

BEFORE THE KANSAS BOARD OF PHARMACY

In the Matter of

Case No. 24-006

CVS Pharmacy #17502
Kansas Registration No. 2-13222

FINAL ORDER

Decision

The Kansas Board of Pharmacy (Board) has carefully considered the evidence presented and reviewed the applicable statutes, regulations and policies, and hereby affirms the May 17, 2024, Summary Order imposing a \$13,000 fine on CVS Pharmacy #17502.

Statement of Case

This matter comes on for hearing on September 18, 2024, before the Board upon the request by CVS for a hearing to review the Summary Order imposing a \$13,000 fine on CVS Pharmacy #17502 for violating the Kansas Pharmacy Act and rules and regulations of the state Board of Pharmacy.

Appearing for the Board were: Dr. Terica Gatewood, PharmD, President; and members, Bill Walden, R.Ph; Dr. Jonathan Brunswig, PharmD; Dr. Tiffany Strohmeier, PharmD; Dr. Erick Axcell, PharmD; Dr. Andrew Truong, PharmD; and, Lucinda Noches Talbert, Public Member.

CVS Pharmacy #17502 appeared by and through Brian Convery and with counsel, David S. Mitchell, Jr., and Jacob G. Holly.¹

Brenda Head appeared as the Board's disciplinary counsel.

Alexandra Blasi (Blasi), Executive Secretary for the Board, appeared and testified. Jason Syring (Syring), Kansas Board of Pharmacy Inspector, appeared and testified. Carly Haynes (Haynes), Director of Compliance and Inspector for the Kansas Board of Pharmacy, appeared and testified. Damon Lang (Lang), CVS Pharmacist, appeared and testified. Jennifer Frey (Frey), CVS Performance Coordinator, appeared and testified.

Loren F. Snell, Jr., Administrative Law Judge, was appointed and served as the Presiding Officer over the proceedings.

¹ A Motion for Admission Pro Hac Vice was granted at the beginning of the proceedings, permitting David S. Mitchell, Jr., who is not licensed in the State of Kansas, to appear and participate in the proceedings.

Evidentiary Rulings

The Board offered Exhibits 1 through 18 for admission as evidence. CVS had no objection. Exhibits 1 through 18, as offered by the Board, were admitted. Exhibits 1, 3, 6, 7 and 8 were admitted under seal due to the protected health information contained therein.

Findings of Fact

1. The Board previously issued a Kansas Pharmacy Registration number 2-13222, for CVS Pharmacy #17502 located at 2024 N. Rock Road, Derby, Kansas. [Exhibit 13].

2. On November 22, 2023, the Board received a complaint from a patient, B.K., regarding a prescription picked up on November 6, 2023, that was mis-filled by CVS Pharmacy #17502. [Exhibit 1].

3. An investigation was opened by the Board and assigned to Jason Syring (Syring), Pharmacist and licensed Pharmacy Inspector.

4. Syring investigates complaints received by the Board.

5. Syring completed an investigation of CVS Pharmacy #17502. [Exhibit 10].

6. Syring met with Pam Maynez, Pharmacist and Pharmacist in Charge for CVS Pharmacy #17502, on two (2) separate occasions, December 13 and 14, 2023

7. B.K. was given a prescription bottle from CVS Pharmacy #17502 that had a label for patient, K.S., for Losartan/HCTZ. [Exhibit 3].

8. B.K. reported they are allergic to Losartan/HCTZ. [Exhibit 10].

9. The prescription bottle, while labeled incorrectly, was found to contain the correct medication, Atorvastatin, and not the Losartan/HCTZ listed on the label. [Exhibits 3, 7 and 8].

10. The label on the prescription bottle dispensed to B.K. identified the incorrect patient, the incorrect medication, and incorrect instructions.

11. The prescriptions for B.K. for Atorvastatin and for K.S. for Losartan/HCTZ were both filled on October 15, 2023.

12. The prescription for Losartan/HCTZ for K.S. was purchased by K.S. on October 15, 2023. [Exhibit 10].

13. The prescription for Atorvastatin for B.K. was purchased by B.K. on November 6, 2023. [Exhibit 10].

14. The prescriptions were filled by Pharmacy Technician Tammy Cuadra (Cuadra) and the fills were verified as correct by Richard Blankenship (Blankenship), a fill-in Pharmacist. Once the prescription bottle was labeled by the Pharmacy Technician, the prescription bottle was not checked again to ensure the medication in the prescription bottle matched the label on the prescription bottle. [Exhibit 10].

15. According to Lang, the virtual verification process utilized by CVS Pharmacy #17502 involves the Pharmacy Technician pulling the medications, scanning the codes, counting the medication, taking a picture of the medication, placing the counted medication in the prescription bottle, and attaching the label on the prescription bottle.

16. Lang testified that final verification involves making sure that the correct medication gets dispensed to the patient. However, the prescription bottle may be stapled to the bag at the time of final verification. If that is the case, final verification involves reviewing the medication pamphlet stapled to the bag.

17. Lang has never worked for CVS Pharmacy #17502, had no personal knowledge of the events at issue, and was not present.

18. Lang suggested that the workflow for virtual verification had not been followed.

19. Frey was not present and had no personal knowledge of the events at issue.

20. Frey testified that the workflow process requires that the label is placed on the prescription bottle before it is scanned; however, in this instance it appeared the label was scanned before being placed on the bottle, which is not how staff are trained.

Applicable Statutes, Regulations and Policies

“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 K.S.A. 65-1627(a), (c), (d), (e) and (f), 65-1643, 65-1657, 65-1663 and 65-1676, and amendments thereto, for violation of the pharmacy act of the state of Kansas, rules and regulations of the state board of pharmacy adopted under the pharmacy act of the state of Kansas or for violation of the federal or state uniform controlled substances act or rules and regulations of the state board of pharmacy adopted under the federal or state uniform controlled substances act or for violation of the federal or state food, drug and cosmetic act or any rules and regulations adopted under any such act in an amount not to exceed \$5,000 for each violation..”²

“The board may deny an application or renewal, limit, condition, revoke, suspend or place in a probationary status the registration of any pharmacy upon a finding that: (1) Such pharmacy

² K.S.A. 65-1658(e).

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.”³

“All prescriptions shall be filled or refilled in strict conformity with any directions of the prescriber.”⁴

“The confidential communications between a licensed pharmacist and the pharmacist's patient and records of prescription orders filled by the pharmacist are placed on the same basis of confidentiality as provided by law for communications between a physician and the physician's patient and records of prescriptions dispensed by a physician. Nothing in this subsection shall limit the authority of the board or other persons, as provided by law, from inspecting the book or file of prescription orders kept by a pharmacy or firm performing any duty or exercising any authority as otherwise provided by law.”⁵

“The pharmacist-in-charge shall prohibit all other pharmacy personnel from performing those judgmental functions restricted to the pharmacist. The following judgmental functions shall be performed only by a pharmacist and shall not be delegated: (1) Final verification of the accuracy of a completed compound or prescription.”⁶

“Any pharmacist may delegate nonjudgmental functions to a pharmacist intern or pharmacy technician. Each pharmacist shall conduct in-process and final checks associated with the preparation of medications, except as provided by K.A.R. 68-7-11.”⁷

“The label of each drug or device shall be typed or machine-printed and shall include the following information... (8) the brand name or corresponding generic name of the drug or device; (9) the name of the manufacturer or distributor of the drug or device, or an easily identified abbreviation of the manufacturer's or distributor's name.”⁸

Decision

CVS Pharmacy #17502 disagreed with the allegation that a prescription was miss-filled, as suggested in the Summary Order. CVS relies on the fact that while the prescription bottle was clearly mislabeled to indicate that Losartan/HCTZ was in the bottle, the correct medication for patient B.K., Atorvastatin, was actually in the prescription bottle and was properly dispensed.

The fact that patient B.K. happened to receive the correct medication does not detract from the fact that the medication was mislabeled, and the initial reaction was that the wrong prescription

³ K.S.A. 65-1627(e)(1).

⁴ K.S.A. 65-1637(g).

⁵ K.S.A. 65-1654(1).

⁶ K.A.R. 68-2-20(c).

⁷ K.A.R. 68-2-20(d).

⁸ K.A.R. 68-7-14(a).

was dispensed. Had this been a miss-fill, as it was believed prior to the investigation, and that medication had been taken by patient B.K., the effects could have been severe. This entire scenario could have been avoided if the final verification was performed by the Pharmacist, rather than the Pharmacy Technician, as is required by the applicable regulations. Whether the procedures employed by CVS Pharmacy #17502 were sufficient, as suggested by CVS Pharmacy #17502, is immaterial because on this occasion they were not, and demonstrated a manner by which the applicable regulation could be and was circumvented.

Lang provided testimony as to what constitutes final verification. Lang testified that final verification requires that the Pharmacist verify that the correct medication gets dispensed to the patient. Lang also testified that the label on the prescription bottle is part of the prescription record. Again, while in this circumstance the correct medication was fortunately dispensed and the patient reviewed the label before taking any of the medication, the incorrect label was placed on the prescription bottle, leading the patient to believe that the incorrect medication had been dispensed. Had the Pharmacist visually verified the prescription to ensure that the correct label had been placed on the bottle, a step in the final verification process, then the incident may have been avoided.

In this matter, the evidence has established that the Pharmacy Technician scanned, counted, labeled and bagged patient B.K.'s prescription without the Pharmacist's final verification of the labeled prescription bottle and the medication included therein. On the occasion currently before the Board, the Pharmacy Technician placed the wrong label, with incorrect instructions on the prescription bottle that was dispensed to patient B.K. This is not a simple labeling error such as listing an incorrect date or listing an incorrect date filled. This error was critical in that it incorrectly identified the medication that was contained in the prescription bottle, It provided incorrect description and instructions related to the medication in the bottle. The mistakes made in this situation could have involved patient safety, raising the level of concern.

Based upon the evidence presented, the verification procedures utilized by CVS Pharmacy #17502 in this instance did not allow the Pharmacist to verify that the correct medication is in the labeled prescription bottle after it has been counted and labeled because the Pharmacist only views photographs of the medication that is supposed to be in the labeled prescription bottle. An error that Lang testified would have been caught if the Pharmacist had visualized and conducted a final verification.


The Board considered the information provided and concluded CVS Pharmacy #17502 violated K.S.A. 65-1637(g), K.S.A. 65-1654(a), K.A.R. 68-2-20 (c)(1) and (d) and K.A.R. 68-7-14(8) and (9), as set forth in the Summary Order, and this constituted a failure to comply with the applicable statutes and regulations constituting a violation of the Kansas Pharmacy Act.

The Board voted 6-0 to affirm the Summary Order imposing a \$13,000 fine on CVS Pharmacy #17502 for failure to comply with the applicable statutes and regulations.⁹

⁹ Dr. Tiffany Strohmeyer, PharmD, recused herself from the deliberations and the decision.

10/30/2024

Date


Terica Gatewood (Oct 30, 2024 12:10 CDT)

Dr. Terica Gatewood, PharmD,
President
Kansas Board of Pharmacy

Notices

1. This is a Final Order and becomes effective upon service.
2. **Within fifteen (15) days** after service of the Final Agency Order, any party may file a Petition for Reconsideration.¹⁰
3. Either party to this agency proceeding may seek judicial review of the Final Order by filing a timely petition in the District Court.¹¹ Reconsideration of the Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed **within thirty (30) days** following service of the Final Order.
4. A copy of any petition for judicial review must be served upon the Kansas Board of Pharmacy. The agency officer designated to receive service of a petition for judicial review is:

Alexandra Blasi, Executive Secretary
Kansas State Board of Pharmacy
800 SW Jackson #1414
Topeka, KS 66612-1244

¹⁰ K.S.A. 77-529.

¹¹ K.S.A. 77-613.

Certificate of Service

On October 31, 2024, I certify that a copy of the foregoing was placed in the United States first class mail, postage prepaid, addressed to:

CVS Pharmacy#17502
2024 N. Rock Rd.
Derby, KS 67037

Jacob G. Holly
Foulston Siefkin LLP
822 S. Kansas Ave., Suite 200
Topeka, KS 66612

David S. Mitchell
Ryan J. Smith
Rose Law Firm
120 E. 4th St.
Little Rock, AR 72201

Brenda L. Head
Frieden & Forbes, LLP
1414 SW Ashworth Place, Ste 201
Topeka, KS 66604

Gary Ayers
Brooke Aziere
Foulston Siefkin LLP
1551 N. Waterfront Pkwy, Suite 100
Wichita, KS 67206

and I further certify that I caused a copy of the foregoing to be hand-delivered to:

Alexandra Blasi
Executive Secretary
Kansas State Board of Pharmacy
800 SW Jackson #1414
Topeka, KS 66612-1244

Alexandra Blasi

Staff Person
Kansas Board of Pharmacy