

TEMPORARY SUSPENSION ORDER #A-17-008-BSI

RE: IN THE MATTER OF
KORNER PHARMACY
(PHARMACY LICENSE #29908)

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 29908, issued to Korner Pharmacy (Respondent), 2503 Cartwright, Missouri City, Texas 77459, pursuant to § 565.059 of the Texas Pharmacy Act (Pharmacy Act), TEX. OCC. CODE ANN., Title 3, Subtitle J.

Kevin Peterson, Individual Owner, on behalf of Respondent, and Preston C. Goodwin, Legal Counsel for Respondent, did not appear. Caroline Hotchkiss represented Board staff. Kerstin 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 Jenny Downing Yoakum, R.Ph.

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 29908 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 20, 2017, Hearing on Temporary Suspension of License of Respondent:

1. On or about April 2, 2015, Respondent, 2503 Cartwright, Missouri City, Texas 77459, was issued Texas pharmacy license number 29908.
2. The individual owner of Respondent is Kevin Peterson.
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, Mr. Peterson 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 April 30, 2017.
8. All jurisdictional requirements have been satisfied.
9. Between on or about February 1, 2016, and November 22, 2016, Respondent and Charlie Bellinger Bethea, while acting as pharmacist-in-charge and a pharmacist, dispensed controlled substances and dangerous drugs to patients in repeated patterns that demonstrate a lack of adherence to professional standards for practicing corresponding responsibility in dispensing controlled substances. During this time period, Respondent dispensed controlled substances and dangerous drugs pursuant to approximately 2,000 hardcopy original prescription drug orders (the drug orders). For each patient, the drug orders are consistently comprised of a purported official prescription form for a Schedule II controlled substance and another prescription form that routinely prescribes one controlled substance and two non-controlled dangerous drugs. During the above stated time period, Ms. Bethea should have known that prescriptions dispensed pursuant to the drug orders were invalid, i.e. not issued for a legitimate therapeutic purpose or medical need and/or prescription forgeries, due to the following prescription red flags factors:
 - a. A large majority of patients of the pharmacy received the following controlled substances: alprazolam 2mg, carisoprodol 350 mg, hydrocodone/APAP 10/325 mg, promethazine with codeine 6.25 mg-10 mg/5ml, and oxycodone 30 mg;
 - b. Patients were dispensed prescriptions for consistent large quantities of the above-listed controlled substances;
 - c. Respondent and Ms. Bethea dispensed prescriptions for patients and prescribers outside the general area of Respondent, in that many patients travelled long geographic distances between their purported residence throughout Houston's metropolitan area and other Texas cities, the prescriber's office, and Respondent;
 - d. Respondent and Ms. Bethea dispensed prescriptions at inconsistent intervals throughout the above listed ten-month time period, usually dispensing prescriptions on not more than three days per week, including several weeks of zero dispensing, which indicates that the prescriptions were received by Respondent in an unusual manner compared to a typical pharmacy operating on consistent business days;
 - e. A large number of prescriptions issued by the prescribers were issued from practice locations that are not listed with the Texas Medical Board as registered pain management clinics; and
 - f. Prescriptions dispensed throughout the time period alleged bear readily-

identifiable markers of forgeries, including quantities, directions, or dosages differing from usual medical usage, prescriptions that do not comply with the acceptable standard abbreviations, prescriptions that appear to be photocopied, prescriptions look "too good," i.e., patients names and addresses match exactly to drivers license or identification, prescriptions are written in different color inks or written in different handwriting, and misspellings typed on the official prescription form.

10. Beginning on or about February 26, 2016, through on or about December 21, 2016, Respondent and Ms. Bethea, while acting as the pharmacist-in-charge and a pharmacist of the pharmacy, failed to comply with reporting requirements for dispensing of controlled substances to the State of Texas's applicable drug monitoring database, i.e. the Prescription Access Texas system (prior to September 1, 2016) and currently the Texas Prescription Monitoring Program (commencing September 1, 2016). The last date of reporting of dispensing a controlled substance by Respondent was on February 19, 2016. Respondent and Ms. Bethea, while acting as pharmacist-in-charge and a pharmacist, routinely dispensed controlled substances after February 19, 2016. Between on or about February 26, 2016, and November 22, 2016, Respondent dispensed controlled substances pursuant to approximately 1,700 hardcopy original prescription drug orders (the drug orders), which each contained a prescription for a controlled substance, namely, alprazolam 2mg, carisoprodol 350 mg, hydrocodone/APAP 10/325 mg, promethazine with codeine 6.25 mg-10 mg/5ml, and oxycodone 30 mg.
11. On or about December 6, 2016, Respondent and Ms. Bethea, while acting as pharmacist-in-charge and a pharmacist, failed to supply pharmacy records within 72 hours after a request by an authorized agent of the Board. Previously, on November 30, 2016, a compliance officer for the Board requested that Respondent supply a drug audit trail of all dispensing over the past one year. When the compliance officer went to Respondent on December 6, 2016, Respondent and Ms. Bethea did not provide the request drug audit trail of all dispensing.

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 29908 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) shall surrender to the Board said license and any renewal certificate pertaining to said license number as specified by Board staff.
- (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 27, 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) Respondent shall allow Board staff to directly contact Respondent on any matter regarding the enforcement of this Order.
- (6) 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 20th day of January, 2017.

And it is so ORDERED.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED ON THIS 20th day of January, 2017.


MEMBER, TEXAS STATE BOARD OF PHARMACY


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