

IN THE MATTER OF  
CVS PHARMACY #1485  
Permit No. P00542

BEFORE THE  
MARYLAND STATE  
BOARD OF PHARMACY

Respondent

\* \* \* \* \*

CONSENT ORDER

Based on information received and a subsequent investigation by the Maryland State Board of Pharmacy (the "Board"), and subject to Md. CODE ANN., HEALTH Occ. ("Health Occupations") § 12-411, the Board charged CVS Pharmacy #1485, Permit No. P00542 (the "Respondent Pharmacy"), with violations of certain provisions of the Maryland Pharmacy Act (the "Act"), codified at Health Occupations §§ 12-101 et seq. (1994 Repl. Vol. and 1999 Supp.).

Specifically, the Board charged the Respondent Pharmacy with violating the following provisions of the Act:

**§ 12-403. Required Standards:**

(b) *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;
- (3) Shall ensure that a licensed pharmacist be immediately available on the premises to provide pharmacy services at all times the pharmacy is in operation;
- (4) Shall be supervised by a licensed pharmacist who is responsible for the operations of the pharmacy at all times the pharmacy is in operation; [or]

- (9) May not participate in any activity that is a ground for Board action against a licensed pharmacist under § 12-313 of this title[.]

The Board charged the Respondent Pharmacy with participating in activity that is a ground for Board action against a licensed pharmacist under § 12-313 of the Act, to wit, § 12-313(b)(3), which provides:

**§ 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 deny a license to any applicant, reprimand any licensee, place any licensee on probation; or suspend or revoke a license if the applicant or licensee:

- (3) Aids an unauthorized individual to practice pharmacy or to represent that the individual is a pharmacist[.]

The Respondent Pharmacy was given notice of the charges and the issues underlying those charges by letter and Charging Document sent via certified mail to Angela Bryant, Regional Health Care Manager for the Respondent Pharmacy, on or about February 14, 2000. A Case Resolution Conference ("CRC") on those charges was held on May 18, 2000, and was attended by Stanton G. Ades, P.D., President of the Board, Paul Ballard, Assistant Attorney General and Counsel to the Board, Laura Schneider, P.D., Board Commissioner, James Anagnos, Staff Attorney/Administrative Prosecutor, Frank Weskel, District Manager for CVS Pharmacy, Barry Jasilli, Director of Regulatory Compliance for CVS

Pharmacy, and Angela Bryant, CVS Pharmacy Regional Health Care Manager.

Following the CRC, the parties and the Board agreed to resolve the charges pending against the Respondent by entering into the following Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

**FINDINGS OF FACT**

The Board makes the following Findings of Fact:

1. At all times relevant to the charges herein, the Respondent Pharmacy was permitted by the Board to operate in the State of Maryland, being issued Pharmacy Permit No. P00542, on or about December 31, 1993.
2. At all times relevant to the charges herein, the Respondent Pharmacy used the pharmacy permit for the operation of a pharmacy located at 13751 Connecticut Avenue, Wheaton, Maryland 20906, known as CVS Pharmacy #1485.
3. CVS Pharmacy #1485 is part of a national pharmacy chain. On December 15, 1998, the Board received an Annual Renewal Application for Pharmacy Permit for 1999, submitted by Stephen E. Murphy, an agent of CVS Pharmacy's licensing department, located at One CVS Drive, Woonsocket, Rhode Island, 02895.
4. From 1993 to 1998, Kumudini Asika DeSilva, a/k/a Asika Kumudini DeSilva, a/k/a Asika Ganartna, worked for another CVS Pharmacy, CVS #1463, as a pharmacy technician, pharmacy intern,

and pharmacy graduate intern to earn the required practical experience for licensure.

5. In October 1998, Ms. DeSilva sat for and passed two parts of the Board's licensing examination, but failed a third part, the North American Pharmacist Licensing Examination ("NAPLEX").

6. Ms. DeSilva sat for the NAPLEX again in May 1999, and failed for a second time.

7. On or about June 20, 1999, Ms. DeSilva represented to Frank Weskel, a CVS Pharmacy district manager, that she had received notification from the Board that she had passed the NAPLEX.

8. At that time, CVS Pharmacy changed Ms. DeSilva's employment status from intern to pharmacist, and transferred her to CVS Pharmacy #1485.

9. CVS Pharmacy did not ask Ms. DeSilva to produce a pharmacist license issued by the Board, nor did CVS Pharmacy request from the Board verification of Ms. DeSilva's licensure status.

10. On September 30, 1999, a Division of Drug Control ("DDC") inspector, Peter Smith, went to CVS Pharmacy #1485 for a routine inspection.

11. CVS Pharmacy #1485 listed "Asika Ganartna" as a pharmacist on a sign in the store, but this individual was not on duty.

12. CVS Pharmacy #1485 did not display a pharmacist license for "Asika Ganartna" and could not produce one when requested by Mr. Smith.

13. Mr. Smith contacted the Board office to verify the status of "Asika Ganartna."

14. At that time, the Board staff determined that "Asika Ganartna" was the same person as Kumudini Asika DeSilva, who did not hold a license to practice pharmacy in the State of Maryland on September 30, 1999.

15. Further investigation by the Board revealed that on multiple occasions during the Summer of 1999, Kumudini Asika DeSilva worked as a pharmacist at CVS Pharmacy #1485 while no licensed pharmacist was on duty.

#### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes, as a matter of law, that the Respondent Pharmacy violated: (1) § 12-403(b)(1) of the Act by allowing an individual not licensed by the Board as a pharmacist to practice pharmacy; (2) § 12-403(b)(3) of the Act by not ensuring that a licensed pharmacist was immediately available on the premises to provide pharmacy services at all times that it was in operation

during the times relevant to the charges herein; (3) § 12-403(b)(4) of the Act by operating without the supervision of a licensed pharmacist who was responsible for its operations at all times that it was in operation during the times relevant to the charges herein; and (4) § 12-403(b)(9) of the Act by participating in activity that is a ground for Board action against a licensed pharmacist under § 12-313 of the Act, to wit, § 12-313(b)(3), which proscribes aiding an unauthorized individual to practice pharmacy or to represent that the individual is a pharmacist.

**ORDER**

Based on the foregoing Findings of Fact, Conclusions of Law, and agreement of the parties, it is this 21<sup>st</sup> day of JUNE 2000, by a majority of a quorum of the Board, hereby

**ORDERED** that the Respondent Pharmacy shall be placed on **PROBATION** for a period of one year, subject to the following conditions:

1. The Respondent Pharmacy agrees that if a licensed pharmacist is not on duty at the time of a Board inspection, the Board may take action against the permit of the Respondent Pharmacy, including, but not limited to, revocation or suspension. However, the Respondent Pharmacy shall have notice of such action and a right to a hearing in accordance with the

Maryland Administrative Procedure Act, codified at Md. CODE ANN., STATE GOV'T ("State Government") § 10-201 et seq., within thirty days after a representative of the Respondent Pharmacy notifies the Board in writing of its desire for such a hearing, before any such action by the Board becomes final.

2. The Respondent Pharmacy shall pay a civil monetary penalty of Ten Thousand Dollars (\$10,000.00) to the Board for payment into the General Fund of the State of Maryland. Payment of this civil monetary penalty shall be made on or before September 1, 2000. The Respondent Pharmacy agrees that if it fails to pay the civil monetary penalty on or before September 1, 2000, the Board may take action against the permit of the Respondent Pharmacy, including, but not limited to, revocation or suspension. However, the Respondent Pharmacy shall have notice of such action and a right to a hearing in accordance with the Maryland Administrative Procedure Act, codified at Md. CODE ANN., STATE GOV'T ("State Government") § 10-201 et seq., within thirty days after a representative of the Respondent Pharmacy notifies the Board in writing of its desire for such a hearing, before any such action by the Board becomes final; and be it further

**ORDERED** that the Respondent Pharmacy shall be operated in accordance with the Maryland Pharmacy Act; and be it further

ORDERED that the conditions of this Consent Order be, and the same is hereby, effective as of the date of this Consent Order; and be it further

ORDERED that upon execution of this Consent Order, it is subject to public inspection as a public document under the Maryland Public Information Act, codified at State Government § 10-611 et seq.



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Stanton G. Ades, P.D.  
President, Maryland State  
Board of Pharmacy

CONSENT OF CVS PHARMACY #1485

I, Barry Jasilli, Director of Regulatory Compliance for CVS Pharmacy, and the authorized representative of CVS Pharmacy #1485 for the purpose of binding CVS Pharmacy #1485 to this Consent Order, by affixing my signature hereto, acknowledge that:

1. I am aware that without my consenting on behalf of CVS Pharmacy #1485, the permit of CVS Pharmacy #1485 to operate a pharmacy in the State of Maryland cannot be limited except pursuant to the provisions of Health Occupations § 12-409 and State Government §§ 10-205 et seq.

2. I am aware that CVS Pharmacy #1485 is entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I, as authorized representative for CVS Pharmacy #1485, hereby consent and submit on behalf of CVS Pharmacy #1485 to the foregoing Findings of Fact, Conclusions of Law, and Order, provided that the Board adopts the foregoing Consent Order in its entirety. By doing so, I, as authorized representative for CVS Pharmacy #1485, waive the right of CVS Pharmacy #1485 to have a formal hearing as set forth in State Government § 10-201 et seq., and any right to appeal as set forth in Health Occupations § 12-412 and State Government § 10-222. I, as authorized representative for CVS Pharmacy #1485, acknowledge that by its failure to abide by the conditions set forth in this Consent Order and following proper procedures, CVS Pharmacy #1485

may suffer disciplinary action, possibly including revocation of its permit to operate a pharmacy in the State of Maryland.

6/9/00  
Date

Barry Jasilli  
Barry Jasilli  
Director of Regulatory Compliance,  
CVS Pharmacy

STATE OF Rhode Island  
CITY/COUNTY OF Providence

I HEREBY CERTIFY that on this 9 day of June 2000, a Notary Public of the State of Rhode Island and City/County aforesaid, personally appeared Barry Jasilli and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESS my hand an Notarial Seal.

Mary Alice Kleiber  
Notary Public

My Commission Expires: \_\_\_\_\_  
**Mary Alice Kleiber**  
**State of Rhode Island**  
**My Commission Expires 3-7-04**