

BEFORE THE ARKANSAS STATE BOARD OF PHARMACY

**IN THE MATTER OF
DENNIS M. MCDONALD
P.D., NO. 6927, AND
BUY-RITE PHARMACY NO. AR-19374**

NO. 2005-020

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

On October 11, 2005, the Arkansas State Board of Pharmacy (“the Board”) conducted a hearing in the above styled matter. After being duly served with notice thereof, Dennis M. McDonald and Buy-Rite Pharmacy (“Respondents”) appeared in person. From the testimony of witnesses, exhibits, and evidence of record, the Board enters the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Respondent McDonald holds a pharmacist license and Buy-Rite Pharmacy holds a pharmacy permit issued by and each is subject to the jurisdiction of the Board.
2. Respondent McDonald was pharmacist-in-charge of Buy-Rite Pharmacy at all times relevant herein.
3. From December 2004 into August 2005, Respondent McDonald utilized a procedure for ordering and receiving Class III - V Controlled Substances in which any pharmacist or pharmacy technician could order a drug, any pharmacist or pharmacy technician present in the pharmacy would check in the drugs against the invoice without documenting who checked in specific drugs, sticker the bottles, and place the bottles on the shelf. Respondent McDonald might or might not review the invoices for the drugs received. This practice allowed the order to be placed, checked in, stickered and inter-dispersed on the shelf without a pharmacist reviewing the order, checking the invoice, and being able to determine whether the drugs ordered and received were actually needed

or that the quantity were appropriate for the quantity of the drug being dispensed. In contrast, Respondent personally ordered and checked in Class II Controlled Substances.

4. The existing procedures for receiving and checking in deliveries of Class III – V Controlled Substances at Buy-Rite Pharmacy at Buy-Rite Pharmacy prior to August, 2005 were not reasonably designed to provide for the security and accountability of these controlled substances at Buy-Rite Pharmacy.

5 In July and September 2005 Board inspectors conducted audits of selected Schedule III and IV controlled substances in the inventory of Buy-Rite Pharmacy for the period of December 31, 2004 until July 21, 2005, and selected Schedule II Controlled substances for the period of December 31, 2004 through September 7, 2005. During these time periods, the Buy-Rite Pharmacy's inventory of Class III – V Controlled Substances had shortages and overages as set forth in Attachment A, incorporated by reference herein. The audit did not find any substantial shortages of Class II Controlled Substances.

6. On November 11, 2004 and February 8, 2005, Respondent dispensed prescriptions for Propoxy-N-100, a Class IV Controlled Substance, for his personal use. The prescription was attributed to Jerry Nichols, DDS. Dr. Nichols did not authorize the Propoxy-N-100 for Respondent.

7. Following an automobile collision on or about June 7, 2005, Respondent McDonald was subjected to a drug screen which revealed that Respondent had consumed the following drugs:

Propoxyphene, Class IV Controlled Substance
Propranolol, legend, non-controlled

Amitriptyline, legend, non-controlled
Butalbital, Class IV Controlled Substance or legend, non-controlled
Diazepam, Class IV Controlled Substance
Codeine, Class III, IV, or V Controlled Substance

Respondent had possessed and consumed said drugs without the authorization of a practitioner.

CONCLUSIONS OF LAW

1. As set forth above, as pharmacist-in-charge at Buy-Rite Pharmacy Respondent McDonald's ongoing failure to provide appropriate security and accountability of Class III – V Controlled Substances in the inventory of Buy-Rite Pharmacy resulted in the shortages of drugs identified in Attachment A. Respondent's conduct constitutes separate incidents of violation of Board Regulation 04-02-0005 (e).

2. Respondent's violations of Board Regulation 04-02-0005(e) 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's dispensing the controlled substance Propoxy-N-100 without the authorization of a practitioner as described above constitutes separate incidents in violation of the Controlled Substances Act, Ark. Code Ann. § 5-64-308(c).

4. Respondent's violations of Ark. Code Ann. § 5-64-308 constitutes separate incidents of unprofessional conduct pursuant to Board Regulation 02-04-0002(d) and gross professional conduct pursuant to Ark. Code Ann. § 17-92-311(a)(7) (Repl. 2002).

5. Respondent's possession of the controlled substances identified in Finding

of Fact paragraph 7 above without the authorization of a practitioner constitutes separate incidents in violation of the Controlled Substances Act, Ark. Code Ann. § 5-64-401.

6. Respondent's violations of Ark. Code Ann. § 5-64-401 constitutes separate incidents of unprofessional conduct pursuant to Board Regulation 02-04-0002(d) and gross unprofessional conduct pursuant to Ark. Code Ann. § 17-92-311(a)(7) (Repl. 2002).

7. Respondent Buy-Rite Pharmacy's ongoing operations under the circumstances as set forth above constitutes separate incidents of failure to operate the pharmacy according to law in violation of Ark. Code Ann. § 17-92-407.

ORDER

IT IS THEREFORE ORDERED that Respondent's pharmacist license be, and it is hereby, suspended for a minimum of one-year. In order to seek reinstatement of his license, Respondent shall appear before the Board accompanied by representatives of the Board's Pharmacists Support Group, if Respondent is accepted into the Support Group.

IT IS SO ORDERED this 10th day of November 2005.

ARKANSAS STATE BOARD
OF PHARMACY

by: _____
CHARLES CAMPBELL, PHARM. D.
EXECUTIVE DIRECTOR