

IN THE MATTER OF
GRACE PHARMACY, INC

PERMIT NO. P01877,

DERIN ADEWETAN, P.D.

LICENSE NO. 10863,

&

APPLICATION FOR

STADIUM PHARMACY

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHARMACY

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FINAL DECISION AND ORDER

Background

This case arose out of allegations that Derin Adewetan, P.D., License No. 11184, a permit holder and manager of Grace Pharmacy, Permit No. P01877, doing business as "Glenarden Pharmacy" (the "Pharmacy") violated numerous statutes and regulations governing the operation and closure of a pharmacy, and failed to cooperate with a lawful investigation. On January 17, 2001, the Board of Pharmacy (the "Board"), issued charges against Mr. Adewetan, Grace Pharmacy, and issued charges relating to Mr. Adewetan's application for Stadium Pharmacy (the "Applicant"). A contested case hearing was held under the Administrative Procedure Act, Md. Code Ann., State Gov't §10-201 *et seq.* before a quorum of the Board on July 18, 2001, and was continued on September 12, 2001, and October 17, 2001.¹ On the same

¹ One Board member, Barbara Faltz Jackson, attended the hearing on July 18, 2001, but due to scheduling conflicts, did not attend the hearings conducted on September 12, 2001 and October 17, 2001. Ms. Jackson was recused from the deliberation. A quorum of the remaining seven Board members who heard the entire case unanimously agreed to issue this Final Order and Order.

date, this same quorum of the Board convened to deliberate and voted unanimously to uphold some of the charges against the Respondent Pharmacy and the Applicant. While the Board also found Mr. Adewetan in violation of the Maryland Pharmacy Act, it did not wish to sanction his pharmacist's license. On January 16, 2002, this quorum of the Board, unanimously approved this Final Decision and Order.

SUMMARY OF THE EVIDENCE

A. Documents

The following documents were admitted into evidence:

STATE'S EXHIBIT LIST

- State's Exhibit 1Computer Printout of Licensure Information
- State's Exhibit 2A.....Letter of Procedure Re: Respondent, dated
January 17, 2001
 - B.....Charges
 - C.....Summons
- State's Exhibit 3A.....Letter of Procedure Re: Respondent-
Pharmacy, dated January 17, 2001
 - B.....Charges and Denial of Pharmacy Permit
 - C.....Summons
- State's Exhibit 5A.....DDC Inspection Report, dated July 23, 1996
 - B.....DDC Inspection Report, dated June 29, 1998
 - C.....Letter from DDC to Respondent, dated August 5,
1998, with attachment
 - D.....DDC Inspection Report, dated September 8, 1998
 - E.....DDC Inspection Report, dated August 26, 1999
 - F.....DDC Inspection Report, dated August 7, 2000
 - G.....Memo from Nomoto to DDC Chief, dated
August 10, 2000
 - H.....DDC Inspection Report, dated October 11, 2000
- State's Exhibit 6A.....October 26, 2000 letter from Andoll to Kruger
 - B.....November 2, 2000 letter from Andoll to
Kruger
 - C.....November 15, 2000 memo from Andoll to Freedman

- D.....November 16, 2000 memo from Andoll to Freedman
- E.....November 16, 2000 memo from Andoll to Freedman
- F.....December 4, 2000 letter from Andoll to Krueger
- G.....December 27, 2000 letter from Andoll to Kruger
- H.....January 10, 2001 Report of Louis Friedman
- I.....January 15, 2001 Cover memo and list from Kruger to Freedman
- J.....January 24, 2001 letter from Kruger to Andoll with property log
- K.....March 22, 2001 memo from Andoll to Gill

- State's Exhibit 7A.....Faxed memo from Respondent to Andoll, dated October 26, 2000
- B.....October 26, 2000 Letter from Andoll to Respondent
- C.....November 17, 2000 letter from Shryock to Lottier
- D.....November 17, 2000 letter from Andoll to Respondent, with attachments
- E.....November 24, 2000 memo from Respondent to Andoll, with lease and floor plan
- F.....November 27, 2000 memo from Banwo to Andoll
- G.....November 28, 2000 memo from Greedman to Andoll
- H.....December 4, 2000 letter from Andoll to Respondent
- I.....December 27, 2000 letter from Andoll to Respondent
- J.....December 27, 2000 letter from Andoll to Respondent
- K.....January 16, 2001 memo from Andoll to Gill
- L.....January 19, 2001 letter from Andoll to Respondent

- State's Exhibit 8A.....August 22, 2000 Complaint from Patient A
- B.....September 5, 2000 letter from Andoll to Patient A
- C.....September 6, 2000 letter from Andoll to Respondent
- D.....October 13, 2000 letter from Gale to Respondent, with attachment
- E.....October 20, 2000 memo from Respondent to Gale
- F.....January 24, 2001 letter from Andoll to Respondent, with attachment

G.....February 8, 2001 fax cover sheet from
Shryock with letter to Andoll, with
attachments

State's Exhibit 9.....Andoll's Investigative Report, dated November 2,
2000

B. Summary of Pertinent Witness Testimony.

Louis Friedman, Inspector for the Division of Drug Control, Maryland Department of Health and Mental Hygiene ("Drug Control"), testified regarding an inspection of the Pharmacy conducted by Mr. Kelly, Drug Inspector, on July 23, 1996 (State's Exhibit No. 5A). In his inspection report, Mr. Kelly had noted among many other deficiencies in the Pharmacy's operation, that there were no patients' addresses or prescribers' addresses listed on four controlled dangerous substance ("CDS") prescription forms. (Transcript of Proceedings ("T"), 18-20).

Mr. Friedman further testified that on June 29, 1998, Peter Smith, Drug Inspector, conducted an inspection of the Pharmacy in which he found, among many other deficiencies, that prescriber's addresses were again not included on CDS prescriptions, that the required biennial inventory of CDSs had not been done since February, 1996, and that at times the Pharmacy would be locked with Mr. Adewetan's non-pharmacist daughter remaining inside. (State's Exhibit No. 5B; T. 28-29; 36; 38-39; 43). Mr. Friedman testified that on August 14, 1998 and September 18, 1998, both he and Mr. Smith went back to the Pharmacy and that most of the problems had been corrected. He also stated that Mr. Adewetan assured them that the prescription department would be enclosed and locked when a pharmacist is absent. (State's Exhibit 5C and 5D; T. 47-48).

Yukie Nomoto, another Drug Control Inspector, testified that when she inspected the Pharmacy on August 7, 2000, there was no pharmacist on duty. Instead a non-pharmacist

family member of Mr. Adewetan was left in the Pharmacy without the supervision of a licensed pharmacist, who informed Ms. Nomoto that this had been a practice for the past five years. (State's Exhibit No. 5F; T. 77-78). There was no current biennial CDS inventory available for inspection. (T. 74-75).

Ms. Nomoto did a follow-up inspection on October 11, 2000, and again there was no current biennial CDS inventory available for inspection. In addition, there were again no patient addresses on some CDS prescriptions. (State's Exhibit No. 5H; T. 82-83).

Pam Kruger, Prince George's County Narcotics Investigator, testified that in August of 2000 she received a phone call from the Prince George's County Sheriff's department regarding the impending eviction of the Pharmacy. (T. 121). Because the Sheriff's department's procedures did not allow it to put anything on the street that could cause harm to the public, Ms. Kruger's unit went to the Pharmacy to seize the pharmaceutical drugs and hold them for safekeeping. (T. 124). After Ms. Kruger and her colleagues gathered the Pharmacy's drugs into garbage bags, the Pharmacy's owners reached an agreement with the landlord and the eviction ceased. The drugs were then left in place at the Pharmacy. (T. 126).

On October 24, 2000, Ms. Kruger received a similar call from the Sheriff's department requesting that her unit help with the eviction of the Pharmacy. She and her colleagues seized the Pharmacy's drugs, prescription records, and computer. (T. 127). After speaking with Michelle Andoll, Pharmacist Compliance Officer for the Board, and receiving letters from her dated October 26, 2000 and December 4, 2000, Ms. Kruger determined that all non-expired drugs not already filled for specific patients could be released to Surajudeen Banho, a licensed pharmacist in the District of Columbia. (State's Exhibit No. 6A; T. 128-129; 133). In January of 2001, Ms. Kruger obtained Mr. Adewetan's permission to release drugs to Mr. Banho, to release

drugs to the manufacturers that would reimburse Mr. Adewetan for them, and to destroy the remaining drugs. (T. 134; 138-140; State's Exhibit No. 6I). However, Mr. Banho did not show up to take the drugs, so the drugs designated for release to him were not released to him until April 10, 2001 (T. 139-140).

Michelle Andoll, Pharmacist Compliance Officer for the Board, testified that she inspected Grace Pharmacy on October 16 or 17, 2000, with another Board staff member, James Slade, and Yuki Nomoto. She learned from Mr. Adewetan that he only filled about 10 to 40 prescriptions per day, which is a very small amount for a pharmacy. She noticed that there was no security around the pharmacy area, e.g., no electronic or physical barriers separating the prescription area from the rest of the store. (T. 160-161).

On October 24, 2000, Ms. Andoll received a call from Detective Kruger notifying her that the eviction had taken place and that the police had taken possession of all the prescription drugs, both controlled substances and other drugs. In letters to Detective Kruger dated October 26, 2000 (State's Exhibit No. 6A), November 2, 2000 (State's Exhibit No. 6B), December 4, 2000 (State's Exhibit No. 6F), and December 27, 2000 (State's Exhibit No. 6G), Ms. Andoll instructed Detective Kruger regarding the proper disposition of the drugs and licensing certificates in the possession of the police. (T. 162-167).

On October 26, 2000, Ms. Andoll sent Mr. Adewetan a detailed letter containing instructions regarding the closing of the Pharmacy. (State's Exhibit No. 7B; T. 169-170). She followed up with another letter to Mr. Adewetan dated November 17, 2000, reminding him of the proper procedures for closing a pharmacy. (State's Exhibit No. 7D; T. 171). In the letter, she stated in pertinent part as follows:

[w]hile it may not have been possible for you to provide the Board with advance notice of the closing in accordance with COMAR 10.34.14.01, you are still

required to comply with the remaining provisions of COMAR 10.34.14. Please submit the required written notification of closing as described in COMAR 10.34.14.02 by December 4, 2000. (State's Exhibit No. 7D).

Ms. Andoll acknowledged that COMAR 10.34.14.01, which requires 14-day advance notice of a pharmacy's closing, could not have been complied with by Mr. Adewetan due to the eviction. (T. 172). However, Ms. Andoll testified that Mr. Adewetan did not submit the information ~~re~~required by COMAR 10.34.14.01 or COMAR 10.34.14.02 to be submitted to the Board within ten days after the Pharmacy's closure (T. 173-175).

Ms. Andoll also testified regarding the allegation that Mr. Adewetan had failed to cooperate with a lawful Board investigation. She testified that Mr. Adewetan failed to timely respond to a letter Ms. Andoll sent to him on September 6, 2000, regarding a complaint received from Patient A. Ms. Andoll's letter requested that Mr. Adewetan respond within 30 days to the allegations made by the complainant or face disciplinary action for failure to cooperate with a lawful Board investigation.² (State's Exhibit No. 8C). When Ms. Andoll received no response from Mr. Adewetan, she re-sent the letter via certified mail on October 13, 2000, giving Mr. Adewetan a deadline of October 27, 2000 to submit a response to the Board. (State's Exhibit No. 8D). When Ms. Andoll visited the Pharmacy on October 16, 2000, she reminded Mr. Adewetan about the letter she sent to him and he promised he would provide a response. However, the Board did not receive his response until December 21, 2000, which letter Mr. Adewetan had dated October 20, 2000. (State's Exhibit No. 8E). The complaint was dismissed. (T. 186-191).

Detective Colleen Muldoon testified that Mr. Adewetan could have picked up the Pharmacy's permit (T. 275-276). However, she stated that he would not have been allowed to

² See Md. Code Ann., Health Occ. Art. §12-313(28) (a pharmacist may be disciplined by the Board if the pharmacist "[f]ails to cooperate with a lawful investigation conducted by the Board or the Division of Drug Control.").

see where the drugs were being stored by the police and to make a list of the drugs being stored. (T. 278-279).

Derin Adewetan testified that he owned fifty-one percent of the Pharmacy. (T. 305).

Mr. Adewetan testified that leaving his daughter alone in the pharmacy may have been bad judgment, but was not intentional. He denied ever leaving any unlicensed person alone in the Pharmacy at other times. (T. 294-295; 344).

Mr. Adewetan testified that he cooperated with the Board, claiming that he responded but that the Board did not receive his first letter in response. After Ms. Andoll reminded him of the fact that she had not yet received a response from him when she inspected the Pharmacy on October 16, 2000, he claimed to have then sent another written response. (T. 295; 299-300).

With regard to notifying the Board about the closure of the pharmacy, Mr. Adewetan testified that on the day of the eviction that Detective Muldoon told him she had informed the Board of the eviction. (T. 301). He testified that he did not have access to anything in his pharmacy upon being evicted and therefore could not provide a drug inventory or pharmacy permit to the Board. (T. 303-304).

Regarding the lack of prescribers' and patients' addresses on prescription forms, Mr. Adewetan claimed these omissions were due to distractions. (T. 306-307). He claimed that all medication would be labeled with this information when it was actually dispensed to patients. (T. 309).

FINDINGS OF FACT

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

1. Derin Adewetan owns fifty-one percent of the Pharmacy. (T. 305).

2. The Pharmacy had no security around the pharmacy area, e.g., no electronic or physical barriers separating the pharmacy area from the rest of the store. (T. 161). Nonetheless, Mr. Adewetan left unlicensed personnel alone in the store on many occasions without being supervised by a licensed pharmacist. (State's Exhibit Nos. 5B and 5F, ¶ 77-78).
3. Mr. Adewetan twice failed to timely complete biennial CDS inventories as required by law. (State's Exhibit Nos. 5B and 5H; T. 28-29; 75; 82-83).
4. Mr. Adewetan repeatedly failed to list patient and prescriber addresses on CDS prescription forms. (State's Exhibits 5A, 5B, and 5H; T. 18-20; 36, 82-83).
5. Mr. Adewetan failed to provide the Board with notification that the Pharmacy had been closed within ten days after its closure on October 24, 2000. (T. 173).
6. While Mr. Adewetan could not have provided to the Board the information required under COMAR 10.34.14.02B, D, or E, due to the eviction and the seizure of drugs by the Prince George's County Police, he nonetheless could have, but failed to provide to the Board the following information and documentation as required by COMAR 10.34.14.02A and C: the date on which the Pharmacy was closed; the Pharmacy's permit; and the Pharmacy's CDS registration. (T. 174; 275-276).
7. Mr. Adewetan failed to respond in a timely manner to Ms. Andoll's request for a response to Patient A's complaint, which response the Board did not receive until December 21, 2000, despite the fact that Mr. Adewetan had dated his written response "October 20, 2000." (State's Exhibit No. 8E).

OPINION

It is clear from the record that Mr. Adewetan failed to operate the Pharmacy in accordance with pharmacy statutes and regulations. As the Pharmacy's controlling permit holder and sole pharmacist, it was Mr. Adewetan's duty to insure that the Pharmacy complied with all applicable laws.

Mr. Adewetan admitted that on August 7, 2000, he allowed his non-pharmacist daughter to remain in the Pharmacy without supervision of a licensed pharmacist. He admitted that this was bad judgment on his part but stated that he did not intentionally violate the law. However, he also repeatedly denied allowing unlicensed persons to be in the Pharmacy at other times. (T. 294-295; 344-348). Given the consistent statements to the contrary by three different Drug Control inspectors at three different times, Mr. Adewetan's denials are very troubling indeed.

On June 27, 1998, Drug Inspector Peter Smith noted in his inspection report that Mr. Adewetan informed him that at times he would leave his daughter alone in the Pharmacy with access to the prescription area. (State's Exhibit No. 5B, p. 5; T. 38-39). On September 18, 1998, Drug Inspector Louis Friedman noted in his inspection report that Mr. Adewetan assured both he and Mr. Smith that the prescription area would be enclosed and locked if the pharmacist was to be absent. (State's Exhibit No. 5D; T. 47-48). Then on August 7, 2000, Drug Inspector Yuki Nomoto also found the Pharmacy unattended by a pharmacist, with the non-pharmacist daughter present in the Pharmacy. Indeed, Ms. Nomoto noted in her inspection report that the daughter told her that this had been a practice for approximately five years before the time of the inspection. (State's Exhibit No. 5F; T. 77-78). It would be simply irrational to surmise that all of these inspectors were mistaken about these facts. Mr. Adewetan's unwillingness to admit to these obvious facts is very troubling to the Board and severely damages his credibility.

Mr. Adewetan repeatedly failed to file appropriate records as required by pharmacy and CDS regulations. Mr. Adewetan twice failed to timely complete biennial CDS inventories as required by law. (State's Exhibit Nos. 5B and 5H; T. 28-29; 75; 82-83). Mr. Adewetan also repeatedly failed to list patient and prescriber addresses on CDS prescription forms. (State's Exhibits 5A and 5B; T. 18-20; 36). Finally, Mr. Adewetan failed to provide the Board with notification that the Pharmacy had been closed within ten days after its closure on October 24, 2000. (T. 173). While Mr. Adewetan could not have provided to the Board the information required under COMAR 10.34.14.02B, D, or E, due to the eviction and the seizure of drugs by the Prince George's County Police, he nonetheless could have, but failed to provide to the Board the following information and documentation, as required by COMAR 10.34.14.02A and C: the date on which the Pharmacy was closed; the Pharmacy's permit; and the Pharmacy's CDS registration. (T. 174; 275-276). All of these violations raise doubts about Mr. Adewetan's organizational competence to operate a pharmacy in compliance with all applicable laws.

Finally, Mr. Adewetan's failure to respond in a timely manner to Michelle Andoll's request for a response to Patient A's complaint showed that he failed to cooperate with the Board's investigation. Mr. Adewetan again provides a story that is difficult to believe. He states that he sent a letter on October 20, 2000, which the Board did not receive until December 21, 2001. (State's Exhibit No. 8E; T. 337-338). Given his lack of credibility as demonstrated by his denial that he left unlicensed persons alone in the Pharmacy on many occasions, the Board does not believe Mr. Adewetan's unreasonable claim that he sent this letter on October 20, 2000.

What is most troubling about Mr. Adewetan is his pattern of lax practices in which he fails to take simple actions that are required by pharmacy laws, and then fails to acknowledge his shortcomings or take appropriate actions to remedy problems that are repeatedly pointed out to

him. This pattern of behavior is especially puzzling given that the volume of prescriptions handled by the Pharmacy is so low. Mr. Adewetan has had plenty of time in which to address and correct problems brought to his attention by Drug inspectors but yet has repeatedly failed to correct security and record-keeping deficiencies. Given this pattern of deficiencies and his failure to timely respond to Ms. Andoll's request for a response to Patient A's complaint, the Board has no confidence that Mr. Adewetan is presently capable of operating a pharmacy in compliance with pharmacy laws.

CONCLUSIONS OF LAW

Based upon the foregoing summary of evidence, findings of fact, and opinion, the permit holders of Grace Pharmacy, Inc., Permit No. P01877, and Applicant for Stadium Pharmacy, violated Md. Code Ann., Health Occ. ("HO") §12-403(b)(1), (3), (4) and COMAR 10.34.05.02A(3), COMAR 10.34.14.01B, 10.34.14.02A, and 10.34.14.02C, by their failure to operate the Pharmacy in compliance with the law and with the rules and regulations of the Board when they repeatedly failed to prevent an individual from being in the Pharmacy's prescription area without a pharmacist's presence and supervision and when they failed to comply with the Board's regulations on closure of pharmacies. They also violated HO §12-403(9) by their participation in activities that are grounds for Board action against a licensed pharmacist when Mr. Adewetan repeatedly failed to file reports required by law in violation of HO §12-313(b)(7) (CDS biennial inventories and prescription forms with patient addresses and prescriber addresses) and failed to cooperate with a lawful Board investigation in violation of HO §12-313(b)(28).

SANCTIONS

Based on Mr. Adewetan's repeated violations of pharmacy security regulations, his repeated failures to prepare and file required pharmacy records, his failure to provide required information to the Board, and his failure to cooperate with a Board investigation by failing to timely respond to the Board's Pharmacist Compliance Officer's request for information, the Board cannot trust Mr. Adewetan to operate a pharmacy without first undertaking certain remedial steps. However, the Board is not taking disciplinary action against Mr. Adewetan's pharmacist's license because it believes he may competently practice pharmacy under the supervision of other permit holders. Therefore, Mr. Adewetan's pharmacist's license remains in good standing. Nonetheless, based on these violations the Board in its professional expertise does not believe that that Mr. Adewetan can competently operate a pharmacy without first undertaking certain remedial steps. Thus, the Board's sanctions will be imposed against the permit holders of the Pharmacy and as applicants to be permit holders of another pharmacy.

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 Pharmacy permit is **REVOKED**; and be it further

ORDERED that the Application is **DENIED**; and be it further

ORDERED that Grace Pharmacy, Inc.'s permit holders' application for a pharmacy permit will be granted only under the following conditions:

1. Derin Adewetan must pass the Board's Pharmacy Law Test with a score of at least 75 as provided in COMAR 10.34.02;

2. Upon passing the Pharmacy Law Test, and assuming all other requirements for an application for a pharmacy permit are met, the Board will grant the Applicant Pharmacy a probationary pharmacy permit for an indefinite period of time subject to the following conditions:
 - (a) Mr. Adewetan must hire at his expense a Board-approved mentor, and shall abide by all recommendations made by the mentor;
 - (b) Mr. Adewetan shall insure, and it shall be his sole responsibility, that the mentor will provide the Board with quarterly reports for at least one year following the Board's granting of the permit, the frequency of the reports thereafter to be determined by the Board;
 - (c) The Applicant Pharmacy shall be subject to random inspections to be conducted at minimum on a quarterly basis, and after a year following the Board's granting of the permit, the frequency of the random inspections shall be determined by the Board;
 - (d) The Applicant Pharmacy shall comply with all recommendations made by Drug Control inspectors or Board representatives following the random inspections, either immediately or at a time agreed to by the Drug Control inspectors and/or Board representatives.
 - (e) The Applicant Pharmacy, in consultation with the mentor, within three months after being granted the permit by the Board, shall develop a Quality Assurance Improvement Program to be approved by the Board;
3. One year following the Board's granting of a pharmacy permit to a permit holder or permit holders of Grace Pharmacy, Inc., the permit holder(s) of the Applicant

Pharmacy may petition the Board to be released from probation upon demonstrating compliance with the probationary conditions contained herein. The Board may grant the petition or modify the conditions of probation. If the Applicant Pharmacy is continued on probation by the Board, the Applicant Pharmacy may petition the Board again on an annual basis until the Board is satisfied that probationary conditions are no longer necessary to insure that the Applicant Pharmacy will comply with all laws relating to the operation of a pharmacy. And be it further

ORDERED that should the Applicant Pharmacy violate any condition of probation set forth herein, the Board shall, after notice and opportunity for a hearing under the Administrative Procedure Act, State Gov't §§10-201, *et seq.*, and HO §12-411, suspend, revoke, and/or fine the Applicant Pharmacy in accordance with HO §12-410.

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., State Gov't Art., §§10-611, *et seq.*

1/15/02
Date

W. Irving Lottier, Jr.
W. Irving Lottier, Jr., P.D.
Secretary, Board of Pharmacy

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann. §12-316, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Act, Md. Code Ann., State Gov't Art., §§10-201, *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.