

IN THE MATTER OF

ASPCARES f/k/a AMERICAN
SPECIALTY PHARMACY

Respondent-Pharmacy

Permit Number: P06661

* BEFORE THE
* MARYLAND BOARD
* OF PHARMACY
* Case Number: 20-034
*

CONSENT ORDER

On May 22, 2020, the Maryland Board of Pharmacy (“the Board”) charged ASPCares, formerly known as American Specialty Pharmacy (the “Respondent-Pharmacy”), Permit Number P06661, under the Maryland Pharmacy Act (the “Act”), Md. Code Ann., Health Occ. §§ 12-101 *et seq.* (2014 Repl. Vol. & 2019 Supp.). The Board charged the Respondent-Pharmacy under the following provisions of the Act:

§ 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:

...

- (2) Violates any of the standards specified in § 12-403 of this subtitle;
or
- (3) Otherwise is not conducted in accordance with the law.

§ 12-403. Required standards.

...

(c) *In general* — 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; [and]

...

- (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[.]

§ 12-313. Denials, reprimands, suspensions, and revocations —Grounds

...
(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 . . . reprimand any licensee, place any licensee on probation, or suspend or revoke a license of a pharmacist if the . . . licensee:

(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

...

(6) Submits a false statement to collect a fee;

(7) Willfully makes or files a false report or record as part of practicing pharmacy;

...

(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; [and]

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

The pertinent provisions of Md. Code Regs. (“COMAR”) provide:

10.34.10 Pharmacist, Pharmacy Intern, and Pharmacy Technician Code of Conduct.

.02 Compensation.

A pharmacy technician, pharmacy intern, or a pharmacist may not fraudulently seek or accept compensation for a pharmacy product or service not provided.

FINDINGS OF FACT

The Board finds:

1. The Respondent-Pharmacy currently holds a permit to operate as a pharmacy in the State of Maryland. The Respondent-Pharmacy's permit was first issued on or about January 7, 2015 and expires on May 31, 2022. The current owner of the Respondent-Pharmacy is a private corporation (the "Respondent-Owner")¹ that assumed ownership on October 31, 2014. The Respondent-Pharmacy is one of several pharmacies that the Respondent-Owner owns across the country.

2. On December 28, 2015, the Board and the Respondent-Pharmacy entered a Pre-Charge Consent Order that fined the Respondent-Pharmacy \$500 for operating without a valid permit from November 1, 2014 to January 7, 2015.

3. On or about July 30, 2019, the Board received a complaint from a pharmacy benefits manager (the "PBM") alleging that the Respondent-Pharmacy had engaged in fraud, waste, and abuse by billing the PBM for medications that the Respondent-Pharmacy did not actually dispense to patients. According to the complaint, the PBM began an investigation after receiving several anonymous complaints and determined that between October 2014 and October 2018 the Respondent-Pharmacy, in conjunction with other pharmacies owned by the Respondent-Owner, had billed the PBM for medications that it had not dispensed. The PBM also noted that it had terminated the Respondent-Pharmacy's participation in the PBM's pharmacy network.

¹ 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.

4. The Board obtained various records from the PBM as well as the Pharmacy-Respondent. The documents included, among other things, invoices, prescription records, dispensing records, store transfer records, and the Respondent-Pharmacy's overall book of business information. The relevant records from the Respondent-Pharmacy as well as other pharmacies owned by the Respondent-Owner show that there were insufficient invoices to support its billing levels to the PBM, demonstrating a pattern of submitting claims for payment to the PBM for medications that could not have been dispensed to patients.

5. The PBM concluded in part that the Respondent-Pharmacy billed the PBM approximately \$129,416.61 for medications that it had not actually dispensed. The records that the Board obtained from the PBM and the Respondent-Pharmacy confirm the PBM's investigative conclusions.

6. The Respondent-Pharmacy maintains that the claims at issue resulted from "clerical errors" caused by changes to the National Drug Code ("NDC") that were not applied to the claims submitted to the PBM. The Respondent-Pharmacy asserts that it had no improper financial motivation in submitting claims under the original NDC versus the updated NDC because the reimbursement rate was equivalent between the two. The Respondent-Pharmacy further asserts that all patients were dispensed and received their prescribed medications.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent-Pharmacy violated Health Occ. § 12-403(c)(9) by participating in an activity that is a ground for Board action against a licensed pharmacist under § 12-313,

including § 12-313(b)(6) (submits a false statement to collect a fee), and (b)(7) (willfully makes or files a false report or record as part of practicing pharmacy).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is, by the affirmative vote of a majority of Board members, hereby:

ORDERED that the charges against the Respondent-Pharmacy under Health Occ. § 12-403(c)(1), § 12-313(b)(1), (24), and (25), and COMAR 10.34.10.02 are **dismissed**; and it is further

ORDERED that the Respondent-Pharmacy is **reprimanded**; and it is further

ORDERED that the Respondent-Pharmacy's permit is placed on **probation** for a **minimum of one (1) year**, subject to the following terms of conditions:

1. Within six (6) months of the effective date of this Consent Order, the Respondent-Pharmacy must pay a civil fine of one thousand dollars (\$1,000);
2. During the probationary period, the Board, at its discretion, may conduct random audits of the Respondent-Pharmacy to ensure compliance with all applicable laws;
3. After one (1) year from the effective date of the Consent Order, the Respondent-Pharmacy may submit a written petition to the Board requesting termination of probation, provided that it has been fully compliant with this Consent Order and has no outstanding complaints filed against it; and it is further

ORDERED that there shall be no early termination of probation; and it is further

ORDERED that the Respondent-Pharmacy shall operate in accordance with the laws and regulations governing the practice of pharmacy in Maryland; and it is further

ORDERED that the Respondent-Pharmacy shall bear all costs of complying with the Consent Order; and it is further

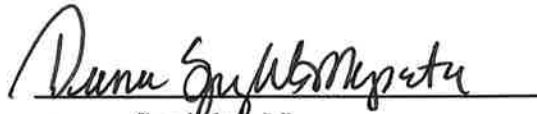
ORDERED that the Respondent-Pharmacy shall cooperate with the Board in the monitoring, supervision, and investigation of its compliance with the terms and conditions of this Consent Order; and it is further

ORDERED that the Respondent's failure to comply with the terms and conditions of the Consent Order, including failure to pay the monetary fine in full by the deadline, constitutes a violation of the 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 this Consent Order is a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2014 and 2019 Supp.).

10-2-2020

Date



Deena Speights-Napata
Executive Director, for:

Kevin Morgan, Pharm.D.
President
Maryland Board of Pharmacy

CONSENT

I, Abdul Hameed, owner of ASPCares, acknowledge that I have had the opportunity to consult with legal counsel before signing this document. By this Consent, I accept, on behalf of ASPCares, to be bound by this Consent Order and its conditions and restrictions. On its behalf, I waive any rights ASPCares may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which ASPCares would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on its behalf, and to all other substantive and procedural protections as provided by law. I also affirm that I am waiving ASPCares's right to appeal any adverse ruling of the Board that might have followed any such hearing.

I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order.

I sign this Consent Order without any reservation, and I fully understand and comprehend the language, meaning, and terms of this Consent Order. I voluntarily sign this Consent Order on behalf of ASPCares and understand its meaning and effect.

09/24/2020
Date


Abdul Hameed
Owner, ASPCares



NOTARY

STATE OF TX

CITY / COUNTY OF Dallas

I HEREBY CERTIFY that on this 24th day of September 2020,
before me, a Notary Public of the foregoing State and City/County, personally appeared
Abdul Hameed, and made oath in due form of law that signing the foregoing Consent Order
was a voluntary act and deed.

AS WITNESSETH my hand and notarial seal.


Notary Public

My Commission expires: 7/13/24

