

TEMPORARY SUSPENSION ORDER #A-16-008-BSI

RE: IN THE MATTER OF
HEALTH FIT PHARMACY
(PHARMACY LICENSE #26701)

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 26701, issued to Health Fit Pharmacy (Respondent), 1307 Yale Street, Suite H, Houston, Texas 77008, pursuant to § 565.059 of the Texas Pharmacy Act (Pharmacy Act), TEX. OCC. CODE ANN., Title 3, Subtitle J.

Bonita Dintte Billings, Officer of Health Fit Pharmacy, LLC, on behalf of Respondent, and Don E. Lewis, Legal Counsel for Respondent, were 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 26701 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 September 15, 2017, Hearing on Temporary Suspension of License of Respondent:

1. On or about November 4, 2009, Respondent, 1307 Yale Street, Suite H, Houston, Texas 77008, was issued Texas pharmacy license number 26701.
2. The corporate owner of Respondent is Health Fit Pharmacy, LLC, and the corporate officer is Bonita Dintte Billings.

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, Ms. Billings 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 November 30, 2017.
8. All jurisdictional requirements have been satisfied.
9. On or about March 11, 2015, a Board compliance officer conducted an inspection of Respondent at the pharmacy's previous licensed location of 3620 Katy Freeway, Suite A, Houston, Texas 77007. The compliance inspector documented on the inspection form that the pharmacy was advised to address corresponding responsibility. In particular, this notation indicates the pharmacy may be engaging in non-therapeutic dispensing practices related to certain highly-abused controlled substances and that the pharmacy should ensure the controlled substances are dispensed only for a legitimate medical purpose.
10. On or about January 21, 2016, a Board compliance officer conducted an inspection of Respondent at the pharmacy's current licensed location of 1307 Yale Street, Suite H, Houston, Texas 77008. The compliance inspector documented on the inspection form that the pharmacy was advised to cease dispensing prescriptions identified by the compliance officer as invalid. The controlled substance dispensed included promethazine with codeine prescriptions and were allegedly without a legitimate medical purpose.
11. Between on or about February 8, 2017, through June 20, 2017, Respondent and Jeremy Branch, while acting as an employee (pharmacist-in-charge and a pharmacist), dispensed controlled substances, including alprazolam 2mg tablets, promethazine with codeine 6.25-10mg/5ml liquid, and carisoprodol 350 mg tablets, pursuant to prescriptions purportedly authorized by Khanh Quoc Nguyen, issued on prescriber's prescription forms identifying "Elite Choice Medical Clinic" at an address of 25010 Oakhurst Dr., Suite 120, Spring, Texas 77386, as follows:

Total for Pharmacy:	1,697 RXs	127,444 Dosage Units
Total for Branch:	575 RXs	42,952 Dosage Units

An investigator for the Board attempted to visit Elite Choice Medical Clinic at the address listed on the prescriber's prescription forms dispensed by Health Fit Pharmacy. Elite Choice Medical Clinic was not located at the address listed on the prescription

forms. The Board investigator was informed that since June 2013 a non-medical business occupies the former office suite of Elite Choice Medical Clinic. In addition, while Dr. Nguyen had practiced medicine in 2010 at Elite Choice Medical Clinic at the location on the prescriber's prescription forms, Dr. Nguyen subsequently surrendered his controlled substance registration in 2011 to the U.S. Drug Enforcement Administration (DEA). No current controlled substance DEA registration is issued to Dr. Nguyen, and a residential address is provided as the practice location for Dr. Nguyen according to the license verification listed on the Texas Medical Board webpage. Nonetheless, prescriptions dispensed by Respondent purportedly issued by Dr. Nguyen practicing medicine at this non-existent clinic constitute approximately half of all prescriptions dispensed during this time period at Health Fit Pharmacy in 2017, and were often the majority of prescription each day.

During the entire period of his tenure as pharmacist-in-charge of Respondent, Mr. Branch should have known the prescriptions purportedly authorized by Dr. Nguyen of Elite Choice Medical Clinic 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 the above-stated controlled substances, 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., 60 tablets of alprazolam 2mg, 120 tablets of carisoprodol 350 mg, and 240 ml of promethazine with codeine 6.25-10mg/5ml liquid;
- c. The prescriptions were routinely dispensed to patients 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 Elite Choice Medical Clinic, the clinic's location in Spring, Texas, is approximately 25 miles apart from Respondent, which is a far distance in the Houston metropolitan area with numerous other pharmacy options. In addition, for most patients there is no logical relation to patients' home addresses to justify legitimate travel at Respondent;
- f. Health Fit Pharmacy purportedly sold the prescriptions in exchange for hundreds of dollars in cash;
- g. The unexplained distance patients 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 and Mr. Branch;
- h. Patients 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. These non-controlled drugs

total 1,524 prescriptions, which is 47% of the total dispensing for prescriptions purportedly issued 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 patients per day.
12. On or after June 21, 2017, Respondent continues to report dispensing for prescriptions purportedly issued by Khanh Quoc Nguyen, M.D., to the Prescription Drug Monitoring Program (PDMP). In approximately six weeks' time following June 21, 2017, Respondent and Jeremy Branch reported dispensing a high percentage of prescriptions purportedly issued by Khanh Quoc Nguyen, M.D. The PDMP report demonstrates that the pharmacy and Mr. Branch are continuing to engage in dispensing prescriptions from this non-existent medical clinic by dispensing high strengths and in large quantities of controlled substances that are known to be routinely abused to patients not billing to insurance to receive the drugs from this pharmacy. Specifically, of the 969 prescriptions reported to the PDMP during this approximate six week period, the pharmacy and Mr. Branch have dispensed of 528 prescriptions (54.49% of the total reported prescriptions) purportedly issued by Dr. Nguyen, consisting of the following:
- o 184 prescriptions each for alprazolam 2mg tablets (11,040 dosage units),
 - o 133 prescriptions each for carisoprodol 350 mg tablets (15,960 dosage units), and
 - o 165 prescriptions each for promethazine with codeine 6.25-10mg/5ml liquid (7,920 dosage units).

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 26701 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:

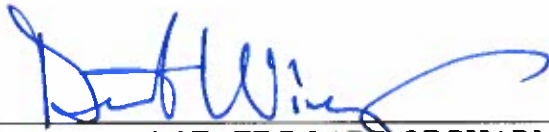
- (a) not operate as a pharmacy in this state in any manner that would allow receipt, distribution, or dispensing prescription drugs during the period said license is suspended; and
 - (b) remove the wall certificate for said license and any renewal certificate pertaining to said license from public 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 September 22, 2017, 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 to the Texas Pharmacy Act, TEX. OCC. CODE ANN., Title 3, Subtitle J (2015), and Texas Pharmacy Board Rules, 22 TEX. ADMIN. CODE (2017).

Passed and approved at the Temporary Suspension Hearing of the Disciplinary Panel of the Texas State Board of Pharmacy on the 15th day of September, 2017.

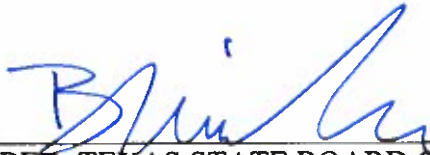
And it is so ORDERED.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED ON THIS 15th day of September, 2017.



MEMBER, TEXAS STATE BOARD OF PHARMACY



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