

TEMPORARY SUSPENSION ORDER #C-14-003-ASI

RE: IN THE MATTER OF
S. RAY JOHNSON
(PHARMACIST LICENSE #16082)

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 16082, issued to S. Ray 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 January 30, 1963, Respondent was issued Texas pharmacist license number 16082.
2. On or about November 23, 2012, Respondent renewed his pharmacist license with the TSBP, and the license is current through January 31, 2015.
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. Respondent's pharmacist license is the subject of Board Order #C-12-002-A (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 co-owns, served as pharmacist-in-charge, and worked as a pharmacist. In addition, the Order found that during the attempted compliance inspection, Respondent "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. On March 4, 2013, prior to the administrative hearing resulting in the findings previously described and subsequently adopted by the Board's Order, Respondent 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.
7. On or about February 18, 2014, Board Staff mailed a letter to Respondent explaining the terms and requirements of the 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 Respondent 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 Texas Administrative Procedures Act, TEX. GOV'T CODE ANN., Chapter 2001, no later than close-of-business on March 13, 2014, in order to appeal the Order.
No motion for rehearing was filed in the matter, and the Order became final.
8. On March 13, 2014, Respondent's pharmacist license became suspended under the Order, for the longer of thirty days or until such time as he passes the MPJE.
9. 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 Respondent'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.
10. 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 Respondent, Carol Johnson, R.Ph., and two pharmacy technicians. The investigator observed Respondent behind the pharmacy's prescription counter accessing prescription drug stock. In addition, the investigator witnessed Respondent providing verbal information regarding a prescription drug to an individual in the pharmacy's drive-thru window.

11. 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 Respondent and a pharmacy technician. The investigator presented a prescription for 21 amoxicillin 500 mg capsules written by a participating practitioner for patient M.G. Respondent 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 Respondent, whose initials are "RJ" in the pharmacy's data processing system, dispensed the prescription. The prescription was assigned prescription number 759084.
12. On April 9, 2014, at approximately 10:10 a.m., two investigators for the TSBP entered The Pill Box to inform Respondent of the undercover capacity of the investigation that had been conducted. The investigators again observed Respondent with unrestricted access to prescription drug stock. After identifying the reason for the investigation, the investigators understood from Respondent that he does not acknowledge the suspension of his license by the Board and believes the Board is acting illegally.
13. The investigation also discovered that the daily logs for March 14, 2014, through April 9, 2014, have been signed by Respondent, indicating himself as a pharmacist at The Pill Box.

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) This Order shall not supersede Board Order #C-12-002-A, which was entered on or about February 11, 2014, and that Board Order #C-12-002-A shall remain in full force and effect.

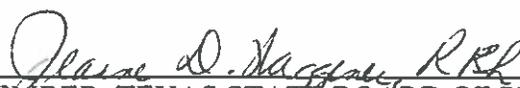
- (2) Pharmacist license number 16082 held by Respondent shall be, and such license is hereby temporarily suspended. Said suspension shall be effective immediately and shall continue in effect, pending a hearing at the State Office of Administrative Hearings within ninety (90) days after the entry of this Order, until further Order of the Board. If such hearing is not held within the required time, Respondent's license will be reinstated and continue under the terms and conditions in Board Order #C-12-002-A. 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.
- (3) Respondent shall allow Board staff to directly contact Respondent on any matter regarding the enforcement of this Order.
- (4) 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.

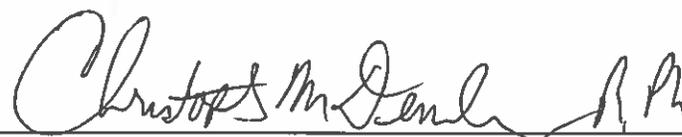
And it is so ORDERED.

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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