

BEFORE THE ARKANSAS STATE BOARD OF PHARAMCY

**IN THE MATTER OF
JIM MCMAHAN
P.D., NO. 6936**

CASE. NO 2005-030

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

On October 11, 2005, the Arkansas State Board of Pharmacy (“the Board”) conducted a conduct a hearing in the above-styled matter. After being duly served with notice thereof, Jim McMahan (“Respondent”) 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 holds a pharmacist license issued by and is subject to the jurisdiction of the Board.
2. Respondent has delivered purported prescriptions for Norco and hydrocodone 10/325, each a Class III Controlled Substance, to himself that were attributed to his father James McMahan, M.D. as the prescribing practitioner. Those prescriptions are set forth in Attachment 1 hereto, incorporated by reference herein.
3. Respondent has delivered purported prescriptions for Soma and carisoprodol, each a Class IV Controlled Substance, to himself that were attributed to his father, James McMahan, M.D. as the prescribing practitioner. Those prescriptions are set forth in Attachment 2 hereto, incorporated by reference herein.

4. Respondent delivered prescription-only, non-controlled drugs (“legend drugs”) to two pharmacy technicians at Buy-Rite Pharmacy on eight occasions and recorded the prescriptions as having been ordered by Dr. McMahan, his father, when in fact Respondent knew that Dr. McMahan has not ordered those legend drugs for the technicians. See Attachment 3 which is incorporated by reference herein.

5. Dr. James McMahan is eighty years of age, closed his office, retired from the active practice of medicine in 1999, and since has practiced a very limited amount in his home. Dr. McMahan allowed his DEA permit to prescribe controlled substances to expire August 31, 2002. After he originally stated to Board inspectors that absolutely no, he had not prescribed any drugs for Respondent, he later stated that Respondent had his tacit approval to fill prescriptions for his “back pills.” He was only vaguely aware that Respondent had chronic physical problems resulting from traumas occurring approximately 17 years ago. He did not treat Respondent for these traumas but later added Vicodin to the drugs prescribed by the original treating physician, has not maintained a patient chart or other records for Respondent since closing his office, and did not know that Respondent had changed his “back pills” from Vicodin to Norco, that Respondent’s consumption of Norco and hydrocodone/APAP (“Norco”) had increased from ½ a tablet to five or six tablets each day, that Respondent was consuming the Norco for conditions other than that for which the drug was originally prescribed by the treating practitioner or that Respondent was using Soma/carisoprodol (“Soma”). When Respondent needed authorization for a new prescription for Norco or Soma, sometimes, but not each time, he would call his father and ask if he could have his “back pills” filled and not provide his father with any further information. Dr. McMahan was very

surprised when he learned that Respondent was using 180 Norco each month. Had Dr. McMahan known that Respondent was using 180 Norco per month, he would have helped Respondent obtain other treatment for his medical needs.

6. As described above, Dr. McMahan did not issue orders for the controlled substances identified in Attachments 1 and 2 hereto in the ordinary course of professional treatment. Respondent knew that Dr. McMahan had not issued orders for those drugs in the ordinary course of professional treatment. An order that is not issued in the ordinary course of professional practice is not a prescription under 21 U.S.C. § 829 and the person knowingly filling such a prescription is subject to the penalties provided for violations of the law relating to controlled substances. 21 C.F.R. § 1306.04. Moreover, Respondent knew or should have known that Dr. McMahan had allowed his DEA permit to expire in 2002.

CONCLUSIONS OF LAW

1. Respondent's deliveries of the controlled substances in Attachments 1 & 2 without the order of a practitioner in the ordinary course of professional treatment and when the practitioner does not have a DEA permit as set forth above constitute separate incidents of violation of the Controlled Substances Act, Ark. Code Ann. § 5-64-308.

2. Respondent's violations of Ark. Code Ann. § 5-64-308 constitute separate incidents of unprofessional conduct pursuant to Board Regulation 02-04-002(d) and gross professional conduct pursuant to Ark. Code Ann. § 17-92-311(a) (7) (Repl. 2002).

3. Respondent's deliveries of legend drugs to pharmacy technicians without the authorization of a practitioner as set forth above constitute deliveries of misbranded

drugs, Ark. Code Ann. § 20-56-211(11), which are separate incidents of violation of Ark. Code Ann. § 20-56-215(1).

4. Respondent's violations of Ark. Code Ann. § 20-56-215 as set forth above constitutes separate incidents of unprofessional conduct pursuant to Board Regulation 02-04-0002(c) and gross unprofessional conduct pursuant to Ark. Code Ann. § 17-92-311(a)(7) (Repl. 2002).

ORDER

IT IS THEREFORE ORDERED that Respondent Jim McMahan's pharmacist license should be, and it is hereby, suspended until Respondent appears before the Board with representatives of the Board's Support Group which favorably recommends that Respondent's license suspension be terminated. At the end of this suspension, Respondent's pharmacist license shall be on probation for a period of five (5) years. The conditions of the probation are that Respondent shall fully comply with all the provisions of Arkansas Pharmacy Law, Ark. Code Ann. § 17-92-101 *et seq.*, Board Regulations, and state, federal and local laws and regulations addressing the practice of pharmacy, controlled substances, and legend (prescription-only) drugs.

IT IS FURTHER ORDERED that Respondent shall pay a monetary penalty of \$5,000 to the Board within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that Respondent take the Board's law examination.

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

ARKANSAS STATE BOARD
OF PHARMACY

BY: _____
CHARLES CAMPBELL, PHARM D.
EXCEUTIVE DIRECTOR