

IN THE MATTER OF
HOPE FOR ALL PHARMACY
AND STORES, INC.

PERMIT NO.: P04150

Respondent-Pharmacy

* BEFORE THE
* STATE BOARD
* OF PHARMACY
* CASE NO. PI-10-003

* * * * *
FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board"), and subject to Md. Health Occ. Ann. § 12-101, et seq., (2009 Repl. Vol.) (the "Act"), the Board charged Hope For All Pharmacy and Stores, Inc., (the "Respondent-Pharmacy"), with violations of the Act. Specifically, the Board charged the Respondent-Pharmacy with violation of the following provisions of § 12-409:

- (a) Subject to the hearing provisions of § 12-411 of this subtitle, the Board may suspend or revoke any pharmacy permit, if the pharmacy:
- (1) Is conducted so as to endanger the public health or safety;
 - (2) Violates any of the standards specified in § 12-403 of this subtitle; or
 - (3) Otherwise is not conducted in accordance with the law.

§ 12-403 Required standards

(b) Except as otherwise provided in this section, a pharmacy for which a pharmacy permit has been issued under this title:

- (1) Shall be operated in compliance with the law and with the rules and regulations of the Board;
- (3) Shall ensure that a licensed pharmacist be immediately available on the premises to provide pharmacy services at all times the pharmacy is in operation;
- (4) Shall be supervised by a licensed pharmacist who is responsible for the operations of the pharmacy at all times the pharmacy is in operation;

- (9) May not participate in any activity that is a ground for Board action against a licensed pharmacist under § 12-313 of this title;

§ 12-313.

(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, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

- (2) Fraudulently or deceptively uses a license;
- (3) Aids an unauthorized individual to practice pharmacy or to represent that the individual is a pharmacist;
- (24) Violates any rule or regulation adopted by the Board[;].

The Board also charges the Respondent-Pharmacy with violating the Code of Ethics (February 19, 1990).

.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 22¹, Annotated Code of Maryland,

(c) Health Occupations Article, Title 12, Annotated Code of Maryland,

(d) Criminal Law Article, Title 5², Annotated Code of Maryland, and

(e) COMAR 10.19.03;³

¹Title 21 refers to, *inter alia*, the dispensing and labeling of drugs.

²Title 5 refers to Controlled Dangerous Substances (CDS), Prescriptions and other substances.

B. A pharmacist may not:

- (1) Engage in conduct which departs from the standard of care ordinarily exercised by a pharmacist;
- (2) Practice pharmacy under circumstances or conditions which prevent the proper exercise of professional judgment; or
- (3) Engage in unprofessional conduct.

The Respondent-Pharmacy was given notice of the issues underlying the Board's charges by a letter dated November 24, 2009. Accordingly, a Case Resolution Conference was held on December 2, 2009, and was attended by Rodney Taylor, P.D. and Meyer Handelman, P.D.; Board members, Vanessa Gray-Thomas, Staff of the Board, and Linda Bethman, Assistant Attorney General, and Francesca Gibbs, Staff Attorney, Counsel to the Board. Also in attendance were the Respondent and her attorney, Darren Margolis, and the Administrative Prosecutor, Roberta Gill.

Following the Case Resolution Conference, the parties and the Board agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

FINDINGS OF FACT

1. At all times relevant to the charges herein, the Respondent-Pharmacy was authorized to operate as a pharmacy in the State of Maryland. The Respondent-Pharmacy was first issued a permit by the Board on November 21, 2007. The Respondent's permit expires on December 31, 2009.

2. At all times relevant herein, Pharmacist A, was the sole owner and the sole

³These regulations deal with CDS.

dispensing pharmacist of the Respondent-Pharmacy. According to the Respondent-Pharmacy's application, Pharmacist A was also the sole employee of the Respondent-Pharmacy.

3. On October 28, 2008, a Board Inspector completed an annual inspection, which showed no untoward results.

4. On June 23, 2009, the same Board Inspector reinspected the Respondent-Pharmacy. He arrived at 12:20 pm and found the pharmacy open for business. When he entered the establishment he found Charles Ebong with a white jacket on, with the name "Pharmacist" printed on the garment. The Inspector asked Mr. Ebong if he was a pharmacist, to which Mr. Ebong replied that he was not; that he was a technician; and, the pharmacist would return later. The Inspector asked Mr. Ebong to contact Pharmacist A, and the Inspector spoke with her after identifying himself. Pharmacist A stated that she would be there in 10 minutes. However, it took Pharmacist A 28 minutes to arrive, at which time the Inspector told her about the correct procedure for having the pharmacy open without a pharmacist present.

5. On July 8, 2009, a Division of Drug Control (DDC) Inspector arrived at 9:58 a.m. to do a Controlled Dangerous Substances (CDS) inspection⁴, and noted that the pharmacist was not on the premises. A female employee was in the store. Pharmacist A arrived at the pharmacy at 10:58 a.m., a full hour after the DDC Inspector arrived and the pharmacy had been left improperly attended, with the back door unlocked.⁵

⁴ The Board inspector did not conduct a CDS inspection on the 23rd.

⁵ By letter dated July 28, 2009, the Pharmacist A's attorney complained to the Secretary of the Department of Health and Mental Hygiene, John Colmers, about the number of inspections, deeming them "harassment". By letter dated August 17, 2009 the Secretary responded, listing the many types of

6. As set forth above, by leaving the Respondent-Pharmacy unattended on two occasions, the Respondent-Pharmacy violated the Act and regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that the Respondent-Pharmacy violated §12-409 (a) (1), (2), (3); §12-403 (b) (1), (3), (4), (9); § 12-313 (b) (2), (3), (24); Code of Md. Regs. tit. 10 § 34.10 .01A (1) (a), (b), (c), (d), (e); B (1), (2) and (3).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 21st day of January, 2010, by a majority of a quorum of the Board,

ORDERED that the Respondent-Pharmacy is hereby **REPRIMANDED**;

ORDERED that the Respondent-Pharmacy pay a fine of \$500, payable to the Board within six months of the date of the Order.

ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

ORDERED that, should the Board receive a report that the Respondent-Pharmacy has violated the Act or if the Respondent-Pharmacy violates any conditions of this Order, after providing the Respondent-Pharmacy with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent-Pharmacy, including

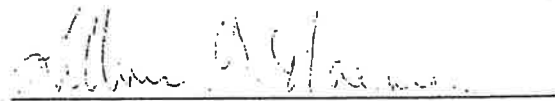
inspections conducted by the Department and indicating that harassment was not the intent, rather,

suspension or revocation. The burden of proof for any action brought against the Respondent-Pharmacy as a result of a breach of the conditions of the Order shall be on the Respondent-Pharmacy to demonstrate compliance with the Order or conditions; and be it

ORDERED that the Respondent-Pharmacy shall operate in accordance with the laws and regulations governing the practice of pharmacy in Maryland; and be it further

ORDERED should the Respondent-Pharmacy fail to demonstrate compliance with this Order, the Board may impose additional terms and conditions on the Order, as it deems necessary;


ORDERED, that for purposes of public disclosure, as permitted by Md. State Gov't. Code Ann. §10-617(h) (Repl. Vol. 2004), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank that it is mandated to report to.



LaVerne G. Naessa, Executive Director
State Board of Pharmacy

3. I am aware that I am entitled to a formal evidentiary hearing before the Board
By this Consent Order, I hereby consent and admit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. By doing so, I waive my right to a formal hearing as set forth in § 12-313 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in § 12-316 of the Act and §10-201, et seq., of the APA. I acknowledge that my failure to abide by the conditions set forth in this Order and following proper procedures, I may suffer disciplinary action, possibly including revocation, against my license to practice pharmacy in the State of Maryland.

1/14/2010
Date


Aderonke Adebajo, P.D.

STATE OF Maryland :

CITY/COUNTY OF Prince Georges :

I HEREBY CERTIFY that on this 14th day of January, 2010, before me, Eliam Khoury, a Notary Public of the foregoing State and (City/County),
(Print Name)
personally appeared Aderonke Adebajo, License No. 11971, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.



Notary Public

My Commission Expires: June 24 - 2013

ELHAM Y KHOURY
Notary Public, State of Maryland
My Commission Expires June 24, 2013