

IN THE MATTER OF

*

BEFORE THE

MINH LUONG

*

MARYLAND BOARD

Respondent

*

OF PHARMACY

LICENSE No: 21835

*

Case No.: 22-055

CONSENT ORDER

On March 16, 2022, the Maryland Board of Pharmacy (“the Board”) issued a Notice of Charges Under the Maryland Pharmacy Act (“Charges”) to **MINH LUONG** (“the Respondent”), License No. **21835**, under the Maryland Pharmacy Act, (the “Act”) Md. Code Ann., Health Occ. §§ 12-101 *et seq.* (2021 Repl. Vol.) and the Md. Code Regs., Code of Maryland Regulations (“COMAR”).

The Board charged the Respondent with violating the following provisions of the Act:¹

§ 12-313. License denial, suspension, or revocation

(b) *In general.* – 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 pharmacist's license, reprimand any licensee, place any licensee on probation, or suspend or revoke a license of a pharmacist if the applicant or licensee:

.....

(15) Dispenses any drug, device, or diagnostic for which a prescription is required without a written, oral, or electronically transmitted prescription from an authorized prescriber;

¹ In its discretion, the Board dismisses the other violations cited in the Charges that are not included in this Consent Order.

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....

- (25) Violates any rule or regulation adopted by the Board[.]

The pertinent provisions of Md. Code Regs. (“COMAR”) 10.34.10 and COMAR 10.19.03 provide as follows:

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;
- (2) Verify the accuracy of the prescription before dispensing the drug or device if the pharmacist has reason to believe that the prescription contains an error[.]

....

B. A pharmacist may not:

- (1) Engage in conduct which departs from the standard of care ordinarily exercised by a pharmacist[.]

10.34.10.08 Refusing to Dispense a Controlled Substance.

A. If, based on generally accepted professional standards for the practice of pharmacy, a pharmacist has reason to believe, or should have

reason to believe, that a prescription of a controlled dangerous substance was not issued for a legitimate medical purpose in the usual course of the prescriber's practice, the pharmacist may not dispense the controlled dangerous substance until the pharmacist:

- (1) Consults with the prescriber; and
- (2) Verifies the medical legitimacy of the prescription.

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 Substances 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.

10.19.03.08. Controlled Substances Listed in Schedule II.

A. Requirement of Prescription-Schedule II (21 CFR §1306.11).

(1) A pharmacist may dispense directly a controlled dangerous substance listed in Schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, only pursuant to a written prescription signed by the prescribing individual practitioner, except as provided in §A(4) of this regulation. Except as noted in §A(5) - (7) of this regulation, a prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy by facsimile equipment, if the original written, signed prescription is presented to the pharmacist for review before the actual dispensing of a controlled substance.

CASE RESOLUTION CONFERENCE (“CRC”)

On May 11, 2022, the Respondent and his attorney, and the Assistant Attorney General - Administrative Prosecutor, attended a Case Resolution Conference ("CRC") with members of the Board in an effort to resolve the pending charges in lieu of an evidentiary hearing. At the CRC, the Respondent and the CRC Committee agreed to, and the Board hereby accepts, the following Findings of Fact, Conclusions of Law, and Order.

I. FINDINGS OF FACT

The Board finds:

I. BACKGROUND

1. At all relevant times, Pharmacy held a permit to operate as a pharmacy in the State of Maryland. On or about March 24, 2020, Pharmacy was issued a permit in Maryland and the permit is scheduled to expire on May 31, 2024. The co-owners of Pharmacy during the relevant period related to the Charges were the Respondent, Pharmacist B, and Pharmacist C.

2. At all relevant times, the Respondent was licensed to practice pharmacy in the State of Maryland. On or about August 6, 2013, the Respondent was issued a license to practice pharmacy in Maryland and the license is due to expire on January 31, 2023.

3. At all relevant times, the Pharmacist B was licensed to practice pharmacy in the State of Maryland. On or about July 12, 2013, the Respondent was issued a license to practice pharmacy in Maryland and the license is due to expire on May 31, 2023.

4. At all relevant times, Pharmacist C was licensed to practice pharmacy in the State of Maryland. On or about December 28, 2005, Pharmacist C was issued a license to practice pharmacy in Maryland and the license is due to expire on July 31, 2023.

II. MARYLAND OFFICE OF CONTROLLED SUBSTANCES ADMINISTRATION (OCSA) INSPECTIONS

5. On April 7, 2021, OCSA conducted a remote regulatory inspection of Pharmacy. One of the documents provided by Pharmacy was a dispensing report of controlled dangerous substances (CDS) prescriptions dispensed by the pharmacy. A review of the dispensing report revealed multiple red flags for potential diversion or abuse for the prescriptions dispensed.

6. On July 14, 2021, OCSA conducted an in-person red flag inspection of Pharmacy.

7. During the July 14, 2021 inspection, two hundred and eighty-two (282) schedule II hard copy prescriptions were examined and one hundred and forty-eight (148) were found to have at least one red flag. The most frequent red flags were suspected fraudulent prescriptions and high dose/high quantity opioid prescriptions.

8. The suspected fraudulent prescriptions were dispensed between April 2021 and July 2021 and most of the prescriptions had sequential prescription numbers indicating that the prescriptions were filled on the same date at or around the same time. All the suspected fraudulent prescriptions were filled, identified the prescriber as MD, and were written for immediate release oxycodone,² in strengths of 10 mg and 20 mg and in quantities from 90 to 120.

² A Schedule II CS.

9. Inspectors obtained copies of one hundred and ten (110) prescriptions written in MD's name.³ Of the 110 prescriptions obtained and reviewed, one hundred and eight (108) were dispensed by the Respondent and the other two were dispensed by Pharmacist C.⁴

10. During an interview on July 14, 2021 with OCSA investigators, the Respondent stated that he verified the suspected fraudulent prescriptions by calling the telephone number printed on the prescriptions. After the Respondent was informed that the telephone number on the prescriptions was not a valid number for MD, the Respondent stated that he called the number on file for MD but admitted that he never verified any of the prescriptions directly with MD.

11. During a visit at MD's practice on July 15, 2021, MD provided investigators with a sample of his prescription pad and it was noted to be ¼ the size of the suspected fraudulent prescriptions presented to Pharmacy. MD stated that only his receptionist answered the office phone and the receptionist informed investigators that she never heard of Pharmacy and had not verified any prescriptions from Pharmacy.

12. On July 26, 2021, inspectors visited MD's office and MD reviewed the prescriptions.

13. On July 26, 2021, MD signed an affidavit and affirmed that he reviewed the (110) prescriptions individually and that he did not write any of the prescriptions.

III. SEPTEMBER 21, 2021 BOARD INSPECTION

³ Investigators suspected that the prescriptions were fraudulent by the type of paper used (no watermark or security features); the incorrect phone number for the prescriber's office; and the incomplete address for the prescriber's office.

⁴ The two prescriptions were filled/dispensed on May 13, 2021.

14. On September 21, 2021 the Board conducted an annual inspection at Pharmacy. A review of CDS prescriptions filled between September 8, 2021 and September 20, 2021, revealed twenty-five (25) hard copy and e-prescribed prescriptions with high strength (10 mg – 15 mg) and high quantity (100 – 120) red flags.

16. The Respondent's conduct, as set forth above, constitutes violations of Health Occ. § 12-313 (b) (15), (25); and COMAR 10.34.10.01 A (1), A (2), B (1); COMAR 10.34.10.08 A (1), A (2); COMAR 10.19.03.07 C (1); COMAR 10.19.03.08 A (1).

II. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated §12-313 (b) (15) and (25); and COMAR 10.34.10.01 A (1), A (2), B (1); COMAR 10.34.10.08 A (1), A (2); COMAR 10.19.03.07 C (1); COMAR 10.19.03.08 A (1).

III. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 21st day of June, 2022, by a majority of a quorum of the Board:

ORDERED that beginning on the effective date of this Consent Order, the license, license number **21835**, of **MINH LUONG**, shall be **SUSPENDED** for a period of **ONE (1) YEAR** and said suspension shall be **IMMEDIATELY STAYED**; it is further

ORDERED that on the effective date of this Consent Order, the license of **MINH LUONG**, shall be placed on **PROBATION FOR THREE (3) YEARS**, subject to the following terms and conditions:

1. The Respondent shall successfully complete **SIX (6)** Board-approved Continuing Education Units (CEUs) in **Identifying Red Flags** and submit proof of successful completion of the CEUs within **NINETY DAYS** of the effective date of this Consent Order;
2. At the time of the next renewal of the Respondent's license, in addition to the required CEUs for renewal, the Respondent shall submit **THREE (3)** CEUs in **Identifying Red Flags**;
3. The Respondent shall draft an anonymous article titled Identifying Red Flags & Lessons Learned and submit the article to the Board within **SIX MONTHS** of the effective date of the Consent Order; and it is further

ORDERED that the Respondent's failure to comply with any of the terms and conditions set forth in this Consent Order constitutes a violation of this Consent Order; and it is further

ORDERED that the Respondent shall cooperate with the Board, its agents/employees in the monitoring, supervision, and investigation of the Respondent's compliance with the terms and conditions of this Consent Order; and it is further

ORDERED that after **THREE (3) YEARS** from the effective date of the Consent Order, the Respondent may submit a written petition to the Board for

termination of probation, provided that the Respondent has demonstrated full compliance with the terms and conditions of the Consent Order and there are no pending investigations or complaints before the Board; and it is further

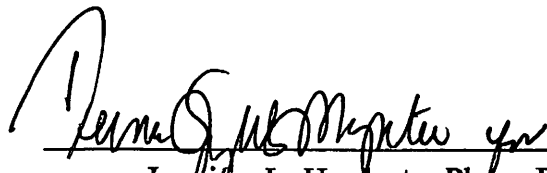
ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing, may impose, by further public order, any sanction(s) authorized by Health Occ. § 12-313 and COMAR 10.34.11.04, including reprimand, additional probation, suspension, revocation and/or monetary penalty; and it further

ORDERED that the effective date of this Consent Order is the date that the Consent Order is executed by the Board President or a designee; and it is further

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

ORDERED that the Consent Order shall be a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2019 Repl. Vol.).

6-21-22
Date



Jennifer L. Hardesty, PharmD
Board President
Maryland Board of Pharmacy


CONSENT OF MINH LUONG

I, **Minh Luong**, acknowledge that I have had the opportunity to consult with legal counsel before entering into this Consent Order. By this Consent, I accept and agree to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing at which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf and to all other substantive and procedural protections provided by law.

I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing. I sign this Consent Order voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

6/16/22
Date


Minh Luong
License Number 21835

NOTARY

STATE OF Maryland

COUNTY/CITY OF: Baltimore Co.

I hereby certify that on this 12th day of June, 2022, before me, a Notary Public of the State of Maryland and County/City aforesaid, personally appeared **Minh Luong**, and made an oath in due form that the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

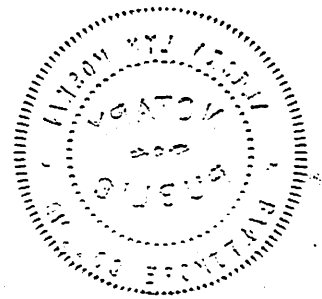
Alicia Lyn Moskal
Notary Public



ALICIA LYN MOSKAL
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires October 5, 2017

My Commission Expires: _____ 2025

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