

BEFORE THE ARKANSAS STATE BOARD OF PHARMACY

**IN THE MATTER OF
CLIFF MCQUAY and
ELLEN MCQUAY, DBA
CLIFF MCQUAY SALES COMPANY
LIST I CHEMICAL WHOLESALER, No. C-00016 CASE NUMBER 2004-001**

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

On June 11, 2004 the Arkansas State Board of Pharmacy (hereafter “the Board”) conducted a hearing in the above referenced proceeding. After being duly served with notice herein, Respondents Cliff McQuay and Ellen McQuay, d/b/a/ Cliff McQuay Sales Company appeared by Cliff McQuay and by counsel Bill Stanley. From the testimony of witnesses, exhibits and other evidence of record, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Respondent holds a List I Chemical wholesalers license issued by and is subject to the jurisdiction of the Board.
2. Respondent was licensed by the Board as a wholesaler of List I Chemicals on June 12, 2001 and holds a current license.
3. From October 1, 2001 into December 2003, Respondent sold pseudoephedrine to up to eleven different retailers, most of which were convenience stores. Arkansas convenience stores’ sales of cough and cold remedies are estimated to be \$2,463 annually.
4. Based upon his sales of pseudoephedrine to said retailers, Respondent was required to maintain records of pseudoephedrine sales pursuant to Ark. Code Ann. § 5-64-1001 *et seq.*

5. Pseudoephedrine is a List I Chemical that is in great demand as an ingredient to be used in the illicit manufacture of methamphetamine (“meth”), a Class II Controlled Substance. Specifically, single-ingredient, 60 mg pseudoephedrine is highly desired as an ingredient in manufacturing meth. Arkansas is well known to have a large number of illicit meth “labs” that manufacture meth.

6. Respondent has failed to report to the Board, or to the Drug Enforcement Administration, as a suspicious transaction any sale of pseudoephedrine to any of his customers.

7. For each of the transactions identified in Attachment A hereto and incorporated by reference herein that was a cash sale exceeding \$200, Respondent failed to report any of these sales as a suspicious transaction.

8. In each of the sales identified below, the circumstances of the sale would lead a reasonable person to believe that the substance was likely to be used for the purpose of unlawfully manufacturing a controlled substance in violation of the Uniform Controlled Substances Act based upon the factors set forth including without limitation the amount involved, the method of payment, the method of delivery, past dealings with the customer, and Respondent’s sales practices and facts in the sales transactions:

- a. Prior to being licensed by the Board, Respondent imposed a limitation on his sales to retailers of three cases or 432 packages of pseudoephedrine per month. However, Respondent would sell more than a total of 432 packages per month to a customer as set forth in Attachment A hereto. Respondent’s monthly sales limit of pseudoephedrine to each convenience store was at a rate that would exceed such store’s annual estimated sales of cough and cold products.

Respondent's self-imposed monthly sales limit was higher than that common for other wholesalers for pseudoephedrine. Because of these facts, each of the sales in Attachment A of 432 packages or more per month was an unreasonably large amount and was a suspicious transaction.

b. Prior to obtaining a license from the Board, Respondent discontinued selling all products other than List 1 chemicals and in late 2001 changed from selling solely 30 mg pseudoephedrine to 60 mg single-ingredient pseudoephedrine. Each of the sales identified in Attachment A were suspicious transactions because Respondent sold only pseudoephedrine and the retailers purchased no other products from Respondent.

c. Each of Respondent's customers was regularly buying the maximum monthly amount of 432 packages that Respondent set for his monthly sales limit per retailer. Each sale of a total of 432 packages or more per month as stated in Attachment A hereto was a suspicious transaction because the retailer was regularly buying the maximum amount each month.

d. Each of the sales of Max Brand 60mg pseudoephedrine identified in Attachment A hereto was a suspicious transaction because (1) the pseudoephedrine was a single-ingredient, 60 mg product that was labeled "PSEUDO 60s" to prominently display the type of chemical and the strength, (2) Respondent's retailer sold said pseudoephedrine for prices up to 400% higher than Respondent's sales price and up to 500% higher than the price for comparable quantities of the product sold in traditional outlets for over-the-counter pharmaceutical products, and (3) 60 mg single ingredient

pseudoephedrine is not generally available in traditional outlets for over-the-counter pharmaceutical products.

CONCLUSIONS OF LAW

1. Respondent's transactions identified above were suspicious transactions pursuant to Ark. Code Ann. § 5-64-1006.
2. Respondent's failure to report the transactions identified above to the Board as suspicious transactions constitutes separate incidents each of which violates Ark. Code Ann. § 5-64-1006 for which the Board is authorized to impose a penalty not to exceed \$10,000 per violation.

ORDER

IT IS THEREFORE ORDERED that the List I Chemical wholesalers license issued to Respondents is hereby suspended for a period of one year.

IT IS FURTHER ORDERED that Respondents shall pay a monetary penalty of \$163,000.00 to the Board upon the completion of said suspension of Respondent's List I Chemical wholesalers license.

IT IS SO ORDERED this 13th day of July 2004.

ARKANSAS STATE BOARD
OF PHARMACY

CHARLES CAMPBELL, PHARM. D.
EXECUTIVE DIRECTOR