considered Respondent’s Request for Hearing or, in the alternative, Petition for Reconsideration of the Summary Order entered July 31, 2024, which became final and effective on August 19, 2024, said Request being filed on August 28, 2024. Respondent’s Request for Hearing was out of time and the Summary Order was already final and effective, thus the Request for Hearing is denied. Respondent received notice of the Board Order prior to the effective date on August 19, 2024 (Exhibit A). Pursuant to K.S.A. 77-529(a) and (b), the Kansas Board of Pharmacy denies Respondent’s Petition for Reconsideration and determines not to reconsider the Summary Order in this matter.

As such, the Summary Order of the Board entered on July 31, 2024, shall remain in effect, including all findings and conclusions therein and the order requiring Respondent to pay a fine to the Board within 30 days of the date of this Order.

Within the time limits established in K.S.A. 77-613, either party may seek judicial review pursuant to said statute. The agency officer designated to receive services of a petition for judicial review is:

Alexandra Blasi, Executive Secretary
Kansas Board of Pharmacy
800 SW Jackson St., Ste. 1414
Topeka, KS 66612-1244

IT IS SO ORDERED.

9/11/2024

Date

Alexandra Blasi

Alexandra Blasi, Executive Secretary
Kansas Board of Pharmacy

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2024, I certify that a copy of the foregoing was placed in building mail, the same to be sent via United States first class mail, postage prepaid, addressed to:

David Carter
PO Box 92
Chetopa KS 67336-0092

Jerrick Irby
Bryan Lynch
Attorneys for Respondent
Hall, Estill, Harwick, Gable, Golden & Nelson PC
100 N Broadway, Suite 2900
Oklahoma City, OK 73102-8865

And by email to

david@prorx.net
jirby@hallestill.com
blynch@hallestill.com



Kansas Board of Pharmacy

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
) Case No. 24-233
DAVID CARTER, R.Ph.)
Kansas License No. 1-13008)
_____)

SUMMARY ORDER

NOW on this 31st day of July, 2024, comes before the Kansas Board of Pharmacy (“Kansas Board”), through its Investigation Member, the matter of David Carter (“Licensee”).

Pursuant to the authority granted to the Board by the Kansas Pharmacy Act, K.S.A. 65-1625, *et seq* (“Pharmacy Act”), and in accordance with the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*, the Board’s Investigation Member enters this Summary Order in the above-captioned matter. After reviewing the investigative materials, the Board’s records and being otherwise duly advised in the premises, the Investigation Member makes the following findings, conclusions, and order:

FINDINGS OF FACT

For purposes of this Order, the Board’s Investigative Member makes the following findings of fact:

1. The Kansas Board has previously issued Licensee a Kansas Pharmacist License #1-13008 to engage in the practice of pharmacy in the State of Kansas.
2. During all times relevant hereto, Licensee was the owner and Pharmacist-in-Charge (“PIC”) at Rigg’s Drug Store (“Pharmacy”), License Number 2-10322, located at 308 Maple Street, Chetopa, Kansas 67336.

Matter of David Carter, R.Ph., No. 24-233 (Kan. Bd. of Pharmacy)

SUMMARY ORDER

Page 1 of 9

3. On June 5, 2024, the Board conducted a routine inspection at the Pharmacy which revealed numerous deficiencies in Licensee's compliance with the Pharmacy Act of the State of Kansas, including the following:

A. Upon request for Continuous Quality Improvement ("CQI") Program Reports, Licensee provided a three-ring binder which contained a July 26, 2022 report as the most recent CQI meeting report, although an Incident Report form was produced for an incident occurring October 3, 2022.

B. The CQI binder contained an incomplete CQI report dated October __, 2022 containing six (6) pharmacy employee names with license/registration numbers listed, but no incidents or Board newsletter discussions were listed.

C. Licensee produced an Incident Report dated October 3, 2022, which was missing Licensee's license number and signatures of the Licensee and technician.

D. Other than the October 3, 2022 Incident Report, the only other Incident Report available for review was from 2017 and it was missing the Licensee's license number and signature.

E. Upon inquiry, Licensee indicated an October 3, 2022 incident was the last incident which had been reported and newer CQI reports should exist, but Licensee was unable to locate them. Licensee called his wife, Edwina Carter (#14-00014), to come to the Pharmacy to locate the missing CQI Reports.

F. On June 5, 2024, after considerable delay, Licensee added seven (7) CQI Reports to the CQI binder which were signed by Licensee with dates ranging from October 28, 2022 through June 5, 2024 (the date of the inspection).

G. None of the seven (7) newly added CQI Reports included the Date of the Report, the Date of the Meeting or the Facility name as required.

H. None of the seven (7) newly added CQI Reports contained any incidents reviewed or Board newsletters reviewed as required.

I. Six (6) of the seven (7) newly added CQI Reports listed topics discussed as Tornado Drill (10/22), Hand Sanitizer (2/23), Talked about CBD Oil (6/23), Safety Drill (9/23), Time My Meds (11/23) and Fire Drill (2/24). The report signed and dated June 5, 2024 (the date of the inspection) did not include a topic discussed as required.

J. The newly produced October 28, 2022 CQI Meeting Report added to the binder on June 5, 2024 did not include discussion of the October 3, 2022 Incident Report as required.

K. The June 21, 2023 CQI Meeting Report added to the binder on June 5, 2024 included the name and registration of SW (#24-121138) whose registration was not approved until August 22, 2023.

L. The June 21, 2023 and September 7, 2023 CQI Meeting Reports added to the binder on June 5, 2024 included the name and registration number of AV (#24-121502) whose registration was not approved until September 20, 2023.

M. Six (6) of the seven (7) newly added CQI Meeting Reports contained the former registration number for AJ, whose registration number changed to a 14 registration effective November 1, 2022.

N. The November 23, 2023 CQI Meeting Report added to the binder on June 5, 2024 was signed as having occurred on Thanksgiving Day.

O. The seven (7) newly added CQI Meeting Reports added to the binder on June 5, 2024 by Licensee, appeared to intentionally falsify or alter the Pharmacy's records.

P. Prior Board inspections in 2022 and 2023 included findings that Licensee needed improvement in CQI meeting frequency and timely documentation, including documented review of Board newsletters.

Q. Licensee's annual controlled substance inventory included a Schedule II inventory dated September 16, 2023 and a Schedule III-V inventory printed on September 16, 2023, but hand-dated September 27, 2023. Drugs of concern were not included, open or close of business of the inspections was not documented and the license/registration numbers of those involved in the inventory were not documented as required.

R. Licensee's immunization protocol was not available for viewing during the inspection and it was later received from Licensee via email. The protocol received was electronically signed by Licensee on June 5, 2024, the date of the inspection.

S. Licensee's compounding records provided on request were presented in a binder with formula worksheets from 2023. When newer compounding records were requested, Licensee indicated they didn't do much compounding and he did not produce any compounding reports for 2024. The inspector observed prepared compounds labeled with handwritten labels on Licensee's shelves that were prepared in 2024. The inspector later located a stack of incomplete 2024 formula worksheets in Licensee's compounding area.

T. The inspector found an unlabeled syringe of cream in a bin with a label for Progesterone 200mg/1ml dated May 31, 2024, which did not have a compounding record.

Matter of David Carter, R.Ph., No. 24-233 (Kan. Bd. of Pharmacy)

SUMMARY ORDER

Page 4 of 9

U. The inspector found compounds on Licensee's shelves which had expired May, 2022; August 9, 2023; September 30, 2023; and January 20, 2024.

CONCLUSIONS OF LAW

4. Pursuant to K.S.A. 65-1627(a)(8), the Kansas Board may revoke, suspend or place in probationary status the license of any pharmacist upon a finding that the licensee has violated any provision of the pharmacy act of the State of Kansas or any rule and regulation adopted by the Board pursuant to the provisions of such Pharmacy Act.

5. Pursuant to K.S.A. 65-1627(a)(3) and K.S.A. 65-1626(vvv)(4), the Kansas Board may revoke, suspend or place in probationary status the license of any pharmacist found by the Board to be guilty of unprofessional conduct, including intentionally falsifying or altering records or prescriptions.

6. K.A.R. 68-19-1 requires that as part of a pharmacy's Continuous Quality Improvement ("CQI) Program, among other things, the pharmacy must meet at least quarterly to discuss the previous quarter's Incident Reports and review each Board newsletter published since the last CQI meeting. The PIC must attend such meetings and a written report of the meeting must be made and maintained. Licensee repeatedly failed to comply with the requirements of K.A.R. 68-19-1 in violation of the Pharmacy Act.

7. K.A.R. 68-7-12 states the PIC is responsible for accurate reporting of incidents in accordance with K.A.R. 68-7-12b. The Kansas Dispensing Incident Reports created by Licensee in 2017 and 2022 failed to contain all the information required by K.A.R. 68-7-12b and were therefore in violation of the Pharmacy Act.

8. K.A.R. 68-20-16(b) requires controlled substance inventories and drugs of concern to be inventoried every year on the same calendar date and K.A.R. 68-20-16(e) required each

Matter of David Carter, R.Ph., No. 24-233 (Kan. Bd. of Pharmacy)

SUMMARY ORDER

Page 5 of 9

inventory to include the license or registration number of each individual participating in the inventory and documentation whether the inventory was taken before the opening of business or after the close of business. Licensee's actions set forth in the above findings of fact establish that Licensee failed to comply with the requirements of K.A.R. 68-20-16 in violation of the Pharmacy Act.

9. K.S.A. 65-1635a required Licensee to have a vaccination protocol. Licensee's actions set forth in the above findings of fact establish that Licensee failed to comply with K.S.A. 65-1635a in violation of the Pharmacy Act.

10. K.A.R. 68-13-3(m) requires certain compounding records and specific documentation for each nonsterile preparation. Licensee's actions set forth in the above findings of fact establish that Licensee failed to comply with K.A.R. 68-13-3(m) in violation of the Pharmacy Act.

11. Licensee's actions set forth in the above findings of fact constitutes unprofessional conduct and violations of the Pharmacy Act which are the basis to discipline Licensee.

ORDER

Based upon the foregoing findings of fact and conclusions of law, Licensee's license #1-13008 is hereby assessed an administrative fine in the amount of Seven Thousand Dollars (\$7,000.00); Licensee is required to pass three (3) hours of ACPE-approved continuing education in ethics and three (3) hours of ACPE-approved continuing education in compounding, none of which can be used for license renewal; and Licensee's License is placed on PROBATION for a period of two (2) years from the date of this Summary Order with the following terms and conditions of probation:

Matter of David Carter, R.Ph., No. 24-233 (Kan. Bd. of Pharmacy)

SUMMARY ORDER

Page 6 of 9

- i. Licensee shall submit a copy of each CQI Meeting Report to the Board within seven (7) days of each CQI meeting;
- ii. Licensee shall submit a copy of each Incident Report to the Board within seven (7) days of each Incident Report;
- iii. Licensee shall notify the Board of any arrest or criminal charge within 10 days of the date of the arrest or charge;
- iv. Licensee shall notify the Board of any change in employment within 10 days of the change;
- v. Licensee shall fully comply with the Pharmacy Act of the state of Kansas, the Board's rules and regulations and all state and federal laws relating to Kansas pharmacies; and
- vi. If at any time after the date of this Summary Order and before the expiration of the period of probation, Licensee ceases to keep his Kansas License current or fails to comply with the terms of this Summary Order or probationary terms, any and all such periods of time shall be excluded in computing and determining the expiration date of the two (2) years of probation prescribed herein.

NOTICES

The Licensee is hereby notified as follows:

12. The Licensee 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 fifteen (15) days after service of this order.

13. If a hearing is not requested as described above, this Summary Order subjecting Licensee's license to probation as set forth herein shall become a final order of the Kansas Board, effective upon the expiration of the time to request a hearing.

14. Within fifteen (15) days after entry of a final agency order, either party may file a petition for reconsideration pursuant to K.S.A. 77-529.

Matter of David Carter, R.Ph., No. 24-233 (Kan. Bd. of Pharmacy)

SUMMARY ORDER

Page 7 of 9


15. Within the time limits established in K.S.A. 77-613, either party may seek judicial review of a final agency order, pursuant to said statute. The agency officer designated to receive service of a petition for judicial review is:

Alexandra Blasi, JD, MBA
Executive Secretary
Kansas Board of Pharmacy
800 SW Jackson, Suite 1414
Topeka, KS 66612

IT IS SO ORDERED.

Jul 30, 2024

Date



Tiffany Strohmeyer (Jul 30, 2024 17:50 CDT)

Tiffany Strohmeyer, PharmD
Investigation Member
Kansas Board of Pharmacy

CERTIFICATE OF SERVICE

I hereby certify that I did, on the 31st day of ~~August~~^{July}, 2024, deposit in the United States Mail, postage prepaid, a copy of the foregoing Summary Order, properly addressed to the following:

David Carter
330 Locust
Chetopa, KS 67336



Representative of the
Kansas Board of Pharmacy