

AGREED TEMPORARY SUSPENSION ORDER #J-19-002-BS1

RE: IN THE MATTER OF
EMOSS PHARMACY, LLC
(PHARMACY LICENSE #27537)

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 pharmacy license number 27537 issued to E Moss Pharmacy, LLC (Respondent), 7011 Harwin Drive, Suite 223, Houston, Texas 77036.

On October 15, 2018, Board staff filed a Petition for Temporary Suspension of pharmacy license number 27537 held by Respondent, pursuant to §565.059 of the Texas Pharmacy Act, TEX. OCC. CODE ANN., Title 3, Subtitle J (the Act). This action was taken as a result of an investigation that produced evidence indicating that Respondent may have violated:

Sections 562.056(a) and (a-1); 562.112(a); 565.001(a)(1), (2), (9)(A), (12), (13) and (15); 565.001(a)(2), (8), (9)(A), and (13); 565.002(a)(3), (8) and (9); and of the Texas Pharmacy Act, TEX. OCC. CODE ANN. Title 3, Subtitle J (2015);

Sections 281.7(a)(1), (2)(A), (3), (12), (13), (20) and (23)(A) and (D); 291.29(a), (b), (c), and (d) (effective September 12, 2011 – September 15, 2018); 291.29(a), (b), (c), (d) and (f) (effective September 16, 2018 – present); 291.32(a)(2)(H) and (b); 291.32(c)(1)(E); 291.34(b)(1)(A) and (B); and 295.3(a) and (b); and 315.6 of the Texas Pharmacy Board Rules, 22 TEX. ADMIN. CODE (2018);

Section 481.075(i) of the Texas Controlled Substances Act, TEX. HEALTH AND SAFETY CODE ANN. (2017);

Section 483.021(a) of the Texas Dangerous Drug Act, TEX. HEALTH & SAFETY CODE ANN.; and

Section 1306.04 of the Rules of the Federal Drug Enforcement Administration, TITLE 21 U.S. CODE OF FEDERAL REGULATIONS, in that allegedly:

COUNTS

- (1) Between on or about October 3, 2017, through on or about October 2, 2018, Respondent and Job Ratemo, while acting as an employee (pharmacist-in-charge and a pharmacist) and corporate officer of E Moss Pharmacy, LLC, dispensed invalid prescriptions for controlled substances—often combinations of controlled substances—to patients in discernable patterns that demonstrate a lack of professional judgment and neglect of a pharmacist's corresponding responsibility in dispensing controlled substances. The invalid prescriptions included the following six controlled substances, based on dispensing data provided by Respondent which demonstrates Mr. Ratemo dispensed:

- (a) approximately 1,971 prescriptions for Hydrocodone/APAP 10-325 mg tablets;
 - (b) approximately 1,584 prescriptions for Oxycodone HCL 30 mg tablets;
 - (c) approximately 528 prescriptions for Hydromorphone HCL 8 mg tablets;
 - (d) approximately 905 prescriptions for Alprazolam 2 mg tablets;
 - (e) approximately 1,348 prescriptions for Promethazine-Codeine Syrup 6.25-10 mg/5ml; and
 - (f) approximately 482 prescriptions for Carisoprodol 350 mg tablets.
- (2) During the above-referenced time period, Respondent and Mr. Ratemo, while acting as an employee (pharmacist-in-charge and a pharmacist) and corporate officer of E Moss Pharmacy, LLC, dispensed at least 1,324 written prescription drug orders that included combinations of controlled substances dispensed to an individual patient on the same day:
- (a) Hydrocodone 10-325 mg and Alprazolam 2 mg: 624 combinations
 - (b) Hydrocodone 10-325 mg and Carisoprodol 350 mg: 301 combinations
 - (c) Oxycodone HCL 30 mg and Alprazolam 2 mg: 214 combinations
 - (d) Oxycodone HCL 30 mg and Carisoprodol 350 mg: 131 combinations
 - (e) Hydromorphone 8 mg and Alprazolam 2 mg: 25 combinations
 - (f) Hydromorphone 8 mg and Carisoprodol 350 mg: 17 combinations
 - (g) Hydrocodone 10-325 mg and Promethazine-Codeine: 7 combinations
 - (h) Oxycodone HCL 30 mg and Promethazine-Codeine: 5 combinations
- (3) Respondent and Mr. Ratemo, while acting as an employee (pharmacist-in-charge and a pharmacist) and corporate officer of E Moss Pharmacy, LLC, dispensed approximately 6,903, or 59.37% of the 11,628 total prescriptions dispensed during the above-referenced time period, which were purportedly authorized by three physicians: Ronald Bryant, MD., Juan Pacheco Garcia, MD., and Matthew T. Monroe, MD. All three physicians or their clinic staff have indicated the prescriptions in question were fraudulent, and that reports had been made to the Drug Enforcement Agency (DEA) and the Texas Department of Public Safety (DPS).
- Further, Dr. Monroe indicated that the prescriptions in question did not bear his signature, contained an incorrect telephone number that he has never used, listed an incorrect medical license number, and that his practice did not include prescribing Oxycodone and Hydromorphone. Dr. Bryant indicated that his practice did not include Oxycodone or narcotic cough syrups, that he infrequently prescribed Hydrocodone with a muscle relaxant, that he was aware of prescriptions bearing retired DEA numbers being filled, and that the fraudulent prescriptions contain incorrect phone numbers.
- (4) Mr. Ratemo knew or should have known that the majority of the 6,818 controlled substance prescriptions referenced in paragraph 8 above were invalid, i.e. not issued for a legitimate therapeutic purpose or medical need and/or prescription forgeries, due to the following discernable patterns or red flag factors that a reasonable pharmacist would have recognized:

- (a) Prescriptions for the controlled substances referenced in paragraph 8 above were at the highest strength available, with no variance: Alprazolam 2 mg; Carisoprodol 350 mg; Hydrocodone/APAP 10/325 mg; Hydromorphone HCL 8 mg; and Oxycodone HCL 30 mg.
 - (b) Only large quantities were prescribed:
 - (i) 100-120 tablets of Hydromorphone HCL 8 mg;
 - (ii) 100-120 tablets of Hydrocodone/APAP 10/325 mg;
 - (iii) 90 tablets of Carisoprodol 350 mg;
 - (iv) 60-90 tablets of Alprazolam 2 mg; and
 - (v) 100-120 tablets of Oxycodone HCL 30 mg.
 - (c) Controlled substance prescriptions were routinely dispensed as combinations, with patients receiving more than one of the controlled substances referenced in paragraph 8 above on the same date.
 - (d) The prescriptions indicate a discernable lack of individualized treatment. Patients were receiving the same controlled substances, the same combinations, at the same maximum strength, from the same practitioner.
 - (e) The prescriptions fail to indicate a therapeutic purpose and/or diagnosis on the face of the prescriptions.
 - (f) In addition to repeatedly being issued for large quantities of high strength controlled substances, dangerous drugs and/or over-the-counter products were consistently added to the prescriptions in discernable patterns.
 - (g) Opioids, benzodiazepines, muscle relaxants, and cough syrups containing codeine are commonly known drugs of abuse—especially in combination.
 - (h) Almost all patients presenting prescriptions for the above drugs, and/or drug combinations, were paying large amounts of cash for controlled substances:
 - (i) \$700 - \$1,200 for 100-120 tablets of Hydromorphone HCL 8 mg;
 - (ii) \$300 - \$400 for 100-120 tablets of Hydrocodone/APAP 10 mg;
 - (iii) \$100 - \$180 for 90 tablets of Carisoprodol 350 mg;
 - (iv) \$140 - \$180 for 60-90 tablets of Alprazolam 2 mg;
 - (v) \$360 - \$380 for Promethazine-Codeine Syrup 240 ml; and
 - (vi) \$1,180 - \$1,440 for 100-120 tablets of Oxycodone HCL 30 mg.
 - (i) During the entire above-referenced time period, only two patients used insurance for payment.
- (5) Additional factors or patterns suggesting nontherapeutic dispensing of controlled substances include: Drs. Bryant, Garcia, and Monroe were not prescribing from pain management clinics registered with the Texas Medical Board; the type and/or quantity of

controlled substances being prescribed by Drs. Bryant, Garcia, and Monroe were inconsistent with their respective areas of medical practice; the pharmacy routinely orders and receives controlled substances from multiple suppliers; Mr. Ratemo admitted to Board Inspector Kathy Salinas that he had not called any prescribers to verify the authenticity of prescriptions; Mr. Ratemo was not utilizing the Texas Prescription Monitoring Program to report controlled substance dispensing or to review patient records prior to dispensing; and the pharmacy does not maintain normal operational hours in that it is only open from 10:00 AM to 3:00 PM on Monday through Thursday.

- (6) Between on or about October 12, 2017, through on or about October 12, 2018, Respondent and Job Ratemo, while acting as an employee (pharmacist-in-charge and pharmacist) and corporate officer of E Moss Pharmacy, LLC, failed to comply with reporting requirements for dispensing of controlled substances to the Texas Prescription Monitoring Program. Respondent and Mr. Ratemo dispensed numerous controlled substances between on or about October 3, 2017, through on or about October 2, 2018, in that the pharmacy's drug audit trail of dispensing contains entries of dispensing 6,818 prescriptions for controlled substances. However, data from the Texas Prescription Monitoring Program demonstrates the pharmacy failed to report any prescriptions dispensed for controlled substances during this time period.

In lieu of proceeding with a temporary suspension hearing, Respondent requested entry of this Agreed Temporary Suspension Order (Order). By signing this Order, Job Ratemo, Corporate Officer, on behalf of Respondent, and Don E. Lewis, Legal Counsel for Respondent, neither admit nor deny the truth of the matters previously set out in this Order, and agree that the Board has jurisdiction in this matter and waive the right to notice of hearing, formal administrative hearing, and judicial review of this Order.

Subsequently, it was agreed among the parties that Respondent shall comply with the requirements set forth in the ORDER OF THE BOARD below.

ORDER OF THE BOARD

THEREFORE, PREMISES CONSIDERED, the Board does hereby ORDER that:

- (1) Effective immediately upon the entry of this Order, Respondent's license shall be, and such license is hereby temporarily suspended. Said suspension 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 (SOAH) and/or the subsequent entry of an agreed board order or board order to resolve the matter.
- (2) 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; 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
- (3) Respondent specifically waives the right to a contested case hearing before the State Office of Administrative Hearings within the 90 day timeframe specified in § 565.059(c) of the Act, and Respondent's pharmacist license shall not be automatically reinstated. The parties agree that the hearing at SOAH will be scheduled within 180 days of the entry of this order, unless the parties agree for the hearing to be held on a specific later date.
- (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 (2017), and Texas Pharmacy Board Rules, 22 TEX. ADMIN. CODE (2018).

And it is so ORDERED.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED ON THIS 30th day of October, 2018.



MEMBER, TEXAS STATE BOARD OF PHARMACY



MEMBER, TEXAS STATE BOARD OF PHARMACY



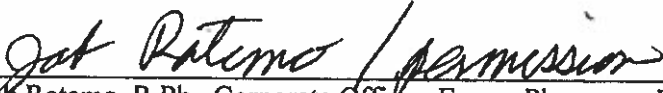
MEMBER, TEXAS STATE BOARD OF PHARMACY

ATTEST:



Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director/Secretary
Texas State Board of Pharmacy

APPROVED AS TO FORM AND AGREED TO:



Job Ratemo, R.Ph., Corporate Officer, Emoss Pharmacy, LLC



Don E. Lewis, Legal Counsel for Emoss Pharmacy, LLC
Don E. Lewis and Associates
1717 St. James Place, Suite 120
Houston, Texas 77056

APPROVED AS TO FORM:



Kerstin Arnold, General Counsel
Texas State Board of Pharmacy