

BOARD ORDER #B-08-023
SOAH DOCKET NO. 515-10-3083

RE: IN THE MATTER OF
JAMES TATE
(PHARMACY TECHNICIAN
REGISTRATION #105808)

BEFORE THE TEXAS STATE
BOARD OF PHARMACY

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On this day came on to be considered by the Texas State Board of Pharmacy the matter of pharmacy technician registration number 105808, issued to James Tate.

After proper and timely notice was given, the matter was heard in public hearing on June 2, 2010, before Catherine C. Egan, Administrative Law Judge, State Office of Administrative Hearings, who issued a Proposal for Decision, containing Findings of Fact and Conclusions of Law, which was properly served on all parties. All parties were given an opportunity to file exceptions and replies; however, no exceptions were filed. The Texas State Board of Pharmacy, after consideration of the Proposal for Decision and argument of the parties, makes and adopts the following Findings of Fact and Conclusions of Law of the Administrative Law Judge contained in the Proposal for Decision. A copy of the Proposal for Decision is attached as Exhibit "A" and incorporated by reference as though fully set forth herein. All proposed Findings of Fact and Conclusions of Law submitted by any party which are not specifically adopted herein are denied.

FINDINGS OF FACT

1. The Texas State Board of Pharmacy (Board) issued to James Tate (Respondent) a pharmacy technician registration, registration number 105808, on May 11, 2004. Respondent's Texas pharmacy technician registration has remained in full force and effect since that time.
2. On March 10, 2010, Board Staff (Staff) mailed by certified mail, return receipt requested, its notice of hearing and complaint to Respondent's last known address as shown in the Board's records: 9835 Fredericksburg Road #1017, San Antonio, Texas 78240.
3. On March 13, 2010, the notice of hearing and complaint were delivered to Respondent by the United States Postal Service.

4. The notice of hearing and complaint contained a statement of the time, place, and nature of the hearing; a statement of the legal authority under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
5. The notice of hearing contained the following language in capital letters in at least 12-point boldface type: "Upon your failure to appear at the hearing, the factual allegations in this notice and the complaint will be deemed admitted as true, and the relief sought by the Texas State Board of Pharmacy may be granted by default."
6. The hearing was held on June 2, 2010, before State Office of Administrative Hearings (SOAH) ALJ Catherine C. Egan at the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Litigation counsel Julie Hildebrand represented Staff. Respondent did not appear and was not represented at the hearing. The record closed the same day.
7. Staff's motion for default was granted.
8. On March 20, 2008, Respondent possessed penalty group 3 and 4 controlled substances without a prescription, specifically: 700 hydrocodone with acetaminophen tablets, 2 bottles of alprazolam tablets, 1 ½ bottles of promethazine with codeine, and 1 oxycodone tablet.
9. Respondent sold the alprazolam to a friend for \$100 per bottle.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. (CODE) § 568.003.
2. SOAH has jurisdiction over all matters related to conducting a contested case in this matter, including the preparation of a Proposal for Decision with Findings of Fact and Conclusions of Law, under TEX. GOV'T CODE ANN. ch. 2003.
3. Timely and proper notice of the hearing was sent to Respondent as required by TEX. GOV'T CODE ANN. ch. 2001; 1 TEX. ADMIN. CODE (TAC) §§ 155.401 and 155.501; and 22 TAC § 281.30.
4. The Board may revoke a pharmacy technician's registration if that registrant has violated the Texas Controlled Substances Act set out in chapter 481 of the TEXAS HEALTH AND SAFETY CODE. CODE §§ 568.003(a)(6)(A) and 568.0035.

5. Staff's allegations in its notice of hearing and complaint are deemed admitted as true pursuant to 1 TAC § 155.501.
6. Based on the Findings of Fact, Respondent violated §§ 481.114(a) and 481.117(a) of the TEXAS HEALTH AND SAFETY CODE.
7. Based on the Findings of Fact and Conclusions of Law, the Board has grounds to revoke Respondent's pharmacy technician's registration and to impose an administrative penalty of \$5,000 for his violation of chapter 481 of the TEXAS HEALTH AND SAFETY CODE pursuant to Code §§ 566.002, 568.003 and 568.0035, and 22 TAC § 281.62.

CONSTRUCTION

It is the intent of the Texas State Board of Pharmacy that any Findings of Fact that are properly construed as Conclusions of Law should be treated as Conclusions of Law and that any Conclusions of Law that are properly construed as Findings of Fact should be treated as Findings of Fact.

ORDER OF THE BOARD

THEREFORE, PREMISES CONSIDERED, the Texas State Board of Pharmacy (hereinafter referred to as "BOARD") does hereby ORDER that pharmacy technician registration number 105808 held by James Tate (hereinafter referred to as "Respondent") shall pay shall pay an administrative penalty of five thousand dollars (\$5,000) due ninety (90) days after the entry of this Order.

It is further ORDERED that effective thirty (30) days after the entry of this Order, pharmacy technician registration number 105808 held by Respondent shall be, and such registration is hereby revoked.

It is finally ORDERED that Respondent:

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1. shall not practice as a pharmacy technician trainee or a pharmacy technician in this state or have access to prescription drugs during the period registration number 105808 is revoked; and
2. shall surrender to the BOARD, Enforcement Division, registration number 105808 and any renewal certificate and personal identification card pertaining to registration number 105808 within thirty (30) days after the entry of this Order.

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Passed and approved at the regular meeting of the Texas State Board of Pharmacy on the 10th day of August 2010.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED ON THIS 10th day of August 2010.

MEMBER, TEXAS STATE BOARD OF PHARMACY

ATTEST:

Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy

Kerstin E. Arnold
General Counsel
Texas State Board of Pharmacy

EXHIBIT A

SOAH DOCKET NO. 515-10-3083
(TSBP NO. 2008-2570)

TEXAS STATE BOARD OF PHARMACY, Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
JAMES TATE, REGISTRATION NO. 105808, Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas State Board of Pharmacy (Staff/Board) seeks to revoke Respondent James Tate's pharmacy technician registration and to impose an administrative penalty for illegally possessing and delivering controlled substances. Despite being sent proper notice, Respondent failed to appear or be represented at the hearing, and Staff moved for default. The Administrative Law Judge (ALJ) granted Staff's request for default and recommends that Respondent's registration be revoked and that a \$5,000 administrative penalty be imposed.

I. NOTICE, JURISDICTION AND PROCEDURAL HISTORY

The hearing convened June 2, 2010, before State Office of Administrative Hearings (SOAH) ALJ Catherine C. Egan at the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Litigation counsel Julie Hildebrand represented Staff. Staff established jurisdiction and provided evidence that proper notice of the hearing was provided to Respondent. Those matters are set out in the findings of fact and conclusions of law.

II. RECOMMENDATION

In accordance with 1 TEX. ADMIN. CODE (TAC) § 155.501, the ALJ granted Staff's motion for default and deemed the alleged facts in Staff's complaint and notice of hearing to be true. The ALJ finds that grounds exist for discipline under TEX. OCC. CODE ANN. (CODE) § 568.003, and that the Board may assess penalties pursuant to CODE §§ 566.002 and 568.0035, and 22 TAC § 281.62. The ALJ therefore recommends that Respondent's pharmacy technician registration be revoked and that an administrative penalty of \$5,000 be imposed.

III. FINDINGS OF FACT

1. The Texas State Board of Pharmacy (Board) issued to James Tate (Respondent) a pharmacy technician registration, registration number 105808, on May 11, 2004. Respondent's Texas pharmacy technician registration has remained in full force and effect since that time.
2. On March 10, 2010, Board Staff (Staff) mailed by certified mail, return receipt requested, its notice of hearing and complaint to Respondent's last known address as shown in the Board's records: 9835 Fredericksburg Road #1017, San Antonio, Texas 78240.
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IV. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. (CODE) § 568.003.
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7. Based on the Findings of Fact and Conclusions of Law, the Board has grounds to revoke Respondent's pharmacy technician's registration and to impose an administrative penalty of \$5,000 for his violation of chapter 481 of the TEXAS HEALTH AND SAFETY CODE pursuant to CODE §§ 566.002, 568.003 and 568.0035, and 22 TAC § 281.62.

SIGNED July 7, 2010.



CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS