

TEMPORARY SUSPENSION ORDER #J-18-002-SI

RE: IN THE MATTER OF
HOUSTON MIDTOWN PHARMACY
(PHARMACY LICENSE #26529)

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 pharmacy license number 26529, issued to Houston Midtown Pharmacy (Respondent), 6609 West Sam Houston Parkway South, Suite 98, Houston, Texas 77072, pursuant to § 565.059 of the Texas Pharmacy Act (Pharmacy Act), TEX. OCC. CODE ANN., Title 3, Subtitle J.

Christopher Henderson, Legal Counsel for and on behalf of Respondent, was in attendance. Caroline Hotchkiss represented Board staff. Kerstin Arnold served as General Counsel to the Disciplinary Panel. The following Board members served as the Disciplinary Panel: Dennis F. Wiesner, R.Ph.; Christopher M. Dembny, R.Ph.; and Bradley A. Miller, Ph.T.R.

The Disciplinary Panel determines that Respondent, by continuation in the operation of the pharmacy, would constitute a continuing threat to the public welfare, and that pharmacy license number 26529 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 January 19, 2018, Hearing on Temporary Suspension of License of Respondent:

1. On or about June 24, 2009, Respondent, 6609 West Sam Houston Parkway South, Suite 98 Houston, Texas 77072, was issued Texas pharmacy license number 26529.
2. Respondent is operated through the corporate entity, Houston Midtown Pharmacy, LLC. Michael Moore is the sole corporate officer of Houston Midtown Pharmacy, LLC.
3. As the holder of a pharmacy license, Respondent is liable for any violation of the Act by an employee of the pharmacy.

4. As the owner of a pharmacy, Houston Midtown Pharmacy, LLC, has responsibility for all administrative and operational functions of the pharmacy.
5. A pharmacy is responsible for any violations in the practice of pharmacy by an owner or employee of the pharmacy.
6. The pharmacy license of Respondent was in full force and effect at all times and dates material and relevant to this Order.
7. The license of Respondent is current through June 30, 2019.
8. All jurisdictional requirements have been satisfied.
9. Between on or about July 25, 2017, through on or about October 24, 2017, Respondent, Eric Christopher Jones, while acting as an employee (pharmacist-in-charge and a pharmacist), and Alfred Leon Wimberley, while acting as an employee (pharmacist-in-charge and a pharmacist), dispensed approximately 1,600 prescriptions for controlled substances, and approximately 1,600 additional prescriptions for non-controlled drugs and products not requiring a prescription pursuant to prescription drug orders purportedly authorized by Thu Anh Nguyen, D.O., Pinemont Clinic, 5400 Pinemont Dr., Houston, Texas 77092. Dr. Nguyen's prescription drug orders for controlled substances primarily were comprised of hydrocodone/APAP 10/325 mg tablets, oxycodone 30 mg tablets, alprazolam 2mg tablets, and carisoprodol 350 mg tablets, and dispensing of these controlled substances totaled more than 150,000 dosage units in the three month period. Pursuant to the pharmacy's drug audit trail of all dispensing, Dr. Nguyen's prescription drug orders constitute over eighty percent of the nearly 4,000 total prescriptions dispensed by the pharmacy during this time period. Dr. Nguyen did not authorize the prescriptions.
10. Between on or about July 25, 2017, through on or about October 24, 2017, Respondent, Mr. Jones, and Mr. Wimberley engaged in improper dispensing for nearly all of the remaining twenty percent of the pharmacy's total dispensing, i.e., approximately 700 prescriptions associated with a prescriber other than Thu Anh Nguyen, D.O., described above in Allegation (9). Dispensing by the pharmacy associated with prescribers other than Dr. Nguyen also primarily consisted of hydrocodone/APAP 10/325 mg tablets, oxycodone 30 mg tablets, alprazolam 2mg tablets, and carisoprodol 350 mg tablets, and associated prescriptions for dangerous drugs and non-prescription drugs and products dispensed as prescriptions. These 700 prescription drug orders include controlled substances written by a nurse practitioner with a revoked license, several physicians with questionable, inappropriate prescribing practices indicating non-therapeutic prescriptions for highly abused controlled substances dispensed in combinations to the same patient on the same day, and prescription drug orders written on fraudulent Schedule II controlled substance forms purporting to be official prescription forms.

11. Between on or about July 25, 2017, through on or about October 25, 2017, Respondent, Mr. Jones and Mr. Wimberley failed to keep and maintain complete and accurate prescription records in the following ways:
 - a. The pharmacy's drug audit trail of all dispensing (drug audit trail) fails to contain dispensing information relating to over 500 prescriptions, in that the drug audit trail provided to the Board's investigator fails to contain a dispensing record that correlates with prescription drug order forms with dispensing labels. Board staff determined the missing records for these prescriptions by identifying 327 original prescription drug orders where information for these prescriptions is not reflected in the drug audit trail data;
 - b. The drug audit trail contains false or fraudulent information relating to the initials or identification code of the dispensing pharmacist. On August 3, 4, and 31, September 1, and October 16 and 17, 2017, Mr. Wimberley filled in his signature on official Schedule II controlled substance prescription forms, but the dispensing pharmacist initials in the drug audit trail reflect "EJ," for Mr. Jones as the dispensing pharmacist; and
 - c. The pharmacist signature line is not signed on approximately fifty official Schedule II controlled substance prescription forms that were dispensed in the above stated time period.

12. Between on or about July 25, 2017, through on or about October 25, 2017, Respondent, Mr. Jones, and Mr. Wimberley likely knew that the prescription drug orders purportedly issued by Thu Anh Nguyen, D.O., Pinemont Clinic, 5400 Pinemont Dr., Houston, Texas 77092, were fraudulent prescriptions.
 - a. The prescription drug orders purportedly issued by Dr. Nguyen are written in various identifiable handwritings, such that patient information appears in a different handwriting in comparison with the prescription drug order and/or the practitioner signature. Also, there are at least two different practitioner signatures appearing on the prescription drug orders;
 - b. Multiple prescription drug orders either have no practitioner signature or fail to contain or contain erroneous required prescription elements, such as an issuance date, patient address, and patient date of birth or age;
 - c. Persons with the same or similar addresses are dispensed the same controlled substances and are frequently dispensed on the same date;
 - d. Persons are dispensed contraindicated drugs with frequency, including tramadol with hydrocodone/APAP and/or oxycodone, and carisoprodol and/or alprazolam; citalopram with hydrocodone/APAP and/or oxycodone; cyclobenzaprine with hydrocodone/APAP and/or oxycodone, and alprazolam; and diphenhydramine with hydrocodone/APAP and/or oxycodone and carisoprodol;
 - e. Prescriptions reported to the Prescription Drug Monitoring Program (RX Aware) under Dr. Nguyen as the practitioner resulted in numerous unresolved error reports that were generated to the pharmacy; and
 - f. On the morning of October 25, 2017, a board investigator seized approximately sixty prescription drug orders purportedly issued by Dr. Nguyen for thirty persons. However, the board investigator observed no persons waiting at the pharmacy for

the prescriptions to be dispensed, and noted no preparations to notify persons whose names the confiscated prescription drug orders were written of the seizure.

13. During the entire period of tenure as a pharmacist and pharmacist-in-charge of Respondent, Mr. Jones and Mr. Wimberley knew or should have known the prescription drug orders purportedly authorized by Thu Anh Nguyen, D.O., Pinemont Clinic, 5400 Pinemont Dr., Houston, Texas 77092, were invalid, i.e., not issued for a legitimate therapeutic purpose or valid medical need and/or prescription forgeries, due to prescription red flags factors indicating recurrent and readily-identifiable nontherapeutic prescribing and dispensing activity to a reasonable pharmacist, including:
 - a. The prescriptions were for controlled substances, specifically, oxycodone 30 mg, hydrocodone/APAP 10/325, alprazolam 2mg, and carisoprodol 350 mg, which are popular as street drugs and have a high potential for abuse;
 - b. The prescriptions were for consistent large quantities of the above-stated controlled substances, e.g., 120 tablets of oxycodone 30 mg, 120 tablets of hydrocodone/APAP, 60 tablets of alprazolam 2mg, and 90 tablets of carisoprodol 350 mg;
 - c. The prescriptions were routinely dispensed to persons receiving more than one of the above-listed controlled substances on the same date for a combination of controlled substances;
 - d. The prescriptions routinely lack a specific diagnosis and the intended use for the drug prescribed;
 - e. According to the location on the prescriber's form listing Pinemont Clinic, the clinic's location is approximately 15 miles apart from Respondent, which is a far distance in the Houston metropolitan area with numerous other pharmacy options. In addition, for most persons there is no logical relation to persons' home addresses to justify legitimate trade at Respondent;
 - f. Respondent purportedly sold the prescriptions in exchange for hundreds of dollars in cash;
 - g. The unexplained distance persons were willing to travel along with other prescription red flags identify that individuals knew that in exchange for cash payment these prescription drug orders would be filled with controlled substances from Respondent, Mr. Jones, and Mr. Wimberley;
 - h. Persons receiving the prescriptions were generally dispensed non-controlled drugs at the same time as the prescriptions for controlled substances, which were also purportedly authorized by Dr. Nguyen. Dispensing controlled substances and non-controlled substances in ratio of 1:1 is recognized as an attempt to subvert regulatory oversight of nontherapeutic prescribing and dispensing of controlled substances; and
 - i. During the entire time period referenced, the prescriptions for the same or similar drugs in the same or similar quantities and in the same or similar combinations of drugs were dispensed to multiple persons per day.

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) Pharmacy license number 26529 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 contested case hearing on disciplinary action against the suspended license to be held at the State Office of Administrative Hearings not later than ninety (90) days after the date of this Order. During the period of suspension, Respondent shall:
 - (a) not operate as a pharmacy in this state in any manner that would allow receipt, distribution, or dispensing prescription drugs during the period said license is suspended; and
 - (b) remove the wall certificate for said license and any renewal certificate pertaining to said license from public display in a pharmacy and may not further display in public view said certificates.
- (2) Respondent shall immediately transfer all prescription drugs to a secured licensed pharmacy or other entity with the authority to legally possess prescription drugs, not later than January 26, 2018, and to immediately thereafter provide documentation of such transfer to the Board.
- (3) If Respondent does not immediately and fully comply with the terms of paragraph (2) above, the Board shall have the authority to remove all dangerous drugs from Respondent's establishment for the purpose of either transferring such drugs to a secured licensed pharmacy or other entity with the authority to legally possess dangerous drugs set forth in § 483.041(c) of the Texas Dangerous Drug Act, or destroying such drugs as in § 483.074 of the Texas Dangerous Drug Act.
- (4) Respondent shall be responsible for all costs relating to compliance with the requirements of this Order.
- (5) 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

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to the Texas Pharmacy Act, TEX. OCC. CODE ANN., Title 3, Subtitle J (2017), and Texas Pharmacy Board Rules, 22 TEX. ADMIN. CODE (2018).

Passed and approved at the Temporary Suspension Hearing of the Disciplinary Panel of the Texas State Board of Pharmacy on the 19th day of January, 2018.

And it is so ORDERED.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED ON THIS 19th day of January, 2018.



MEMBER, TEXAS STATE BOARD OF PHARMACY



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