

<p>IN THE MATTER OF</p> <p>CARMEN ZALDIVAR-ADLER, D.P.M.</p> <p>Respondent</p> <p>License Number: 01453</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>BEFORE THE MARYLAND</p> <p>BOARD OF PODIATRIC</p> <p>MEDICAL EXAMINERS</p> <p>Case Number: 2020-012</p>
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CONSENT ORDER

On or about December 3, 2020, the Maryland State Board of Podiatric Medical Examiners (the “Board”) notified **CARMEN ZALDIVAR-ADLER, D.P.M.** (the “Respondent”), License Number 01453, of its intent to revoke her license to practice podiatric medicine in the State of Maryland under the Maryland Podiatry Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 16-101 *et seq.* (2014 Repl. Vol. and 2019 Supp.).

Specifically, the Board based its action on the Respondent’s violation of the following provisions of the Act under Health Occ. § 16-311:

- (a) *In general.* -- Subject to the hearing provisions of § 16-313 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license or a limited license to any applicant, reprimand any licensee or holder of a limited license, impose an administrative monetary penalty not exceeding \$50,000 on any licensee or holder of a limited license, place any licensee or holder of a limited license on probation, or suspend or revoke a license or limited license if the applicant, licensee, or a holder:
 - (7) Personally uses a controlled dangerous substance in violation of the law;
 - (8) Prescribes or distribute a controlled dangerous substance to any other person in violation of the law; [and]

- (17) Behaves fraudulently, immorally, or unprofessionally in the practice of podiatry[.]

In its Notice, the Board informed the Respondent that she had the opportunity to request a hearing before the Board by submitting a request in writing to the Board's Executive Director within thirty days of service of this Notice. More than thirty days have elapsed since the service of the Notice on the Respondent, and the Respondent has not requested a hearing.

On or about December 3, 2020, the Board also issued an Order for Summary Suspension of the Respondent's license. The Board took such action pursuant to its authority under Md. Code Ann., State Gov't § 10-226(c) (2014 Repl. Vol. & 2019 Supp.), concluding that the public health, safety or welfare imperatively requires emergency action.

On or about January 7, 2021, the Board held a Case Resolution Conference (CRC) via videoconference. Following the CRC, in order to resolve the Charges and the Order for Summary Suspension, the Board and the Respondent agreed to enter into this Consent Order.

FINDINGS OF FACT

The Board makes the following findings of fact:

I. BACKGROUND

1. At all times relevant, the Respondent was and is licensed to practice podiatric medicine in the State of Maryland. The Respondent was originally licensed to practice podiatric medicine in Maryland on May 31, 2007, under License Number 01453. The Respondent's license is current through December 31, 2021.

2. At all times relevant to the events giving rise to this order, the Respondent was employed as a podiatrist with a podiatry practice (the “Practice”)¹ with eight locations throughout the Baltimore metropolitan area.

3. On or about October 21, 2020, the Board opened an investigation of the Respondent after receiving two complaints from the owner (“Podiatrist A”) of the Practice and a former colleague (“Podiatrist B”) of the Respondent’s at the Practice, both of whom are licensed podiatrists in Maryland. Both Podiatrists A and B alleged that the Respondent wrote prescriptions for Schedule II controlled dangerous substances (“CDS”) to herself and a friend. Podiatrist B alleged that the Respondent did so by forging his signature on his prescription pad without authorization.

II. BOARD INVESTIGATION

4. As part of its investigation, the Board conducted prescription surveys, interviewed relevant witnesses and obtained relevant documents, including copies of the prescriptions the Respondent forged.

5. The Board’s investigation revealed that on or about October 30, 2020, the office manager (the “Manager”) at the Practice received a telephone call from a pharmacist attempting to verify a prescription dated October 19, 2020, apparently issued by Podiatrist B to the Respondent for Percocet 10/325 mg (#45), a Schedule II CDS opioid.

¹ For confidentiality and privacy purposes, the names of witnesses, patients, health care providers, health care facilities, and other institutions are not disclosed in this document.

6. After receiving the telephone call, the Manager conferred with Podiatrists A and B and determined that Podiatrist B had never treated the Respondent as a patient or written any prescription to the Respondent. Podiatrist B was employed as a podiatrist at the Practice from September 2016 to June 30, 2020.

7. An internal audit by the Practice and copies of prescriptions the Board obtained revealed that between July and October 2020, the Respondent wrote nine prescriptions for Percocet 10/325 mg (#6 to #45) to herself using Podiatrist B's prescription pad and forging his signature without his authorization.

8. The Practice's audit further revealed that the Respondent wrote one prescription for Percocet 10/325 mg (#180) to her friend and housemate, who had never been her patient of record.

9. On November 9, 2020, the Board's investigator interviewed the Respondent under oath. During the interview, the Respondent admitted to writing the nine prescriptions for Percocet 10/325 mg using Podiatrist B's prescription pad and forging his signatures without his authorization. The Respondent stated that the prescriptions were for back pain from an accident that occurred in May 2020. The Respondent further admitted to writing the prescription for Percocet 10/325 mg (#180) to her friend and housemate but did not keep any record of treating him.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's actions, as set forth above, constitute: personally using a controlled dangerous substance in violation of the law, in violation of Health Occ. § 16-311(a)(7);

prescribing or distributing a controlled dangerous substance to any other person in violation of the law, in violation of Health Occ. § 16-311(a)(8); and behaving fraudulently, immorally, or unprofessionally in the practice of podiatry, in violation of Health Occ. § 16-311(a)(17).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is, by the affirmative vote of a majority of the Board considering this case:

ORDERED that the Order for Summary Suspension of the Respondent's license to practice podiatric medicine in the State of Maryland under License Number 01453, issued on December 3, 2020 is hereby **TERMINATED**; and it is further

ORDERED that the Respondent's license is **SUSPENDED** for a minimum period **TWO (2) YEARS** starting from the effective date of this Consent Order; and it is further

ORDERED that the suspension shall continue until the Respondent has complied with the following terms and conditions of the suspension:

- i. Within 30 days, the Respondent shall undergo a substance abuse evaluation by an independent Board-approved evaluator ("Evaluator 1"). Evaluator 1 shall conduct the evaluation and promptly submit a report to the Board detailing his or her findings and recommendations.
 1. Evaluator 1 shall be provided with this Consent Order and any other investigative materials the Board deems relevant.
 2. The Respondent shall sign and update the written release/consent forms requested by the Board and Evaluator 1, including release/consent forms to authorize Evaluator 1 to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information Evaluator

1's records and files in a public order. The Respondent shall not withdraw her release/consent;

3. The Respondent shall also sign any written release/consent forms to authorize Evaluator 1 to exchange with (i.e., disclose to and receive from) outside entities (including all of the Respondent's current therapists and treatment providers) verbal and written information concerning the Respondent and to ensure that Evaluator 1 is authorized to receive the medical records of the Respondent, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. The Respondent shall not withdraw her release/consent.
- ii. If Evaluator 1 finds that the Respondent **does not** have any substance use or abuse problems, during the period of suspension, the Respondent shall be subject to random drug/toxicology screening at least 13 times per year, on an approximately monthly basis (i.e. there shall be no period without such testing longer than 60 consecutive calendar days). All results shall be immediately reported to the Board. If the Respondent decides to leave the State of Maryland at any time or deem herself unavailable for testing, she must notify the Board in writing of the reason for her unavailability as soon as possible and no later than seven days in advance of her unavailability. Otherwise, a missed drug screen may be considered a test refusal and deemed a positive test and a violation of this Consent Order.
 - iii. If Evaluator 1 finds that the Respondent **does** have substance use or abuse problems, the Respondent shall enroll in an appropriate rehabilitation program, Board-approved in advance (the "Program"), as follows:
 1. Within 5 business days, the Respondent shall contact the Program to schedule an initial consultation for enrollment;
 2. Within 15 business days, the Respondent shall enter into a contract to receive rehabilitation services and comply with Program recommendations;
 3. The Respondent shall fully and timely cooperate and comply with all Program referrals, rules, and requirements, including, but not limited to, the terms and conditions of any rehabilitation agreement(s) entered with the Program, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by the Program;

4. The Respondent shall sign and update the written release/consent forms requested by the Board and the Program, including release/consent forms to authorize the Program to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from the Program's records and files in a public order. The Respondent shall not withdraw her release/consent;
5. The Respondent shall also sign any written release/consent forms to authorize the Program to exchange with (i.e., disclose to and receive from) outside entities (including all of the Respondent's current therapists and treatment providers) verbal and written information concerning the Respondent and to ensure that the Program is authorized to receive the medical records of the Respondent, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. The Respondent shall not withdraw her release/consent; and
6. The Respondent's failure to comply with any of the above terms or conditions including terms or conditions of any rehabilitation agreement(s) with the Program constitutes a violation of this Consent Order.
7. If the Respondent is required to enroll in the Program as described above, she shall successfully complete the program of rehabilitation recommended by the Program before submitting a petition to terminate the suspension of her license.
8. If the Program requires random toxicology screening, then all such results must be reported to the Board, and shall count toward the satisfaction of the requirement (ii) above that the Respondent is subject to drug/toxicology screening. If more than one toxicology screen is performed by the Program during a 30 day period, the Board shall determine which drug screen counts towards the fulfillment of the requirement (ii) above.

iv. During the suspension period, the Respondent shall not:

1. Practice podiatric medicine;

2. Take any actions after the effective date of this Order to hold herself out to the public as a current provider of podiatric medical services;
 3. Authorize, allow or condone the use of the Respondent's name or provider number by any health care practice or any other licensee or health care provider;
 4. Function as a reviewer for the Board or for any hospital or other medical care facility in the State;
 5. Prescribe or dispense medications; or
 6. Perform any other act that requires an active podiatric medical license.
- v. No earlier than 30 days before the end of the minimum period of suspension, the Board shall arrange for an independent psychiatric/substance use evaluation and any other evaluation(s) that the Board determines are necessary to assess the Respondent's safety to return to the practice of podiatric medicine. This (these) evaluation(s) shall be performed by a Board-approved professional(s) ("Evaluator 2"). The Respondent shall submit to the evaluation(s) as directed by the Board, and under the following terms:
1. The Respondent shall sign and update written release/consent forms requested by the Board and the Evaluator 2, including release/consent forms to authorize the Evaluator 2 to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from Evaluator 2's records and files in a public order. The Respondent shall not withdraw her release/consent;
 2. The Respondent shall also sign any written release/consent forms to authorize the Evaluator 2 to exchange with (i.e., disclose to and receive from) outside entities (including all of the Respondent's current therapists and treatment providers) verbal and written information concerning the Respondent and to ensure that the Evaluator 2 is authorized to receive the medical records of the Respondent, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. The Respondent shall not withdraw her release/consent.

3. If Evaluator 2 finds, and notifies the Board, that the Respondent is safe to return to the practice of podiatric medicine, the Respondent may submit a written petition to the Board to terminate the suspension of the Respondent's license. The Respondent may be required to appear before the Board or a panel of the Board to discuss her petition for termination.

And it is further

ORDERED that after the minimum period of suspension, and upon receipt of the written petition, the Board shall issue an order that may, at the discretion of the Board, include any additional terms and conditions the Board deems appropriate. If the Board determines that it is safe for the Respondent to return to the practice of podiatric medicine, the suspension shall be terminated through an order of the Board and, in addition to any other terms and conditions the Board deems appropriate, the Respondent shall immediately be placed on **PROBATION** for a minimum period of **THREE (3) YEARS**, with the following terms and conditions:

1. During the first year of the period of probation, the Respondent is prohibited from prescribing controlled substances;
2. During the period of probation, the Respondent shall continue to undergo and submit to the Board random toxicology/drug screens, at least 13 times per year, under the same terms as described in requirement (ii) above;
3. During the period of probation, the Respondent shall complete an educational course, approved by the Board in advance, on prescribing controlled medications.

And it is further

ORDERED that, after the conclusion of the **THREE (3) YEAR** probationary period, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated through

an order of the Board. The Respondent may be required to appear before the Board or a committee of the Board to discuss her petition for termination. The Board shall grant the petition to terminate the probation if the Respondent has complied with all of the probationary terms and conditions and there are no pending complaints of similar violation; and it is further

ORDERED that if the Respondent allegedly fails to comply with any term or condition of probation or this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If there is a genuine dispute as to a material fact, the hearing shall be an evidentiary hearing before the Board. If there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before the Board; and it is further

ORDERED that after the appropriate hearing, if the Board determines that the Respondent has failed to comply with any term or condition of probation or this Consent Order, the Board may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend or revoke the Respondent's license to practice podiatric medicine in Maryland. The Board may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that, unless stated otherwise in the order, any time period prescribed in this order begins when the Consent Order becomes effective. The Consent Order is effective upon the signature of the Board Chair; and is further

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Provisions §§ 4-101 *et seq.* (2014).

Date

1/29/2021

Yvonne U. Umezurike, D.P.M.

Board President

Maryland State Board of Podiatric Medical Examiners


CONSENT

I, Carmen Zaldivar-Adler, D.P.M., acknowledge that I had the opportunity to be represented by and consult with counsel before entering this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed after any such hearing.

I sign this Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

1/27/2021
Date

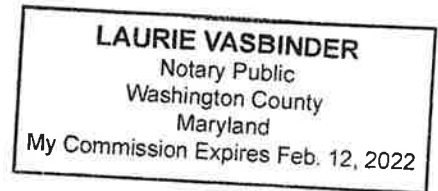

Carmen Zaldivar-Adler, D.P.M.
Respondent

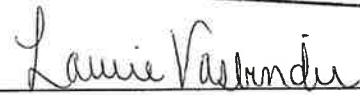
NOTARY

STATE OF MARYLAND
CITY/COUNTY OF Washington

I HEREBY CERTIFY that on this 27 day of January, 2021, before me, a Notary Public of the foregoing State and City/County personally appeared Carmen Zaldivar-Adler, D.P.M., and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed.

AS WITNESSETH my hand and notary seal.




Notary Public

My commission expires: 02/12/2022