

*TEMPORARY SUSPENSION ORDER # 2019-05005*

RE: IN THE MATTER OF  
GARY LYNNE SMITH  
(PHARMACIST LICENSE #20919)

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 pharmacist license number 45136 issued to Gary Lynne Smith (Respondent), pursuant to § 565.059 of the Texas Pharmacy Act (Pharmacy Act), TEX. OCC. CODE ANN., Title 3, Subtitle J.

Respondent was in attendance. John Griffith, Litigation Counsel, 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.; Jenny Downing Yoakum, R.Ph.; and Lori Henke, Pharm.D., R.Ph.

The Disciplinary Panel determines that Respondent, by continuation in practice, would constitute a continuing threat to the public welfare, and that pharmacist license number 20919 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 August 28, 2019, Hearing on Temporary Suspension of License of Respondent:

1. On or about May 28, 2010, Respondent was issued Texas pharmacist license number 20919.
2. Respondent's Texas pharmacist license was in full force and effect at all times and dates material and relevant to this Order.
3. Respondent served as the pharmacist-in-charge and a pharmacist of Care RRX Pharmacy from on or about May 17, 2018, through on or about August 1, 2018.

4. A pharmacist-in-charge has responsibility for the practice of pharmacy at the pharmacy for which he/she is the pharmacist-in-charge, including legally operating the pharmacy in accordance with all state and federal laws or rules governing the practice of pharmacy.
5. A pharmacist is responsible for complying with all state and federal laws and rules governing the practice of pharmacy while on duty.
8. Respondent's pharmacist license is current through May 30, 2020.
9. All jurisdictional requirements have been satisfied.

Between on or about May 17, 2018, through on or about December 3, 2018, Gary Lynne Smith, while acting as an employee (pharmacist-in-charge from on or about on or about May 17, 2018, through on or about August 1, 2018, and pharmacist from on or about August 1, 2018, through on or about December 3, 2018) of Care RRX Pharmacy, 6744 Highway 6 South, Houston, Texas 77083, previously located at 4102 Woodlawn Avenue, Suite 120, Pasadena, Texas 77504, dispensed numerous invalid prescriptions for 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. Mr. Smith knew or should have known the prescriptions were invalid.

During the time period referenced above, 99.17% of the controlled substance prescriptions dispensed by Mr. Smith were as follows:

- (a) 614 prescriptions for hydrocodone/APAP 10-325 mg tablets; and
- (b) 464 prescriptions for carisoprodol 350 mg tablets.

Prescriptions for the two above controlled substances account for 55.42% of the total 1,945 prescriptions dispensed by Mr. Smith during the above-stated time period. Further, Mr. Smith dispensed hydrocodone and carisoprodol in combination to approximately 94% of the pharmacy's patients.

<b>Controlled Substance Combinations Dispensed to the Same Patient on the Same Day</b>	<b># Patients (450 total)</b>	<b>% Patients</b>
Hydrocodone + Carisoprodol	424	94.22%
Hydrocodone (only)	6	1.33%
Carisoprodol (only)	16	3.56%
<b>TOTAL</b>	<b>446</b>	<b>99.11%</b>

During the above time period, Mr. Smith dispensed the below controlled substances pursuant to prescriptions from multiple prescribers, including, but not limited to, the following:

Prescriber Name	# Patients (450 total)	% of Total Patients	# Patients receiving Hydrocodone and Carisoprodol	% of Prescriber's patients receiving Controlled Substances
Rodriguez, Victor	139	30.89%	138	99.28%
Thompson, Katherine	86	19.11%	85	98.84%
Camp, Darryl	70	15.55%	69	98.57%
Rosenfield, Jonathan	47	10.44%	38	80.85%
Uwaydah, Nema	20	4.44%	20	100%
Warfield, Brett	20	4.44%	20	100%
Romans, Bradford L.	16	3.56%	15	93.75%
Hayes, Leo M.	10	2.22%	9	90%
<b>TOTAL</b>	<b>408</b>	<b>90.66%</b>	<b>394</b>	<b>96.57%</b>

During the above-referenced time period, Mr. Smith knew or should have known that the majority of the controlled substance prescriptions referenced above were invalid, i.e. not issued for a legitimate therapeutic purpose or medical need in the regular course of professional practice, due to the following discernable patterns or red flag factors that a reasonable pharmacist should have recognized:

- (a) prescriptions for the hydrocodone and carisoprodol were dispensed almost exclusively at the highest strength available in tablet form, with no variance;
- (b) large quantities were dispensed:
  - (i) average of 114 tablets of hydrocodone/APAP 10/325 mg per patient;
  - (ii) average of 85 carisoprodol 350 mg tablets per patient;
- (c) controlled substance prescriptions were routinely dispensed as combinations, with patients receiving more than one of the controlled substances referenced above on the same date;
- (d) the prescriptions indicated a discernable lack of individualized treatment; i.e., patients were receiving the same controlled substances, the same combinations, at the same maximum strength, from the same practitioner;

- (e) many of the prescriptions failed to indicate a therapeutic purpose and/or diagnosis on the face of the prescriptions;
- (f) in addition to the prescriptions for large quantities of high strengths of controlled substances, patients were also prescribed dangerous drugs and/or over-the-counter products in discernable patterns;
- (g) opioids and muscle relaxants are commonly known drugs of abuse—especially in combination; and
- (h) almost all patients presenting prescriptions for the above referenced drugs and/or drug combinations paid cash..

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) Pharmacist license number 20919 held by Respondent shall be, and such license is hereby temporarily suspended. Said suspension shall be effective immediately and shall continue in force and 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 practice pharmacy in this state or be employed in any manner requiring a license with the Board or allowing access to prescription drugs in a pharmacy; 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 be responsible for all costs relating to compliance with the requirements of this Order.
- (3) Respondent shall allow Board staff to directly contact Respondent on any matter regarding the enforcement of this Order.

- (4) Respondent shall not violate any pharmacy or drug statute or rule of this state, another state or the United States with respect to pharmacy, controlled substances, or dangerous drugs.
- (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 (2017), and Texas Pharmacy Board Rules, 22 TEX. ADMIN. CODE (2019).

Passed and approved at the Temporary Suspension Hearing of the Disciplinary Panel of the Texas State Board of Pharmacy on the 28th day of August, 2019.

And it is so ORDERED.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED ON THIS 28th day of August, 2019.

Dan Wing, RPh.  
MEMBER, TEXAS STATE BOARD OF PHARMACY

Jennifer D. Jakom, RPh.  
MEMBER, TEXAS STATE BOARD OF PHARMACY

Lori Henke, RPh  
MEMBER, TEXAS STATE BOARD OF PHARMACY