

TEMPORARY SUSPENSION ORDER #A-15-015-BS1

RE: IN THE MATTER OF
RX MAX PHARMACY
(PHARMACY LICENSE #27883)

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 27883, issued to RX Max Pharmacy (Respondent), 5858 South Gessner Drive #124, Houston, Texas 77036, pursuant to § 565.059 of the Texas Pharmacy Act (Pharmacy Act), TEX. OCC. CODE ANN., Title 3, Subtitle J.

Beveier Auguste, Managing Officer of RX Max Pharmacy, LLC, for and on behalf of Respondent, was not in attendance; however, Don E. Lewis, Legal Counsel for Respondent, was in attendance. 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.; Joyce A. Tipton, R.Ph.; and Phyllis A. Stine.

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 27883 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 22, 2015, Hearing on Temporary Suspension of License of Respondent:

1. RX Max Pharmacy, 5858 South Gessner Drive, Suite 124, Houston, Texas 77036, holds Texas pharmacy license number 27883.
2. The sole managing officer of RX Max Pharmacy, LLC, which operates RX Max Pharmacy, is Beveier Auguste.

3. As the owner of a pharmacy, Ms. Auguste has responsibility for all administrative and operational functions of the pharmacy.
4. A pharmacy is responsible for any violations in the practice of pharmacy by an owner or employee of the pharmacy.
5. The license of RX Max Pharmacy is current through February 29, 2016.
6. All jurisdictional requirements have been satisfied.
7. On or about February 24, 2014, the TSBP informed RX Max Pharmacy of its investigation regarding the purchases and sales of hydrocodone, carisoprodol, and alprazolam tablets by RX Max Pharmacy, which determined that RX Max Pharmacy was allegedly dispensing prescriptions that may not have been issued for a legitimate medical purpose. No disciplinary action was taken with regard to this matter.
8. On or about January 14, 2015, a compliance officer for the TSBP performed a routine inspection of RX Max Pharmacy. Shlonda Fay Williams, pharmacist-in-charge of RX Max Pharmacy since on or about June 13, 2014, was operating RX Max Pharmacy on the day of the inspection. The compliance officer observed Ms. Williams as the sole pharmacist employee of RX Max Pharmacy during the inspection.
9. During the inspection, the compliance officer identified numerous prescriptions each issued on October 4, 2014, authorized by Vogue Davis, APN, for hydrocodone/APAP 10/325 mg tablets as invalid prescriptions, as discussed below in the Allegations in detail. The compliance officer addressed the invalidity of the prescriptions authorized by Ms. Davis with Ms. Williams, who stated that previously she was told by the pharmacy owner to continue to dispense these prescriptions at a maximum of four per day.
10. On or about February 4, 2015, Chukwuma Anyanwu became the pharmacist-in-charge of RX Max Pharmacy.
11. On or about March 30, 2015, an investigator for the TSBP obtained dispensing records and original prescriptions from RX Max Pharmacy. According to the dispensing records of RX Max Pharmacy, numerous prescriptions each issued on October 4, 2014, authorized by Vogue Davis, APN, for hydrocodone/APAP 10/325 mg tablets, continued to be dispensed by RX Max Pharmacy on a regular basis following the compliance officer's inspection.
12. Between on or about October 1, 2014, and March 6, 2015, RX Max Pharmacy sold controlled substances and dangerous drugs to patients pursuant to 2,162 invalid prescriptions (totaling 109,500 dosage units of hydrocodone/APAP 10/325 mg, alprazolam 2mg, and carisoprodol 350 mg) issued by Vogue Davis, a nurse practitioner, under the supervision of Raul Rodriguez, M.D., Center Care Medical Group, 8700 Commerce Park, Suite 125, Houston, Texas 77036. These prescriptions were invalid

because they were issued without a valid patient-practitioner relationship and/or a valid medical need.

13. Of the 2,162 invalid prescriptions, 2,106 prescriptions were purportedly issued on October 4, 2014, by Vogue Davis, APN. (The remaining 56 prescriptions were purportedly issued on October 3, 2014, by Ms. Davis.) Pharmacist employees of RX Max Pharmacy engaged in fraud by dispensing and delivering these prescriptions for controlled substances and dangerous drugs because the practitioner acted outside the course of professional practice by supplying prescriptions to patients with the same date of issuance, and pharmacist employees of RX Max Pharmacy knew or should have known that the practitioner could not have issued all the prescriptions in the same day pursuant to a valid patient-practitioner relationship.
14. RX Max Pharmacy was required to ensure that its agents and employees, before dispensing a prescription, determined that the prescription was a valid prescription. It was known or should have known the 2,162 prescriptions issued by Vogue Davis, APN, were invalid and fraudulent because, based primarily on the factors listed below, the patients receiving such prescriptions received inadequate or improper medical treatment and/or the prescribers failed to use medical reasoning in issuing the prescriptions.
 - The patients received prescription drug orders written by Ms. Davis for an opioid (hydrocodone), a benzodiazepine (alprazolam), and/or a muscle relaxant (carisoprodol), which is part of what is known in the Houston, Texas community as “the Houston cocktail” and “the Trinity.” Hydrocodone, alprazolam, and carisoprodol are controlled substances with a high potential for abuse, and the drugs are commonly sought by drug abusers and have a high street value, indicating that diversion from legitimate medical channels was more likely;
 - Prescriptions for hydrocodone, alprazolam and carisoprodol written by Ms. Davis were prescribed in consistent quantities of approximately 120 tablets of hydrocodone/APAP 10 mg tablets, 45 tablets of alprazolam 2mg, and 90 tablets of carisoprodol 350 mg tablets per prescription drug order, indicating that the prescription drug orders were not based on an individual patient assessment or medical need;
 - In an attempt to avoid regulatory scrutiny for prescribing and dispensing an inversely proportional amount of controlled substances, the prescription drug orders written by Ms. Davis contained an equal number of dangerous drugs to controlled substances. Specifically, 1,077 of the 2,162 drugs prescribed by Ms. Davis and dispensed by RX Max Pharmacy were ibuprofen 600 mg tablets and a multivitamin. Thus, prescriptions for dangerous drugs prescribed by Ms. Davis were dispensed to a patient along with a prescription for hydrocodone/APAP 10/325 mg tablets, alprazolam 2mg tablets or carisoprodol 350 mg tablets, indicating that the dangerous drug prescriptions also were not prescribed based on a therapeutic need;
 - During the six-month time period analyzed, approximately 55% of the total prescriptions that RX Max Pharmacy dispensed were written by Ms. Davis and were often the majority of the prescriptions dispensed by the pharmacy per day. The high quantity of prescriptions written by Ms. Davis specifically on October 4, 2014, that

were dispensed by RX Max Pharmacy indicates that this prescriber saw numerous patients per day, which undermines the ability to prescribe based on an individual patient assessment or pursuant to medical need, or identifies that Ms. Davis intentionally backdated the date of issuance for hydrocodone/APAP 10/325 mg prescriptions to be issued prior to the rescheduling of the controlled substance. The high quantity of the prescriptions dispensed by RX Max Pharmacy issued by Ms. Davis emphasizes the agents and employees of RX Max Pharmacy's responsibility to be aware of the specific prescriber and her habits;

- Approximately 99% of patients receiving prescriptions from Ms. Davis dispensed by RX Max Pharmacy were under sixty-five years of age, with 50% of patients between the ages of twenty-five and forty-five. In several instances, prescriptions written by Ms. Davis for patients with the same address or same last names were dispensed on the same day, indicating that patients travelled in groups to get the prescriptions for the controlled substances. In addition, multiple patients from the same address receiving prescriptions from Ms. Davis were dispensed prescriptions. The younger age of the patients, which makes chronic pain less likely, and multiple patients utilizing the same home address and receiving the same drugs are additional indicators that the prescriptions were not based on medical need; and
- RX Max Pharmacy charged, and patients were willing to pay \$500 for 120 hydrocodone/APAP 10/325 mg tablets (\$2.83 per tablet, \$340 total), 90 carisoprodol 350 mg tablets (\$1.55 per tablet, total \$140), and \$10 each for 30 ibuprofen 600 mg and 30 multivitamins. This pricing of the drugs indicates that RX Max Pharmacy was not dispensing the drugs for legitimate medical purposes, but rather selling the drugs for profit to drug-seeking patients willing to pay a higher price for a pharmacy that would not reject the invalid prescriptions.

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 27883 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:

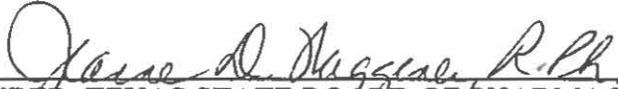
- (a) not operate as a pharmacy in this state in any manner that would allow receipt, distribution, or dispensing prescription drugs during the period said license is suspended; and
 - (b) shall surrender to the Board said license and any renewal certificate pertaining to said license number as specified 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 April 29, 2015, 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 (2013), and Texas Pharmacy Board Rules, 22 TEX. ADMIN. CODE (2015).

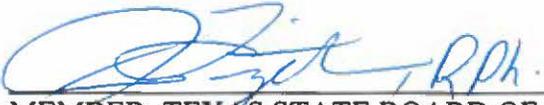
Passed and approved at the Temporary Suspension Hearing of the Disciplinary Panel of the Texas State Board of Pharmacy on the 22nd day of April, 2015.

And it is so ORDERED.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED ON THIS 22nd day of April, 2015.


MEMBER, TEXAS STATE BOARD OF PHARMACY


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