

BOARD ORDER #T-09-223
SOAH DOCKET NO. 515-11-0433

RE: IN THE MATTER OF
ANDREA LYNN MCCOY
(PHARMACY TECHNICIAN
REGISTRATION #147322)

BEFORE THE TEXAS STATE
BOARD OF PHARMACY

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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 November 15, 2010, before State Office of Administrative Hearings (SOAH) ALJ Suzanne Formby Marshall 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 February 12, 2009, Respondent received deferred adjudication based on a plea of guilty to the misdemeanor offense of possession of marihuana.

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. Staff's allegations in its notice of hearing and complaint are deemed admitted as true pursuant to 1 TAC § 155.501.
5. The Board may take disciplinary action against a pharmacy technician's registration if the registrant has been placed on deferred adjudication community supervision for a misdemeanor under chapter 481 of the Texas Health and Safety Code. TEX. OCC. CODE § 568.003(a)(4)(A)(ii).
6. The Board has determined that Respondent's offense is one that is directly related to the duties and responsibilities of a pharmacist technician. 22 TAC § 281.63(i)(6).

7. The penalty amount for violating provisions of the Code may not exceed \$5,000 for each violation. Code § 566.002; 22 TAC § 281.65(1)(U).
8. Based on the Findings of Fact and Conclusions of Law, the Board is authorized to impose a probated suspension of Respondent's pharmacy technician's registration for five years and to impose an administrative penalty of \$5,000 for the violation noted above. Code § 568.0035.

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 the "BOARD") does hereby ORDER that:

- (1) Effective sixty (60) days after the entry of this Order, Respondent's Texas registration number 147322 shall be, and such registration is hereby suspended, until such time as written documentation is provided by a Board approved mental health professional (hereinafter referred to as "MHP") which states that Respondent is not physiologically or psychologically alcohol or drug dependent, does not have an incapacity of a nature that would prevent Respondent from performing pharmacy technician duties as authorized by Respondent's registration with reasonable skill, competence and safety to the public, and is able to return to the practice of pharmacy without posing a threat to Respondent or the public. During the period of suspension, Respondent shall:
 - (a) not practice as a pharmacy technician trainee or a pharmacy technician in this state or have access to prescription drugs; and
 - (b) authorize a Board approved MHP to furnish an initial written report, and any subsequent reports requested by the BOARD, to the BOARD. The initial written report shall include an evaluation of the current status of Respondent, Respondent's capacity to practice as a pharmacy technician trainee or a pharmacy technician, and a suggested schedule of future treatment and/or after-care if necessary. Failure to comply with all recommendations of the MHP shall constitute a violation of this Order.

- (2) If within six (6) months after the entry of this Order, Respondent fails to provide written documentation from a Board approved MHP, as required by Paragraph (1), registration number 147322 issued to Respondent shall be revoked and of no further force and effect, effective six (6) months after the entry of this Order. In the event that registration number 147322 issued to Respondent is revoked, Respondent shall:
 - (a) 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 147322 is revoked; and
 - (b) surrender to the BOARD, registration number 147322 and any renewal certificate and personal identification card pertaining to registration number 147322.
- (3) Upon the completion of the initial suspension outlined in Paragraph (1) above, registration is hereby suspended for an additional period of five (5) years. Such suspension shall be probated under the conditions that Respondent abide by and obey the terms of this Order, all Federal laws and laws of the State of Texas with respect to pharmacy, controlled substances, dangerous drugs, and all rules and regulations adopted pursuant to the above-mentioned statutes, and that Respondent will comply with all terms of this Order.
- (4) Respondent shall pay a probation fee of four hundred dollars (\$400). This probation fee is due ninety (90) days after the probationary period outlined in Paragraph (3) above begins.

If Respondent fails to pay the probation fee within ninety (90) days after the probationary period begins, registration number 147322 issued to Respondent shall be suspended, effective ninety (90) days after the probationary period begins. In the event that registration number 147322 issued to Respondent is suspended Respondent shall not practice as a pharmacy technician trainee or a pharmacy technician in this state or have access to prescription drugs.

If within six (6) months after the probationary period begins, Respondent fails to pay the probation fee, registration number 147322 issued to Respondent shall be revoked and of no further force and effect, effective six (6) months after the probationary period begins. In the event that registration number 147322 issued to Respondent is revoked, Respondent shall:

- (a) 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 147322 is revoked; and

- (b) surrender to the BOARD, registration number 147322 and any renewal certificate and personal identification card pertaining to registration number 147322.
- (5) During the probationary period outlined in Paragraph (3) above, Respondent shall continue under the care of a MHP if the MHP determines further treatment and/or after care is needed and authorize the MHP and/or representative of the after-care program to furnish written quarterly reports to the BOARD concerning the conduct and status of Respondent. Within twenty (20) days after any oral or written request of BOARD staff, Respondent shall obtain a current written evaluation by a Board approved MHP. Failure to comply with such a request, failure to cause the MHP to furnish written quarterly reports, or failure to comply with all recommendations of the MHP, shall constitute a violation of this Order;
- (6) Respondent shall register with the drug screening company as specified by Board staff, (hereinafter referred to as the “DRUG SCREENING COMPANY”) to participate in the drug and alcohol analysis program within ninety (90) days after the entry of this Order.

If Respondent fails to register with the DRUG SCREENING COMPANY within ninety (90) days after the entry of this Order, registration number 147322 issued to Respondent shall be suspended, effective ninety (90) days after the entry of this Order. In the event that registration number 147322 issued to Respondent is suspended Respondent shall not practice as a pharmacy technician trainee or a pharmacy technician in this state or have access to prescription drugs.

If within six (6) months after the entry of this Order, Respondent fails to register with the DRUG SCREENING COMPANY, registration number 147322 issued to Respondent shall be revoked and of no further force and effect, effective six (6) months after the entry of this Order. In the event that registration number 147322 issued to Respondent is revoked, Respondent shall:

- (a) 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 147322 is revoked; and
- (b) surrender to the BOARD, registration number 147322 and any renewal certificate and personal identification card pertaining to registration number 147322.

- (7) Respondent shall pay an administrative penalty of five thousand dollars (\$5,000) due ninety (90) days after the entry of this Order.

If Respondent fails to pay the administrative penalty within ninety (90) days after the entry of this Order, registration number 147322 issued to Respondent shall be suspended, effective ninety (90) days after the entry of this Order, until such payment is received by the BOARD. In the event that registration number 147322 issued to Respondent is suspended Respondent shall not practice as a pharmacy technician trainee or pharmacy technician in this state or have access to prescription drugs.

If within six (6) months after the entry of this Order, Respondent fails to pay the administrative penalty, pharmacy technician registration number 147322 issued to Respondent shall be revoked and of no further force and effect, effective six (6) months after the entry of this Order. In the event that pharmacy technician registration number 147322 issued to Respondent is revoked, Respondent shall:

- (a) 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 147322 is revoked; and
- (b) surrender to the BOARD, registration number 147322 and any renewal certificate and personal identification card pertaining to registration number 147322.

It is further ORDERED that upon the entry of this Order and during the entire duration of the Order, Respondent shall:

- (8) submit, within twenty-four (24) hours, to the performance of unscheduled urinalysis or other types of drug or alcohol analysis as specified by BOARD staff or others authorized by BOARD staff, such as a mental health professional or supervising pharmacist;
- (9) provide copies of chain-of-custody document(s) from the collection site for any urinalysis or other type of drug or alcohol analysis, as required by Paragraph (8), for which Respondent has submitted a sample. Such document(s) shall be provided within three (3) days of the submission to the analysis;
- (10) provide copies of any and all current prescriptions taken by or in possession of Respondent to BOARD staff. Within ten (10) days of any and all new prescriptions prescribed by a treating physician (or other health-care practitioner with prescriptive authority) who has reviewed this Order, Respondent shall provide copies of any and all new prescriptions to BOARD staff;

- (11) provide a written statement from a treating physician (or other health-care practitioner with prescriptive authority), who has reviewed this Order, for all current sample medication taken by or in possession of Respondent to BOARD staff. The statement shall include the patient's name, drug name, quantity provided, date provided, directions for use, and physician's name. Within ten (10) days of any and all new sample medication provided by a treating physician (or other health-care practitioner with prescriptive authority), who has reviewed this Order, Respondent shall provide copies of such a statement to BOARD staff;
- (12) inform any and all physicians (or other health-care practitioners with prescriptive authority) who treat Respondent for any reason or condition that Respondent has a history of substance abuse, and that Respondent is the subject of this Order. Unless a medical emergency exists, Respondent shall also provide a copy of this Order to any treating physician for review prior to the physician's authorization of prescription medication for Respondent;
- (13) cause any treating physician (or other health-care practitioner with prescriptive authority) to provide BOARD staff, upon request, with information and patient records, including information about any and all prescriptions authorized for Respondent. By Respondent's signature on this Order, Respondent does hereby authorize any and all physicians (or other health-care practitioners with prescriptive authority) treating Respondent for any reason or condition to provide BOARD staff with information, including patient records, regarding prescriptions authorized for Respondent;
- (14) be in violation of this Order, and shall surrender registration number 147322 pending formal disciplinary action in said matter, in the event that:
 - (a) the results of any alcohol or drug analysis indicate the presence of alcohol or drugs (unless the dangerous drug was prescribed within one (1) year or the controlled substance was prescribed within six (6) months from the date of the analysis for a legitimate and documented therapeutic purpose by a practitioner who reviewed the terms of this Order before authorizing the prescription; and/or
 - (b) any health-care practitioner submits written documentation that Respondent has developed an incapacity to practice as a pharmacy technician;
- (15) participate in the activities and programs of Alcoholics Anonymous, or any other substantially similar program that has been approved in writing by BOARD staff, on a regular basis as directed by BOARD staff. Respondent shall maintain documentation as to the number and location of meetings attended and make such documentation available to BOARD staff upon request;

- (16) abstain from the consumption of alcohol, any products containing alcohol (including over-the-counter products and prescription drugs), dangerous drugs, and/or controlled substances in any form unless prescribed, within one (1) year if a dangerous drug, or within six (6) months if a controlled substance, by a practitioner with prescriptive authority for a legitimate and documented therapeutic purpose and unless ingested for the same therapeutic purpose as originally prescribed;
- (17) not be convicted of or received deferred adjudication for an alcohol-related or drug-related offense;
- (18) abide by and not violate Federal laws and laws of the State of Texas or any other state with respect to pharmacy, controlled substances, dangerous drugs and rules and regulations promulgated pursuant to the above-mentioned statutes;
- (19) not hold any of the individuals providing reports to the BOARD liable in any manner for the contents of such reports;
- (20) authorize the persons listed below to discuss and/or disclose the terms of this Order, the nature of the complaint(s) resulting in the entry of the Order, the status and conduct of Respondent, and any other relevant matter, with each other:
 - staff of the BOARD;
 - intervenors and staff of the Professional Recovery Network of the Texas Pharmacy Association;
 - MHP and/or any physician (or other health-care practitioner with prescriptive authority) who is evaluating or treating (or who has evaluated or treated) Respondent;
 - representative(s) of any after-care program evaluating or treating (or that has evaluated or treated) Respondent;
 - supervising pharmacist and any potential or current employer of pharmacy technician; and
 - any other person who Respondent, by oral or written notification to the BOARD, has authorized to discuss this information.

- (21) If Respondent submits a written request to surrender Respondent's registration, this Order shall be terminated, and registration number 147322 shall be, and such registration is hereby revoked effective immediately. Respondent shall surrender registration number 147322 and any renewal certificate and personal identification card pertaining to registration number 147322 within thirty (30) days after the request. Respondent shall not request to reinstate registration number 147322 within one year after registration number 147322 is revoked. In the event that registration number 147322 issued to Respondent is revoked, Respondent 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 147322 is revoked.
- (22) If Respondent chooses to practice as a pharmacy technician trainee or a pharmacy technician in Texas, Respondent shall:
- (a) notify the BOARD of Respondent's initial place of employment in Texas and of any subsequent change of employment and the reasons for such change. Such notifications shall be submitted in writing to the BOARD's office within ten (10) days after the entry of this Order, and within ten (10) days of any subsequent employment; and
 - (b) inform any and all employers that Respondent is the subject of this Order.
- (23) The terms and conditions described above in paragraph (1) through paragraph (22) apply to Respondent's registration when designated either as a pharmacy technician trainee or a pharmacy technician.

It is further ORDERED that any cost associated with compliance with the terms of this Order shall be the responsibility of the Respondent.

It is further ORDERED that Respondent shall allow the staff of the BOARD, Enforcement Division, to directly contact the Respondent on any matter regarding the enforcement of this Order.

It is finally ORDERED that failure to comply with any of the terms and conditions in this Order constitutes a violation of the pharmacy laws or rules of this state and shall be grounds for further disciplinary action against the Texas registration held by Respondent.

Passed and approved at the regular meeting of the Texas State Board of Pharmacy on the 8th day of February 2011.

THIS ORDER IS A PUBLIC RECORD.

ENTERED ON THIS 8th day of February 2011.

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. 515-11-0433
(TSBP NO. 2009-1591)**

**TEXAS STATE BOARD OF
PHARMACY,
Petitioner**

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BEFORE THE STATE OFFICE

V.

OF

**ANDREA LYNN MCCOY,
PHARMACY TECHNICIAN,
REGISTRATION NO. 147322,
Respondent**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas State Board of Pharmacy (Staff/Board) seeks a five-year probated suspension of Andrea McCoy’s (Respondent) pharmacy technician registration and imposition of an administrative penalty of \$5,000 against Respondent because she was placed on deferred adjudication after entering a guilty plea to the misdemeanor offense of possession of marijuana. 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 a five-year probated suspension be imposed on Respondent’s registration, as well as a \$5,000 administrative penalty, for the violation found below.

I. NOTICE, JURISDICTION AND PROCEDURAL HISTORY

The hearing convened November 15, 2010, before State Office of Administrative Hearings (SOAH) ALJ Suzanne Formby Marshall 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 and sanctions pursuant to Code § 568.0035.¹ The ALJ therefore recommends that Respondent's pharmacy technician registration be placed on a probated suspension of five years and that she be assessed an administrative penalty in the amount of \$5,000.

III. FINDINGS OF FACT

1. The Texas State Board of Pharmacy (Board) issued to Andrea McCoy (Respondent) a pharmacy technician registration, registration number 147322, on September 9, 2008. Respondent's Texas pharmacy technician registration has remained in full force and effect since that time.
2. On September 27, 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: 19811 Bolton Ridge Lane, Humble, TX 77338.
3. On September 29, 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 November 15, 2010, before State Office of Administrative Hearings (SOAH) ALJ Suzanne Formby Marshall 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 February 12, 2009, Respondent received deferred adjudication based on a plea of guilty to the misdemeanor offense of possession of marihuana.

¹ Although Staff asserts in its grounds for relief that Respondent also violated § 481.121(a) of the Texas Controlled Substances Act, the ALJ is unable to conclude, based on the one deemed factual assertion, that Respondent's deferred adjudication for possession of marijuana is the same thing as "knowingly or intentionally possessing a usable quantity of marijuana," as proscribed by § 481.121(a) of the Texas Controlled Substances Act, and asserted as a violation of TEX. HEALTH & SAFETY CODE § 568.003(a)(6)(A). Consequently, the ALJ does not conclude that there were multiple violations.

IV. 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. Staff's allegations in its notice of hearing and complaint are deemed admitted as true pursuant to 1 TAC § 155.501.
5. The Board may take disciplinary action against a pharmacy technician's registration if the registrant has been placed on deferred adjudication community supervision for a misdemeanor under chapter 481 of the Texas Health and Safety Code. TEX. OCC. CODE § 568.003(a)(4)(A)(ii).
6. The Board has determined that Respondent's offense is one that is directly related to the duties and responsibilities of a pharmacist technician. 22 TAC § 281.63(i)(6).
7. The penalty amount for violating provisions of the Code may not exceed \$5,000 for each violation. Code § 566.002; 22 TAC § 281.65(1)(U).
8. Based on the Findings of Fact and Conclusions of Law, the Board is authorized to impose a probated suspension of Respondent's pharmacy technician's registration for five years and to impose an administrative penalty of \$5,000 for the violation noted above. Code § 568.0035.

SIGNED November 18, 2010.



SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS