

TEMPORARY SUSPENSION ORDER #C-14-005-AS1

RE: IN THE MATTER OF
CAROL M. JOHNSON
(PHARMACIST LICENSE #16435)

BEFORE THE TEXAS STATE
BOARD OF PHARMACY

On this day came on to be considered by the Disciplinary Panel of the Texas State Board of Pharmacy ("Board") the matter of the Petition for Temporary Suspension of pharmacist license number 16435, issued to Carol M. Johnson ("Respondent"), pursuant to § 565.059 of the Texas Pharmacy Act ("Pharmacy Act"), TEX. OCC. CODE ANN., Title 3, Subtitle J.

Respondent did not appear and was not represented by counsel. Caroline K. Hotchkiss represented Board staff. Kerstin E. Arnold served as General Counsel to the Disciplinary Panel. The following Board members served as the Disciplinary Panel: Jeanne D. Waggener, R.Ph.; Dennis F. Wiesner, R.Ph. and Christopher M. Dembny, R.Ph.

The Disciplinary Panel determines that Respondent, by continuation in practice, would constitute a continuing threat to the public welfare, and that pharmacist license number 16082 issued to Respondent shall be temporarily suspended in accordance with § 565.059 of the Pharmacy Act. The Disciplinary Panel makes this finding based on the following evidence and/or information presented at the April 29, 2014, Hearing on Temporary Suspension of License of Respondent:

1. On or about November 16, 1963, Respondent was issued Texas pharmacist license number 16435.
2. Respondent's Texas pharmacist license was in full force and effect at all times and dates material and relevant to this Petition.
3. Respondent is a partner in the ownership of The Pill Box, License #2472, 601 Bliss Ave., Dumas, Texas 79029.
4. All jurisdictional requirements have been satisfied.

5. The Pill Box's pharmacy license is the subject of Board Order #C-12-002-B ("the Order") entered on February 11, 2014. The Order was based on findings of fact involving several violations of Texas Pharmacy Board Rules observed during an attempted compliance inspection and subsequent undercover investigation at The Pill Box, which Respondent owns with S. Ray Johnson ("Mr. Johnson") and at which Respondent is employed as a pharmacist. In addition, the Order found that during the attempted compliance inspection, Mr. Johnson "challenged the inspector's authority to conduct a compliance inspection of his pharmacy" ultimately thwarting the inspection because of his hostile and threatening actions, and asserted to the inspector that the Board "had no power."
6. Mr. Johnson's pharmacist license is the subject of a Board Order based on the same findings as those set forth in the Order. Board Order #C-12-002-A in the matter of Mr. Johnson's pharmacist license ("his Board Order" or "Mr. Johnson's Order") was also entered on February 11, 2014.
7. On March 4, 2013, prior to the administrative hearing resulting in the findings previously described and subsequently adopted by the Board's Order and Mr. Johnson's Order, Mr. Johnson filed a lawsuit against the Board in the United States District Court for the Northern District of Texas in Amarillo contesting the authority of the Board to regulate pharmacy practice and operation and contesting the authority of Board Staff to pursue administrative action against his pharmacist license and the pharmacy's license for alleged violations. The suit was ultimately dismissed with prejudice in favor of the Board.
8. On or about February 18, 2014, Board Staff mailed a letter to The Pill Box regarding the Order to explain the following:
 - a. the license of The Pill Box is subject to a probated suspension under the Order;
 - b. the amounts of the monetary penalty and probation fee assessed and the due date for such payment; and
 - c. the appeals process, including the requirement to file a motion for rehearing under the Texas Administrative Procedures Act ("the APA"), TEX. GOV'T CODE ANN., Chapter 2001, no later than close-of-business on March 13, 2014, in order to appeal the Order.
9. On or about February 18, 2014, Board Staff mailed a letter to Mr. Johnson explaining the terms and requirements of his Board Order, including the following:
 - a. explaining the suspension of his license;
 - b. requiring him to register for the Multistate Pharmacy Jurisprudence Examination (MPJE);
 - c. outlining prohibited pharmacist duties during the suspension period, including a prohibition against access to prescription drugs;
 - d. requiring a change of pharmacist-in-charge for The Pill Box;
 - e. instructing return of his pharmacist wall and renewal certificates;
 - f. and informing Mr. Johnson of the due date for the payment of monetary penalty and probation fee assessed.

In addition, the letter explained the appeals process, including the requirement to file a motion for rehearing under the APA no later than close-of-business on March 13, 2014, in order to appeal the Order.

10. No motion for rehearing was filed in the matter of The Pill Box, and the Order became final. In addition, Mr. Johnson did not file a motion for rehearing in the matter of his pharmacist license, and his Board Order also became final.
11. On March 13, 2014, Mr. Johnson's pharmacist license became suspended under his Board Order, for the longer of thirty days or until such time as he passes the MPJE.
12. As of the date of this Order, Board staff has not been informed of a change of pharmacist-in-charge for The Pill Box, has not received Mr. Johnson's pharmacist wall or renewal certificates, has not received an application regarding the MPJE, and has not received payment of the monetary penalty or probation fee due under the Order for The Pill Box.
13. On April 8, 2014, at approximately 11:00 a.m., a Board investigator acting in an undercover capacity as patient M.G. entered The Pill Box. The investigator identified four individuals inside of the pharmacy, specifically Mr. Johnson, Respondent, and two pharmacy technicians. The investigator observed Mr. Johnson behind the pharmacy's prescription counter accessing prescription drug stock. In addition, the investigator witnessed Mr. Johnson providing verbal information regarding a prescription drug to an individual in the pharmacy's drive-thru window.
14. On April 9, 2014, at approximately 9:00 a.m., a Board investigator acting in an undercover capacity as patient M.G. entered The Pill Box. The investigator identified two individuals inside of The Pill Box, specifically Mr. Johnson and a pharmacy technician. The investigator presented a prescription for 21 amoxicillin 500 mg capsules written by a participating practitioner for patient M.G. Mr. Johnson selected the drug product from the pharmacy's shelf, dispensed the prescription, and provided verbal information regarding the prescription. The label that is affixed to the prescription vial contains the initials "CJ," although Mr. Johnson, whose initials are "RJ" in the pharmacy's data processing system, dispensed the prescription. The prescription was assigned prescription number 759084.
15. On April 9, 2014, at approximately 10:10 a.m., two investigators for the Board entered The Pill Box to inform Mr. Johnson of the undercover capacity of the investigation that had been conducted. The investigators again observed Mr. Johnson with unrestricted access to prescription drug stock. After identifying the reason for the investigation, the investigators understood from Mr. Johnson that he does not acknowledge the suspension of his license by the Board and believes the Board is acting illegally.
16. The investigation also discovered that the daily logs for March 14, 2014, through April 9, 2014, have been signed by Mr. Johnson, indicating himself as a pharmacist at The Pill Box. Respondent also signed the daily logs for these dates as a pharmacist of The Pill

Box, and her initials "CJ" appear on the log as dispensing pharmacist for the majority of the prescriptions.

17. On April 8 and 9, 2014, the Board investigators observed that at all times in which Respondent was present in The Pill Box during the investigation, Respondent made no attempt to curtail or limit the duties of Mr. Johnson or his access to prescription drug stock, thereby allowing the violations listed above to occur.

Subsequent to any proceedings involving the conduct described above, the Board may take additional disciplinary action on any criminal action taken by the criminal justice system based on the same conduct described in the allegations above. However, Respondent shall be provided all rights of due process should the Board initiate such disciplinary action subsequent to the conclusion of the criminal proceedings.

ORDER OF THE BOARD

THEREFORE, PREMISES CONSIDERED, the Board does hereby ORDER that:

- (1) Pharmacist license number 16435 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 Board. During the period of suspension, Respondent shall:
 - (a) not practice pharmacy in this state or be employed in any manner requiring a license with the Board or allowing access to prescription drugs in a pharmacy during the period of suspension; and
 - (b) surrender to the Board said license and any renewal certificate and personal identification card pertaining to said license number as specified by Board staff.
- (2) Respondent shall allow Board staff to directly contact Respondent on any matter regarding the enforcement of this Order.
- (3) Failure to comply with any of the requirements in this Order constitutes a violation and shall be grounds for further disciplinary action. The requirements of this Order are subject to the Texas Pharmacy Act, TEX. OCC. CODE ANN., Title 3, Subtitle J (2013), and Texas Pharmacy Board Rules, 22 TEX. ADMIN. CODE (2014).

Passed and approved at the Temporary Suspension Hearing of the Disciplinary Panel of the Texas State Board of Pharmacy on the 29th day of April, 2014.

And it is so ORDERED.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED ON THIS 29th day of April, 2014.


MEMBER, TEXAS STATE BOARD OF PHARMACY


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