

IN THE MATTER OF

\* BEFORE THE

JESSICA POLM

\* MARYLAND BOARD

Respondent

\* OF PHARMACY

Registration No. T07156

\* Case No. 19-350

\* \* \* \* \*

**FINAL DECISION AND ORDER**

**Procedural History**

Jessica Polm (the “Respondent”) was registered by the Maryland Board of Pharmacy (“Board”) as a pharmacy technician in March 2010. On August 21, 2019, the Board issued a Notice of Intent to Summarily Suspend the Respondent’s registration based on allegations that the Respondent was impaired when performing technician duties at the hospital pharmacy where Respondent was employed. The Board held a show cause hearing on September 25, 2019, and after consideration of arguments presented by the State and the Respondent, the Board decided not to summarily suspend the Respondent’s registration and instead ordered that the Respondent promptly submit to a medical evaluation by a Board-approved evaluator.

On August 24, 2020, the Board issued charges against the Respondent based on the Respondent’s failure to undergo the medical evaluation as ordered by the Board on September 27, 2019, as well as the original allegations of impairment contained in the Notice of Intent to Summarily Suspend.

The Board delegated the evidentiary hearing in this matter to the Office of Administrative Hearings (“OAH”) to issue proposed findings of fact, proposed conclusions of law and a proposed sanction. An evidentiary hearing was held at OAH on February 18, 2021, via video conference. The evidence included witness testimony from the Board’s Compliance Pharmacist and

Compliance Coordinator on behalf of the State. In addition, the Respondent testified on her own behalf. The Administrative Law Judge (“ALJ”) also admitted into evidence 16 documentary exhibits offered by the State and 8 documentary exhibits offered by the Respondent.

In a Proposed Decision issued on May 18, 2021, the ALJ recommended that the charges issued by the Board be upheld in part and dismissed in part. As a sanction, the ALJ recommended that the Respondent’s registration be suspended or non-renewed until such time that the Respondent underwent a comprehensive medical, psychological and substance abuse evaluation with a Board-approved evaluator.

The Proposed Decision was sent to both parties at their addresses of record. No exceptions were filed. After considering the record, including the evidentiary record made before the ALJ, the Board now issues this Final Decision and Order.

### **FINDINGS OF FACT**

The Board adopts the ALJ’s proposed findings of fact, which are set forth in relevant part below. The ALJ’s Proposed Decision of May 18, 2021, is incorporated by reference into this Final Decision and Order<sup>1</sup>.

1. At all times relevant to the charges herein, the Respondent was registered with the Board as a pharmacy technician. The Respondent was first registered on March 29, 2010; the registration expired on March 31, 2021.

2. The Respondent’s medical history was admitted into evidence.

3. On June 25, 2015, the Respondent was prescribed a certain medication, scheduled as a controlled dangerous substance (“CDS”).

4. On December 24, 2015, the Respondent was again prescribed the same medication.

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<sup>1</sup> The ALJ’s Proposed Decision, dated May 18, 2021, is not attached to this public document but has been provided to the Respondent.

5. As of March 2019, the Respondent was being treated by her primary care physician as well as three other medical specialists.

6. The Respondent had current prescriptions for certain CDS pain medications and non-controlled medications, but not the medication originally prescribed in 2015.

7. The Respondent's primary care provider warned her regarding the dangers of taking opioids with benzodiazepines.

8. During the evening of March 27, 2019, the Respondent's birthday, she took the expired medication prescribed in 2015.

9. On March 28, 2019, the Respondent was referred for a fitness for duty examination after one of the Respondent's co-workers at the hospital pharmacy where she worked reported to a pharmacy manager that the Respondent was showing signs of impairment.

10. The Respondent was seen in the emergency department, where she was evaluated by a nurse; as a part of that evaluation, the Respondent provided a urine specimen at 6:40 p.m.

11. On March 29, 2019, the Respondent spoke by phone with an examiner with the hospital pharmacy occupational health division. The Respondent described her medical history and current medications and admitted taking a tablet from the expired medication during the evening of March 27, 2019.

12. On April 3, 2019, the Respondent met with an examiner with the hospital pharmacy occupational health division who referred the Respondent for an evaluation by the employment assistance program.

13. On April 7, 2019, the hospital pharmacy occupational health division received a report indicating that the Respondent's urine specimen tested positive for the expired medication the Respondent had admitted to taking.

14. The hospital pharmacy occupational health division referred the Respondent for evaluation and treatment, but the Respondent did not comply with the referral.

15. On April 15, 2019, the hospital pharmacy reported the Respondent to the Board.

16. On April 24, 2019, the hospital pharmacy terminated the Respondent's employment and informed the Board of its action.

17. On May 3, 2019, the hospital pharmacy filed a formal complaint with the Board.

18. On August 21, 2019, the Board notified the Respondent of its intent to summarily suspend her pharmacy technician registration and the Respondent's right to participate in a show cause hearing with the Board on September 25, 2019.

19. On September 25, 2019, the Board held a show cause hearing concerning the summary suspension of the Respondent's pharmacy technician registration. The Respondent answered the Board's questions concerning her medical diagnoses and medications and the circumstances of her employment, including the events at the hospital pharmacy.

20. On September 27, 2019, the Board decided not to summarily suspend the Respondent's pharmacy technician registration. The Board instead ordered the Respondent to submit to a comprehensive medical and substance abuse evaluation with a Board-approved evaluator to determine whether the Respondent was able to practice safely and competently as a pharmacy technician.

21. The Board referred the Respondent to an evaluator (Evaluator A) who has an office in Towson and ordered her to contact the Board's compliance coordinator when she had scheduled the appointment with Evaluator A.

22. The Respondent scheduled four (4) appointments with Evaluator A but she canceled or failed to show for all of them. The Respondent cited her cat's illness and death for the first two

cancellations and then her own illness for the third cancellation. The Respondent merely failed to show for the fourth appointment.

23. On October 21 and 29, 2019, the Respondent, who stated that she was receiving in-home treatment, asked the Board to refer her to an evaluator closer to her home in Anne Arundel County.

24. The Board then referred the Respondent to an evaluator who has offices in Anne Arundel County (Evaluator B).

25. The Respondent failed to show for an appointment with Evaluator B on November 27, 2019. The Respondent canceled appointments with Evaluator B on December 2 and 6, 2019, due to feeling ill from her in-home treatment and an unspecified emergency, respectively.

26. The Respondent has not worked as a pharmacy technician since her termination from the hospital pharmacy.

### **DISCUSSION**

The Board adopts much of the ALJ's discussion on pages 10-13 of the Proposed Decision as it relates to the allegations that the Respondent failed to cooperate with a lawful investigation conducted by the Board. The ALJ's discussion, in relevant part, is set forth below. The Board does not wholly agree with the ALJ's discussion relating to the Respondent's alleged impairment at work, but determines that such concurrence is not necessary since the Board has substantial evidence in the record to conclude, by a preponderance of the evidence, that the Respondent failed to cooperate with the Board's lawful investigation and to impose the sanction ordered herein.

The Respondent obviously failed to cooperate with a lawful investigation conducted by the Board. The Board ordered the Respondent to submit to a comprehensive medical and substance

abuse evaluation with a Board-approved evaluator to determine whether the Respondent was able to practice safely and competently as a pharmacy technician. The Board referred the Respondent to Evaluator A, who has an office in Towson, and after the Respondent canceled or failed to show for four (4) appointments with Evaluator A, granted the Respondent's request for a referral to a physician closer to her home. The Respondent then failed to show for or canceled three (3) appointments with Evaluator B.

Near the very end of the hearing, the Respondent testified that she resisted the Board's referral for a comprehensive medical and substance abuse evaluation because she had a traumatic incident with a psychiatrist or psychologist in the past. The Respondent did not say when that incident occurred. The Respondent also testified that she would now comply with an order of the Board for a psychiatric and substance abuse evaluation.

The Board's regulations contain guidelines for the imposition of disciplinary sanctions or penalties on a pharmacy technician. The minimum sanction for failure to cooperate with a Board investigation is a reprimand and the maximum sanction is a revocation. The minimum penalty is \$1,000.00 and the maximum penalty is \$2,500.00. COMAR 10.34.11.05A. The Board's regulations also provide for the consideration of mitigating and aggravating factors to determine whether the sanction in a particular case should fall outside the range of sanctions established by the guidelines. COMAR 10.34.11.08A The mitigating factors include, but are not limited to, the Respondent's lack of a prior disciplinary record; self-reporting of the violation to the Board; full and voluntary admission of misconduct to the Board and cooperation during Board's disciplinary proceedings; implementation of remedial measures to correct or mitigate harm arising from the misconduct; timely good-faith effort to make restitution or to rectify the consequences of the misconduct; evidence of rehabilitation or rehabilitative potential; absence of premeditation to

commit the misconduct. The Board is also to consider the absence of potential harm to the public or adverse impact and whether the registrant's conduct was an isolated incident and not likely to recur.

The aggravating factors include, but are not limited to, the Respondent's previous criminal or administrative disciplinary history. The aggravating factors also include a consideration of whether the violation was committed deliberately or with gross negligence or recklessness; had the potential for, or caused, serious patient harm; was part of a pattern of detrimental conduct; or was motivated by a desire for financial gain. The Board is also to consider: the vulnerability of the patient or customer; the Respondent's attempt to hide error or misconduct from patients or others; whether any previous attempts at rehabilitation of the Respondent were unsuccessful; or whether the Respondent committed the violation under the guise of treatment. COMAR 10.34.11.08A(1)-(2).

The Board regulations provide that the existence of one or more of these factors does not impose on the Board or an administrative law judge any requirement to articulate its reasoning for not exercising its discretion to impose a sanction outside of the range of sanctions set forth in this chapter. COMAR 10.34.11.08B. Nothing in the regulations requires the Board or an administrative law judge to make findings of fact with respect to any of these factors. COMAR 10.34.11.08C. The State proposed that the Respondent's registration be suspended pending her completion of the comprehensive medical and substance abuse evaluation ordered by the Board in 2019. The State did not ask for a monetary penalty. The State did not address the regulatory guidelines; implicitly, the State suggested that the Board should continue to treat the Respondent's case as a medical and potential rehabilitation case with the first step being a comprehensive medical and substance abuse evaluation with a Board-approved evaluator. That is what the Board

itself ordered instead of a summarily suspending the Respondent's pharmacy technician registration in 2019.

As to the regulatory mitigating and aggravating factors, the Respondent has no prior disciplinary record with the Board, but she failed to comply with the Board's appropriate and very reasonable order to undergo a comprehensive medical and substance abuse evaluation with a Board-approved evaluator to determine whether the Respondent was able to practice safely and competently as a pharmacy technician. The Respondent has a significant medical history for which she is prescribed medications that could affect her ability to perform the duties of a pharmacy technician. It also seems likely that the Respondent may have psychological issues other than substance abuse issues that may be interfering with her ability to cooperate with the Board's investigation of her fitness to practice. She avoided seven (7) different appointments with Board-approved evaluators and has essentially done nothing in the past two (2) years to cooperate with the Board's investigation. The Respondent's behavior is problematic and not easily explained; she needs to be evaluated by appropriate professionals.

#### **EXCEPTIONS**

Neither party filed exceptions to the ALJ's Proposed Decision.

#### **CONCLUSIONS OF LAW**

Based on the findings of fact and discussion, as set forth above, the Board concludes that the Respondent is subject to disciplinary action in accordance with Health Occ. § 12-6B-09(29).



## SANCTION

The Board is responsible for ensuring the safe and competent delivery of pharmacy services to Maryland citizens. In furtherance of that mission, the Board may order a registrant to undergo an evaluation if the Board determines that there may be an impairment issue that could affect the registrant's ability to practice safely and cause harm to the public. The Board funds the costs of such evaluation. Health Occ. § 12-320. In this matter, the Board received a complaint from a hospital pharmacy that the Respondent appeared impaired at work. Although the hospital pharmacy referred the Respondent to its employee assistance program, the Respondent failed to show or participate. During a subsequent hearing before the Board, the Respondent presented various medical and pharmaceutical issues that she was currently experiencing, and based on that presentation, the Board ordered the Respondent to undergo a comprehensive evaluation in lieu of summarily suspending her technician registration. The Respondent repeatedly failed to cooperate with two (2) Board evaluators by failing to show or cancelling a total of seven (7) appointments. Although the Respondent now asserts that she will cooperate, the Board has understandable doubt that the Respondent will follow through based on her history of non-compliance. Therefore, the Board will impose a suspension of the Respondent's registration until such time that the Board is in receipt of the results of a comprehensive evaluation by a Board-approved evaluator.<sup>2</sup> At that time, based on the results of the evaluation, the Board shall take further action, as appropriate, taking into account the results of the Board-ordered evaluation.

## ORDER

It is, by an affirmative vote of a quorum of the Board, hereby:

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<sup>2</sup> The Board's records indicate that the Respondent's registration expired on March 31, 2021. However, the Board retains jurisdiction as the Respondent's misconduct occurred while she was an active registrant.

**ORDERED** that the Respondent, Jessica Polm, Registration No. T07156, is **SUSPENDED** until such time that the Respondent submits to a comprehensive medical and substance abuse evaluation by a Board-approved evaluator(s) and the Board receives and reviews the results of such evaluation(s); and be it further,

**ORDERED** that the Respondent shall fully cooperate with the Board-approved evaluator, to include the execution of any and all releases necessary to enable the evaluator to obtain treatment records, communicate with the Respondent's healthcare providers, and provide a full evaluation report to the Board; and be it further,

**ORDERED** that upon receipt of the comprehensive medical and substance abuse evaluation report(s) from the Board-approved evaluator(s), the Board shall take further action relating to the Respondent's registration to incorporate recommendations of the evaluator, as appropriate, after notice and an opportunity for a hearing;

**ORDERED** that this Final Decision and Order is a **PUBLIC** document pursuant to General Provisions Art. § 4-333(b)(6).

10-15-21

Date



Deena Speights-Napata, M.A., Executive Director  
Maryland Board of Pharmacy

**NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW**

Pursuant to Md. Code Ann., Health Occ. § 12-316, the Respondent has the right to seek judicial review of this Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Order. The cover letter accompanying this Order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the

Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If the Respondent files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Maryland Board of Pharmacy  
Deena Speights-Napata, MA, Executive Director  
4201 Patterson Avenue, 5<sup>th</sup> Floor  
Baltimore, Maryland 21215**

Notice of any petition should also be sent to the Board's counsel at the following address:

**Linda M. Bethman  
Assistant Attorney General  
Maryland Department of Health  
300 West Preston Street, Suite 302  
Baltimore, Maryland 21201**