

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of)
) Case No. 23-314
BARNEY'S PHARMACY)
Kansas Registration No. 2-08279)

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Barney's Pharmacy ("Respondent") as follows:

1. The Board is represented herein by its attorney, Brenda L. Head of Frieden & Forbes, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by its attorney, Kelli J. Stevens, Stevens Law, LLC, 15621 West 87th Street Parkway, Box #157, Lenexa, Kansas 66219.

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 2-08279 ("Kansas Registration"). At all times relevant hereto, the Respondent has held a current registration to operate a pharmacy in the State of Kansas.

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 Kansas Pharmacy Act, K.S.A. 65-1626, *et seq.* and the Board's regulations which would justify the revocation or imposition of other disciplinary action against

its Kansas Registration under the provisions of K.S.A. 65-1627(e)(1) and (e)(7) and the assessment of an appropriate fine against Respondent under the provisions of K.S.A. 65-1658.

5. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board, and upon motion duly made, seconded and passed, the Board finds:

A. During the period from at least 2020 to the present, Respondent's Pharmacist-in-Charge ("PIC") was Owner and Pharmacist, George Saghbene of Barney's Pharmacy located at 3108 West Central, Wichita, Kansas.

B. K.S.A. 65-1637(g) requires all prescriptions to be filled or refilled in strict conformity with any directions of the prescriber. K.S.A. 65-1626(III)(3) defines professional incompetency as a pattern of pharmacy practice or other behavior that demonstrates a manifest incapacity or incompetence to practice pharmacy. Respondent's PIC repeatedly failed to comply with these requirements in violation of the statute and established the requisite pattern of pharmacy practice which demonstrates an incompetence to practice pharmacy on the following mis-filled prescriptions:

i. On May 2, 2023, Rx #1908326 was prescribed for 12.5 mg and Respondent's PIC mis-filled it at 25 mg.

ii. On April 18, 2023, Rx #1882731 was prescribed for Levothyroxine Sodium 75 MCG and Respondent's PIC mis-filled it with Meloxican 15.

iii. On December 2, 2022, Rx #1894095 was prescribed for Buprenorphine 8 mg and Respondent's PIC mis-filled it with Buprenorphine/Naloxone 8/2.

iv. On November 8, 2022, Rx #1881242 was prescribed for 80 mg and Respondent's PIC mis-filled it with 20 mg.

v. On July 8, 2022, Rx #1882241 was prescribed at 40 mg and Respondent's PIC mis-filled it with 20 mg.

vi. On or about October 12, 2022, Patient AN was prescribed Clonazepam 1 mg and Respondent's PIC mis-filled it with .5 mg.

vii. On December 2, 2022, Rx #1895292 was mis-labeled by Respondent's PIC with the incorrect drug.

viii. On June 19, 2023, Rx #1912463 was prescribed at 30 mg and Respondent's PIC mis-filled it with 10 mg.

ix. On June 15, 2023, Rx #1912156 was prescribed Fluoxetine 40 mg and Respondent's PIC mis-filled it with Trazadone 100 mg.

x. On May 20, 2023, Rx #1893867 was prescribed at 100 g and Respondent's PIC mis-filled it with 200 g.

xi. On March 17, 2023, Rx #1904169 was prescribed at Norco 10 mg-325 mg and Respondent's PIC mis-filled it with 7.5 mg-325 mg.

C. Pursuant to K.A.R. 68-7-12, the Respondent's PIC is responsible for accurate reporting of incidents in accordance with K.A.R. 68-7-12b. The Kansas Dispensing Incident Reports created by Respondent's PIC 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. Specifically, the following Incident Reports prepared by Respondent's PIC were deficient or were not prepared by Respondent's PIC:

i. Rx #1908326 reported May 3, 2023, was unsigned and did not contain the Pharmacist's license number.

- ii. Rx #1882731 reported April 25, 2023, was unsigned and did not contain the Pharmacist's license number.
- iii. Rx #1894095 reported December 2, 2022, was unsigned and did not contain the Pharmacist's license number.
- iv. Rx #1881242 reported November 8, 2022, was unsigned and did not contain the Pharmacist's license number.
- v. Rx #1882241 reported November 2, 2022, was unsigned and did not contain the Pharmacist's license number.
- vi. Rx #1865935 reported July 9, 2022, was unsigned and did not contain the Pharmacist's license number.
- vii. A Trelegy prescription reported October 21, 2022, did not contain the required patient information, was unsigned and did not contain the Pharmacist's license number.
- viii. A Clonazepam prescription reported October 12, 2022, did not contain the required patient information, was unsigned and did not contain the Pharmacist's license number.
- ix. Rx #1912156 reported June 21, 2023, did not contain the Pharmacist's license number.
- x. Rx #1893067 reported June 28, 2023, was unsigned and did not contain the Pharmacist's license number.
- xi. On March 17, 2023, Rx #1904169 was mis-filled and Respondent's PIC failed to complete an Incident Report.

xii. From June 22, 2022, to May 20, 2023, Patient LN was twice prescribed the incorrect strength of her prescription and Respondent's PIC failed to complete Incident Reports.

xiii. From June 22, 2022, to May 9, 2023, Patient WF was prescribed the incorrect strength of his prescription and Respondent's PIC failed to complete Incident Reports.

xiv. On December 2, 2022, Rx #1895292 was mis-labeled by Respondent's PIC and Respondent's PIC failed to complete an Incident Report.

D. K.A.R. 68-19-1 requires, that as part of a pharmacy's required Continuous Quality Improvement ("CQI") Program, among other things, the pharmacy must meet at least quarterly to discuss the previous quarters Incident Reports. The PIC must attend such meetings and a written report of the meeting must be made and maintained.

E. The Self-Inspection Report executed by the Respondent's PIC on December 15, 2020, represented Respondent's Kansas Dispensing Incident Reports ("Incident Reports") were complete and the CQI Program was being completed as required.

F. Respondent could not produce reports of the CQI Program meetings, which had been uploaded in violation of the regulation. Respondent could not produce quarterly CQI Program Reports between the period of time of those uploaded in 2020 and June 4, 2023, and the June 5, 2023 report was deficient, all in violation of the requirements of K.A.R. 68-19-1.

G. Pursuant to K.A.R. 68-7-12b, Respondent's PIC had responsibility to ensure that procedures existed requiring each pharmacist who became aware of a reportable incident to report the incident to the Respondent's PIC. Respondent's PIC was further responsible to ensure that an appropriate Incident Report was prepared and maintained in the records of the

Pharmacy. As described herein, Respondent's PIC and Respondent failed to fulfill these obligations.

H. Pursuant to K.A.R. 68-7-12(a), Respondent's PIC was responsible to develop, supervise and coordinate all pharmaceutical services carried on in the Pharmacy to ensure compliance with the Act and the Board's regulations.

Upon motion duly made, seconded and passed, the Board finds and concludes that Respondent's conduct, as described above, violates the Act and such conduct warrants the imposition of appropriate disciplinary action against Respondent's Kansas Registration pursuant to K.S.A. 65-1627(e)(1) and (e)(7).

6. 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 10 days of the effective date of this Stipulation and Consent Order contemplated hereby, Respondent shall pay to the Board an administrative fine in the amount of One Thousand Dollars (\$1,000.00).

B. OTHER TERMS AND CONDITIONS. For a period of eighteen (18) months from the effective date of this Stipulation and Consent Order, Respondent will be entitled to operate as a Kansas pharmacy pursuant to Chapter 65, Article 16 of the Kansas Statutes Annotated provided it adheres to the following terms and conditions:

i. Respondent shall provide the Board copies of all Incident Reports within three (3) days of completion.

ii. Respondent shall provide the Board copies of all Continuous Quality Improvement reports and documents within three (3) days of completion.

iii. If, at any time after the effective date of this Stipulation and Consent Order and before expiration of the period of its terms and conditions, Respondent ceases to keep its Kansas Registration current or fails to keep the Board timely advised of all Incident Reports and CQI Reports, any and all such periods of time shall be excluded in computing and determining the expiration date of the eighteen (18) months time period prescribed herein.

iv. Respondent shall pay all required fees for registration to the Board and shall renew its registration in a timely manner as required by law.

v. Respondent shall comply with all provisions of the Kansas Pharmacy Act, K.S.A. 65-1626 *et seq.*, and the rules and regulations of the Board applicable to registered pharmacies and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. For purposes of this subsection, “state” includes the State of Kansas and all other states and territories of the United States.

vi. Respondent shall make itself available for personal interviews to be conducted by any member of the Board or the staff of the Kansas State Board of Pharmacy. These interviews will be at the Board’s discretion and may occur periodically during the period of its terms and conditions set forth herein. Respondent will be notified and given sufficient time to arrange these interviews.

vii. Respondent’s failure to comply with any provision set forth in this Stipulation and Consent Order constitutes a violation of the terms or conditions of this Order.

viii. Respondent shall provide all current and future PIC’s a copy of this Stipulation and Consent Order within five (5) business days of the effective date hereof and/or the beginning date of the PIC’s employment.

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;

7. Respondent agrees that all information in the possession of the Board's Investigation Member or Investigation Committee, 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, with or without the presence of the Respondent or its attorney. In the event that this Stipulation and Consent Order is 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.

8. The stipulations contained herein shall not become binding until this Stipulation and Consent Order is approved and entered as a Final Order 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.

9. 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 as a final order of the Board. 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.

10. 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.

11. 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.

12. The Respondent acknowledges that it enters into this Stipulation and Consent Order freely and voluntarily after consultation with or an opportunity to consult with counsel of its choosing. The Respondent further acknowledges that it has read this Stipulation and Consent

Order in its entirety, that it understands its legal consequences and that it agrees that none of its terms are unconscionable, arbitrary or capricious.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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,

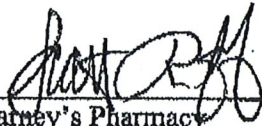
JD, MBA, its Executive Secretary at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.

ENTERED AND EFFECTIVE this 17th day of July, 2024.

KANSAS BOARD OF PHARMACY

By: 
TERICA GATEWOOD, PHARMD
President


AGREED AND APPROVED BY:



Barney's Pharmacy

5/28/24

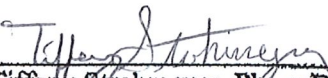
Date



Kelli J. Stevens, #16032
STEVENS LAW, LLC
15621 West 87th Street Parkway, Box #157
Lenexa, KS 66219
Respondent's Attorney

05/29/2024

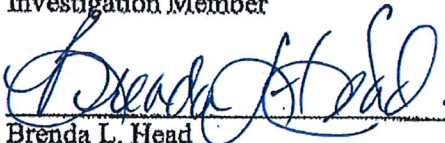
Date



Tiffany Strohmeier, PharmD
Investigation Member

July 11, 2024

Date



Brenda L. Head
FRIEDEN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604
(785) 354-1100
bhead@fllawllp.com
Counsel for the Kansas Board of Pharmacy

5/29/2024

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 17th day of July, 2024 addressed to:

Brenda L. Head
FRIEDEN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604

Barney's Pharmacy
3108 W. Central
Wichita, KS 67203

Kelli J. Stevens
STEVENS LAW, LLC
15621 West 87th Street Parkway, Box #157
Lenexa, KS 66219



Representative of the
KANSAS BOARD OF PHARMACY