

BEFORE THE ARKANSAS STATE BOARD OF PHARMACY

**IN THE MATTER OF
MARK HERRINGTON,
P.D., 7818,
MICHELLE TEAGUE
PHARMACY TECHNICIAN NO. PT88001, AND
MARK'S PHARMACY, AR19514**

NO. 2006-039

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

On October 10, 2006 the Arkansas State Board of Pharmacy (hereafter "the Board") conducted a hearing in the above styled matter. Mark Herrington, Michelle Teague and Mark's Pharmacy (hereafter "Respondents") appeared in person. From the testimony of witnesses, exhibits and evidence of record, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Respondent Mark Herrington holds a pharmacist license and at all times relevant herein was pharmacist-in-charge and an owner of Mark's Pharmacy, Melbourne, Arkansas. Respondent Mark's Pharmacy holds an Arkansas pharmacy permit. Said license and permit were issued by, and each respondent is subject to the jurisdiction of, the Board.

2. Michelle Teague is registered and holds a permit as a pharmacy technician. Teague's permit was issued by this Board and this Board retains jurisdiction over Respondent Teague's permit. Respondent Teague is as employee of Mark Herrington and has worked as a pharmacy technician at Mark's Pharmacy for four years.

3. On or about July 19, 2006, Respondent Herrington's wife was critically injured and admitted to an out-of-town hospital. Respondent Herrington accompanied his wife to the hospital and remained with her during working hours on July 20.

4. After unsuccessfully attempting to find a relief pharmacist to work in Mark's Pharmacy on July 20, 2006, Respondent Herrington had no pharmacist to dispense prescription-only drugs in his absence on that date.

5. Rather than close Mark's Pharmacy on July 20, 2006 when he had no pharmacist to dispense prescription-only drugs, Respondent Herrington instructed his pharmacy technician Respondent Teague to dispense prescription-only drugs, including controlled substances, on both new and refill prescriptions.

6. Respondent Teague worked at Mark's Pharmacy in Respondent Herrington's absence on July 20, 2006 and dispensed 213 new and refill prescriptions, both controlled substances and legend drugs, without the supervision of a pharmacist present in the store.

7. Throughout the hours of operation for Mark's Pharmacy on July 20, 2006, Respondent Herrington communicated with Respondent Teague via telephone. Respondent Herrington returned to work at Mark's Pharmacy on July 21.

CONCLUSIONS OF LAW

1. Respondent Mark Herrington's conduct in allowing a pharmacy technician to dispense prescription-only drugs when he was not physically present in the pharmacy to supervise her, as set forth above, constitutes separate incidents in violation of Board Regulation 03-00-0005(a).

2. Respondent Herrington's violations of Board Regulation 03-00-0005(a) constitute separate incidents of unprofessional conduct pursuant to Board Regulation 02-04-0002(b) and gross unprofessional conduct pursuant to Ark. Code Ann. § 17-92-311(a)(7) (Repl. 2002).

3. Respondent Teague's conduct in dispensing prescription-only drugs without the supervision of a pharmacist physically present in the pharmacy, as set forth above, constitutes separate incidents in violation of Board Regulation 03-00-0005(a).

4. Respondent Teague's violations of Board Regulation 03-00-0005(a) constitutes separate instances of grounds for disciplinary action pursuant to Board Regulation 03-00-0002(j)(1) (A) and Ark. Code Ann. § 17-92-801(d)(3) (Repl. 2002).

5. Respondent Mark's Pharmacy knowingly operating a pharmacy and allowing a pharmacy technician to dispense the prescriptions of authorized practitioners without the supervision of a pharmacist physically present in the store, as set forth above, constitutes separate instances in violation of Board Regulation 03-00-0005.

6. Respondent Mark's Pharmacy's operation of a pharmacy in violation of Board Regulation 03-00-0005 constitutes separate instances of operations for which the pharmacy permit was issued not being conducted according to law in violation of Ark. Code Ann. § 17-92-407 (Repl. 2002).

ORDER

IT IS THEREFORE ORDERED that Respondent Herrington shall pay a monetary penalty of \$2,000.00 to the Board on or before December 31, 2006.

IT IS FURTHER ORDERED that Respondent Teague shall pay a monetary penalty of \$500.00 to the Board on or before December 31, 2006.

IT IS FURTHER ORDERED that Respondent Mark's Pharmacy shall pay a monetary penalty of \$5,000.00 to the Board on or before December 31, 2006.

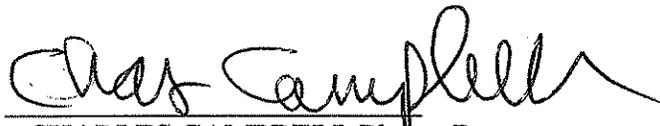
IT IS FURTHER ORDERED that the pharmacist license for Respondent Herrington, the technician permit and registration for Respondent Teague, and the pharmacy permit for Mark's Pharmacy shall be on probation for two years from the date of this Order. The conditions of this probation are that Respondents shall fully comply with all federal, state, and local laws and regulations pertaining to the practice of pharmacy, controlled substances, and legend drugs.

You may appeal pursuant to the Administrative Procedure Act, A.C.A. Section 25-15-212.

IT IS SO ORDERED this 23 day of October 2006.

ARKANSAS STATE BOARD

OF PHARMACY

by: 
CHARLES CAMPBELL Pharm.D.
EXECUTIVE DIRECTOR