

TEMPORARY SUSPENSION ORDER #C-07-006-B-S

RE: IN THE MATTER OF
FAMILY HEALTH MART
(PHARMACY LICENSE #10570)

BEFORE THE TEXAS STATE
BOARD OF PHARMACY

On this day came on to be considered by the Texas State Board of Pharmacy (hereinafter referred to as "TSBP") the matter of the Petition for Temporary Suspension of Pharmacy License regarding license number 10570, issued to Family Health Mart (hereinafter referred to as "Respondent"), pursuant to § 565.059 of the Texas Pharmacy Act (hereinafter referred to as "Pharmacy Act"), TEX. OCC. CODE ANN. Subtitle J.

Danny Kent Elkins, R.Ph., Pharmacist-in-Charge and Corporate President of Family Health Mart, appeared on behalf of Respondent. Julie Hildebrand represented TSBP staff. Kerstin Arnold served as General Counsel to the TSBP. The following TSBP members served as the Disciplinary Panel: W. Michael Brimberry, R.Ph., MBA; W. Benjamin Fry, R.Ph.; and Doyle E. High, R.Ph.

ORDER OF THE BOARD

The TSBP Disciplinary Panel determines that Respondent, by continuation in operation, would constitute a continuing threat to the public welfare, and that pharmacy license 10570 issued to Respondent should be temporarily suspended in accordance with § 565.059 of the Pharmacy Act. The TSBP Disciplinary Panel makes this finding based on the following evidence and/or information presented at the Hearing on Temporary Suspension of License of Respondent:

1. Respondent was issued a Texas pharmacy license, number 10570, by the TSBP on June 15, 1984.
2. Respondent's license is current until April 30, 2008.

3. Respondent's Texas pharmacy license was in full force and effect at all times and dates material and relevant to this matter.
4. On March 23, 2007, the TSBP, by certified mail, return receipt requested, served Respondent Notice and Petition for Temporary Suspension of Pharmacy License at its last known address of file with the TSBP, proper and timely notice of all matters asserted.
5. On or about March 9, 16, 20, and 22, 2007, and other unknown dates beginning in approximately February 2006 to present, Danny Kent Elkins, owner and pharmacist-in-charge of Respondent, allowed the pharmacy to operate while not under the supervision of a pharmacist and allowed pharmacy technicians and a non-registered pharmacy employee to perform duties that may only be performed by a pharmacist and duties that may only be performed by a pharmacy technician under the supervision of a pharmacist.
6. On or about March 9, 2007, a pharmacist from another pharmacy telephoned Respondent and requested a transfer of a prescription. A pharmacy technician or a non-registered pharmacy employee attempted to communicate the transferring of the prescription to the pharmacist. The pharmacist refused to accept the transfer after verifying that the person attempting to transfer the prescription was not a pharmacist and that a pharmacist was not present in the pharmacy.
7. On or about March 16, 20, and 22, an Investigator for the TSBP observed pharmacy technicians and a non-registered pharmacy employee operating Respondent, including filling and dispensing prescriptions, while no pharmacist was present in the pharmacy or while not under the supervision of a pharmacist.
8. The following prescriptions were filled and dispensed to patients J.H. and B.L. (a TSBP investigator and a deputy sheriff acting in undercover capacities) by pharmacy technicians and a non-registered pharmacy employee without a pharmacist verifying the accuracy of the prescription, in that a pharmacist was not present in the pharmacy or a pharmacist was not supervising the duties performed by the technician or employee:

Date	RX#	Drug	Qty.	Pt.
03/16/07	680248	Alprazolam 2 mg tablets	90	J.H.
03/16/07	680249	Hydrocodone/Acetaminophen 10/500 tablets	30	J.H.
03/16/07	680256	Hydrocodone/Acetaminophen 7.5/750 tablets	30	J.H.
03/20/07	680336	Alprazolam 2 mg tablets	90	J.H.
03/20/07	680337	Hydrocodone/Acetaminophen 7.5/750	30	J.H.
03/20/07	680338	Hydrocodone/Acetaminophen 10/500	30	J.H.
03/22/07	680397	Hydrocodone/Acetaminophen 7.5/500	15	B.L.

9. A pharmacy technician admitted in an affidavit to a TSBP investigator that, since her employment began in February 2006, she has filled and dispensed prescriptions without a pharmacist verifying the accuracy of the prescription, in that a pharmacist was not present in the pharmacy or a pharmacist was not supervising the duties performed by the technician.
10. A non-registered pharmacy employee admitted in an affidavit to a TSBP investigator that she has filled and dispensed prescriptions without a pharmacist verifying the accuracy of the prescription, in that a pharmacist was not present in the pharmacy or a pharmacist was not supervising the duties performed by the technician, and that she has transferred prescriptions, which is a duty that can only be performed by a pharmacist or that may only be performed by a pharmacy technician under the supervision of a pharmacist.
11. On or about March 20, 2007, a pharmacist employed by Respondent failed to evaluate the prescription drug orders and the patient medication record to conduct a drug regimen review in order to identify inappropriate drug utilization of the dispensed prescriptions described above. Additionally, a pharmacist dispensed the prescriptions described above in quantities, dosages, or for periods of time which grossly exceeded the standards of practice, approved labeling of the Federal Food and Drug Administration, or the guidelines published in professional literature.

ORDER OF THE BOARD

THEREFORE, PREMISES CONSIDERED, the TSBP does hereby ORDER that pharmacy license number 10570 held by Respondent shall be, and such license is hereby temporarily suspended. Said suspension shall be effective immediately and shall continue in effect, pending a hearing on the suspended license, until further Order of the TSBP.

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

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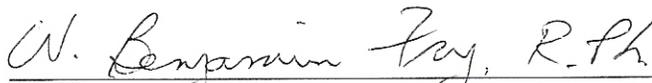
Passed and approved at the Temporary Suspension Hearing of the Texas State Board of
Pharmacy on the 2nd day of *April* 2007.

And it is so ORDERED.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED ON THIS 2nd day of *April* 2007.


MEMBER, TEXAS STATE BOARD OF PHARMACY


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