

IN THE MATTER OF
MEDICINE SHOPPE #634
PERMIT NO. P01909
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 #634, (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;
- (11) (ii) Shall:
 2. Be kept in a clean and orderly manner [;].

§ 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 also charged the Respondent-Pharmacy with violating the Code Md. Regs. tit. 10 § 34.07.

01. Equipment

B. A refrigerator, solely for the storage of drugs requiring refrigeration, with a thermometer or a temperature monitoring device.

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 Reisterstown Road in Baltimore City, Maryland. The Respondent-Pharmacy was first issued a permit by the Board on September 11, 1997. The Respondent-Pharmacy's permit is due to expire on December 31, 2002.

2. The Respondent-Pharmacy is owned by Pamela Arrey. The application submitted by the Respondent-Pharmacy to the Board on December 8, 2000 for a 2001 permit lists Ms. Arrey as a full-time employee.²

3. On June 22, 2001, Jack Freedman and Cathy Putz of the Division of Drug Control (DDC), and Michelle Andoll, Pharmacist Compliance Officer of the Board, arrived at the Respondent-Pharmacy at 10:00 a.m., the posted opening time. At approximately 10:15 a.m. they observed a person unlocking the pharmacy door and entering the premises, who later identified herself as Bertha Mbuh, a technician. Ms. Mbuh stated that

² Ms. Arrey is also listed as a full time employee for the two other Medicine Shoppe pharmacies that she owns—a physical impossibility. The application also lists pharmacist Olyuinka Agboola as a part-time employee. The application received by the Board on 11/29/01 for a 2002 permit lists Babatunje Ajayi as a full-time employee, and Lawrence Ekaney as a part-time employee. Mr. Ajayi stated under oath that he is employed full-time with Rite Aid and only works for the Respondent-Pharmacy on his days off.

a pharmacist was on the way and contacted someone by telephone. Ms. Mbuh stated that she would dispense a prescription which had been checked by the pharmacist when the pharmacist was not on duty, but would not take new prescriptions by telephone.

4. When Ms. Arrey arrived at 10:30 a.m. she stated that she had been delayed due to having to stop at the Liberty Medicine Shoppe that morning to deal with computer problems. However, DDC Inspector Friedman was at the Liberty Medicine Shoppe that morning and only pharmacist Adekoya was there: Ms. Arrey was not there when that pharmacy opened. In addition, there was no evidence of computer problems at that location that morning.

5. The inspectors found the Respondent-Pharmacy to be in disarray, with the dispensing counter dirty and disorganized. Drinks were kept in the refrigerator used for drugs. Purchasing invoices for Schedule III to IVs were not being signed consistently. Some contained a signature that Ms. Arrey later identified to be that of her 7-year old daughter. There were also incomplete DEA 222 forms, as well as faxed prescriptions for Schedule IIs without corresponding hard copies. In addition, there were discrepancies for OxyContin tablets, which differed from that claimed in the May 16, 2001 inventory. The Respondent-Pharmacy failed to timely deliver a CDS (controlled dangerous substances) inventory to DDC, as promised.

6. On January 4, 2002, at approximately 2 p.m., Ms. Putz returned to the Respondent-Pharmacy location to follow up on the problems identified in June 2001. The

CDS audit that was due in June 2001 still had not been delivered. When Ms. Putz arrived, two unlicensed³ individuals, Ms. Mbuh and Adolph Schwartz, were in the pharmacy and customers were in store. Ms. Putz was informed that Ms. Arrey had been in the pharmacy, but had to leave. Thereupon, Ms. Putz instructed Ms Mbuh and Mr. Schwartz to close the pharmacy. Mr. Schwartz locked the pharmacy and they waited outside until Ms. Enwezor, a pharmacist who had been working at the Liberty Road location, arrived.

7. The Respondent-Pharmacy allowed unlicensed persons in the pharmacy when no licensed pharmacist was present. In addition, the Respondent-Pharmacy allowed an unlicensed person to have access to the pharmacy by giving him the key.

8. Due to the Board's concerns about adequate pharmacist coverage for the Respondent'-Pharmacy, the Board requested that Ms. Arrey supply to the Board an accounting of the licensed pharmacists who worked at the Respondent-Pharmacy and the hours that they worked there, for October, November and December, 2001. Ms. Arrey supplied schedules, purporting to show the Respondent-Pharmacy was, in fact, staffed by Maryland licensed pharmacists during that time period. Based upon interviews with the pharmacists, the following discrepancies were disclosed between the Respondent-Pharmacy's lists and the actual work schedules of the pharmacists:

A. Pharmacist Lawrence Ekaney was listed by the Respondent-Pharmacy as having worked at the Respondent-Pharmacy on October 6, 2001. Mr.

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.

Ekanev stated under oath that he did not work on these dates for the Respondent-Pharmacy. Thus, for those dates, there was either no pharmacist on duty or the Respondent-Pharmacy submitted falsified records of coverage to the Board.

B. Ms. Arrey also listed on the January 14, 2002 employee list submitted to the Board a licensee named Grace Bogunjoko, who stated under oath that she was a recent hire, had only worked one or two dates for the Respondent-Pharmacy, and was not the pharmacist on duty for the week of January 14, 2002, as listed. Therefore, it appears that either no pharmacist was on duty on those dates on which her name appeared at the Respondent-Pharmacy, as required, or that the Respondent-Pharmacy submitted false documentation regarding coverage.

9. As set forth above, by the Respondent-Pharmacy's 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), (9) and (11) 12-409 (a) (1), (2), (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; Code Md.

Regs. tit. 10 § 34.07 .01 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

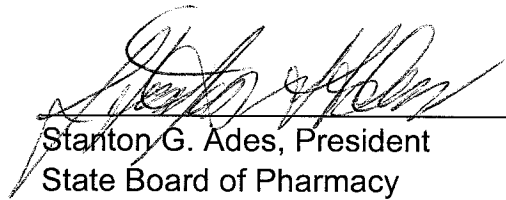
ORDERED that should the Board receive a report that the Respondent-Pharmacy's practice is a threat to the public health, welfare and safety, the Board may take immediate action against the Respondent-Pharmacy, including lifting the Stay of Suspension, or

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 #634**

I, Pamela Arrey, owner of Medicine Shoppe #634, 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;

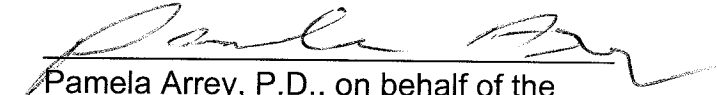
2. I am aware that without my consent, the pharmacy's permit to operate as a pharmacy in this State cannot be limited except pursuant to the provisions of § 12-409 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et seq., (1999 Repl. Vol.)

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

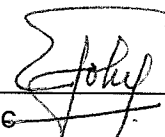

Pamela Arrey, P.D., on behalf of the
Medicine Shoppes #634

STATE OF
CITY/COUNTY OF Montgomery:

I HEREBY CERTIFY that on this 13th day of November, 2003 before me, JOHN N. EPIE, a Notary Public of the foregoing State and (City/County),
(Print Name)
personally appeared Pamela Arrey, on behalf of Medicine Shoppe #634, 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