

IN THE MATTER OF * **BEFORE THE**
POPLAR GROVE PHARMACY, INC. * **MARYLAND STATE**
Respondent * **BOARD OF PHARMACY**
Permit Number: P05639 * **Case Number: 19-255**

* * * * *

FINAL ORDER

On March 18, 2020, the Maryland Board of Pharmacy (“Board”) issued a Notice of Intent to Revoke the pharmacy permit issued to Poplar Grove Pharmacy, Inc. (“Respondent Pharmacy”), based, among other things, on the criminal conviction and unprofessional conduct of the Pharmacy’s co-owner and pharmacy manager, Pharmacist A. On May 22, 2020, the case was delegated to the Office of Administrative Hearings (“OAH”) for an evidentiary hearing and proposed decision. The Board subsequently amended its Notice on July 9, 2020.¹

On September 10 and October 19, 2020, the Administrative Law Judge (“ALJ”) held telephone scheduling conferences. The Administrative Prosecutor appeared on behalf of the State, and both Pharmacist A and her husband, the Respondent Pharmacy’s owners, participated in both scheduling conferences. The ALJ advised the Respondent Pharmacy’s owners that the Respondent Pharmacy, as a corporation, must be represented by an attorney at the evidentiary hearing. Following each of the two scheduling conferences, the ALJ issued a written report to the parties confirming the requirement of attorney representation, and the date, time, and location of the hearing on the merits, which was scheduled for an in-person hearing on December 14, 15, and 16, 2020, beginning at 9:30 a.m. each day at OAH. In addition, on September 10, 2020, OAH issued

¹ The Board amended its Notice of Intent to Revoke on July 9, 2020, to correct an error in its allegations. Specifically, the Board corrected Allegation #15 which stated, “Pharmacist A pleaded guilty” to “Pharmacist A was found guilty by a jury.”

a Notice of Hearing to both parties detailing the same hearing information. The Notice of Hearing also stated that failure to appear may result in a dismissal of the case or a decision against the party for failure to appear.

On November 30, 2020, the ALJ received a letter from Pharmacist A acknowledging the evidentiary hearing date but stating that she was declining to appear. On December 14, 2020, at 9:30 a.m., an evidentiary hearing was convened at OAH in this matter. The Administrative Prosecutor appeared on behalf of the State and was prepared to move forward. Neither the Respondent Pharmacy's owners, nor counsel on their behalf, appeared by 9:45 a.m., at which time the Administrative Prosecutor moved to admit seven (7) exhibits in support of the State's case and moved for a default order.²

Under OAH's rules of procedure, "[i]f, after receiving proper notice, a party fails to attend or participate in a prehearing conference, hearing, or other stage of a proceeding, the judge may proceed in that party's absence or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party." COMAR 28.02.01.23A.

On December 21, 2020, the ALJ issued a Proposed Default Order. The ALJ found that the Respondent Pharmacy had proper notice of the December 14, 2020, evidentiary hearing and that it failed to appear or participate without good cause. The ALJ proposed that the Board find the Respondent Pharmacy in default, adopt as findings of fact the statements set out in the allegations of fact section of the Notice of Intent to Revoke and conclude as a matter of law that the

² The ALJ admitted seven (7) State's exhibits: State's Exhibit 1 – Order of Summary Suspension, dated April 15, 2019; State's Exhibit 2 – Amended Order of Summary Suspension, dated May 28, 2020; State's Exhibit 3 – Notice of Intent to Revoke Pharmacy Permit, dated July 9, 2020, with attached unsigned Final Order of Revocation of Pharmacy Permit; State's Exhibit 4 – Consent Order of May 2016 and Order Terminating Probation, dated February 21, 2018; State's Exhibit 5 – Report of Investigation with attachments; State's Exhibit 6 – Criminal court documents in State of Maryland v. Susan I. Nwoga (Baltimore City Circuit Court, Case No. 118114013); State's Exhibit 7 – Licensing Information for Respondent Pharmacy

Respondent Pharmacy violated Health Occ. § 12-313(b)(2), (22) and (25), and COMAR 10.34.10.01B(1) and (3) in the manner set forth in the Notice. The ALJ proposed that the Respondent Pharmacy be disciplined in a manner the Board determines appropriate, including revocation of the Respondent Pharmacy's permit.

The ALJ mailed copies of the Proposed Default Order to the Respondent Pharmacy, the Administrative Prosecutor, and the Board at the parties' respective addresses of record with OAH. The Proposed Default Order notified the parties that they may file written exceptions to the proposed order but must do so within 30 days of the receipt of the Proposed Default Order. The Proposed Default Order stated that any exceptions and request for a hearing must be sent to the Board with a copy provided to the opposing party. Neither party filed exceptions.

FINDINGS OF FACT

Because the Board concludes that the Respondent Pharmacy failed to contest the factual allegations contained in the Board's Notice, or the documentary evidence admitted into the record at the evidentiary hearing scheduled in this matter, and did not file exceptions to the ALJ's Proposed Default Order, the following findings of fact are adopted from the allegations of fact in the July 9, 2020, Notice of Intent to Revoke and are deemed proven by the preponderance of the evidence:

1. At all times relevant hereto, the Respondent Pharmacy was licensed to operate as a pharmacy in the State of Maryland.
2. The Respondent Pharmacy was originally permitted to operate as a pharmacy in Maryland on or about March 14, 2012.
3. The Respondent Pharmacy's permit expired on May 31, 2020.

4. The Respondent Pharmacy's permit was summarily suspended by the Board on April 15, 2019.
5. At all times relevant hereto, Pharmacist A was the co-owner and pharmacy manager of the Respondent Pharmacy.
6. In June 2016, the Respondent Pharmacy and Pharmacist A each entered into Consent Orders ("2016 Consent Orders") with the Board.
7. In the 2016 Consent Orders, the Board made the following Findings of Fact:

...

4. On or about July 16, 2012, the Maryland Division of Drug Control ("DDC") conducted a controlled dangerous substance ("CDS") inspection ("2012 Inspection") of the [Pharmacy]. The 2012 Inspection revealed the following: seven suspected fraudulent Schedule II prescriptions³; deficiencies in recording the date of receipt on Schedule III-V invoices when orders are received; failure to maintain electronically linked Controlled Substance Ordering System ("CSOS") records; and failure to take an initial CDS inventory before opening for business as a pharmacy.
5. On May 13, 2013, DDC conducted a follow-up CDS inspection of CDS prescriptions to check for fraudulent and/or illegitimate prescriptions.
6. On May 14, 2013 and May 15, 2013, the DDC returned to the [Pharmacy] to conduct a more thorough inquiry into the suspected fraudulent prescriptions that were discovered [during the May 13, 2013 follow-up inspection]. The Inspectors photocopied all suspected fraudulent CDS Schedule II prescriptions for January through April 2013, as well as May 1 through 14, 2013. The Inspectors also obtained a log of all CDS Schedule II prescriptions dispensed by the [Pharmacy] from May 1, 2012 through May 14, 2013.
7. According to the DDC's inspection, the [Pharmacy] filled approximately 683 Schedule II CDS prescriptions from January 1, 2013 through May 14, 2013. Of those prescriptions, the DDC

³ These prescriptions were later confirmed in writing, by the alleged prescribers, to be fraudulent.

identified approximately 261 suspected fraudulent or invalid prescriptions.

8. The suspected fraudulent prescriptions contained anomalies, such as, for example:
 - a. Incomplete or inaccurate security features on the prescription form;
 - b. Incorrect prescriber addresses; and
 - c. Incorrect prescriber telephone numbers.
9. After the May 2013 DDC inspections, at which the inspectors alerted the [Pharmacy] and Pharmacist A to the suspected forgeries, the [Pharmacy] then instituted additional controls to combat the efforts of those attempting to fill fraudulent prescriptions.
10. On or about June 16 and 17, 2014, the DDC performed a follow-up inspection of the [Pharmacy].
11. On or about August 21, 2015, the DDC conducted another CDS inspection of the [Pharmacy].
12. The DDC inspectors reviewed the approximately 6481 CDS prescriptions dispensed between January 1, 2013 and September 24, 2015 and copied those prescriptions that were suspected to be fraudulent.
13. The DDC inspectors contacted the purported prescribers of the suspected fraudulent prescriptions and were able to obtain written verification that a number of the prescriptions were fraudulent. The DDC Inspectors verified that the [Pharmacy] filled 623 fraudulent CDS prescriptions, which were attributed to 113 purported practitioners. Of the 623 fraudulent prescriptions, 356 were Schedule II and 267 were Schedules III through V. Eighty-nine of the fraudulent prescriptions were dispensed after the DDC's May 2013 inspections.

8. The Board concluded in the 2016 Consent Orders that the Respondent Pharmacy and Pharmacist A violated Health Occ. §12-313(b)(25); COMAR 10.34.10.01A(1)(a), (b), (c), (d), and (e); COMAR 10.34.10.01B(1); COMAR 10.19.03.07C(1); and COMAR 10.19.03.09A(1).

9. In disciplining Pharmacist A, the Board stayed a thirty (30) day suspension of Pharmacist A's license. The Board placed Pharmacist A's license on probation for three (3) years; required Pharmacist A to pay a fine in the amount of two thousand and five hundred dollars (\$2,500.00); complete a course on the topic of identifying fraudulent prescriptions with attention to red flags and the corresponding responsibility of the pharmacist; and enroll in and successfully complete a course on the topic of the appropriate prescription and dispensing of methadone for both substance abuse and pain management.
10. In disciplining the Respondent Pharmacy, the Board placed the Respondent Pharmacy on probation for one (1) year and ordered it to pay a fine in the amount of five thousand dollars (\$5,000.00).

Current Case

11. On or about January 25, 2019, a Board Inspector went to the Respondent Pharmacy to conduct an annual inspection. The Board Inspector arrived at the Respondent Pharmacy at approximately 1:30 p.m. Upon her arrival, the Board Inspector noticed that the Respondent Pharmacy was closed.
12. The Respondent Pharmacy's business hours on file with the Board are Monday through Friday 10 a.m. to 6 p.m., and Saturday 10 a.m. to 2 p.m. The Respondent Pharmacy did not submit a written notification to the Board that it would be closed during business hours.⁴
13. Since February 14, 2019, the Respondent Pharmacy has not been open and Board staff have not been able to contact the Respondent Pharmacy or its co-owner.⁵

⁴ The Respondent Pharmacy was closed when a Board Inspector went to the Respondent Pharmacy approximately two weeks later.

⁵ Board staff contacted the Attorney for the Respondent Pharmacy. According to Board staff, the Attorney could not confirm if there were any drugs or patient records remaining in the Respondent Pharmacy.

14. The Respondent Pharmacy failed to request or submit to a closing inspection by the Board, as required by Board regulations, to ensure the proper transfer of controlled and non-controlled drug inventory and confidential prescription records.
15. On or about February 13, 2019, Pharmacist A was found guilty by a jury in the Circuit Court for Baltimore City, Maryland of approximately three hundred (300) counts that included possession with intent to distribute a controlled dangerous substance, Medicaid fraud, and theft. According to court documents, Pharmacist A filled fraudulent prescriptions, dispensed controlled dangerous substances, and submitted claims for payment and reimbursement to Medicaid and other health programs.
16. Following her conviction, Pharmacist A was detained in jail until her sentencing date.
17. On or about May 23, 2019, Pharmacist A was sentenced to five (5) years of incarceration for the Medicaid fraud and felony theft convictions, and ten (10) years of incarceration with nine (9) years, eight (8) months, and twenty-two (22) days suspended, and five (5) years of supervised probation for two counts of distribution.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Board concludes that the Respondent Pharmacy is subject to disciplinary action based on Health Occ. § 12-409(a)(2) (violates any of the standards specified in § 12-403 of this subtitle); § 12-403(c)(9) (may not participate in any activity that is a ground for Board action against a pharmacist under § 12-313 of this title); § 12-313(b)(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); § 12-313(b)(25) (violates any rule or regulation adopted by the Board); and COMAR 10.34.10.01B(3) (engage in unprofessional conduct).

SANCTION

The Board adopts the recommendation by the ALJ to impose a sanction, and thus, imposes a revocation of the Respondent Pharmacy's permit to operate a pharmacy in Maryland. Although the Respondent Pharmacy ceased operations in January 2019, and has been summarily suspended since April 2019, the Board's imposition of a revocation of the Respondent Pharmacy's permit is warranted based on Pharmacist A's criminal conviction involving criminal conduct all taking place through the Respondent Pharmacy's operations, as well as the Respondent Pharmacy's failure to properly record the transfer of remaining controlled dangerous substances inventory and confidential patient records.


ORDER

It is, on the affirmative vote of a quorum of the Board, hereby,

ORDERED that the pharmacy permit issued to POPLAR GROVE PHARMACY, INC., is **REVOKED**; and it is further

ORDERED that this is a final order and public document in accordance with General Provisions Art., § 4-301.

8-11-21
Date


Deena Speights-Napata, MA, Executive Director
Maryland Board of Pharmacy

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 12-412, the Respondent Pharmacy has the right to seek judicial review of this Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Order. The cover letter accompanying this Order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If the Respondent Pharmacy files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

**Maryland Board of Pharmacy
Deena Speights-Napata, MA, Executive Director
4201 Patterson Avenue, 5th Floor
Baltimore, Maryland 21215**

Notice of any petition should also be sent to the Board's counsel at the following address:

**Linda M. Bethman
Assistant Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201**