

IN THE MATTER OF	*	BEFORE THE
FAMILY CHOICE PHARMACY	*	MARYLAND BOARD
Respondent	*	OF PHARMACY
Permit No.: P06072	*	Case No.: 22-242

* * * * *

FINAL ORDER OF REVOCATION OF PHARMACY PERMIT

The Maryland State Board of Pharmacy (the “Board”) notified **FAMILY CHOICE PHARMACY, Permit Number P06072** (the “Respondent-Pharmacy”), of the Board’s intent to revoke its permit to operate a pharmacy under the Maryland Pharmacy Act (the “Act”), Md. Code Ann., Health Occ. §§ 12-101 *et seq.* (2021 Repl. Vol.).

The Notice also informed the Respondent-Pharmacy that, unless it requested a hearing in writing within thirty (30) days of receipt of said Notice, the Board would sign the Final Order, which was enclosed. More than thirty (30) days have elapsed, and the Respondent-Pharmacy failed to timely request a hearing. Therefore, this revocation is final.

The Board bases its action on the Respondent-Pharmacy’s violation of the following provisions of the Act:

§ 12-403. Required standards.

....

- (c) 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;
 -
 - (9) May not participate in any activity that is a ground for Board action

against a licensed pharmacist under § 12-313 of this title, a registered pharmacy technician under § 12-6B-09 of this title, or a registered pharmacy intern under § 12-6D-11 of this title;

§ 12-409. Suspensions and revocations -- Grounds

- (a) *In general.* – 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.

§ 12-313. Denials, Reprimands, Suspensions, and Revocations – Grounds

- (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 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:
 -
 - (2) Fraudulently or deceptively uses a license;
.....
 - (6) Submits a false statement to collect a fee;
 - (7) Willfully makes or files a false report or record as part of practicing pharmacy;
 - (8) Willfully fails to file or record any report that is required by law;
.....
 - (15) Dispenses any drug, device, or diagnostic for which a prescription is required without a written, oral, or electronically transmitted prescription from an authorized prescriber;
.....
 - (22) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other

proceeding is pending to have the conviction or plea set aside;¹

....

(24) Is disciplined by a licensing or disciplinary authority of any state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes;

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

The pertinent provisions of Code Md. Regs ("COMAR") 10.34 *et seq.* and 10.19 *et seq.* provide as follows:

COMAR 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,

....

(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;

(2) Verify the accuracy of the prescription before dispensing the drug or device if the pharmacist has reason to believe that the prescription contains an error[.]

....

B. A pharmacist may not:

¹ Pursuant to Health Occ. §12-313 (a) In this section, "convicted" includes a determination of guilt, a guilty plea, or a plea of nolo contendere followed by a sentence.

- (1) Engage in conduct which departs from the standard of care ordinarily exercised by a pharmacist;
- (2) Practice pharmacy under circumstances or conditions which prevent the proper exercise of professional judgment; or
- (3) Engage in unprofessional conduct.

COMAR 10.19.03.07. Prescriptions.

....

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 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 violations of the provisions of law relating to controlled dangerous substances.

COMAR 10.19.03.08. Controlled Substances Listed in Schedule II.

A. Requirement of Prescription-Schedule II (21 CFR §1306.11).

- (1) A pharmacist may dispense directly a controlled dangerous substance listed in Schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, only pursuant to a written prescription signed by the prescribing individual practitioner, except as provided in §A(4) of this regulation. Except as noted in §A(5)-(7) of this regulation, a prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy by facsimile equipment, if the original

written, signed prescription is presented to the pharmacist for review before the actual dispensing of a controlled substance.

FINDINGS OF FACT

The Board makes the following findings of fact:

I. Background

1. At all times relevant hereto, the Respondent-Pharmacy had a permit to operate as a pharmacy in the State of Maryland. The Respondent-Pharmacy was originally issued a permit on or about August 13, 2013. The Respondent-Pharmacy's permit expired on May 31, 2022.

2. The Respondent-Pharmacy is owned by a pharmacist ("Pharmacist-Owner").²

3. On March 21, 2022, the Office of the Attorney General Medicaid Fraud Unit reported to the Board that the Pharmacist-Owner pled guilty to Medicaid Fraud and three counts of Distribution/CDS on March 18, 2022, in the Circuit Court for Prince George's County.

4. It is alleged that on or about and in between October 2013 through June 2021, the Respondent-Pharmacy operated in part as a "pill mill."

5. The Office of Controlled Substances Administration (OCSA) conducted a regulatory pharmacy inspection of the Respondent-Pharmacy from March 4-12, 2019, after

² For confidentiality and privacy purposes, the names of individuals and facilities involved in this case are not disclosed in this document. Upon written request, the Administrative Prosecutor will provide the information to the Respondent-Pharmacy.

discovering that the Respondent-Pharmacy had dispensed oxycodone to two young patients, ages 11 and 16.

6. During the regulatory inspection, OCSA inspectors found numerous fraudulent prescriptions and returned the following day to conduct a more detailed inspection of the pharmacy.

7. In its inspection report, OCSA identified several red flags that were ignored by the Pharmacist-Owner when filling prescriptions.

8. The customers presented the Pharmacist-Owner with prescriptions for controlled dangerous substances (CDS) that were fraudulent and which the Pharmacist-Owner made no effort to verify. These prescriptions contain red flags including, but not limited to, the following:

- i. Cocktail prescriptions;
- ii. Prescriptions purchased with cash;
- iii. High Strength/High Quantity CDS;
- iv. Prescribers located long distances from the patient;
- v. Patients located long distances from the pharmacy;
- vi. Out-of-state prescriber/patients;
- vii. Prescription filled too soon;
- viii. Patients under the age of 40;
- ix. More than one person with the same address receiving the same CDS; and
- x. Misclassification of prescribers' credentials on script.

9. OCSA identified five hundred and thirty-eight (538) fraudulent prescriptions filled by the Respondent-Pharmacy, presented in the names of eighteen (18) purported prescribers.

II. The Medicaid Fraud Scheme

10. The number of claims submitted to Medicaid, and amount of money paid by Medicaid, underrepresented the quantity of drugs dispensed by the Respondent-Pharmacy to Medicaid recipients.

11. The Medicaid claims data showed that between January 2015 through June 2019, Medicaid paid the Respondent-Pharmacy \$164,000 for drugs dispensed on 4,705 prescriptions for 268 recipients. During that same time frame the Pharmacist-Owner reported to the Prescription Drug Monitoring Program (the “PDMP”) dispensing 11,360 prescriptions for 901 recipients.

12. The CDS dispensed by the Pharmacist-Owner and reported by the Pharmacist-Owner to PDMP were for Medicaid recipients and those claims should have been submitted to the Medicaid program.

III. The Indictment

13. On August 26, 2021, the State of Maryland issued an indictment charging the Pharmacist-Owner with one (1) count of Defrauding a State Health Plan (Annotated Code of Maryland, Criminal Law § 8-509), one (1) count of Felony Theft – Scheme (Annotated Code of Maryland, Criminal Law § 7-104), two-hundred and thirty-nine (239) counts of Distribution of Controlled Dangerous Substances (Annotated Code of Maryland, Criminal Law § 5-602), and one (1) count of Manufacture, Distribution, Dispensing or

Possession of Specified Amounts, (Annotated Code of Maryland, Criminal Law § 5-612(a)(5)).

14. The Pharmacist-Owner accepted cash from Medicaid recipients in exchange for filling their prescriptions. The Pharmacist-Owner sometimes charged the Medicaid recipients \$450 cash, even though they would have only been responsible for a \$3.00 copay.

15. On some occasions, the Pharmacist-Owner would charge cash for filling the CDS prescriptions and would also bill Medicaid for filling other medications based on prescriptions presented by the same customer on the same day.

16. All the representative recipients identified in the indictment were Medicaid recipients, yet the Pharmacist-Owner only submitted claims to Medicaid for one of those recipients ("Patient 1").

17. The Pharmacist-Owner also charged Patient 1 in exchange for filling fraudulent prescriptions.

18. The Pharmacist-Owner submitted claims to Medicaid knowing that the prescriptions for Patient 1 were fraudulent, and Medicaid paid the Pharmacist-Owner \$2,918 based on the fraudulent claims.

IV. The Conviction

19. On March 18, 2022, the Pharmacist-Owner entered a guilty plea to one (1) count of Defrauding a State Health Plan (Annotated Code of Maryland, Criminal Law § 8-509), and three (3) counts of Distribution of Controlled Dangerous Substances (Annotated

Code of Maryland, Criminal Law § 5-602), which involved distribution of CDS to the minor child of Patient 1, when she was between the ages of ten and eleven years old.

20. The Pharmacist-Owner was sentenced to twenty (20) years with all but eighteen (18) months of incarceration suspended. Upon release from incarceration, the Pharmacist-Owner will be on probation for a period of five (5) years and is ordered to pay restitution in the amount of \$2,918.00 to the Office of Attorney General Medicaid Fraud Control Unit.

21. The Pharmacist-Owner surrendered his DEA registration with an effective date of March 18, 2022.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes that the Respondent-Pharmacy violated Health Occ. § 12-313, including § 12-313(b)(2), (6), (7), (8), (15), (22), (24), and/or (25), and Health Occ. § 12-403(c)(1), and Health Occ. §12-409 (c)(9), and Health Occ §12-409(a)(1)-(3), and COMAR 10.34.10.01(A)(1)(a), (c), (d), and/or (e), and/or COMAR 10.34.10.01(A)(2), and/or COMAR 10.34.10.01(B)(1)-(3), and/or COMAR 10.19.03.07(C)(1), and/or COMAR 10.19.03.08(A)(1).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 15th day of February 2023, by a majority of the quorum of the Board hereby

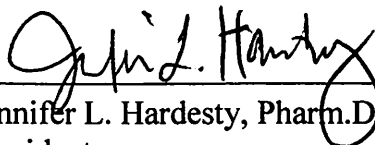
ORDERED that Respondent-Pharmacy **FAMILY CHOICE PHARMACY's** permit to operate a pharmacy in the State of Maryland is hereby **REVOKED**; and it is further

ORDERED that the Respondent-Pharmacy shall return to the Board all Maryland pharmacy permits within ten (10) days of the date of this Order; and it is further

ORDERED that the effective date of this Order is the date that it is signed by the Board; and it is further

ORDERED that this document constitutes a formal disciplinary action of the Board and this Order is final and a public document pursuant to Md. Code Ann., Gen. Prov. § 4-101 *et seq.* & § 4-333 (2019).

2/15/23
Date



Jennifer L. Hardesty, Pharm.D.
President
Maryland Board of Pharmacy

NOTICE OF RIGHT TO APPEAL

Pursuant to Health Occ. § 12-412, you have a right to take a direct judicial appeal. A Petition for Judicial Review must be filed within thirty (30) days of service of this Order and shall be made as provided for judicial review of a final decision in Md. Code Ann., State Gov't §§ 10-201 *et seq.* (2021 Repl. Vol.) and Title 7, Chapter 200 of the Maryland Rules.