

IN THE MATTER OF	*	BEFORE THE
NGUEGNI DORINE FOBI-TAKUSI	*	STATE BOARD
RESPONDENT	*	OF PHARMACY
LICENSE NO.: 16750	*	CASE NO.: 12-154
* * * * *	* * * * *	* * * * *

CONSENT ORDER

On July 18, 2012, the State Board of Pharmacy (the "Board") charged Nguegni Dorine Fobi-Takusi, P.D. (the "Respondent"), License No. 16750, under the Maryland Pharmacy Act (the "Act") and Md. Health Occ. Code Ann. ("H.O.") § 12-101, *et seq.* (2009 Repl. Vol. and 2011 Supp.).

The pertinent provisions under § 12-313 of the Act provide the following:

(b) Subject to the hearing provisions of § 12-315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant for a pharmacists' license, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

- (3) Aids an unauthorized individual to practice pharmacy or to represent that the individual is a pharmacist or a registered pharmacy technician;
- (4) Delegates pharmacy acts to an unauthorized individual; [and]
- (25) Violates any rule or regulation adopted by the Board[.]

The pertinent provision under Title 10, Subtitle 19, pertaining to dangerous devices and substances, of the Code of Maryland Regulations provides the following:

10.19.03.07 Prescriptions.

C. Purpose of Issue of Prescription (21 CFR § 1306.04).

- (1) A prescription for a controlled dangerous substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of the individual practitioner's professional practice. The responsibility for the proper prescribing and dispensing of controlled dangerous substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of the Maryland Controlled Dangerous Substance Act Criminal Law Article, §§ 5-501 – 5-505, Annotated Code of Maryland, and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled dangerous substances.

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The pertinent provision under Title 10, Subtitle 34, pertaining to Board of Pharmacy, of the Code of Maryland Regulations provides the following:

10.34.10.01 Patient Safety and Welfare.

A. A pharmacist shall:

- (1) Abide by all federal and State laws relating to the practice of pharmacy and the dispensing, distribution, storage, and labeling of drugs and devices, including but not limited to:
 - (a) United States Code, Title 21,
 - (b) Health-General Article, Titles 21 and 22, Annotated Code of Maryland,
 - (c) Health Occupations Article, Title 12, annotated Code of Maryland,
 - (d) Criminal Law Article, Title 5, Annotated Code of Maryland, and
 - (e) COMAR 10.19.03[.]

The pertinent provisions under Title 10, Subtitle 34, Chapter 05, pertaining to Pharmacy Security, of the Code of Maryland Regulations provide the following:

10.34.05.02 Prescription Area.

- A. The Pharmacy permit holder shall:
 - (2) Provide a means of securing the prescription area; [and]
 - (5) Prevent unauthorized entry when the prescription area is closed during a period that the rest of the establishment is open.

10.34.05.03 Pharmacy Operation.

- A. A pharmacist shall be immediately available on the premises to provide pharmacy services at all times the pharmacy is in operation.
- B. If the prescription area is not open the same hours as the establishment, the pharmacy permit holder shall prominently display signs indicating the business hours of the prescription area.

10.34.05.05 Security Responsibility.

The pharmacy permit holder is responsible for assuring that pharmacists, employees, and others who enter the pharmacy:

- A. Know and abide by the requirements of this chapter; [and]
- B. Maintain those measures necessary to ensure this chapters' enforcement [.]

The pertinent provision under Title 16 of the United States Code of Federal Regulations provides the following:

21 CFR § 1306.04. Purpose of issue of prescription.

- (a) A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and

dispensing of controlled substance is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

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On August 22, 2012, a Case Resolution Conference ("CRC") was held before a committee of the Board. Based on negotiations between the parties and the CRC, Respondent agreed to the terms of this Consent Order as accepted by the Board.

FINDINGS OF FACT

The Board makes the following findings of fact:

I. Background

1. On February 25, 2003, the Respondent was initially licensed as a pharmacist in the State of Maryland.

2. In 2010, The Respondent renewed her license. The Respondent's license is currently active and will expire on October 31, 2012.

3. The Respondent currently holds a permit to operate Zonetak Pharmacy (the "Pharmacy"), a retail pharmacy in the State of Maryland. The permit was first issued on January 24, 2011 and will expire on December 31, 2013.

4. At all times relevant, the Respondent was, and is, operating the Pharmacy at 10085 Red Run Boulevard, Physicians Pavilion at Owings Mills

("Physicians Pavilion"), Suite 104, Owings Mills, Maryland 21117. Physicians Pavilion is a four story office building which contains physicians' medical offices. There are no other retail establishments in Physicians Pavilion.

5. At all times relevant, the Respondent and her spouse owned and operated the Pharmacy.

6. On November 8, 2011, during an annual inspection, the Respondent reported that the hours of operation were from 8:00 a.m. to 5:00 p.m. on Monday through Friday and closed on Saturdays and Sundays.

II. The Complaint

7. On or around mid March 2012, the Board received a voice mail message from an unidentified person who stated concerns about activities at the Pharmacy.

8. The complainant requested that the Board investigate the Pharmacy as he/she had seen a large number of people getting out of cars with out-of-state license plates, mainly from Ohio and Kentucky, and filling their prescriptions at the Pharmacy.

9. The complainant further stated that these people "hang out or linger all day" in the Pharmacy area, parking lot area, and outside.

III. Investigation

10. On March 30, 2012, at approximately 10:00 a.m., the Compliance Officer and Inspector 1¹ from the Board visited the Physicians Pavilion. The Pharmacy is located on the first floor of the building.

¹ The Respondent obtained the identity of the inspectors and the compliance officer from the administrative prosecutor.

11. On March 30, 2012, the Compliance Officer and Inspector 1 interviewed a security guard (hereinafter the "Security Guard")² at Physicians Pavilion, who stated:³

- a. On March 30, 2012, at approximately 8:00 a.m., there were a large number of people, who got out of cars with out-of-state license plates such as Ohio, Kentucky, and Georgia, and came in to fill their prescriptions at the Pharmacy.
- b. Individuals would come sporadically, usually early in the morning. They would come into the Pharmacy but not visit any of the physicians' offices in the building.
- c. Previously, on Thursday March 29, 2012, there were even more people that came in from out-of-state to fill their prescriptions at the Pharmacy.
- d. Previously, on Wednesday March 28, 2012, a male approached the Security Guard, pulled him/her aside, and asked him/her if the Pharmacy had oxycodone.
- e. If a police car were to show up, the cars with out-of-state license plates would "vanish right away."

12. On Friday, March 30, 2012, the Compliance Officer and Inspector 1 interviewed "Informant A" and "Informant B"⁴ who worked at an office in Physicians Pavilion. The interview revealed the following:

- a. The Informants referred to the Pharmacy as a "pill mill." Since the Pharmacy opened, they noticed that there had been lots of people driving cars with out-of-state license plates to fill their prescriptions at the Pharmacy and that the number had been increasing.

² The Respondent may obtain some information about the Security Guard from the administrative prosecutor.

³ The Security Guard worked at Physicians Pavilion for over one year and worked from 5:30 a.m. to 4:00 p.m.

⁴ The Respondent obtained information about Informant A and Informant B from the administrative prosecutor.

- b. The Informants had witnessed transactions in cash at the Pharmacy. For example, an individual paid \$450 in cash for prescriptions.
- c. The Informants stated that they usually observed the cars with out-of-state license plates came in on Tuesdays, Wednesdays, and Thursdays early in the morning, or at around 3:00 p.m. to 4:00 p.m.
- d. The Informants stated that if a police car were to enter the driveway, drivers of the cars with out-of-state license plates would quickly drive away.
- e. The Informants further stated that they had never seen the type of activity in the Pharmacy with the previous pharmacy while it was in operation at the same location.

13. On Tuesday, April 3, 2012, at approximately 7:30 a.m., the Compliance Officer and Inspectors 1, 2, and 3 (hereinafter the "Inspectors") from the Board arrived at the Physicians Pavilion.

14. On April 3, 2012, the Inspectors interviewed the Security Guard who stated that:

- a. Previously, on April 2, 2012, the Security Guard witnessed about ten (10) cars with Kentucky and Ohio license plates.
- b. A cashier and a pharmacy technician (the "Pharmacy Technician")⁵ would usually arrive between 8:00 a.m. and 8:30 a.m. daily to open the Pharmacy before a pharmacist would arrive.

15. On April 3, 2012, the Inspectors observed the following:

- a. At 7:48 a.m., an SUV with Kentucky license plates arrived with three passengers. The Inspectors observed that they had pillows in the car. Shortly thereafter, cars with Ohio and Tennessee plates arrived.

⁵ The Respondent obtained the identity of the cashier and the Pharmacy Technician from the administrative prosecutor.

- b. At around 8:10 a.m., a person who the Security Guard identified as the cashier opened the Pharmacy. There was no pharmacist in the Pharmacy.
- c. A cleaning crew went inside the Pharmacy and worked in the front retail store area.
- d. At 8:15 a.m., the Security Guard unlocked the Pharmacy for a person who the Security Guard identified as a Pharmacy Technician.
- e. At 8:35 a.m., there were five to six individuals waiting outside the Pharmacy.
- f. At 8:45 a.m., the Security Guard unlocked the door to the Pharmacy for a person the Security Guard identified as a pharmacist.⁶

16. Subsequently, on April 3, 2012, the Inspectors entered the Pharmacy to conduct a follow-up inspection from the annual inspection in November 2011 and observed the following:

- a. The Pharmacy did not have a means of securing the prescription area from the retail area. There was a gate with a latch on the inside that did not lock.
- b. The Pharmacy did not display any signs indicating the business hours of the establishment nor the prescription area.
- c. According to the "floater" Pharmacist, the hours of operation were 8:30 a.m. to 7:30 p.m. Monday through Friday and closed on Saturdays and Sundays.
- d. The Pharmacy Technician identified himself/herself to the Compliance Officer and Inspectors as a "cashier."
- e. The Pharmacy Technician stated that her registration expired on March 31, 2012.⁷

⁶ The Respondent obtained the identity of the pharmacist from the administrative prosecutor.

⁷ On April 3, 2012, the Pharmacy Technician submitted a renewal application to the Board and the Board renewed the registration. On April 4, 2012, the Board mailed the renewed registration to the Pharmacy Technician.

- f. At 12:44 p.m., the Pharmacy Technician performed technician duties such as entering the prescriptions in the computer and placing medication into pharmacy bags.
- g. The Pharmacy Technician's initials were on the computer prescription label of RX # 603460 dated April 3, 2012.
- h. Patient 1 and Patient 2⁸ paid cash of over \$600 each at the cash register for narcotic prescriptions. Patient 1 from Kentucky paid approximately \$ 659 in cash for oxycodone 15 mg (#112), oxycodone 30 mg (#112), and meloxicam (#28).⁹ Patient 2 from Kentucky paid approximately \$ 600 in cash for oxycodone 15 mg (#168).¹⁰

17. Additionally, on April 3, 2012, the Inspectors requested and reviewed "Drug Usage Reports" and the Schedule II Controlled Dangerous Substances ("CDS") prescriptions, which the Pharmacy Technician provided, and found the following:

- a. According to the "Drug Usage Report" dated March 29, 2012, among approximately 40 prescriptions of oxycodone 15 mg and 30 mg, 19 prescriptions were for out-of-state patients.
- b. According to the "Drug Usage Report" dated April 2, 2012, among 54 prescriptions of oxycodone 15mg and 30mg, 22 prescriptions were for out-of-state patients.
- c. After reviewing the Schedule II CDS prescriptions, the Inspectors found the Pharmacy Technician's initials on 19 computer prescription labels filled on April 2, 2012 (for example N213746), and 8 computer prescription labels filled on April 3, 2012 (for example, N213826).

⁸ In order to maintain confidentiality, the names of patients are not used in the consent order. The Respondent obtained the identity of patients from the administrative prosecutor.

⁹ Approximately a month before, on March 6, 2012, Patient 1 purchased oxycodone 15 mg (#112) and oxycodone 30 mg (#112) at the Pharmacy.

¹⁰ The prescription for oxycodone shows the price paid was \$ 288.69. The approximately \$300 plus which Patient 2 paid on April 3, 2012 may have been for additional pain medication.

- d. From March 21, 2011¹¹ to June 30, 2011, the “Dispensing Report” for oxycodone (5, 10, 15, 20, and 30 mg) showed that there were approximately 89 out-of-state prescriptions among 702 total prescriptions of oxycodone, increasing toward the end of June 2011.
- e. From February 27, 2012 to April 2, 2012, the “Dispensing Report” for oxycodone (5, 10, 15, 20, and 30 mg) showed that there were approximately 478 out-of-state prescriptions among approximately 1038 total prescriptions of oxycodone.
- f. Between March 26, 2012 and April 3, 2012, the Schedule II CDS prescriptions (Oxycodone 15 mg and 30 mg.) for out-of-state individuals that the Pharmacy filled originated from a pain clinic¹² in Timonium, Maryland.¹³ The individuals had addresses in Kentucky, Ohio, Tennessee, and West Virginia and were paid for with cash.

18. Upon further investigation, the Board found the Respondent’s initials on the computer prescription labels for prescriptions from the pain clinic in Timonium, including, but not limited to the following:

- a. On October 24, 2011, the Respondent filled prescriptions of oxycodone 30 mg (#84) and oxycodone 15 mg (#84) to Patient 3¹⁴ from West Virginia.
- b. On October 24, 2011, the Respondent filled prescriptions of oxycodone 30 mg (#112) and oxycodone 15 mg (#112) to Patient 4 from West Virginia.
- c. On March 30, 2012, the Respondent filled a prescription of oxycodone 15 mg (#84) to Patient 5 from Ohio.
- d. On March 30, 2012, the Respondent filled a prescription of oxycodone 30 mg (#168) to Patient 6 from Ohio.

¹¹ March 21, 2011 is approximately two months after the Pharmacy’s opening.

¹² The Respondent obtained information about the identity of pain clinic from the administrative prosecutor.

¹³ The pain clinic has subsequently been closed by the Drug Enforcement Agency.

¹⁴ Patient 3 has the same last name as Patient 4 and resides on the same street in West Virginia.

- e. On March 30, 2012, the Respondent filled a prescription of oxycodone 15 mg (#84) to Patient 7 from Kentucky.
- f. On March 30, 2012, the Respondent filled a prescription of oxycodone 15 mg (#168) to Patient 8 from West Virginia.
- g. On March 30, 2012, the Respondent filled a prescription of oxycodone 30 mg (#84) to Patient 9 from Kentucky.
- h. On March 30, 2012, the Respondent filled a prescription of oxycodone 15 mg (#56) to Patient 10 from Kentucky.
- i. On March 30, 2012, the Respondent filled a prescription of oxycodone 10 mg (#168) to Patient 11 from Kentucky.
- j. On March 30, 2012, the Respondent filled a prescription of oxycodone 10 mg (#168) to Patient 12 from Kentucky.
- k. On April 2, 2012, the Respondent filled a prescription of oxycodone 30 mg (#168) to Patient 13 from Kentucky.

19. Upon further investigation, the Board obtained copies of prescriptions from the Respondent's files for additional patients from the pain clinic in Timonium, including, but not limited to the following:

- a. On or about October 24, 2011, the Respondent filled a prescription for oxycodone 30 mg (#112) to Patient 14 from Kentucky.
- b. On or about October 12, 2011, the Respondent filled a prescription for oxycodone 30 mg (#112) to Patient 15 from Kentucky.
- c. On or about October 25, 2011, the Respondent filled prescriptions of oxycodone 30 mg (#112) and oxycodone 15 mg (#84) to Patient 16¹⁵ from Kentucky.
- d. On or about October 25, 2011, the Respondent filled prescriptions of oxycodone 30mg (#112) and oxycodone 15 mg (#84) to Patient 17 from Kentucky.

¹⁵ Patient 16 is the wife of Patient 17.

- e. On or about October 25, 2011, the Respondent filled prescriptions of oxycodone 30 mg (#112) and oxycodone 10 mg (#84) to Patient 18 from Tennessee.

IV. Summary of Findings

20. The Respondent's conduct as described above constitutes violations of H.O. § 12-313(b), as follows:

- a. Aiding an unauthorized individual to practice pharmacy in violation of H.O. § 12-313(b)(3) by allowing the pharmacy technician whose registration had been expired to conduct duties of a pharmacy technician; and/or
- b. Delegating pharmacy acts to an unauthorized individual in violation of H.O. § 12-313(b)(4) by allowing the pharmacy technician whose registration had been expired to conduct duties of a pharmacy technician.

21. The Respondent's conduct as described above constitutes violations of rules or regulations adopted by the Board, under H.O. § 12-313(b)(25) as follows:

- a. The Respondent's conduct constitutes a violation of Md. Code Regs. tit. 10, § 19.03.07(C)(1) by knowingly filing prescriptions issued not in the usual course of professional treatment or in legitimate and authorized research when the Respondent filled Schedule II CDS prescriptions for a large number of out-of-state individuals who may not have legitimate medical purpose for narcotic medication and pay a large amount of cash;
- b. The Respondent's conduct constitutes a violation of Md. Code Regs. tit. 10, § 34.05.02(A)(2) by failing to provide a means of securing the prescription area;
- c. The Respondent's conduct constitutes a violation of Md. Code Regs. tit. 10, § 34.05.02(A)(5) by failing to prevent unauthorized entry when the prescription area is closed during a period that the rest of the establishment is open;
- d. The Respondent's conduct constitutes a violation of Md. Code Regs. tit. 10, § 34.05.03(A) by failing to make a pharmacist

available on the premise to provide pharmacy services at all times the pharmacy is in operation;

e. The Respondent's conduct constitutes a violation of Md. Code Regs. tit. 10, § 34.05.03(B) by failing to display signs indicating business hours of the prescriptions area when the prescriptions area is not open the same hours as the establishment;

f. The Respondent's conduct constitutes a violation of Md. Code Regs. tit. 10, § 34.05.05 by failed to assure or maintain measures that pharmacists, employees, and others who enter the pharmacy abide by the requirements of this chapter to ensure security of the pharmacy; and/or

g. The Respondent's conduct constitutes a violation of the Code of Federal Reg. 21 CFR 1306.04, in violation of Md. Code Regs. tit. 10, § 31.10.01(A)(1)(a) by violating federal laws relating to the practice of pharmacy.

CONCLUSIONS OF LAW

The Board concludes as a matter of law that Respondent violated H.O § 12-313(b)(3) (aids an unauthorized person), (4) (delegates pharmacy acts to an unauthorized individual), and (25) Violates and rule or regulation, and Code Md. Regs. tit. 10, § 19.03.07C(1) (prescription must be for legitimate medical purpose), Code Md. Regs. tit. 10, § 34.10.01 (Patient safety and welfare), Code Md. Regs. tit. 10, § 34.05.02 (Pharmacy security), Code Md. Regs. tit. 10, § 34.05.03 (Pharmacy operation), Code Md. Regs. tit. 10, § 34.10.01 (Security responsibility), and 21 CFR §1306.04 (Prescription must be issued for legitimate medical purpose).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 26th day of OCTOBER, 2012, by affirmative vote of a majority of its members then serving:

ORDERED that effective the date of this Consent Order, Respondent's license to practice pharmacy shall be **SUSPENDED for thirty (30) days, all STAYED** and it is further

ORDERED that effective the date of this Consent Order, Respondent shall be placed on **PROBATION** under the following terms and conditions for a minimum of two (2) years:

1. Within the first year of probation, Respondent shall enroll in and shall successfully complete a Board-approved six (6) credit course(s) in assessing prescription validity;
2. The above course shall be in addition to any continuing education requirements mandated for continuing certification. The course shall not count toward fulfilling other continuing education requirements that Respondent must fulfill in order to renew her license to practice pharmacy;
3. Within sixty (60) days of the date of this Consent Order, Respondent shall pay to the Board, for deposit in the General Fund of Maryland, a monetary fine of \$1500.00
4. After a minimum of two (2) years, Respondent may file a written petition for termination of probation, but only if Respondent has satisfactorily complied with all terms and conditions of probation and this Consent Order, and if there are no outstanding complaints regarding Respondent before the Board;
5. Respondent shall be responsible for all costs associated with fulfilling the terms and pre-conditions of this Consent Order; and
6. Respondent shall comply with the Maryland Pharmacy Act and all laws, statutes and regulations pertaining to the practice of pharmacy; and it is further

ORDERED that any violation of the terms and conditions of this Consent Order shall be deemed unprofessional conduct in the practice of pharmacy; and it is further

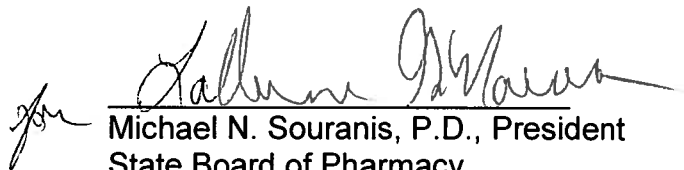
ORDERED that if Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing before the Board if there is a genuine dispute as to the underlying material facts, or after an opportunity for a show cause hearing before the Board, may impose any sanction which the Board may have imposed in this case under §§ 12313 and 12-313.1 of the Maryland Pharmacy Act, including a reprimand, probation, suspension, revocation and/or a monetary fine; and it is further

ORDERED that no earlier than two (2) years following the effective date of this Consent Order, and provided that Respondent has complied with the Consent Order terms during Respondent's period of two years and there are no new complaints, Respondent may petition the Board to terminate the conditions of this Consent Order; and it is further

ORDERED that Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is a public document pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.* (2009 Repl. Vol. and 2011 Cum. Supp.)

Date 10/26/12


Michael N. Souranis, P.D., President
State Board of Pharmacy

CONSENT

I, Nguegni D. Takusi, P.D, acknowledge that I am represented by counsel and have reviewed this Consent Order with my attorney, H. Jeffrey Ziegler, Esquire, before signing this document.

I am aware that I am entitled to a formal evidentiary hearing before an administrative law judge of the Office of Administrative Hearings. I acknowledge the validity and enforceability of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other procedural and substantive protections to which I am entitled by law. I am waiving those procedural and substantive protections.

I voluntarily enter into and agree to abide by the foregoing Findings of Fact, Conclusions of Law, and Order and agree to abide by the terms and conditions set forth herein as a resolution of the Charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law and I waive my right to a full evidentiary hearing as set forth above, and any right to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.

I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may be subject to disciplinary actions, which may include revocation of my license to practice pharmacy.

I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order, consisting of seventeen (17) pages.

10/25/12
Date

OCT 25 2012

[Signature]
Nguegni D. Takusi, P.D.
Respondent

STATE OF MARYLAND

CITY/COUNTY OF _____

OCT 25 2012

I HEREBY CERTIFY that on this 25th day of OCTOBER, 2012, before me, a Notary Public of the State and County aforesaid, personally appeared Nguegni D. Takusi, P.D., and gave oath in due form of law that the foregoing Consent Order was her voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

[Signature]
Notary Public

OCT 25 2012

My commission expires:

04/18/2015



OCT 25 2012

[Signature]