

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

In the Matter of

JOE'S DISCOUNT PHARMACY, INC
License Nos. 53-01-010738 and 53-15-073432,

File No. 53-17-147126

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: 12/26/, 2017


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

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Respondent.

ADMINISTRATIVE COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs by Cheryl Wykoff Pezon, Acting Director, Bureau of Professional Licensing, complains against Respondent Joe's Discount Pharmacy, Inc 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. 53-01-010738 and a controlled substance license no. 53-15-073432. 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. Respondent is a licensed pharmacy located in Detroit, Michigan. Respondent's pharmacist-in-charge (PIC) is Yousef Ghassan Kosho, R.Ph.¹

¹The Department has also filed an Administrative Complaint against Kosho for the conduct alleged here. *Yousef Ghassan Kosho, R.Ph.*, No. 53-17-147127.

7. 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.

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

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

10. Oxycodone (e.g., Percocet), a schedule 2 controlled substance, is an opioid used to treat pain, and is commonly abused and diverted.

11. The CDC’s guidelines for opioid prescribing direct providers to avoid prescribing opioid pain medication and benzodiazepines concurrently whenever possible.

12. 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.

13. MAPS data showed that more than 20% of the prescriptions dispensed at Joe’s Discount during 2016 were authorized by providers who have been disciplined for inappropriate prescribing.

14. Of all dispensers of oxymorphone 40 mg and oxymorphone (all strengths), Respondent ranked within the top 15% of dispensers beginning in 2016 through the 2nd quarter of 2017.

15. MAPS data also revealed that from January 1, 2017 through August 28, 2017, promethazine with codeine and the highest strengths of hydrocodone/apap, oxycodone, and oxymorphone accounted for 42% of all controlled substances dispensed by Respondent.

16. Patients paid cash for 24.8% of the prescriptions Respondent filled in 2016 and 36.1% of the controlled substances Respondent dispensed between January 1, 2017 and April 30, 2017. These rates are several times the state average of approximately 10% for cash payment and suggest that prescriptions were filled for illegitimate purposes.

17. On August 30, 2017, a Department inspector visited Respondent's business premises. During an interview with the Department inspector, the following events occurred:

- a. PIC Kosho stated that he had always been the PIC for Respondent.
- b. The Department's inspector performed and discussed with PIC Kosho a controlled substance audit. The audit compared the amounts of controlled substances Respondent reported to MAPS as dispensed versus the records produced by Respondent. The audit revealed large quantities of commonly abused and diverted controlled substances dispensed but not reported to MAPS. PIC Kosho did not know why there was a discrepancy.
- c. The Department's inspector confronted PIC Kosho with evidence of large quantities of commonly abused and diverted controlled substances unaccounted for from Respondent's inventory. PIC Kosho failed to adequately account for the missing controlled substances.

- d. During the interview, the Department's inspector smelled alcohol on PIC Kosho's breath. PIC Kosho admitted he had been drinking the night before and was feeling hungover.
- e. The Department inspector observed a price list for controlled substances displayed at Respondent; PIC Kosho stated that he determined the prices based on no particular reason, and promptly took the price list down and tore it up.

18. During the aforementioned interview, PIC Kosho also affirmed that a MAPS report is obtained for every controlled substance prescription and that he verifies every controlled substance prescription by faxing the prescriber a verification form.

19. The Department reviewed MAPS data for 11 patients to whom Respondent dispensed prescriptions during the period of December 13, 2015 to December 13, 2017. All of those patients repeatedly filled prescriptions for commonly abused and diverted controlled substances at Respondent during that period:

- (a) Patient GB² filled prescriptions for a benzodiazepine and an opioid on the same day or on days within close proximity six times between September 30, 2016 and June 13, 2017. Patient GB filled numerous prescriptions for commonly abused and diverted controlled substances, including benzodiazepines, opioids, and codeine/promethazine syrup during the review period. Patient GB filled 43 controlled substance prescriptions at Respondent between July 15, 2016 and November 30, 2017.
- (b) Patient JB filled prescriptions for tramadol, alprazolam, and codeine/promethazine syrup nine times during the review period, either on the same day or on days in close proximity. Patient JB also filled prescriptions for oxycodone and alprazolam four times on the same day or on days in close proximity. Patient JB filled 58 controlled substance prescriptions at in total at Respondent during the review period.

²Patients are identified by initials to protect confidentiality of patient records.

- (c) Patient CH filled numerous prescriptions for opioids and benzodiazepines. Patient CH also filled prescriptions for the commonly abused and diverted controlled substance codeine/promethazine syrup 40 times during the review period. On 8 of those occasions, patient CH also filled prescriptions for oxycodone on the same day. In total, Patient CH filled 87 controlled substance prescriptions at Respondent in total during the review period.
- (d) Patient RH filled a combination of an opioid and a benzodiazepine on the same day on nine occasions between September 15, 2016 and August 14, 2017. Patient RH frequented three other pharmacies during the review period, filling prescriptions for similar controlled substances and controlled substance combinations as she filled at Respondent.
- (e) Patient PW filled several prescriptions for opioids and benzodiazepines during the review period. Respondent dispensed a prescription for carisoprodol (Soma) for patient PW despite patient PW's history of receiving opiates and benzodiazepines. Patient PW filled eight prescriptions at Respondent, but was also frequenting another pharmacy close in time and filling prescriptions for controlled substances at that location.
- (f) Patient LS filled prescriptions at 15 different pharmacies during the review period. Patient LS filled 57 prescriptions for codeine/promethazine syrup at various pharmacies during the review period; 25 of those prescriptions were filled at Respondent. Patient LS filled multiple prescriptions for opioids and benzodiazepines during the review period, often in close proximity to filling controlled substance prescriptions at other pharmacies. Patient LS filled 45 controlled substance prescriptions at Respondent in total during the review period.
- (g) Patient CO filled numerous prescriptions for opioids, benzodiazepines, and stimulants during the review period. Patient CO filled 92 controlled substance prescriptions in total at Respondent during the review period.
- (h) Patient CM filled 12 prescriptions for codeine/promethazine syrup between November 18, 2016 and December 7, 2017. On 10 of those occasions, patient CM also filled prescriptions for an opioid. Overall, patient CM filled 26 prescriptions at Respondent.
- (i) Patient LM filled prescriptions for an opioid and carisoprodol (Soma) on the same day or in close proximity on 11 occasions between February 6, 2016 and April 17, 2016. On seven of these occasions, patient LM also filled a prescription for codeine/promethazine syrup.

Patient LM filled 31 prescriptions at Respondent during the review period.

- (j) Patient JI filled prescriptions for an opioid and a benzodiazepine three times between December 28, 2016 and August 25, 2016, but was frequenting other pharmacies during the period.
- (k) Patient DP filled prescriptions for an opioid and a benzodiazepine on four occasions at Respondent between September 8, 2016 and April 24, 2017. Patient DP filled 13 controlled substance prescriptions at Respondent in total.³

20. Also on August 30, 2017, the Department's inspector noted violations of regulations governing pharmacies, including overfilled and expired medications found on shelves, a lack of up-to-date reference materials, controlled substance logs were not signed, DEA 222 forms were not being signed, no pharmacy technician license was displayed, and overfilled or misbranded drugs were in the active inventory.

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 for other than legitimate or professionally recognized therapeutic, scientific, or industrial purposes, or outside the Respondent's scope of practice, in violation of MCL 333.7311(1)(g).

³ Notably, in January 2012 patient DP was sentenced to one count of Felony Controlled Substance-Delivery/Manufacture Marijuana and one count of Felony Controlled Substance - Delivery/Manufacture (Cocaine, Heroin, or Another Narcotic) less than 50 grams. In September 2016, patient DP was sentenced to Felony Controlled Substance- Delivery/Manufacture Marijuana- Attempt.

COUNT III

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

COUNT IV

Respondent failed to comply with Mich Admin Code, R 338.3153, in violation of MCL 333.7311(1)(h).

COUNT V

Respondent failed to comply with MCL 333.7321, in violation of MCL MCL 333.7311(1)(h).

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.

MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY AFFAIRS

Dated: 12/26/17


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

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