

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Interim
Suspension Order Against:

SOUTH FIGUEROA DRUGS,
TONI GAYLE WALKER (Owner),

Original Pharmacy Permit No. PHY 40552,

Respondent.

Case No. 5879

OAH No. 2017020077

INTERIM SUSPENSION ORDER

The Petition for Interim Suspension Order (ISO) in this matter was heard by Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, on February 24, 2017, at Los Angeles, California.

Petitioner Virginia Herold was represented by Susan Melton Wilson, Deputy Attorney General.

Respondent South Figueroa Drugs appeared by its owner, Toni Gayle Walker.

The following documents were marked for identification, received in evidence, and considered by the ALJ:

Notice of Hearing on ISO and Petition for ISO with Memorandum of Points and Authorities (Ex.1);

Declaration of Board Inspector Noelle Randall with attached exhibits (Ex. 2);

Return Receipt for Mailing (Ex. 3); and

E-mail and photos, from Toni Walker to Noelle Randall (Ex. A).

Argument was heard and the matter was submitted for decision on the hearing date. On March 1, 2017, Respondent delivered a hand-written letter to the ALJ, with photocopies of pictures attached to it. There was no indication that it had been served on Petitioner's counsel. The documents, not being timely and apparently not served, were not considered by the ALJ in ruling on the Petition for ISO.

The ALJ hereby makes the following factual findings, legal conclusions, and order. The factual findings that follow were established by a preponderance of the evidence.

FACTUAL FINDINGS

1. Petitioner brought the Petition for Interim Suspension Order (Petition) in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

2. (A) Respondent South Figueroa Drugs (pharmacy) holds Original Pharmacy Permit Number PHY 40552. The permit was first issued in November 1994, was valid at all times relevant to this matter, and will expire November 1, 2017.

(B) Toni Gayle Walker (Walker, at all relevant times, was 100 percent owner of the pharmacy since the permit was issued, and she has been the Pharmacist-In-Charge (PIC) of the pharmacy at all times. She holds Pharmacist License Number RPH 33235, and has held that license since August 20, 1979. At all times Walker's license was valid, and it will expire on January 31, 2019.

3. Walker has operated the pharmacy by herself since prior to June 2016, and since then.

4. Board Inspector Noelle Randall (Randall) performed an inspection of the pharmacy on June 16, 2016. Randall was accompanied by another Board Inspector, Connie Tang. They found a filthy and disorganized pharmacy. The conditions included, but are not limited to, the following:

(A) Trash bags blocked the rear door of the pharmacy, preventing egress and further blocking access to the back room of the pharmacy. The trash bags contained confidential records. As a result, the inspectors could not do a complete inspection of the back portion of the pharmacy.

(B) Insects, including one perceived by Randall to be a roach, crawled out of a pile of prescription documents that Randall was reviewing.

(C) There was trash and clutter throughout the pharmacy, blocking aisles and partially blocking medication shelves and the counter. The trash and clutter was paperwork, boxes, and trash bags.

(D) The pharmacy was dirty, with a thick layer of dust or dirt covering many inventory shelves, and in other places. An unidentified brown and white substance covered part of the floor.

(E) Reused containers were found in a drawer, some with patient labels from the pharmacy.

(F) A collapsed counter was cluttered with many unorganized prescription documents. Walker told the inspectors that the counter had collapsed, and she was in the process of reorganizing the documents that had fallen or been disorganized as a result of the failed counter. Randall could not discern that the records were in any particular order.

(G) One of the two refrigerators at the premises was filled with rotten food, and it emitted a foul odor. The refrigerator used for drug storage had a large block of ice frozen around the internal freezer.

(H) The bathroom was very dirty. There was dirt crusted in the sink, and when the water was turned on it was yellow in color. The cover for the toilet tank had been removed.

5. Following the inspection, Randall gave Walker verbal and written directives to correct the many deficiencies that the inspectors found. Walker was given a deadline of June 30, 2016, to complete the corrections.

6. On July 6, 2016, Randall and Inspector Tang returned to the pharmacy. At first, they could not obtain access; the pharmacy has a locked security gate that has to be opened from the inside. The door behind the gate was open, and the inspectors heard a radio, but could not find Walker. A phone call to Walker brought no response.

7. The inspectors waited for approximately one hour and fifteen minutes for Walker, from a place where they could see if she returned. Another phone call brought a busy signal. The inspectors then went to the front door and made contact with Walker.

8. During the July 6, 2016 inspection, the inspectors found the pharmacy to be in a condition substantially similar to the condition they found on June 16, 2016, as follows:

(A) Walker had taken away some of the trash bags that had been blocking the back door during the June inspection. But, she did not remove them all, and the rear door remained obstructed. The inspectors were able to get to a file cabinet in the rear portion of the pharmacy, but they were prevented from opening it by the trash bags.

(B) The bathroom appeared unchanged in condition from the prior inspection.

(C) There was still the unidentified substance on the floor.

(D) There were still insects on the premises, along with spray poison and traps.

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(E) The premises remained dirty, with dirt on inventory shelves, liquid dried on such shelves, and trash on the floor. There were boxes and bags of papers on the floor in the main pharmacy area.

(F) Pharmacy records remained piled up on the counter, and some were piled up on the floor. On the occasion of the second inspection, as well as the first, the records appeared disorganized. Walker acknowledged that it would be difficult to quickly retrieve pharmacy records for a particular patient or drug given the state of the records.

9. Randall gave Walker a copy of a written inspection report. She advised Walker that the pharmacy remained in an unacceptable condition, and that Walker had to remedy the problems as soon as possible. Randall advised that the bathroom had to be a priority, and told Walker that a pharmacy had to have a sink for the pharmacy, as well as one in a functioning restroom.

10. On July 7, 2016, Walker sent 11 photographs showing parts of the pharmacy, including the bathroom. Thereafter, on August 2, 2016, Randall received an e-mail from Walker stating that she had gotten rid of the confidential trash. However, Randall remains of the opinion that the pharmacy has not been properly cleaned up.

11. During the hearing on the ISO, Walker stated that she is in the process of selling the pharmacy business. She provided copies of her July and August 2016 emails to Randall and the photos she previously sent. However, she provided no evidence that the facility has been brought into a clean and wholesome state since then.

12. The record, including the photographic evidence, establishes that the operation of the Respondent's premises in a dirty condition, with disorganized records that cannot be readily retrieved or accessed, threatens the public health, safety, and welfare.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter exists under Business and Professions Code sections 494, 4003, 4011, and 4301,¹ based on Factual Findings 1 and 2. Under section 494, subdivision (e), the standard of proof to obtain an interim order of suspension is a preponderance of the evidence.

2. To obtain an ISO pursuant to section 494, Petitioner must establish that the licensee has engaged in acts that constitute grounds for discipline under the Code, and that permitting the licensee to continue to engage in the licensed activity, or to do so without some restrictions, would endanger the public health, safety, and welfare.

¹ All further statutory citations are to the Business and Professions Code.

3. The Board may discipline a licensee for unprofessional conduct, which includes, but is not limited to, violation of any statutes regulating controlled substances and dangerous drugs. It may also take disciplinary action against a licensee for violating any of the statutes governing pharmacy, or for violating the Board's regulations. (§ 4301, subds. (j) & (o).)

4. California Code of Regulations (CCR), title 16, section 1707.5,² subdivision (c), provides that a pharmacy, and its equipment and fixtures, shall be maintained "in a clean and orderly condition. The pharmacy is to be dry, well-ventilated, free from rodents and insects, and properly lighted. The pharmacy shall be equipped with a sink with hot and cold running water for pharmaceutical purposes."

5. CCR section 1714 provides that every pharmacy shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly maintained, prepared, secured, and distributed. The pharmacy must be sufficient in size and unobstructed so it can accommodate the safe practice of pharmacy.

6. Section 4105, subdivision (a), provides that all records or other documentation of the acquisition or disposition of dangerous drugs held by a licensed entity, such as a pharmacy, must be retained at the licensed premises "in readily retrievable form."

7. (A) Respondent has violated CCR section 1707.5, subdivision (c), by failing to maintain the pharmacy premises in a clean and orderly condition, based on Factual Findings 4 through 11.

(B) Respondent has violated CCR section 1714, in that the pharmacy is not in a condition where its space is unobstructed so that pharmacy can be safely practiced. Furthermore, this regulation is violated by Respondent's failure to maintain the premises so that drugs can be safely and property maintained, prepared, secured, and distributed. This Conclusion is based on Factual Findings 4 through 11.

8. Respondent has violated section 4105, subdivision (a), by failing to maintain records in a readily retrievable form, based on Factual Findings 4(F), 5, 6, and 8(F).

9. Respondent has violated section 4301, subdivision (o), by its violations of section 4105, subdivision (a), and by the violation of CCR sections 1707.5, subdivision (c), and 1714, based on Legal Conclusions 7 and 8 and their factual predicates.

10. Dirty and filthy premises, where pharmacy records cannot be readily accessed, patently threaten the public health, safety and welfare, and this Conclusion is supported by Factual Findings 1 through 12.

² All citations to the CCR shall be to title 16 thereof.

11. Based on all the forgoing, Petitioner has established cause for the issuance of an ISO, pending a hearing on an accusation.

12. It is expected that the Board will comply with the requirement to file an accusation against Respondent within 15 days. If Respondent requests it, a full evidentiary hearing will take place.

ORDER

The Petition for an Interim Order of Suspension is granted against Respondent South Figueroa Drugs, Pharmacy Permit Number PHY 40552. Said Pharmacy is suspended from operating as a pharmacy pending the outcome of a hearing on an accusation, or until further orders of this tribunal.

DATED: March 3, 2017

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Joseph D. Montoya
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JOSEPH D. MONTOYA
Administrative Law Judge
Office of Administrative Hearings