

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BLUE MINT PHARMCO LLC and JONA
RUSHIN, R.PH.,

Plaintiffs,

v.

TEXAS STATE BOARD OF PHARMACY
("Board"); JULIE SPIER, R.PH., in her official
capacity and individually; LORI HENKE,
PHARM.D., in her official capacity and
individually; RICK FERNANDEZ, R.PH., in his
official capacity and individually; DONNIE
LEWIS, R.PH., in his official capacity and
individually; JENNY DOWNING YOAKUM,
R.PH., in her official capacity and individually;
DANIEL GUERRERO, in his official capacity
and individually; BRADLEY MILLER, PH.T.R.,
in his official capacity and individually; DONNA
MONTEMAYOR, P.PH., in her official capacity
and individually; IAN SHAW, in his official
capacity and individually; SUZETTE TIJERINA,
R.PH., in her official capacity and individually;
RICK TISCH, in his official capacity and
individually; and TIM TUCKER, R.Ph. in his
official capacity and individually,

Defendants.

Civil Action No. 22-561

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, DAMAGES, AND
DEMAND FOR JURY TRIAL**

Plaintiffs Blue Mint Pharmco, LLC and Jona Rushin, R.Ph. (“Plaintiffs”) respectfully allege as follows in support of this Complaint for declaratory judgment, preliminary and permanent injunction, and compensatory damages pursuant to 42 U.S.C. § 1983, and demand for jury trial against defendants the Texas State Board of Pharmacy (“Board”), Julie Spier, R.Ph., Lori Henke, Pharm.D., Rick Fernandez, R.Ph., Donnie Lewis, R.Ph., Jenny Downing Yoakum, R. Ph., Daniel Guerrero, Bradley Miller, Ph.T.R., Donna Montemayor, R.Ph., Ian Shaw, Suzette Tijerina, R.Ph., and Rick Tisch (collectively, “Defendants”).

I. **INTRODUCTION**

1. Plaintiffs bring this action under 42 U.S.C. §§ 1981,1983, and the Fourteenth Amendment to the United States Constitution to end the pervasive and continuing violations of their constitutional rights by the Defendants, including the Board and its members acting in their official capacity and individually. Plaintiffs seek, among other relief, declaratory judgment that Defendants’ unlawful administration of disciplinary proceedings denied Plaintiffs procedural and substantive due process guaranteed by the Fourteenth Amendment, and that Defendants racially discriminate in their regulation of pharmacists and pharmacies licensed in the State of Texas in violation of the Equal Protection Clause of the United States Constitution. Plaintiffs further seek injunctive relief enjoining Defendants from continuing violations of Plaintiffs’ rights and compensatory damages.

II. THE PARTIES

2. Plaintiff Blue Mint Pharmco LLC (“Blue Mint”) is a limited liability company organized and existing under the laws of the State of Texas. Blue Mint owns Blue Mint Pharmacy (“Pharmacy”), which holds an active Texas Pharmacy License. The Pharmacy provides services in a predominantly low-income, African American community in and around Houston, Texas. Blue Mint is an African American owned business. At all times relevant to this Complaint, Blue Mint has constitutionally protected liberty and property interests in its pharmacy license and economic well-being.

3. Plaintiff Jona Rushin, R.Ph. (“Rushin”) is an African American pharmacist licensed in the State of Texas. At all times relevant to this Complaint, Rushin has constitutionally protected liberty and property interests in her pharmacist license and economic well-being.

4. Defendant Texas State Board of Pharmacy (“Board”) is a state regulatory body that licenses and disciplines pharmacists and pharmacies.

5. Defendant Julie Spier, R.Ph. (“Spier”) is a member of the Board.

6. Defendant Lori Henke, Pharm.D. (“Henke”) is a member of the Board.

7. Defendant Rick Fernandez, R.Ph. (“Fernandez”) is a member of the Board.

8. Defendant Donnie Lewis, R.Ph. (“Lewis”) is a member of the Board.

9. Defendant Jenny Downing Yoakum, R.Ph. (“Yoakum”) is a member of the Board.

10. Defendant Daniel Guerrero (“Guerrero”) is a member of the Board.

11. Defendant Bradley A. Miller, Ph.T.R. (“Miller”) is a member of the Board.
12. Defendant Donna Montemayor, R.Ph. (“Montemayor”) is a member of the Board.
13. Defendant Ian Shaw (“Shaw”) is a member of the Board.
14. Defendant Suzette Tijerina, R.Ph. (“Tijerina”) is a member of the Board.
15. Defendant Rick Tisch (“Tisch”) is a member of the Board.

III. **JURISDICTION AND VENUE**

16. This Court has subject matter jurisdiction over the federal claims under 28 U.S.C §§ 1331 and 1342, as this action arises under the Fourteenth Amendment to the United States Constitution and is brought to redress the deprivation, under color of state law, of rights, privileges, and immunities secured by the United States Constitution. This Court is further authorized to grant the requested relief pursuant to 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. § 1983.

17. Venue is proper in the Southern District of Texas under 28 U.S.C. § 1391 on the provisions of 28 U.S.C. § 1391 because the events giving rise to Plaintiffs’ claims occurred in the Southern District of Texas.

IV. **BACKGROUND ALLEGATIONS**

A. Prescription Drug Abuse and Texas Health & Safety Code § 481.0761

18. In 2017, the Texas State Legislature passed HB 2561 that amended Health and Safety Code § 481.0761 and expanded the Board’s authority to monitor and regulate prescriptions for controlled substances.

19. Specifically, the amendment added, among other provisions, Tex. Health & Safety Code § 481.0761(h), which directed the Board to

identify prescribing practices that may be potentially harmful and patient prescription patterns that may suggest drug diversion or drug abuse. The board shall determine the conduct that constitutes a potentially harmful prescribing pattern or practice and develop indicators for levels of prescriber or patient activity that suggest a potentially harmful prescription pattern or practice may be occurring or drug diversion or drug abuse may be occurring.

20. Based on the indicators listed above, the Board was authorized to develop “guidelines identifying behavior suggesting a patient is obtaining controlled substances that indicate drug diversion or drug abuse is occurring.” Tex. Health & Safety Code § 481.0761(j).

21. Tex. Health & Safety Code § 481.0761(k) further provides that the “guidelines may be based on the frequency of prescriptions issued to and filled by the patient, the types of controlled substances prescribed, and the number of prescribers who prescribe controlled substances to the patient.”

22. HB 2561 also imposed a duty on a pharmacist who observes the indicators above with respect to a patient to access the patient’s prescription history before dispensing opioids, benzodiazepines, barbiturates, or carisoprodol. Tex. Health & Safety Code §§ 481.0761(j) and 481.0764(a). A pharmacist’s failure to comply with the statute is grounds for disciplinary action by the Board. Tex. Health & Safety Code § 481.0764(d).

23. A patient’s prescription history is accessed through an electronic database known as the Texas Prescription Monitoring Program (“PMP”), which is maintained by the Board. In addition to a patient’s prescription history, the PMP assigns a “PMP score” to a particular

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