

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

In the Matter of

BENSTAR PHARMACY, PLLC
License No. 53-15-058298,

File No. 53-17-147133

Respondent.

ORDER OF SUMMARY SUSPENSION AND FOR
SEIZURE OF CONTROLLED SUBSTANCES

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.

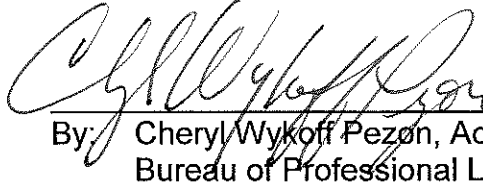
Therefore, IT IS ORDERED that Respondent's controlled substance license is **SUMMARILY SUSPENDED**, commencing the date this *Order* is served.

IT IS FURTHER ORDERED that, pursuant to Article 7 of the Code, MCL 333.7101 *et seq.*, all controlled substances owned or possessed by Respondent at the time the *Administrative Complaint* was filed before the Disciplinary Subcommittee shall be seized by the Department pending completion of proceedings.

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: 11/1, 2017


By: Cheryl Wykoff Pezon, Acting Director
Bureau of Professional Licensing

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ADMINISTRATIVE COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs by Cheryl Wykoff Pezon, Acting Director, Bureau of Professional Licensing, complains against Benstar Respondent Pharmacy, PLLC 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(1)(h).

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. Respondent holds a pharmacy license no. 53-01-010006 and a controlled substance license no. 53-15-058298. After consultation with the Board Chairperson, the Department found that there is an imminent danger to the public health or safety that warrants suspension of Respondent's controlled substance license. Therefore, pursuant to MCL 333.7314(2), the Department summarily suspended Respondent's State of Michigan controlled substance license, effective on the date the accompanying Order of Summary Suspension was served.

6. Alprazolam is a benzodiazepine schedule 4 controlled substance. Alprazolam is a commonly abused and diverted drug, particularly in its 1 mg and 2 mg dosages.

7. Clonazepam is a commonly abused and diverted benzodiazepine schedule 4 controlled substance.

8. Carisoprodol is a schedule 4 controlled substance. Carisoprodol is a muscle relaxant and is commonly abused and diverted.

9. Codeine preparations (e.g., codeine/promethazine syrup) are schedule 5 controlled substances prescribed for treating acute cough and related upper respiratory symptoms. Codeine/promethazine syrup is ill suited for long-term treatment of any condition. Codeine/promethazine syrup is a highly sought-after drug of abuse and is known by the street names “lean,” “purple drank,” and “sizzurp.”

10. Codeine preparations (e.g., codeine/promethazine syrup) are highly abused and diverted schedule 5 controlled substances.

11. Hydrocodone combination products (e.g., hydrocodone/apap), oxycodone, and oxymorphone are commonly abused and diverted opioid schedule 2 controlled substances.

12. Tramadol is a commonly abused and diverted opioid schedule 4 controlled substance.

Michigan Automated Prescription System data

13. 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 Respondent ranked among the highest-volume dispensers of commonly abused and diverted controlled substances in 2016 and 2017:

<i>Drug</i>	<i>Respondent's 2016 Rank</i>	<i>Respondent's 2017 Q1 Rank</i>	<i>Respondent's 2017 Q2 Rank</i>
(a) Codeine/Promethazine Syrup	18	10	6
(b) Oxycodone 30 mg	22	12	6
(c) Oxymorphone (all strengths)	61	n/r	22
(d) Oxymorphone 40 mg	18	n/r	20

14. Respondent ranked among the highest dispensers of these commonly abused and diverted controlled substances in the State of Michigan despite its small location within a convenience store in a residential Detroit neighborhood.

15. During the following periods, Respondent filled prescriptions for commonly abused and diverted controlled substances in the following quantities:

Drug	2016	2017 thru Oct. 17
(a) Oxycodone 30 mg	676 (32.69%)	574 (30.60%)
(b) Hydrocodone/Apap, 10-325 mg	171 (8.27%)	282 (15.03%)
(c) Alprazolam 2 mg	93 (4.50%)	24 (1.28%)
(d) Codeine/Promethazine Syrup	542 (26.21%)	488 (26.01%)
(e) Total, (a) - (d) (percentage of all CS prescriptions dispensed)	1482 (71.66%)	1368 (72.92%)
(f) Total CS Prescriptions	2068	1876

Dispensing despite patterned prescribing

16. Over 45% of all prescriptions Respondent filled in 2016 were written by prescribers who were subjected to disciplinary action based on allegations of overprescribing commonly abused and diverted controlled substances.

17. Specifically, the Department reviewed MAPS data relating to Respondent's dispensing of controlled substances pursuant to prescriptions written by Peter R. Nwoke, M.D. Pursuant to a final order on March 15, 2017, the Michigan Board of Medicine suspended Nwoke¹ upon a finding that he violated MCL 333.16221(a) by conduct that included prescribing oxycodone and/or promethazine with codeine to virtually *all* of his patients receiving a controlled substance in 2015.

18. The MAPS data for 2015 showed Respondent dispensed pursuant to Nwoke's prescriptions despite an apparent pattern of prescribing:

¹File No. 43-16-140512.

- (a) More than sixty percent (60%) of patients filling Nwoke's prescriptions at Respondent received both oxycodone *and* codeine/promethazine syrup.
- (b) Prescriptions for Nwoke's patients receiving both of those drugs accounted for nearly *three-fourths* of all Nwoke's prescriptions Respondent dispensed.
- (c) Even though Nwoke's office was nearly 13 miles away from Respondent, more than eighteen percent (18%) of all controlled substance prescriptions filled by Respondent were written by Dr. Nwoke.

19. The Department reviewed MAPS data relating to Respondent's dispensing of controlled substances pursuant to prescriptions written by Prescriber #1 from January 1, through October 17, 2017. Of the 102 patients of Prescriber #1 who filled prescriptions at Respondent, 58 filled a combination of hydrocodone/apap and codeine/promethazine syrup at a single visit. Five patients of Prescriber #1 filled a combination of hydrocodone/apap and codeine/promethazine syrup at a single visit *at least four times*.

Patient examples

20. The Department reviewed MAPS data for the five patients to whom Respondent dispensed the most prescriptions in 2017 through October 17. All of those patients repeatedly filled prescriptions for commonly abused and diverted controlled substances during that period:

- (a) Patient DP² filled prescriptions for alprazolam, tramadol, and codeine/promethazine syrup in January, February, March, May, and August. Patient DP filled a combination of alprazolam and codeine/promethazine syrup in close proximity to one other in April.

²Patients are de-identified to protect confidentiality.

- (b) Patient SP filled prescriptions for alprazolam and hydrocodone/apap in January, February, March, April, May, June, July, August, and September.
- (c) Patient VL filled prescriptions for hydrocodone/apap and promethazine/codeine in January, April, June, July, and August. Patient VL also filled a combination of carisoprodol and hydrocodone/apap in February and March.
- (d) Patient WN filled prescriptions for clonazepam and hydrocodone/apap in January, February, May, June, July, August, and September.
- (e) Patient JM filled prescriptions for alprazolam and hydrocodone/apap in January, February, March, April, May, June, and July.

Department investigation

21. In an interview with Department investigators, Respondent's pharmacist in charge (PIC), Uzoma Benjamin Nwachukwu, R.Ph., admitted that he failed to consistently call prescribers' offices to verify controlled substance prescriptions.

22. Respondent's PIC also admitted that he failed to consistently verify controlled prescriptions by requesting a diagnosis code from the prescriber.

23. The Department investigators inspected Respondent's business premises on May 31, 2017 and noted violations of several regulations governing pharmacies, including lack of sanitary conditions, lack of a 2017 controlled substance inventory, and possession of expired and misbranded medications.

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).

COUNT II

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

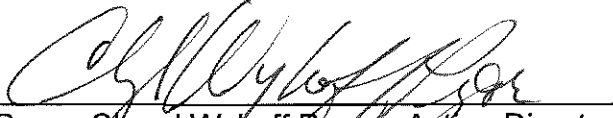
COUNT III

Respondent failed to complete an annual controlled substance inventory, contrary to MCL 333.7321 and in violation of MCL 333.7311(1)(h).

RESPONDENT IS NOTIFIED that, consistent with to 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.

MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY AFFAIRS

Dated: 11/1, 2017


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