

IN THE MATTER OF

*

BEFORE THE

TJ'S PHARMACY

*

MARYLAND STATE

*

BOARD OF PHARMACY

PERMIT NO. N/A

*

Applicant

*

Case No. 22-184

* * * * *

FINAL DECISION AND ORDER

Background

On May 18, 2022, the Maryland Board of Pharmacy (the "Board") issued a Notice of Intent to Deny Application for Maryland Pharmacy Permit against the application submitted by TJ's Pharmacy and Jackie McCall, Jr. (the "Applicant") for new ownership of an existing pharmacy owned by Vincent Ippolito and located in Waldorf, Maryland. The Board's review and investigation of the application revealed several issues of concern to the Board, to include: (1) the existing pharmacy, operating as Northgate Pharmacy, had its DEA Registration immediately suspended on January 24, 2022; (2) the owner of Northgate Pharmacy, Vincent Ippolito, pled guilty to distribution of Oxycodone on December 22, 2021; (3) the Applicant, Mr. McCall, was a former pharmacist on staff at Northgate Pharmacy during the relevant period at issue in the DEA and criminal matters; and (4) Mr. McCall has a criminal history, and a disciplinary history with the Board and the Virginia Board of Pharmacy. In addition, the Board's investigation revealed that Mr. Ippolito had transferred his authority as permit holder under the pharmacy permit P04037 to TJ's Pharmacy and Mr. McCall pending issuance of a pharmacy permit to TJ's Pharmacy.

A contested case hearing was held under the Administrative Procedure Act, Md. Code Ann., State Gov't §10-201 *et seq.*, and COMAR 10.34.01, before a quorum of the Board on September 21, 2022, for the purpose of adjudicating the Notice of Intent to Deny Application. After the conclusion of the hearing, the same quorum of the Board convened to deliberate and voted unanimously to deny the application for a pharmacy permit submitted by TJ's Pharmacy for the reasons set forth in this Final Decision and Order.

SUMMARY OF THE EVIDENCE

A. Documents.

The following documents were admitted into evidence:

- | | |
|--------------------------|---|
| State's Exhibit No. 1 - | Maryland Board of Pharmacy Report of Investigation, dated April 5, 2022 |
| State's Exhibit No. 6 - | Supplemental Report regarding Northgate Pharmacy, dated September 3, 2021 |
| State's Exhibit No. 7 - | Documents from Pharmacy A |
| State's Exhibit No. 8 - | State of Maryland v. Vincent Ippolito, Case No. C-08-CR-21-000428 |
| State's Exhibit No. 15 - | Follow Up Inspection Form, Inspection date April 28, 2022 |
| State's Exhibit No. 16 - | Follow Up Inspection Form, Inspection date May 10, 2022 |
| State's Exhibit No. 19 - | Virginia Board of Pharmacy license documents |
| Joint Exhibit No. 2 - | Application for Maryland Pharmacy Permit – New Ownership, dated Oct. 25, 2021 |
| Joint Exhibit No. 3 - | Correspondence between Mr. McCall and Board staff |
| Joint Exhibit No. 4 - | Maryland Board of Pharmacy v. J. McCall, Jr., Case No. 15-045 |

- A. Order Terminating Probation, dated Aug. 21, 2020
 - B. Final Consent Order, dated June 1, 2017
 - C. Consent Order Terminating Summary Suspension, dated June 26, 2015
 - D. Order for Summary Suspension, dated March 18, 2015
- Joint Exhibit No. 5 - Wage check on J. McCall, Jr., dated January 29, 2022
- Joint Exhibit No. 9 - DEA – In the Matter of Northgate Pharmacy, Inc. – Order to Show Cause and Immediate Suspension of Registration, dated January 24, 2022
- Joint Exhibit No. 10 - Surrender for Cause of DEA Certificate of Registration, dated January 27, 2022
- Joint Exhibit No. 11 - Limited Power of Attorney for use of Pharmacy Licenses, DEA and other registration numbers, and DEA Order forms, effective December 1, 2021
- Joint Exhibit No. 12 - Subpoena Duces Tecum to TJ’s Pharmacy, dated April 21, 2022
- Joint Exhibit No. 13 - Asset Purchase Agreement, dated December 1, 2021
- Joint Exhibit No. 14 - Bill of Sale, dated December 1, 2021
- Joint Exhibit No. 17 - Notice of Intent to Deny Application for Maryland Pharmacy Permit, dated May 18, 2022
- Joint Exhibit No. 18 - Letter of Representation, dated June 9, 2022
- Joint Exhibit - Stipulation as to Findings of Fact and Exhibits, dated September 6, 2022

B. Witnesses.

- State:* Trina Leak – Compliance Director, Board of Pharmacy
Amanda Vollmerhausen – Inspector, Board of Pharmacy
- Applicant* Jackie McCall, Jr., R.Ph. – owner, TJ’s Pharmacy

FINDINGS OF FACT

Based upon the testimony and documentary evidence presented at the evidentiary hearing, the Board finds the following facts:

1. The Applicant submitted an Application for Maryland Pharmacy Permit to the Board, dated October 25, 2021 (the “Application”). According to the Application, the “Application Type” was “New Ownership.” The Application was signed by Jackie McCall, Jr. [Joint Ex. No. 2]

2. According to the Application, Mr. McCall was the only employee at the pharmacy at the time the Application was submitted, and the address of the pharmacy is the same address as Northgate Pharmacy, owned by Vincent Ippolito. [Joint Ex. Nos. 2 and 9, p. 119]

3. Mr. McCall is also a licensed pharmacist in Maryland, with a License No. 21799. [Joint Ex. No. 4]

TJ’s Pharmacy Operating under a transferred Pharmacy Permit Number P04037

4. On November 1, 2021, Northgate Pharmacy, Inc., and McCall’s Pharmacy, LLC, through Vincent Ippolito and Jackie McCall, Jr., respectively, executed a Limited Power of Attorney for Use of Pharmacy Licenses, DEA and Other Registration Numbers, and DEA Order Forms, appointing McCall’s Pharmacy as Northgate Pharmacy’s agent for the purpose of utilizing Northgate Pharmacy’s business numbers, to include pharmacy permit number P04037, to continue its pharmacy operations. [Joint Ex. No. 11]

5. On December 1, 2021, Northgate Pharmacy, Inc., V. Ippolito, and McCall’s Pharmacy, LLC, executed an Asset Purchase Agreement, in which McCall’s Pharmacy agreed to purchase the business assets of Northgate Pharmacy, Inc., located in Waldorf, Maryland, and owned by Vincent Ippolito. [Joint Ex. No. 13]¹

6. Since submitting the Application to the Board, Board staff members have received several email correspondences from Mr. McCall on behalf of TJ’s Pharmacy. [Joint Ex. No. 3]

¹ The Board also received a copy of a Bill of Sale, dated December 1, 2021. [Joint Ex. No. 14]

7. By email dated January 29, 2022, Mr. McCall emailed the Board's Inspector Supervisor stating:

...

Even though I only have the power of attorney for the pharmacy permit and do not have my own, I have asked Mr. Ippolito to not return to the pharmacy during the hours it is open. When we meet to go over insurance payments we will do so when the pharmacy is not open to the public...

[Joint Ex. No. 3, p. 33] (Emphasis added)

8. By email dated February 21, 2022, Mr. McCall stated:

*I am emailing you to ask if it is ok to change the name of Northgate Pharmacy to TJ's Pharmacy. The change of ownership is still pending... I am asking if it is ok to change the name on the building because *TJ's Pharmacy is still operating on the Power of Attorney for Northgate Pharmacy...**

[Joint Ex. No. 3, p. 34] (Emphasis added)

9. The Board's Compliance Director (the "Compliance Director") responded to Mr. McCall on February 22, 2022, notifying him that, "Pharmacy permits are not transferrable, and are not subject to a power of attorney. Therefore, a non-owner may not change the name of a pharmacy." [Joint Ex. No. 3, p. 34]

10. According to an Asset Purchase Agreement provided to the Board by Mr. McCall, Mr. McCall, through McCall's Pharmacy, LLC, entered into an agreement for Mr. McCall to purchase certain business assets of Northgate Pharmacy on December 1, 2021. According to the Agreement, "Seller hereby sells, transfers, conveys, assigns and delivers to Purchaser . . . the right, title and interest of Seller related to, necessary for or useful for the Business, including, . . . the leasehold interest in the property located at...Waldorf, Maryland . . . *all licenses and permits...*" [Joint Ex. No. 13, pp. 133-34] (Emphasis added)

11. Invoices from a wholesale distributor, dated December 29, 2021, indicate that certain prescription drugs were shipped to “TJ’s Pharmacy” at the Northgate Pharmacy address, under Mr. McCall’s user identification number using Northgate Pharmacy’s DEA registration number. [State’s Ex. No. 16, Bates 175; T. 85]

Criminal and DEA History Relating to the Pharmacy Seller - Northgate Pharmacy and Vincent Ippolito

12. On or about January 24, 2022, the DEA issued an Order to Show Cause and Immediate Suspension of Registration (“Immediate Suspension Order”) to Northgate Pharmacy, Inc., which stated that Northgate’s continued registration constitutes “an imminent danger to the public health or safety.” The DEA’s Order was based on a criminal investigation that found Mr. Ippolito was repeatedly diverting controlled substances, and further indicated a willingness to continue to divert controlled substances. Furthermore, the DEA conducted an audit of Northgate’s dispensing and was unable to account for thousands of dosage units of controlled substances. [Joint Ex. No. 9]

13. On or about December 22, 2021, Mr. Ippolito pled guilty to Count 1 - Distribution of a Controlled Dangerous Substance, to wit: Oxycodone, a narcotic drug, in the Circuit Court for Charles County (Case Number C-08-CR-21-000428). [State’s Ex. 8]

Disciplinary and Criminal History of TJ’s Pharmacy’s owner, Jackie McCall, Jr., R.Ph.

14. On March 18, 2015, the Board issued an Order for Summary Suspension which summarily suspended Mr. McCall’s pharmacist license (“2015 Summary Suspension”). The 2015 Summary Suspension was based on the Board’s finding that Mr. McCall was terminated from another pharmacy for taking money from patients in exchange for filling fraudulent prescriptions, and Mr. McCall’s “gambling addiction, which motivated Mr. McCall’s misconduct

to obtain money.” [Joint Ex. No. 4D]

15. On June 26, 2015, the Board executed a Consent Order Terminating Summary Suspension (“2015 Consent Order”), wherein the parties agreed that Mr. McCall’s license would remain suspended for sixty-five (65) days followed by probation for at least five (5) years with terms and conditions including that he: (1) attend Gamblers Anonymous meetings weekly, (2) continue weekly therapy with an addictions counselor, (3) may not practice pharmacy more than 40 hours per week, (4) disclose the 2015 Consent Order to any pharmacy employer and ensure a pharmacist supervisor submits quarterly employer reports to the Board, (5) complete six continuing education credits in healthcare ethics, and that he (6) may not own a pharmacy, in whole or in part, directly or indirectly, nor work for a pharmacy owned, in whole or in part, directly or indirectly, by a family member. The 2015 Consent Order was based on the Board’s finding that Mr. McCall was terminated from a pharmacy for taking money from patients in exchange for filling fraudulent prescriptions. [Joint Ex. No. 4C]

16. On or about May 27, 2016, Mr. McCall pled guilty in the Circuit Court for Calvert County, Maryland, to one count of conspiracy to distribute a controlled dangerous substance, to wit: Oxycodone. [Joint Ex. No. 4B]

17. On June 1, 2017, the Board executed a Final Consent Order (“2017 Consent Order”) based on Mr. McCall’s guilty plea to one count of conspiracy to distribute a controlled dangerous substance, to wit: Oxycodone and Mr. McCall’s “gambling addiction, which motivated Mr. McCall’s misconduct to obtain money.” Pursuant to the 2017 Consent Order, Mr. McCall’s license was placed on probation in accordance with the 2015 Consent Order. [Joint Ex. No. 4B]

18. On August 21, 2020, the Board issued an Order Terminating Probation, which terminated Mr. McCall’s probation. [Joint Ex. No. 4A]

19. On June 16, 2022, the Virginia Board of Pharmacy issued an Order against Mr.

McCall denying his application for reinstatement based on, among other things, his failure to disclose that his pharmacist license in the District of Columbia had been revoked, and his failure to disclose that his Florida license had been suspended. [State's Ex. No. 19]

Employment History of TJ's Pharmacy's owner, Jackie McCall, Jr., R.Ph.

20. Mr. McCall was terminated from a chain pharmacy in Calvert County, Maryland, on or about September 9, 2014, for knowingly filling fraudulent prescriptions in exchange for money. [Joint Ex. No. 4B]

21. Mr. McCall collected wages from Pharmacy A, a pharmacy owned by his wife, during the second and third quarter in 2020, while he was under a Board order prohibiting him from working for any pharmacy owned by him or a family member. [Joint Ex. Nos. 4C and 5]

22. Mr. McCall also collected wages from his most recent employer, Northgate Pharmacy, Inc., from 2016 to 2021 while working as a staff pharmacist during the period of the illegal operations that served as the basis for the DEA action against Northgate Pharmacy, Inc., and the criminal action against Northgate Pharmacy's owner, Mr. Ippolito. [State's Ex. 5]

OPINION

A pharmacy permit holder assumes the obligation and expectation to comply with myriad laws relating to prescription drugs and pharmaceutical care. A pharmacy permit holder is entrusted with the authority to purchase and dispense the most addictive, costly and/or lifesaving drugs. Therefore, a pharmacy permit may only be issued to persons who demonstrate that the person will be responsible for operating a pharmacy in a manner that complies with the

Maryland Pharmacy Act, as well as federal and state laws relating to controlled dangerous substances. TJ's Pharmacy, unfortunately, cannot meet that burden.

TJ's Pharmacy's owner, Mr. McCall, has a disciplinary history with the Board based on his intentional filling of false prescriptions for opioids in exchange for cash in 2015. Mr. McCall also pled guilty in May 2016 in the Circuit Court for Calvert County, Maryland, to one count of conspiracy to distribute a controlled dangerous substance, to wit: Oxycodone. Mr. McCall also has a disciplinary record with the Virginia Board of Pharmacy, which includes a recent order issued in June 2022 finding that he attempted to deceive the Virginia Board in his application for reinstatement by, among other things, not disclosing his disciplinary record in D.C. or Florida.

In addition, Mr. McCall's employment as a pharmacist is not supportive of his application for a pharmacy permit. Mr. McCall was terminated from a chain pharmacy relating to his filling of false prescriptions in 2014. Mr. McCall also collected wages from Pharmacy A in 2020, a pharmacy owned by his wife, while he was under a Board order prohibiting him from working for a pharmacy owned by him or a family member. Although Mr. McCall argues that the wages reported from Pharmacy A were advances and not wages, he did not present any documentation or testimony, other than his own, to that effect.² Most recently, Mr. McCall was a staff pharmacist at Northgate Pharmacy while the egregious illegal activities set forth above were taking place. Although there is no specific allegation incriminating Mr. McCall in these illegal activities, taken together with his own prior misconduct in Maryland and Virginia, the totality of employment history does not present a compelling basis for the issuance of a pharmacy permit.

² Given his prior false statements to the Virginia Board of Pharmacy, as well his conflicting statements before this Board, the Board finds his credibility to be questionable. [State's Ex. 19; T. 73; 76; 83, 85]

With respect to the finding that TJ's Pharmacy operated using a transferred pharmacy permit, the evidence demonstrates that TJ's Pharmacy was operating under Permit No. P04037 while anticipating the Board's issuance of a permit to TJ's Pharmacy. TJ's Pharmacy argues that it cannot be found to have illegally operated under a transferred pharmacy permit in violation of the Maryland Pharmacy Act because the business entity, Northgate Pharmacy, Inc., from which it purchased assets and from which it was granted a Power of Attorney, did not hold the pharmacy permit and that the pharmacy permit was actually held by another entity (Company A).³

The Board does not find this argument to be persuasive. All facts regarding Northgate, TJ's Pharmacy, and Mr. Ippolito relate to the same pharmacy operations at the same address in Waldorf, Maryland. The application submitted by TJ's Pharmacy indicates the previous owner of the pharmacy as "Vincent Ippolito." The signage at the pharmacy location in Waldorf states, "Northgate Pharmacy." All of the documents issued by the DEA reflect the pharmacy name as "Northgate Pharmacy, Inc." Mr. McCall's wages as a staff pharmacist at Northgate Pharmacy were paid by Northgate Pharmacy, Inc.

Furthermore, TJ's Pharmacy was granted power of attorney specifically for Permit No. P04037 by Mr. Ippolito, who was the permit holder. The evidence also demonstrates that TJ's Pharmacy, through Mr. McCall, ordered prescription drugs from a wholesale drug distributor under an account using the DEA registration number of Northgate Pharmacy. The Board's inspector also observed Mr. McCall, as owner and sole employee of TJ's Pharmacy, on the pharmacy premises alone working in January 2022.

³ The Board takes administrative notice of its website, <https://mdbop.mylicense.com/Verification>, which was erroneously updated to indicate Company A as the owner of P04037. The Board's website also simultaneously, and correctly, indicates the change in ownership of this pharmacy location to Company A as "pending."

Therefore, the record demonstrates that Mr. Ippolito, owner of Northgate Pharmacy and permit holder of Permit Number P04037, transferred the authority to operate a pharmacy under such permit to TJ's Pharmacy. Despite the attempt to obfuscate the issue, there is clear and documented evidence of TJ's Pharmacy's illegal use of a transferred permit. Nevertheless, the Applicant's disciplinary, criminal, and professional employment history provide substantial evidence in the record upon which to base the Board's decision.

Based on the extensive background of the Applicant demonstrating repeated violations of the law and issues of credibility, the Board cannot issue a pharmacy permit to TJ's Pharmacy with the assurance that it would be operated in accordance with laws relating to the safe and ethical practice of pharmacy. As such, and in fulfilling its mandate to protect the public, the Board must deny TJ's Pharmacy's application for a pharmacy permit.

CONCLUSIONS OF LAW

Based upon the foregoing summary of evidence, findings of fact, and opinion, the Board concludes that the Respondent-Pharmacy's application for a Maryland Pharmacy Permit is subject to formal action in accordance with Md. Code Ann., Health Occ. §§ 12-401, 12-402, 12-403(c)(1) and (9), 12-408, 12-313(b)(2) and (25) and COMAR 10.34.10.01B(3).

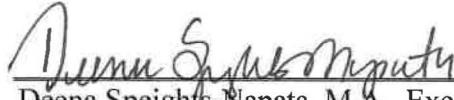
ORDER

Based on the foregoing Findings of Fact, Opinion, and Conclusions of Law, by a unanimous decision of a quorum of the Board, it is hereby:

ORDERED that the application for a pharmacy permit submitted by TJ's Pharmacy and Jackie McCall, Jr., is hereby DENIED; and it is further,

ORDERED that this is a final order of the State Board of Pharmacy and as such is a PUBLIC DOCUMENT pursuant to Md. Code Ann., General Provisions § 4-301 *et seq.*

3-10-23
Date


Deena Speights-Napata, M.A., Executive Director
for
Jennifer Hardesty, Pharm.D.
President, Board of Pharmacy

NOTICE OF RIGHT TO APPEAL

You have the right to appeal this Final Decision and Order. A petition for appeal shall be filed within thirty days of this Final Decision and Order and shall be made pursuant to Md. Code Ann., Health Occ. Art., § 12-412.