

IN THE MATTER OF * BEFORE THE
POPLAR GROVE PHARMACY * MARYLAND BOARD
PERMIT No: P05639 * OF PHARMACY
Respondent * Case No.: PI-15-069

* * * * *

CONSENT ORDER

On January 7, 2016, the Maryland State Board of Pharmacy (the "Board") charged **POPLAR GROVE PHARMACY** (the "Respondent-Pharmacy") (Permit No: **P05639**), under the Maryland Pharmacy Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 12-101 *et seq.* (2014 Repl. Vol.).

The pertinent provisions of §12-313 the Act provide as follows:

(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:

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

The pertinent provisions of Code Md. Regs ("COMAR"), tit. 10, § 34.10 provide as follows:

.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;

B. A pharmacist may not:

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

COMAR 10.19.03.07C:

Purpose of Issue of Prescription

(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 violation of the provisions of the law relating to controlled dangerous substances.

COMAR 10.19.03.09A:

(1) A pharmacist may dispense directly a controlled dangerous substance listed in Schedules III, IV, or V, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, or State Law, only pursuant to either a written prescription signed by a prescribing individual practitioner or a facsimile received by facsimile equipment of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by a prescribing individual practitioner and immediately reduced to writing by the pharmacist containing all information required in Regulation .07 of this chapter, except the signature of the prescribing individual practitioner.

On April 6, 2016, the Respondent-Pharmacy participated in a Case Resolution

Conference (CRC) before a panel of Board members to discuss the potential resolution of the Charges by consent. At the conclusion of the CRC, the Respondent-Pharmacy agreed to enter into this Consent Order to resolve the pending charges and to avoid the expense and time of proceeding to an administrative hearing. This Consent Order is intended to foreclose any future charges by the Board based on allegations of fraudulent prescriptions filled by the Respondent-Pharmacy prior to September 26, 2015.

The Respondent-Pharmacy and the Board agreed to the inclusion of Findings of Fact and Conclusions of Law as required by the Board, and with the terms and conditions set forth herein.

FINDINGS OF FACT

The Board finds:

1. At all times relevant, the Respondent-Pharmacy was authorized to operate a pharmacy in the State of Maryland. The Respondent-Pharmacy was issued a permit to operate a pharmacy under permit number P05639 on March 14, 2012. The permit is current and scheduled to expire on May 31, 2018.

2. At all times relevant, the Respondent-Pharmacy was operating a retail pharmacy at 705 Poplar Grove Street, Baltimore, Maryland 21216.

3. The Respondent-Pharmacy is owned and/or operated by Susan Nwoga and Joseph Nwoga, who is unlicensed. Ms. Nwoga is licensed to practice pharmacy in the State of Maryland under License Number 15990. Ms. Nwoga was first licensed on February 21, 2001. Her license is currently active and will expire on July 31, 2016.

4. On or about July 16, 2012, the Maryland Division of Drug Control ("DDC") conducted a controlled dangerous substances ("CDS") inspection ("2012 Inspection") of the Respondent-Pharmacy. The 2012 Inspection revealed the following: seven suspected fraudulent Schedule II prescriptions¹; deficiencies in recording the date of receipt on Schedule III-V invoices when orders are received; failure to maintain electronically linked Controlled Substance Ordering System ("CSOS") records; and failure to take an initial CDS inventory before opening for business as a pharmacy.

5. On May 13, 2013, DDC conducted a follow-up CDS inspection of CDS prescriptions to check for the indicia of fraudulent and/or illegitimate prescriptions.

6. On May 14, 2013 and May 15, 2013, the DDC returned to the Respondent-Pharmacy to conduct a more thorough inquiry into the suspected fraudulent prescriptions that were discovered on the previous day. The Inspectors photocopied all suspected fraudulent CDS Schedule II prescriptions for January through April 2013, as well as May 1 through 14, 2013. The Inspectors also obtained a log of all CDS Schedule II prescriptions dispensed by the Respondent-Pharmacy from May 1, 2012 through May 14, 2013.

7. According to the DDC's inspection, the Respondent-Pharmacy filled approximately 683 Schedule II CDS prescriptions from January 1, 2013 through May 14, 2013. Of those prescriptions, the DDC identified approximately 261 suspected fraudulent or invalid prescriptions.

¹ These prescriptions were later confirmed in writing, by the alleged prescribers, to be fraudulent.

8. The suspected fraudulent prescriptions contained anomalies, such as, for example:

- a. Incomplete or inaccurate security features on the prescription form;
- b. Incorrect prescriber addresses; and
- c. Incorrect prescriber telephone numbers.

9. After the May 2013 DDC inspections, at which the inspectors alerted the Respondent-Pharmacy and Ms. Nwoga to the suspected forgeries, the Respondent-Pharmacy instituted additional controls in an effort to combat the efforts of those attempting to fill fraudulent prescriptions.²

10. On or about June 16 and 17, 2014, the DDC performed a follow-up inspection of the Respondent-Pharmacy.

11. On or about August 21, 2015, the DDC conducted another CDS inspection of the Respondent-Pharmacy.

12. The DDC inspectors reviewed the approximately 6481 CDS prescriptions dispensed between January 1, 2013 and September 24, 2015 and copied those prescriptions that were suspected to be fraudulent.

13. The DDC inspectors contacted the purported prescribers of the suspected fraudulent prescriptions and were able to obtain written verification that a number of the prescriptions were fraudulent. The DDC Inspectors verified that the Respondent-

² Ms. Nwoga contends that the Respondent-Pharmacy became the victim of organized criminal gangs and rampant prescription fraud that plagued the community. Ms. Nwoga also contends that organized criminal enterprises enlisted employees in hospital and physicians' offices to steal prescription pads left unsecured by physicians and utilized them to pass forged prescriptions and the gangs then enlisted members of the community to pass forged prescriptions on the Respondent-Pharmacy and the other pharmacies in the area.

Pharmacy filled 623 fraudulent CDS prescriptions, which were attributed to 113 purported practitioners. Of the 623 fraudulent prescriptions, 356 were Schedule II and 267 were Schedules III through V. Eighty-nine of the fraudulent prescriptions were dispensed after the DDC's May 2013 inspections.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent-Pharmacy violated the following provision of the Act: H.O. §§ 12-313(b)(25); COMAR 10.34.10.01A(1)(a), (b), (c), (d), and (e); COMAR 10.34.10.01B(1); COMAR 10.19.03.07C(1); and COMAR 10.19.03.09A(1).

ORDER

Based on agreement of the parties, it is therefore this 15th day of ^{June} ~~May~~ 2016, by an affirmative vote of the Board, hereby:

ORDERED that within six (6) months from the date of this Consent Order, the Respondent-Pharmacy shall pay a fine in the amount of **\$5,000**, payable to the Maryland Board of Pharmacy. This monetary fine is in addition to the monetary fine that is to be paid by Ms. Nwoga; and it is further

ORDERED that the Respondent-Pharmacy shall be placed on **PROBATION** for a period of one (1) years and it is further

ORDERED that during the one (1) year probationary period, the Board, at its discretion, may conduct random inspections of the Respondent-Pharmacy; and it is further

ORDERED that at the conclusion of the one (1) year probationary period, and

after the Respondent-Pharmacy has satisfied all of the required terms and conditions, including payment in full of the fine, the Respondent-Pharmacy may file a written petition for termination of its probationary status without further conditions or restrictions, but only if the Respondent-Pharmacy has satisfactorily complied with all conditions of the Consent Order and if there are no pending complaints before the Board regarding the Respondent-Pharmacy; and it is further

ORDERED that failure to comply with the terms and conditions of this Consent Order, including but not limited to failure to pay the required fine and/or failure to allow inspection by the Board and/or a **materially** unsatisfactory inspection, constitutes a violation of this Consent Order and the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board may impose any appropriate sanction under the Act; and it is further

ORDERED that the Respondent-Pharmacy shall bear all expenses associated with this Order; and it is further

ORDERED that the Respondent-Pharmacy shall operate according to the Maryland Pharmacy Act and in accordance with all applicable laws, statutes and regulations pertaining to its operation as pharmacy; and it is further

ORDERED that this document constitutes a formal disciplinary action of the State Board of Pharmacy and is therefore a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4–101 *et seq.*



Mitra Gavani, President
State Board of Pharmacy

CONSENT

I, Susan Nwoga, Co-Owner of Poplar Grove Pharmacy, for and on behalf of Poplar Grove Pharmacy acknowledge that Poplar Grove Pharmacy has had the opportunity to consult with legal counsel before signing this document. By this Consent, Poplar Grove Pharmacy agrees to be bound by this Consent Order and its conditions and restrictions. Poplar Grove Pharmacy waives any rights it may have had to contest the Findings of Fact and Conclusions of Law.

Poplar Grove Pharmacy acknowledges the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which Poplar Grove Pharmacy would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on its own behalf, and to all other substantive and procedural protections as provided by law. Poplar Grove Pharmacy acknowledges the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. Poplar Grove Pharmacy waives any right to appeal any adverse ruling of the Board that might have followed any such hearing.

I, on behalf of the Respondent-Pharmacy, do not admit the allegations in the amended charges but accept the Findings of Fact and enter into this agreement for purposes of compromise and settlement, and the execution and delivery of this consent order shall not constitute or be construed as an admission of any liability or wrongdoing on the part of the Respondent-Pharmacy.

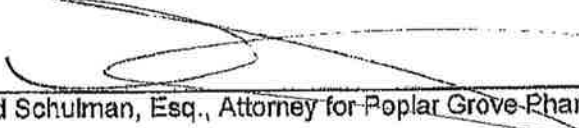
I sign this Consent Order on behalf of Poplar Grove Pharmacy without reservation, and I fully understand and comprehend the language, meaning and terms

of this Consent Order. I voluntarily sign this Order and understand its meaning and effect. I am a duly authorized representative of Poplar Grove and am legally authorized to sign this consent order on behalf of Poplar Grove.

5/26/16
Date


by: Susan I. Nwoga, Co-Owner
Poplar Grove Pharmacy

Read and approved:


Howard Schulman, Esq., Attorney for Poplar Grove Pharmacy

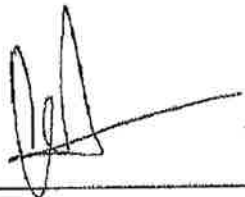
NOTARY

STATE OF MARYLAND

CITY/COUNTY OF MONTGOMERY:

I HEREBY CERTIFY that on this 26th day of MAY, 2016, before me, a Notary Public of the foregoing State personally appeared Susan I. Nwoga, Co-Owner of Poplar Grove Pharmacy, 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.



Notary Public

My Commission Expires: 04/30/2018

Maalsh Thank!
Notary Public, State of Maryland
Commission Expires 4/30/18