

COPY

PROTHONOTARY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF OSTEOPATHIC MEDICINE

2016 FEB -4 PM 3: 36

Department of State

Commonwealth of Pennsylvania :
Bureau of Professional and :
Occupational Affairs :

v. :

Docket No. 0246 -53-16
File No. 16-53-01156

Joseph Thomas Acri, D.O. :
Respondent :

ORDER OF TEMPORARY SUSPENSION AND NOTICE OF HEARING

AND NOW, this 4th day of February, 2016, upon review of the Petition for Temporary Suspension of the license to practice as a medical physician and surgeon of **Joseph Thomas Acri, D.O.**, (hereinafter "Respondent") License No. OS009263L, filed by the Commonwealth of Pennsylvania Bureau of Professional and Occupational Affairs (hereinafter "Commonwealth"), the State Board of Osteopathic Medicine (hereinafter "Board") makes the following findings and enters the following Order:

SUSPENSION ORDER

The Board finds the Commonwealth has alleged facts in its Petition, which, if taken as true, establish at each and every count that the continued practice as of osteopathic medicine and surgery by the Respondent presents an immediate danger to the public health and safety. Therefore in accordance with section 14(a) of the Osteopathic Medical Practice Act, Act of October 5, 1978, P.L. 1109, No. 261, as amended, 63 P.S. §271.14(a), the Board **ORDERS** that the license issued to the Respondent to practice osteopathic medicine and surgery in the Commonwealth is **TEMPORARILY SUSPENDED** upon the service of this order. Respondent shall surrender his wallet card, registration certificate and wall certificate to representatives of

the Bureau of Enforcement and Investigation, Bureau of Professional and Occupational Affairs, immediately upon service of this order in accordance with the Act at 63 P.S. § 271.14(a).

PRELIMINARY HEARING

A preliminary hearing shall be scheduled and conducted by the Board or Office of Hearing Examiners to be convened within thirty (30) days from the date of issuance of this Order. The preliminary hearing shall be limited to evidence on the issue of whether there is a prima facie case to support temporary suspension of the Respondent's license. The preliminary hearing will be held at a location designated by the Board or a hearing examiner for the Board.

The Respondent is entitled to be present at the preliminary hearing and may be represented by an attorney, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings.

If the Board or hearing examiner finds a prima facie case is not established, Respondent's license will be immediately restored. If a prima facie case is established, the temporary suspension shall remain in effect until vacated by the Board, but in no event longer than 180 days, unless otherwise ordered or agreed to by the participants.

ADDITIONAL FORMAL ACTION

In addition to this temporary suspension proceeding, the prosecuting attorney may commence a separate action to suspend, revoke or otherwise restrict Respondent's license, through the filing of a charging document, an Order to Show Cause. The Order to Show Cause may include, but is not limited to, the facts which were alleged in the Petition for Immediate Temporary Suspension. Any Order to Show Cause filed by the prosecuting attorney will be served upon the Respondent and the Order will direct Respondent to reply to the charges in a written answer within 20 days of the issuance of the Order to Show Cause. A formal hearing on

that Order to Show Cause will then be scheduled and conducted by the Board or the Hearing Examiner for the Board.

PROCEDURES

Continuances will be granted for good cause only. A request for a continuance must be filed with the Prothonotary in writing at least one week prior to the date of the hearing. The requirement of the one-week advance filing of a request for continuance will be waived only upon a showing of good cause. The failure to have an attorney present and a request for continuance to retain an attorney will not be considered a valid reason for the granting of a continuance on the day of the hearing. **A request by the Respondent for an extension of time for a continuance which will delay the preliminary hearing or the formal hearing must be accompanied by the agreement of the Respondent that the 180-day temporary suspension will continue during whatever additional time is necessary to conclude the proceedings.**

All proceedings are conducted in accordance with the Administrative Agency Law, 2 Pa.C.S. §§ 501-508, 701-704; 63 P.S. §§ 2201-2207; and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1-35.251. A record of the hearing will be stenographically prepared by an official reporting service. A copy of the transcript may be secured by personally making arrangements with the reporting service at the time of the hearing.

Any document submitted in this matter must be filed with:

Prothonotary
Bureau of Professional and Occupational Affairs
2601 North Third Street
Harrisburg, PA 17110
(717) 772-2686

Any document filed with the Prothonotary must also be served on the Prosecuting

Attorney:

Mark R. Zogby
Prosecuting Attorney
2601 North Third Street
P.O. Box 69521
Harrisburg, Pennsylvania 17106-9521
(717) 783-7200

This Order shall take effect immediately upon mailing.

**BY ORDER:
BEFORE THE STATE BOARD OF
OSTEOPATHIC MEDICINE PROBABLE
CAUSE SCREENING PANEL**

Frank M. Tursi, D.O. *Frank M. Tursi, D.O.*
Committee Member
APPROVE Immediate Temporary
Suspension of Jay Junghe Cho

DENY Immediate Temporary
Suspension of Jay Junghe Cho

RECUSE FROM DECISION

Ian D. Rosenberg,
BSCCPLP
Alternate Committee
Member
APPROVE Immediate Temporary
Suspension of Jay Junghe Cho

DENY Immediate Temporary
Suspension of Jay Junghe Cho

RECUSE FROM DECISION

Board Counsel:

Teresa Lazo, Wesley J. Rish

For the Commonwealth:

Mark R. Zogby
Prosecuting Attorney
Commonwealth of Pennsylvania
Bureau of Professional and Occupational Affairs
P.O. Box 69521
Harrisburg, PA 17106-9521

Respondent:

Joseph Thomas Acri, D.O.
243 North 24th Street
Camp Hill, PA 17011

File No.:

16-53-01156

Date of Issuance:

February 4, 2016

COPY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF OSTEOPATHIC MEDICINE

PROTHONOTARY

2016 FEB -4 PM 3: 36

Department of State

Commonwealth of Pennsylvania	:	
Bureau of Professional and	:	
Occupational Affairs	:	
	:	
v.	:	Docket No. 0246-53-16
	:	File No. 16-53-01156
Joseph Thomas Acri, D.O.	:	
Respondent	:	

PETITION FOR IMMEDIATE TEMPORARY SUSPENSION

AND NOW, comes the Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs (*hereinafter* "Commonwealth"), by and through its Prosecuting Attorney, Mark R. Zogby, and petitions the State Board of Osteopathic Medicine (*hereinafter* "Board") for the immediate temporary suspension of the license to practice osteopathic medicine and surgery issued to **Joseph Thomas Acri, D.O.** (*hereinafter* "Respondent"), pursuant to the Osteopathic Medical Practice Act, Act of October 5, 1978, P.L. 1109, No. 261, as amended, 63 P.S. §271.1 et seq. (*hereinafter* "Act"), and particularly Section 14(a) of the Act, 63 P.S. § 271.14(a), and in support thereof alleges as follows:

1. Petitioner is the Bureau of Professional and Occupational Affairs, a departmental administrative agency within the Pennsylvania Department of State.
2. At all times relevant hereto, the Respondent, **Joseph Thomas Acri, D.O.**, was licensed to practice osteopathic medicine and surgery in the Commonwealth of Pennsylvania, License No. OS009263L.
3. The Respondent's last known address, on file with the Board, is 1709 Kent Street, Camp Hill, PA 17011.

4. The Commonwealth has reason to believe that a current and/or alternate address for the Respondent is 243 North 24th Street, Camp Hill, PA 17011.

5. Respondent's license is active through October 31, 2016, and may be continually renewed thereafter upon the filing of the appropriate documentation and the payment of the necessary fees.

6. On or about January 29, 2016, a Criminal Complaint was filed against the Respondent in Magisterial District Court No. 09-3-04 at docket no. MJ-09304-CR-0000060-2016 (*hereinafter* "Criminal Complaint").

7. The Criminal Complaint charged the Respondent with five (5) felony violations of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act (*hereinafter* "Drug Act"), one (1) felony violation of the Criminal Code, and one (1) misdemeanor violation of the Drug Act, as follows:

- a. 35 P.S. §780-113(a)(14) (Drug Act) (4 counts) – The administration, dispensing, delivery, gift or prescription of any controlled substance by any practitioner or professional assistant under the practitioner's direction and supervision unless done (i) in good faith in the course of his professional practice; (ii) within the scope of the patient relationship; (iii) in accordance with treatment principles accepted by a responsible segment of the medical profession. (Ungraded Felony);
- b. 35 P.S. §780-113(a)(12) (Drug Act) (1 count) – The acquisition or obtaining of possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge. (Ungraded Felony);

- c. 18 Pa.C.S.A. §903(c) (Criminal Code) (1 count) – Conspiracy. (Ungraded Felony); and
- d. 35 P.S. §780-113(a)(21) (Drug Act) (1 count) – The refusal or failure to make, keep or furnish any record, notification, order form, statement, invoice or information required under this act. (Ungraded Misdemeanor).

8. The Affidavit of Probable Cause supporting the Criminal Complaint set forth the following facts:

a. Between February 2011 and August 2012 an individual identified as “T.C.” presented a total of twenty-one prescriptions to the SmartMed Pharmacy in Carlisle, PA. All of the prescriptions were signed by the Respondent and written on prescription pads with the letterhead of Carlisle Regional Medical Center Hospitalists;

b. Between February 2011 and August 2012, the Respondent repeatedly wrote subsequent prescriptions for T.C. prior to the ending date of prior prescriptions and without instructions limiting when the subsequently written prescriptions can be filled, which is in violation of 21 C.F.R. §1306.12;

c. The following are examples of the conduct described in paragraph 8b above: 1) February 9, 2011 – 78 day supply of Oxycodone 30 mg; 2) March 15, 2011 (36 days later) – 90 day supply of Oxycodone 30 mg; 3) May 3, 2011 (48 days later) – 90 day supply of Oxycodone 30 mg; 4) June 16, 2011 (44 days later) – 90 day supply of Oxycodone 300 mg; 5) July 25, 2011 (39 days later) – 78 day supply of Oxycodone 30 mg.

d. T.C. filled the prescriptions set forth in paragraph 8c above either on the same day they were written or within a few days after the date they were written;

e. Between February 2011 and August 2012, the Respondent repeatedly wrote prescriptions for T.C. with quantities of pills and instructions in excess of the manufacturers' recommended dosage. The recommended dosage for Oxycodone 30 mg is 1-2 pills every every 4-6 hours. The recommended dosage for Oxycontin at any amount is 1 pill every 12 hours;

f. The following are examples of the conduct described in paragraph 8e above: 1) May 3, 2011 – 90 day supply of Oxycodone 30 mg with 1440 pills and instructions to take 4 pills every 6 hours (double the recommended dosage); 2) February 20, 2011 – 60 day supply of Oxycontin 80 mg with 1200 pills and instructions to take 4-5 pills every 6 hours (12 to 15 times the recommended dosage); 3) May 3, 2011 – 20 day supply of Oxycontin 80 mg with 400 pills, which amounts to 20 pills a day (10 times the recommended dosage); 4) May 13, 2011 – 60 day supply of Oxycontin 80mg with 1200 pills, which amounts to 20 pills a day (10 times the recommended dosage);

g. Between April 2012 and March 2014, T.C. presented 10 prescriptions for Schedule II narcotics, Oxycodone and Oxycontin, to the Medicine Shop Pharmacy in Newport, PA. All of the prescriptions were signed by the Respondent and written on prescription pads with the letterhead of Carlisle Regional Medical Center Hospitalists

h. The prescriptions referenced in paragraph 8g above were as follows: 1) Four (4) for an 80 day supply of Oxycodone 30 mg with 1440 pills; 2) One (1) for an 83 day supply of Oxycodone 30 mg with 2000 pills; 3) Four (4) for a 60 day supply of Oxycontin 80 mg with 1200 pills;

i. On September 5, 2013 and March 12, 2014, T.C. filled prescriptions for Oxycontin signed by the Respondent. There were apparent alterations on both prescriptions that that raised an issue as to when the Respondent actually wrote the prescriptions. On the first, it appeared that the year on the date was changed from 2012 to 2013. On the second, it appeared that the date was changed from "12/6/12" to "2/6/14." Upon receipt of said prescriptions the pharmacist called Respondent to verify, and Respondent verified both. Respondent later admitted to an agent of the Pennsylvania Office of Attorney General that the dates on both of the above prescriptions were "altered and forged" and he was not treating T.C. in 2014;

j. Respondent worked as a hospitalist at Carlisle Regional Medical Center from approximately 2006 through February 2012. Hospitalists generally did not have practices outside the hospital. Most of the above mentioned prescriptions were written after Respondent was no longer affiliated with Carlisle Regional Medical Center. Carlisle Regional Medical Center had no record of T.C. being a patient between February 2011 and March 2014, including but not limited to no medical records to correspond to the above mentioned prescriptions;

k. Respondent was a customer of C.E.'s restaurant. Between April 2011 and August 2011, Respondent wrote 8 prescriptions for Oxycodone 30 mg, 240 pills each, for C.E. Respondent wrote said prescriptions in C.E.'s restaurant and gave them to him immediately. Respondent did not examine C.E. or order any testing. Respondent did not order or perform any x-rays or MRIs on C.E. Respondent did not see C.E. as a patient at Carlisle Regional Medical Center. Respondent did not recommend that C.E. later go to the hospital for an exam or check-up;

l. Between April 2011 and August 2011, Respondent also wrote 8 prescriptions for Oxycodone 30 mg, 240 pills each, for C.E.'s sister M.E. Respondent wrote said prescriptions in C.E.'s restaurant and gave them to M.E. immediately. On all but one occasion, Respondent failed to examine M.E. On one that one occasion, Respondent conducted a cursory examination of M.E., in the kitchen area of the restaurant, consisting of Respondent touching M.E.'s legs and back. Respondent never saw M.E. as a patient at Carlisle Regional Medical Center. Respondent never recommended that M.E. come the to hospital for an exam, x-rays or an MRI;

m. Between April 2011 and August 2011, Respondent wrote eight prescriptions for Oxycodone 30 mg, 240 pills each, for C.E.'s wife, S.E. Respondent wrote these prescriptions in C.E.'s restaurant and immediately gave them to C.E. to take home for S.E. S.E. never spoke to or met Respondent before receiving her first prescription. Respondent never examined S.E. or ordered any tests. In fact, he never spoke directly with S.E. about the issues she was having. Rather Respondent relied on C.E.'s description of S.E.'s symptoms. S.E. only received one or two of the prescriptions from Respondent directly. Respondent gave the rest of the prescriptions to C.E. to take home for S.E.;

n. All of the prescriptions for C.E., M.E. and S.E. were written on a Carlisle Regional Medical Center prescription pad. The Master Patient Index from February 2011 through March 2014 confirmed that C.E., M.E. and S.E. were never patients of Carlisle Regional Medical Center during this time period.

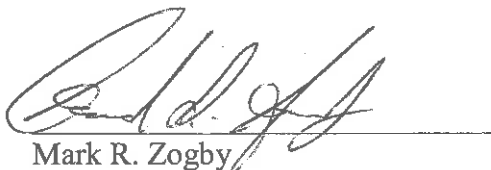
(A true and correct copy of the Criminal Complaint with the Affidavit of Probable Cause is attached hereto as Exhibit "A.")

9. Following his arrest, Respondent's bail was set at \$10,000.00 unsecured.
10. Currently, Respondent is not incarcerated and is free to resume his medical practice.

11. Based upon the foregoing factual allegations, the Respondent's continued practice of osteopathic medicine and surgery within the Commonwealth of Pennsylvania, along with the exercise of any other authorizations to practice the profession issued by the Board, makes Respondent an immediate and clear danger to the public health and safety.

WHEREFORE, the Petitioner respectfully requests that the Board issue an Order immediately suspending the license to practice as osteopathic medicine and surgery of **Joseph Thomas Acri, D.O.**, License No. OS009263L pursuant to Section 14(a) of the Osteopathic Medical Practice Act, Act of October 5, 1978, P.L. 1109, No. 261, as amended, 63 P.S. §271.14(a).

Respectfully submitted,



Mark R. Zogby
Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 783-7200

DATE: February 4, 2016