

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF PHARMACY
DISCIPLINARY SUBCOMMITTEE

In the Matter of

LAP PAN CHU, R.PH.
License No. 53-02-035032,

File No. 53-18-152090

Respondent.

ORDER OF SUMMARY SUSPENSION

The Department filed an *Administrative Complaint* against Respondent as provided by the Public Health Code, MCL 333.1101 *et seq.*, the rules promulgated under the Code, and the Administrative Procedures Act, MCL 24.201 *et seq.*

After careful consideration and after consultation with the Chairperson of the Board of Pharmacy pursuant to MCL 333.7314(2), the Department finds that there is an imminent danger to the public health or safety that requires emergency action.

Therefore, IT IS ORDERED that Respondent's license to practice as a pharmacist is SUMMARILY SUSPENDED, commencing the date this *Order* is served.

MCL 333.7311(6) provides that a controlled substance license is automatically void if a licensee's license to practice is suspended or revoked under Article 15.

Under Mich Admin Code, R 792.10702, Respondent may petition for the dissolution of this *Order* by filing a document clearly titled **Petition for Dissolution of Summary Suspension** with the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, P.O. Box 30670, Lansing, MI 48909.

MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY AFFAIRS

Dated: 10/4/18


By: Cheryl Wykoff Pezon, Director
Bureau of Professional Licensing

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ADMINISTRATIVE COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs by Cheryl Wykoff Pezon, Director, Bureau of Professional Licensing, complains against Respondent Lap Pan Chu, R.Ph. as follows:

1. The Michigan Board of Pharmacy is an administrative agency established by the Public Health Code, MCL 333.1101 *et seq.* The Board's Disciplinary Subcommittee is empowered to discipline licensees for Code violations.

2. The Board administers the controlled substance provisions in Article 7 of the Code, MCL 333.7101 - .7545; and is empowered to discipline licensees for Article 7 violations under MCL 333.7311.

3. MCL 333.7333(1) provides, in pertinent part:

"[G]ood faith" means the prescribing or dispensing of a controlled substance by a practitioner . . . to or for an individual Application of good faith to a pharmacist means the dispensing of a controlled substance pursuant to a prescriber's order which, in the professional judgment of the pharmacist, is lawful. The pharmacist shall be guided by nationally accepted professional standards including, but not limited to, all of the following, in making the judgment:

(a) Lack of consistency in the doctor-patient relationship.

- (b) Frequency of prescriptions for the same drug by 1 prescriber for larger numbers of patients.
- (c) Quantities beyond those normally prescribed for the same drug.
- (d) Unusual dosages.
- (e) Unusual geographic distances between patient, pharmacist, and prescriber.

4. Mich Admin Code, R 338.490(2) provides:

A pharmacist shall not fill a prescription order if, in the pharmacist's professional judgment, any of the following provisions apply:

- (a) The prescription appears to be improperly written.
- (b) The prescription is susceptible to more than 1 interpretation.
- (c) The pharmacist has reason to believe that the prescription could cause harm to the patient.
- (d) The pharmacist has reason to believe that the prescription will be used for other than legitimate medical purposes.

5. MCL 333.7311(6) provides that a controlled substance license is automatically void if a licensee's license to practice is suspended or revoked under Article 15.

6. Respondent is a Michigan-licensed pharmacist and holds a current controlled substance license.

7. At all relevant times, Respondent was a pharmacist at Anson Pharmacy¹ (Anson) located in Temperance, Michigan. Upon information and belief, Respondent is the owner of Anson and has been acting as the pharmacist-in-charge since the pharmacy opened at this location in April 2016.

¹ The Department has also filed an Administrative Complaint against Anson for the conduct alleged here. *Anson Pharmacy*, No. 53-18-152089.

8. As Anson's pharmacist-in-charge, Respondent was responsible for compliance with part 177 of the Code and rules promulgated under that part and for supervising the practice of pharmacy for the pharmacy, per MCL 333.17748.

9. After consultation with the Board Chairperson, the Department found that the public health, safety, and welfare requires emergency action. Therefore, pursuant to MCL 333.16233(5), the Department summarily suspended Respondent's pharmacist license, effective on the date the accompanying Order of Summary Suspension was served.

10. Alprazolam (e.g. Xanax), a schedule 4 controlled substance, is a benzodiazepine used to treat anxiety disorders and panic disorder. Alprazolam is a commonly abused and diverted drug, particularly in its 1 mg and 2 mg dosages.

11. Promethazine with codeine syrup is a schedule 5 controlled substance prescribed for treating cough and related upper respiratory symptoms. Promethazine with codeine syrup is rarely indicated for any other health condition and is particularly ill-suited for long-term treatment of chronic pain. Promethazine with codeine syrup is a highly sought-after drug of abuse, and is known by the street names "lean," "purple drank," and "sizzurp."

12. Hydrocodone is an opioid. Hydrocodone combination products (e.g., Norco), are Schedule 2 controlled substances due to their high potential for abuse.

13. Oxycodone and oxycodone combination products are opioid schedule 2 controlled substances. These medications are used to treat pain and are commonly abused and diverted.

14. Oxymorphone, a schedule 2 controlled substance, is an opioid used to treat pain, and is a commonly abused and diverted drug. Oxymorphone 40 mg is the most commonly abused and diverted strength of oxymorphone.

15. The Centers for Disease Control and Prevention (CDC) guidelines for opioid prescribing direct providers to avoid prescribing opioid pain medication and benzodiazepines concurrently whenever possible.

16. The CDC's guidelines for opioid prescribing direct providers to use "extra precautions" when prescribing opioids with a daily morphine milligram equivalent (MME) of 50 or more. Those guidelines also direct providers to "avoid or carefully justify" increasing dosage to a daily MME of 90 or more.

Dispensing Data

17. The Department reviewed data from the Michigan Automated Prescription System (MAPS), the State of Michigan's prescription monitoring program, which gathers data regarding controlled substances dispensed in Michigan. The Department discovered that Anson's dispensing of oxymorphone 40 mg and oxymorphone (all strengths) escalated from 2016 through 2018. The Department found that Anson was among the highest-ranked dispensers of the following commonly abused and diverted controlled substances among all Michigan dispensers in the following quarters of 2016 through 2018:

| <i>Drug</i> | <i>2016 Q3 Rank</i> | <i>2016 Q4 Rank</i> | <i>2017 Q1 Rank</i> | <i>2017 Q2 Rank</i> | <i>2017 Q3 Rank</i> | <i>2017 Q4 Rank</i> | <i>2018 Q1 Rank</i> | <i>2018 Q2 Rank</i> |
|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| Oxymorphone 40 mg | 40 | 29 | 25 | 30 | 21 | 19 | 22 | 17 |
| Oxymorphone (all strengths) | 57 | 29 | 38 | 40 | 30 | 22 | 27 | 22 |

18. Of all the controlled substance prescriptions dispensed by Anson between January 1, 2016 and June 30, 2018, more than 40% were paid for with cash. Nearly 80% of the prescriptions for oxycodone 30 mg were paid for with cash and 90% oxymorphone 40 mg were paid for with cash. According to the Drug Enforcement Agency (DEA) and Department of Human Services-Office of the Inspector General (DHHS-OIG) the national average for cash payments is around 12% for controlled substances and percentages significantly higher are red flags for diversion.

Dispensing for Pattern Prescribers

19. The Department analyzed Anson's dispensing data between 2016 and 2018 and noticed that Anson was dispensing for providers who tended to prescribe the same medications to a number of patients. Pattern prescribing is suggestive of prescriptions being written for illegitimate purposes. Several of the providers have been recently disciplined by the State of Michigan. Examples include:

- a. In January 2016, Anson filled multiple prescriptions for a combination of oxycodone 30 mg and oxymorphone 40 mg authorized by Dr. Fanny DelaCruz who has been disciplined by the State of Michigan for prescribing controlled substances for other than lawful or diagnostic purposes.
- b. In May 2016, Anson filled multiple prescriptions for a combination of oxycodone 30 mg and oxymorphone 40 mg authorized by Dr. James Beale who has been disciplined by the State of Michigan for prescribing controlled substances for other than lawful or diagnostic purposes.
- c. Between June 2016 and August 2016, Anson filled multiple prescriptions for a combination of oxycodone 30 mg and oxymorphone 40 mg authorized by Dr. Alan Wilson who has been disciplined by the State of Michigan for prescribing controlled substances for other than lawful or diagnostic purposes.

- d. Between August 2016 and July 2017, Anson filled multiple prescriptions for a combination of oxycodone 30 mg and oxymorphone 40 mg purportedly authorized by Dr. TF². On September 19, 2018, a Bureau investigator interviewed Dr. TF who stated that prescriptions filled by Anson under his name were fraudulent, that he never authorized any of them, and that the police have been informed. Furthermore, Dr. TF's office manager contacted Anson's PIC/owner, Lap Pan Chu, and Anson's staff pharmacist, Jie-Pien Lim, in May 2017 and informed them of the fraudulent prescriptions and that Dr. TF had closed his practice in April 2017. Dr. TF's office manager instructed them to stop filling the fraudulent prescriptions. Anson filled them for two months, following receipt of this information.
- e. Between July 2017 and December 2017, Anson filled multiple prescriptions for a combination of oxycodone 30 mg and oxymorphone 40 mg authorized by Dr. Zeyn Seabron who has been summarily suspended by the State of Michigan for prescribing controlled substances for other than lawful or diagnostic purposes.
- f. Between January 2018 and March 2018, Anson filled multiple prescriptions for a combination of oxycodone 30 mg and oxymorphone 40 mg purportedly authorized by Dr. SG. On September 19, 2018, a Bureau investigator interviewed Dr. SG who stated that prescriptions filled by Anson under his name were fraudulent, that he never authorized any of them, and that the police have been informed. Furthermore, Dr. SG contacted Respondent in March 2018 and informed him of the fraudulent prescriptions and also told him that he never prescribes oxymorphone. Respondent stated that he contacted Dr. SG's office and verified the prescriptions with "Jennifer." Dr. SG stated that he does not have anyone named Jennifer that has worked for him. Respondent knew in March 2018 that individuals were filling fraudulent prescriptions with Dr. SG's name and DEA number and Anson continued to fill prescriptions for these individuals under different providers afterwards.
- g. In March 2018, Anson filled multiple prescriptions for a combination of oxycodone 30 mg and oxymorphone 40 mg purportedly authorized by Dr. JH. On September 5, 2018, a Bureau investigator interviewed Dr. JH who stated that he is a urologist, that he never prescribes oxycodone or oxymorphone, and that prescriptions filled by Anson under his name were fraudulent.

² Initials are used to protect confidentiality.

- h. Between March 2018 and August 2018, Anson filled multiple prescriptions for a combination of oxycodone 30 mg and oxymorphone 40 mg purportedly authorized by Dr. MK. On September 12, 2018, a Bureau investigator interviewed Dr. MK who stated that prescriptions filled by Anson under his name were fraudulent, that he never authorized any of them, and that the police have been informed.

20. On August 15, 2018, the Department conducted an unannounced inspection of Anson's business premises and interviewed Anson's staff pharmacist, Jie-Pien Lim, R.Ph. The investigation produced the following information:

Inspection-Related Violations

- a. Anson stored controlled substance acquisition records, including schedule 2 controlled substances, with other non-controlled substance acquisition records, contrary to state and federal regulations. Additionally, the controlled substance records were not signed.
- b. During the inspection, investigators found expired and misbranded medications on the shelves.
- c. Anson did not have the required pharmacy reference texts.
- d. Anson filled numerous prescriptions from mid-level practitioners that failed to disclose the supervising physician.
- e. Anson failed to maintain the required controlled substance log.

Interview

- f. Following the inspection, investigators interviewed the staff pharmacist, Jie-Pien Lim. Bureau investigators questioned Mr. Lim about multiple instances where Anson filled prescriptions for combinations of oxycodone 30 mg and oxymorphone 40 mg from the same provider for different Detroit-area patients where the prescriptions were in near sequential order. Mr. Lim stated that a single "caregiver" would receive monthly prescriptions for these patients.

- g. Mr. Lim also reported that many of the aforementioned prescriptions were not covered by insurance and that the patients paid cash (\$176 for 90-count oxycodone 30 mg, and \$840 for 60-count oxymorphone 40 mg.). However, Bureau investigators found that Anson was actually receiving \$220.47 for 90-count oxycodone 30 mg, and \$1,232.31 for 60-count oxymorphone 40 mg.
- h. Mr. Lim stated that Anson's pharmacists checked MAPS to make sure patients were not "doctor-shopping" and contacted physician's offices to verify prescriptions.
- i. Mr. Lim could not explain why customers were travelling long distances from their homes to doctor's offices and subsequently travelling long distances to Anson.

21. On August 24, 2018, a Bureau investigator interviewed the Respondent. The interview produced the following information:

- a. Respondent confirmed that there were multiple instances where a "caregiver" would bring in prescriptions and pick up medication for individual patients. Respondent also confirmed that most of these were paid for with cash and that he believed it was not a good idea to dispense these prescriptions.
- b. Respondent believed that patients travelled a long distance because Anson's prices were cheaper.
- c. Respondent was unaware of any potential drug diversion and that deciding which prescriptions were appropriate to fill was a "headache" for him and that he considered himself neither a "policeman" nor a "judge."

Specific Patient Examples

22. The Department reviewed MAPS data for twelve (12) patients to whom Anson dispensed controlled substance prescriptions between January 2016 and August 2018. All of those patients filled prescriptions for commonly abused and diverted controlled substances at Anson during that period:

- a. Patient EW³ regularly filled prescriptions oxycodone, oxymorphone and promethazine with codeine syrup at Anson. MME for this patient was as high as 440 and he was receiving prescriptions from Seven (7) different providers. In addition, EW has felony convictions for controlled substance violations. EW resides approximately 58 miles from Anson.
- b. Patient AS regularly filled prescriptions oxycodone and oxymorphone. He is a convicted felon. His MME scores were as high as 270. AS resides approximately 55 miles from Anson.
- c. Patient CL regularly filled prescriptions oxycodone and oxymorphone. He is a convicted felon. His MME scores were as high as 350. CL resides approximately 51 miles from Anson.
- d. Patient DL regularly filled prescriptions oxycodone and oxymorphone. He is a convicted felon. His MME scores were as high as 340. DL resides approximately 49 miles from Anson.
- e. Patient AA regularly filled prescriptions oxycodone and oxymorphone. MME for this patient was as high as 400 and he was receiving prescriptions from seven (7) different providers. In addition, AA has felony convictions for controlled substance violations. AA resides approximately 62 miles from Anson.
- f. Patient SM regularly filled prescriptions oxycodone and oxymorphone. Her MME scores were as high as 450 and she was getting prescriptions from eight (8) different providers. SM resides approximately 65 miles from Anson.
- g. Patient RM regularly filled prescriptions oxycodone and oxymorphone. Her MME scores were as high as 300 and she was getting prescriptions from six (6) different providers. RM resides approximately 52 miles from Anson.
- h. Patient LJ regularly filled prescriptions oxycodone and oxymorphone. His MME scores were as high as 460 and he was getting prescriptions from eight (8) different providers and filling them at four (4) different pharmacies. LJ resides approximately 55 miles from Anson.
- i. Patient AJ regularly filled prescriptions oxycodone and oxymorphone. Her MME scores were as high as 420 and she was getting prescriptions from eight (8) different providers and filling them at four (4) different pharmacies. AJ resides 55 miles from Anson, lives at the same address as Patient LJ, and receives the exact same prescription for oxycodone and oxymorphone.

³ Initials are used to protect patient confidentiality.

- j. Patient LH regularly filled prescriptions oxycodone and oxymorphone. Her MME scores were as high as 370 and she was getting prescriptions from six (6) different providers. LH resides approximately 40 miles from Anson.
- k. Patient KS regularly filled prescriptions oxycodone and oxymorphone. Her MME scores were as high as 350 and she was getting prescriptions from seven (7) different providers and filling them at three (3) different pharmacies. KS resides approximately 62 miles from Anson.
- l. Patient RS regularly filled prescriptions oxycodone and oxymorphone, in addition to several prescriptions for alprazolam and promethazine with codeine syrup. His MME scores were as high as 510 and he was getting prescriptions from fourteen (14) different providers and filling them at six (6) different pharmacies. RS resides approximately 67 miles from Anson.

COUNT I

Respondent failed to maintain effective controls against diversion of controlled substances to other than legitimate and professionally recognized therapeutic, scientific, or industrial uses, in violation of MCL 333.7311(1)(e), in violation of MCL 333.17768(2)(e).

COUNT II

Respondent dispensed controlled substances without good faith, contrary to MCL 333.7333(1) and in violation of MCL 333.7311(1)(h).

COUNT III

Respondent's conduct constitutes a violation of a general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, or a condition, conduct, or practice that impairs, or may impair, the ability safely and skillfully to engage in the practice of the health profession in violation of MCL 333.16221(a).

COUNT IV

Respondent's conduct fails to conform to minimal standards of acceptable, prevailing practice for the health profession in violation of MCL 333.16221(b)(i).

COUNT V

Respondent's conduct, as described above, evidences a failure to maintain invoices and other acquisition records of all controlled substances listed in schedules 1 and 2 in a separate file, contrary to Mich Admin Code, R 338.3153(2)(a), in violation of MCL 333.16221(h).

COUNT VI

Respondent's conduct, as described above, evidences a failure to keep records and maintain inventories in conformance with the record-keeping and inventory requirements of 21 U.S.C. § 827 and 21 C.F.R. 1304, contrary to MCL 333.7321(1), in violation of MCL 333.16221(h).

COUNT VII

Respondent's conduct, as described above, evidences a failure to maintain the necessary professional and technical equipment and supplies, contrary to Mich Admin Code, R 338.481(2) and in violation of MCL 333.16221(h).

COUNT VIII

Respondent's conduct, as described above, evidences a failure to maintain the necessary correct labelling of drugs, contrary to MCL 333.17762(1), in violation of MCL 333.16221(h).

COUNT IX

Respondent's conduct, as described above, evidences a failure to maintain the necessary quality of the drugs being dispensed, contrary to Mich. Admin. Code, R 338.490(1), in violation of MCL 333.16221(h).

COUNT X

Respondent failed to date and initial invoices and other acquisition records of all controlled substances, contrary to Mich Admin Code, R 338.3153(3), in violation of MCL 333.17768(e).

RESPONDENT IS NOTIFIED that, consistent with Mich Admin Code, R 338.1615(3), Respondent has 30 days from the date of receipt of this complaint to answer this complaint in writing and to show compliance with all lawful requirements for retention of the license. Respondent shall submit the response to the Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, P.O. Box 30670, Lansing, MI 48909.

Respondent's failure to submit an answer within 30 days is an admission of the allegations in this complaint. If Respondent fails to answer, the Department shall transmit this complaint directly to the Board's Disciplinary Subcommittee to impose a sanction pursuant to MCL 333.16231(9).

MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY AFFAIRS

Dated: _____

10/4/18


By: Cheryl Wykoff Pezon, Director
Bureau of Professional Licensing