

IN THE MATTER OF
AYMAN NESSEEM
RESPONDENT
LICENSE NO.: 20329

BEFORE THE
STATE BOARD
OF PHARMACY
CASE NO.: 12-154.1



* * * * *

CONSENT ORDER

On July 3, 2013, the State Board of Pharmacy (the "Board") charged Ayman Nesseem, P.D. (the "Respondent"), License No. 20329, under the Maryland Pharmacy Act (the "Act") and Md. Health Occ. Code Ann. § 12-101, *et seq.* (2009 Repl. Vol. and 2012 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:

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

The pertinent regulation 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.

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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 regulation 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 provision under Title 21 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 July 31, 2013, a Case Resolution Conference ("CRC") was held before a committee of the Board. Based on negotiations between the parties and the CRC, the 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 August 10, 2011, the Respondent was initially licensed as a pharmacist in the State of Maryland.
2. The Respondent's license is currently active and will expire on October 31, 2014.
3. At all times relevant, the Respondent was employed at Zonetak Pharmacy (the "Pharmacy"), 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. Other than an optical facility, there are no other retail establishments in Physicians Pavilion.

4. The Respondent worked at the Pharmacy as a "floater" from February to, at least, May 2012.¹

5. In 2012, the Pharmacy typically had only one pharmacist on duty at a time.

II. The Complaint

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

7. 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.

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

III. Investigation

9. On March 30, 2012, at approximately 10:00 a.m., the Compliance Officer and Inspector 1 from the Board visited the Physicians Pavilion. The Pharmacy is located on the first floor of the building.

¹ The investigation did not continue past May 2012.

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

- a. There are a large number of people, who got out of cars with out-of-state license plates such as Ohio, Kentucky, and Georgia, who come 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. A male approached the Security Guard, pulled him/her aside, and asked him/her if the Pharmacy had oxycodone; and
- d. If a police car were to show up, the cars with out-of-state license plates would "vanish right away."

11. On 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.

12. 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; and
- b. A cashier and a pharmacy technician (the "Pharmacy Technician") would usually arrive between 8:00 a.m. and 8:30 a.m. daily to open the Pharmacy before a pharmacist would arrive.

13. 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;

- 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. At 8:35 a.m., there were five to six individuals waiting outside the Pharmacy; and
- d. At 8:45 a.m., the Security Guard unlocked the door to the Pharmacy for a person the Security Guard identified as a pharmacist.

14. 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:

Patient 1 and Patient 2² 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).³ Patient 2 from Kentucky paid approximately \$600 in cash for oxycodone 15 mg (#168).⁴

15. Additionally, on April 3, 2012, the Inspectors requested and reviewed "Drug Usage Reports" and the Schedule II Controlled Dangerous Substances ("CDS") prescriptions, 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;

² In order to maintain confidentiality, the names of patients are not used in the Consent Order.

³ Approximately a month before, on March 6, 2012, Patient 1 purchased oxycodone 15 mg (#112) and oxycodone 30 mg (#112) at the Pharmacy.

⁴ 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.

- c. From March 21, 2011 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;
 - d. 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; and
 - e. 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 clinic⁵ in Timonium, Maryland.⁶ The individuals had addresses in Kentucky, Ohio, Tennessee, and West Virginia and the prescriptions were paid for with cash.
16. Respondent worked a total of nineteen (19) days at the pharmacy from February 25, 2012 to May 21, 2012.
17. The Board obtained from the Pharmacy's files copies of prescriptions for CDS filled by the Respondent. On three representative dates (February 28, February 29, April 25, 2012) Respondent filled a total of 94 prescriptions for CDS, all of which were from the pain clinic in Timonium.
18. A representative sample of these 94 prescriptions is the following twenty-three (23) prescriptions:
- a. On February 28, 2012, the Respondent filled prescriptions of oxycodone 15 mg (#112) and oxycodone 30 mg (#84) for Patient 3 from Kentucky;
 - b. On February 28, 2012, the Respondent filled a prescription of oxycodone 30 mg (#168) for Patient 4 from Kentucky;

⁵ The Respondent may obtain information about the identity of pain clinic from the administrative prosecutor.

⁶ The pain clinic has subsequently been closed by the Drug Enforcement Agency.

- c. On February 29, 2012, the Respondent filled a prescription of oxycodone 30 mg (#168) for Patient 5 from Kentucky;
- d. On February 29, 2012, the Respondent filled a prescription of oxycodone 30 mg (#112) for Patient 6 from Kentucky;
- e. On February 29, 2012, the Respondent filled a prescription of oxycodone 20 mg (#168) for Patient 7 from Kentucky;
- f. On February 29, 2012, the Respondent filled prescriptions of oxycodone 15 mg (#112) and oxycodone 30 mg (#112) for Patient 8 from Kentucky;
- g. On February 29, 2012, the Respondent filled a prescription of oxycodone 15 mg (#168) for Patient 9 from Kentucky;
- h. On February 29, 2012, the Respondent filled prescriptions of oxycodone 15 mg (#112) and oxycodone 30 mg (#112) for Patient 10 from Kentucky;
- i. On February 29, 2012, the Respondent filled prescriptions of oxycodone 30 mg (#112) and oxycodone 15 mg (112) for Patient 11 from Kentucky;
- j. On February 29, 2012, the Respondent filled a prescription of oxycodone 30 mg (#84) for Patient 12 from West Virginia;
- k. On February 29, 2012, the Respondent filled a prescription of oxycodone 15 mg (#84) for Patient 13 from Kentucky;
- l. On February 29, 2012, the Respondent filled a prescription of oxycodone 15 mg (#168) for Patient 14 from West Virginia;
- m. On February 29, 2012, the Respondent filled prescriptions of oxycodone 30 mg (#168) and oxycodone 10 mg (#112) for Patient 15 from Kentucky;
- n. On February 29, 2012, the Respondent filled a prescription of oxycodone 15 mg (#168) for Patient 16 from Ohio;
- o. On February 29, 2012, the Respondent filled a prescription of oxycodone 15 mg (#168) for Patient 17 from West Virginia;
- p. On February 29, 2012, the Respondent filled prescriptions of oxycodone 15 mg (#112) and oxycodone 30 mg (#112) for Patient 18 from Kentucky;

- q. On February 29, 2012, the Respondent filled a prescription for oxycodone 30 mg (#168) to Patient 19 from Ohio;
- r. On February 29, 2012, the Respondent filled a prescription of oxycodone 15 mg (#84) for Patient 20 from Kentucky;
- s. On April 25, 2012, the Respondent filled prescriptions of oxycodone 15 mg (#84) and oxycodone 30mg (#84) for Patient 9⁷ from Kentucky;
- t. On April 25, 2012, the Respondent filled prescriptions of oxycodone 15 mg (#56) and oxycodone 30mg (#56) for Patient 21 from Kentucky;
- u. On April 25, 2012, the Respondent filled prescriptions of oxycodone 15 mg (#56) and oxycodone 30 mg (#56) for Patient 22 from Kentucky;
- v. On April 25, 2012, the Respondent filled a prescription of oxycodone 15 mg (#84) for Patient 23 from Kentucky;
- w. On April 25, 2012, the Respondent filled a prescription of oxycodone 15 mg (#112) for Patient 24 from Kentucky; and
- x. On April 25, 2012, the Respondent filled prescriptions of oxycodone 10 mg (#112) and oxycodone 30 mg (#112) for Patient 25 from Kentucky.

IV. Summary of Findings

19. The Respondent's conduct as described above constitutes evidence of violation of H.O. § 12-313(b)(25) (violates any rule or regulations adopted by the Board) 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 94 Schedule II CDS prescriptions for at least 23 a out-of-state individuals who may not have legitimate medical purpose for narcotic medication;

⁷ Respondent also filed prescriptions for Patient 9 in February.

- b. 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, § 34.10.01(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)(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), 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 13th day of September 2013, by affirmative vote of a majority of its members then serving:

ORDERED that effective the date of this Consent Order, Respondent is **REPRIMANDED** and it is further

ORDERED that effective the date of this Consent Order, Respondent shall comply with the following terms and conditions:

- a. Within three (3) months of the date of this Consent Order, Respondent shall successfully complete a Board-approved course or courses for a total of 6 contact hours which relate to the issue of this case, such as a course in the pharmacist's corresponding responsibility/duty or a course in current laws in dispensing controlled substances;
- b. The above course(s) 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 his license to practice pharmacy;

- c. Upon completion of the course(s), Respondent may file a written petition for release from the terms and conditions of this Consent Order, but only if Respondent has satisfactorily complied with all conditions of this Consent Order, and if there are no pending complaints regarding Respondent similar to the issue of this case before the Board;
- d. Respondent shall be responsible for all costs associated with fulfilling the terms and conditions of this Consent Order; and
- e. 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, may impose an immediate suspension, followed by an opportunity for a show cause hearing before the Board, or an evidentiary hearing before the Board if there is a genuine dispute as to the underlying material facts, 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 2013 Cum. Supp.)

9/13/13
Date


Lenna Israbian-Jamgochian, P.D, President
State Board of Pharmacy

CONSENT

I, Ayman Nesseem, P.D, acknowledge that I am represented by counsel and have reviewed this Consent Order with my attorney, Marc K. Cohen, 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 thirteen (13) pages.

9.6.13

Date

Ayman Neseem

Ayman Neseem, P.D.
Respondent

STATE OF MARYLAND

CITY/COUNTY OF

I HEREBY CERTIFY that on this 6th day of September, 2013, before me, a Notary Public of the State and County aforesaid, personally appeared Ayman Neseem, P.D., and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Melanie L. Hughes
Notary Public

My commission expires:

