

IN THE MATTER OF
MEDICINE SHOPPE #1521
PERMIT NO. P02071
Respondent

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BEFORE THE
STATE BOARD
OF PHARMACY

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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., (2000 Repl. Vol.) (the "Act"), the Board charged Medicine Shoppe #1521, (the "Respondent-Pharmacy"), with violations of the Act. Specifically, the Board charged the Respondent-Pharmacy with violation of the following provisions of § 12-409¹:

- (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.

1 § 12-410. Penalty instead of suspension or in addition to suspension or revocation.

- (a) If after a hearing under § 12-411 of this subtitle the Board finds that there are grounds under § 12-409 of this subtitle to suspend or revoke a permit, the Board may impose a penalty not exceeding \$10,000:
 - (1) Instead of suspending the permit; or
 - (2) In addition to suspending or revoking the permit.

§ 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. Denials, reprimands, suspensions, and revocations

(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:

- (3) Aids an unauthorized individual to practice pharmacy or to represent that the individual is a pharmacist;
- (6) Willfully makes or files a false report or record as part of practicing pharmacy;
- (24) Violates any rule or regulation adopted by the Board;
- (28) Fails to cooperate with a lawful investigation conducted by the Board or the Division of Drug Control.

The Board charged the Respondent-Pharmacy with violating the Code Md. Regs. tit. 10 § 34.05. (1980):

.02 Prescription Area.

A. The pharmacy permit holder shall:

(3) Prevent an individual from being in the prescription area unless a pharmacist is immediately available on the premises to provide pharmacy services [;].

B. The pharmacy permit holder shall:

(2) Have sole possession of a means of access to the pharmacy, except in emergencies [;].

.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.

.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' (sic) enforcement.

The Board further charged the Respondent-Pharmacy with violating the Code of Md. Regs. tit. 10 § 34.10--Pharmacist Code of Conduct--promulgated by the Board:

01. Patient Safety and Welfare.

A. A pharmacist shall:

(1) Abide by all federal and State laws relating to the practice of pharmacy . . . 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) Article 27, 276-304, Annotated Code of Maryland, and
- (e) COMAR 10.19.03[;].

The Respondent-Pharmacy was given notice of the issues underlying the Board's charges by notice dated September 19, 2002. Accordingly, a Case Resolution Conference was held on October 7, 2002, and was attended by Jeanne Furman and Ramona McCarthy Hawkins, Pharmacist Members of the Board, and Linda Bethman, Counsel to the Board. Also in attendance were Pamela Arrey, owner of Respondent-Pharmacy and her attorney, Joseph Kum, 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 hereto the charges herein, the Respondent-Pharmacy was authorized to operate as a pharmacy in the State of Maryland. The Respondent-Pharmacy is located on Hillsmere Drive in Annapolis Maryland. The Respondent-Pharmacy was first issued a permit by the Board on October 8, 1999. The Respondent-Pharmacy's permit is due to expire on December 31, 2002.

2. The Respondent-Pharmacy is owned by Pamela Arrey, P.D., who is listed on the 1999 and 2000 permit applications as a full time employee at the Respondent-Pharmacy.

3. The Respondent-Pharmacy's application for the 2001 permit, Ms. Arrey is listed as a full-time employee and Lawrence Ekaney, P.D. is listed as a part time employee.²

4. On June 26, 2001, Peter Smith, an Inspector from the Division of Drug Control (DDC) entered the Respondent-Pharmacy at approximately 10:05, after observing an employee, later identified as Ife Jones, unlocking the right side door to the pharmacy at approximately 9:20 a.m. Mr. Jones, who is not a licensed pharmacist³, informed Mr. Smith

² Ms. Arrey owns two other pharmacies in Maryland; one on Reisterstown Road in Baltimore City, and one on Liberty Road in Baltimore County, Maryland. She is listed as a full-time pharmacist at those two locations, as well—a physical impossibility.

³ Section 12-301 of the Act states:

(a) Except as otherwise provided in this title, an individual shall be licensed by the Board before the individual may practice pharmacy in this State.

that the pharmacist had just called and would be 20 minutes late. The pharmacist arrived at approximately 10:33 a.m. and was informed by Mr. Smith that a non-pharmacist (unlicensed individual) could not be in the pharmacy area when a pharmacist is not present. Mr. Smith conducted an inspection and noted several deficiencies, including discrepancies in the dispensing of Schedule II drugs.

5. On January 4, 2002, at approximately 4:41 p.m., Michelle Andoll, Pharmacist Compliance Officer, placed a telephone call to the Respondent-Pharmacy and asked to speak to the pharmacist on duty. The gentleman that answered the telephone informed Ms. Andoll that the pharmacist was on the telephone with a long-distance call. Ms. Andoll asked for the pharmacist's name and license number and for the pharmacist to return her call. Ms. Andoll was placed on hold and was later asked to repeat what information she wanted.

6. The gentleman at the Respondent-Pharmacy Ms. Andoll that the pharmacist's name was Babatunde Ajayi, whose license number was 16250. Ms. Andoll asked to speak to Mr. Ajayi and was again put on hold. After a few minutes a gentleman, who sounded the same as the first gentleman, identified himself as Mr. Ajayi. Ms. Andoll asked the gentleman to fax over to the Board a copy of his pharmacist and driver's licenses or photo identification. The requested documents were not faxed over and, at approximately 5:25 p.m., an answering machine picked up Ms. Andoll's return call. The pharmacy was scheduled to close at 6:00 p.m.

7. Ms. Andoll subsequently telephoned Ms. Arrey at the Liberty Medicine Shoppe to obtain her assistance in getting the requested documents. At approximately 6:15 p.m., Ms. Andoll received a copy of Mr. Ajayi's license with a signature written below the image, which signature was not on the signature line. When Ms. Andoll tried to again call the Respondent-Pharmacy she received no answer. Ms. Arrey at first denied, and then later admitted, that a male technician, named Aramide Akinnada, was at the Respondent-Pharmacy. Mr. Akinnada is not a licensed pharmacist and is believed to be the individual who was pretending to be Mr. Ajayi. Ms. Arrey gave several inconsistent responses as to whether or not Mr. Ajayi was actually at the Respondent-Pharmacy that day. In addition the signature on the faxed Ajayi pharmacist license does not match his other signatures filed with the Board.

8. Ms. Arrey was required to bring to the Board records of all current employees, including their full names, home addresses, telephone numbers, positions held, social security numbers, and employee home telephone numbers. Ms. Arrey was further required to bring to the Board payroll records and staffing schedules for the previous three months, as well as a current weekly staffing schedule for each store. Ms. Andoll informed Ms. Arrey that the reason she needed the above information was to assure the Board, whose mission it is to protect the public, that there were licensed pharmacists in the pharmacies at all times when the pharmacies were opened. Accordingly, Ms. Andoll needed to have the actual schedule of the pharmacists who

worked each pharmacy on the dates in question. Ms. Arrey only partially complied with the Board's request.

9. On January 29, 2002, Mr. Ajayi reviewed the work schedule of his hours provided by Ms. Arrey to the Board. Furthermore, he compared his schedule as a full-time pharmacist at Rite-Aid with that supplied by Ms. Arrey. Although the work schedule supplied to Ms. Andoll by Ms. Arrey indicated that Mr. Ajayi worked December 8, 2001 and January 4, 2002 at the Respondent-Pharmacy, based upon the Rite Aid schedule and Mr. Ajayi's confirmation under oath, that he was working at Rite Aid on those dates, Mr. Ajayi was not, in fact, working at the Medicine Shoppe pharmacies on those dates, as listed by Ms. Arrey. Inasmuch as Mr. Ajayi was listed as the only pharmacist on duty at the respective Respondent-Pharmacy on these dates, according to the documentation supplied by the Respondent-Pharmacy, there was thus, in actuality, no pharmacist on duty at those locations on those dates, or the Respondent-Pharmacy provided false information to the Board in its investigation.

10. Ms. Arrey later claimed that the Respondent-Pharmacy was closed on January 4, 2001 for inventory, a fact that she had not told Ms. Andoll during her telephone conversation with her. The company that performs the inventory for the Respondent-Pharmacy indicated that it did not do an inventory on that date or that week, and was not scheduled to do one during that time period.

11. The Respondent-Pharmacy allowed unlicensed persons to be in the pharmacy without the presence of a licensed pharmacist. The Respondent-Pharmacy allowed an unlicensed individual access to the pharmacy by giving him the key to the store.

12. As set forth above by, operating without a pharmacist on duty, posing a grave public danger, submitting false records regarding coverage and failing to have hard copies of Schedule II prescriptions, among other deficiencies, found by the DDC, the Respondent-Pharmacy is in violation of the Act and regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent-Pharmacy violated § 12-313 (b) (3), (6), (24) and (28); § 12-403 (b) (1), (3), (4), and (9); also § 12-409 (a) (1), (2) and (3). The Board further finds that the Respondent-Pharmacy violated the Code Md. Regs. tit. 10 § 34.05. (1980) .02 A (3) and B (2), .03 A, .05 A and B, as well as Code Md. Regs. tit. 10 § 34.10 (2000) .01 A. (1) (a) through (e).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 20th day of November, 2002, by a majority of a quorum of the Board,

ORDERED that the Respondent-Pharmacy's permit to operate as a pharmacy is hereby **SUSPENDED**, and that that Suspension be **STAYED**; and be it further

ORDERED that the Respondent-Pharmacy be placed on Probation for one year, subject to the following conditions:

1. The Respondent-Pharmacy shall submit to random inspections by the Division of Drug Control (DDC) on a quarterly basis;

2. The Respondent-Pharmacy shall pay a fine to the Board of Fifteen Hundred Dollars (\$1500); and be it further

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

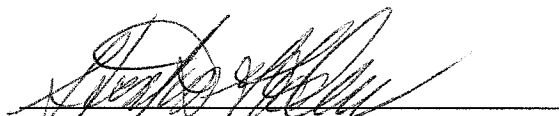
ORDERED that should the Board receive a report that the Respondent-Pharmacy's practice is a threat to the public health, welfare and safety, the Board may take immediate action against the Respondent-Pharmacy, including lifting the Stay of Suspension, or revocation, providing notice and an opportunity to be heard are provided to the Respondent-Pharmacy in a reasonable time thereafter. Should the Board receive in good faith information that the Respondent-Pharmacy has substantially violated the Act or if the Respondent-Pharmacy violates any conditions of this Order or of Probation, 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 lifting the Stay of 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 or of

Probation/Suspension shall be on the Respondent-Pharmacy to demonstrate compliance with the Order or conditions; and be it

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

ORDERED that, at the end of the Probationary period, the Respondent-Pharmacy may petition the Board to be reinstated without any conditions or restrictions on its permit, provided that it can demonstrate compliance with the conditions of this Order. Should the Respondent-Pharmacy fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary. Should the Respondent-Pharmacy fail to petition the Board for reinstatement, the conditions of Probation shall remain as is;

ORDERED that for purposes of public disclosure, as permitted by Md. State Govt. Code Ann. §10-617(h) (Repl. Vol. 1999), 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.


Stanton G. Ades, President
State Board of Pharmacy

**CONSENT OF PAMELA ARREY ON BEHALF OF
MEDICINE SHOPPE #1521**

I, Pamela Arrey, owner of Medicine Shoppe #1521, on its behalf, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Joseph Kum, and have been advised by him of the legal implication of signing this Consent Order;


2. I am aware that without my consent, the pharmacy's permit to operate as a pharmacy in this State cannot be limited except pursuant to the provisions of § 12-409 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et seq., (1999 Repl. Vol.)

3. I am aware that the pharmacy is entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I, on behalf of the Respondent-Pharmacy, 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 § 12-411 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in §12-412 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, the Respondent-Pharmacy may suffer disciplinary action, possibly including revocation, against its permit to operate as a pharmacy in the State of Maryland.

11-13-02
Date

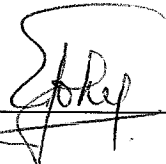

Pamela Arrey, P.D., on behalf of the
Medicine Shoppes #1521

STATE OF
CITY/COUNTY OF Montgomery:

I HEREBY CERTIFY that on this 13th day of November, 2002, before me, JOHNN EPIE, a Notary Public of the foregoing State and (City/County),
(Print Name)
personally appeared Pamela Arrey, on behalf of Medicine Shoppe #1521, Permit P01909, 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.

EPIE JOHN NKEDE
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires February 8, 2006


Notary Public

My Commission Expires: Feb. 8, 2006