

IN THE MATTER OF
MEDICINE SHOPPE #23
PERMIT NO. P01709
Respondent

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BEFORE THE
STATE BOARD
OF PHARMACY

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FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board"), and subject to Md. Health Occ. Ann. § 12-101, et seq., (2000 Repl. Vol.) (the "Act"), the Board charged Medicine Shoppe #23, (the "Respondent-Pharmacy"), with violations of the Act. Specifically, the Board charged the Respondent-Pharmacy with violation of the following provisions of § 12-409¹:

- (a) Subject to the hearing provisions of § 12-411 of this subtitle, the Board may suspend or revoke any pharmacy permit, if the pharmacy:
 - (1) Is conducted so as to endanger the public health or safety;
 - (2) Violates any of the standards specified in § 12-403 of this subtitle; or
 - (3) Otherwise is not conducted in accordance with the law.

1 § 12-410. Penalty instead of suspension or in addition to suspension or revocation.

(a) If after a hearing under § 12-411 of this subtitle the Board finds that there are grounds under § 12-409 of this subtitle to suspend or revoke a permit, the Board may impose a penalty not exceeding \$10,000:

- (1) Instead of suspending the permit; or
- (2) In addition to suspending or revoking the permit.

§ 12-403 Required standards

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

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

(b) 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;
- (6) Willfully makes or files a false report or record as part of practicing pharmacy;
- (24) Violates any rule or regulation adopted by the Board;
- (28) Fails to cooperate with a lawful investigation conducted by the Board or the Division of Drug Control.

The Board charged the Respondent-Pharmacy with violating the Code Md. Regs. tit.

10 § 34.05. (1980):

.02 Prescription Area.

A. The pharmacy permit holder shall:

(3) Prevent an individual from being in the prescription area unless a pharmacist is immediately available on the premises to provide pharmacy services [;].

B. The pharmacy permit holder shall:

(3) Prevent an individual from being in the prescription area unless a pharmacist is immediately available on the premises to provide pharmacy services [;].

C. The pharmacist shall:

(2) Have sole possession of a means of access to the pharmacy, except in emergencies [;].

D. The pharmacist shall:

(3) Have sole possession of a means of access to the pharmacy, except in emergencies [;].

.03 Pharmacy Operation.

A. A pharmacist shall be immediately available on the premises to provide pharmacy services at all times the pharmacy is in operation.

.05 Security Responsibility.

The pharmacy permit holder is responsible for assuring that pharmacists, employees, and others who enter the pharmacy:

A. Know and abide by the requirements of this chapter; and

- B. Maintain those measures necessary to ensure this chapters' (sic) enforcement.

The Board also charged the Respondent-Pharmacy with violating the Code Md. Regs. tit. 10 § 34.07.

01. Equipment

- B. A refrigerator, solely for the storage of drugs requiring refrigeration, with a thermometer or a temperature monitoring device.

The Board further charges the Respondent-Pharmacy with violating the Code of Md. Regs. tit. 10 § 34.10--Pharmacist Code of Conduct--promulgated by the Board:

01. Patient Safety and Welfare.

A. A pharmacist shall:

- (1) Abide by all federal and State laws relating to the practice of pharmacy . . . including but not limited to:

- (a) United States Code, Title 21,
- (b) Health-General Article, Titles 21, and 22, Annotated Code of Maryland,
- (c) Health Occupations Article, Title 12, Annotated Code of Maryland,
- (d) Article 27, 276-304, Annotated Code of Maryland, and
- (e) COMAR 10.19.03[;].

The Respondent-Pharmacy was given notice of the issues underlying the Board's charges by notice dated September 19, 2002. Accordingly, a Case Resolution Conference

was held on October 7, 2002, and was attended by Jeanne Furman and Ramona McCarthy Hawkins, Pharmacist Members of the Board, and Linda Bethman, Counsel to the Board. Also in attendance were Pamela Arrey, owner of the Respondent-Pharmacy and her attorney, Joseph Kum, and the Administrative Prosecutor, Roberta Gill.

Following the Case Resolution Conference, the parties and the Board agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

FINDINGS OF FACT

1. At all times relevant hereto the charges herein, the Respondent-Pharmacy was authorized to operate as a pharmacy in the State of Maryland. The Respondent-Pharmacy is located on Liberty Road in Baltimore County, Maryland. The Respondent-Pharmacy was first issued a permit by the Board on June 22, 1992. The Respondent's permit is due to expire on December 31, 2002.

2. The Respondent-Pharmacy is owned by Pamela Arrey, P.D., who is listed on the permit as a full time employee.²

² Ms. Arrey owns two other pharmacies in Maryland; one on Reisterstown Road in Baltimore City, and one in Annapolis, Maryland. She is listed as a full-time pharmacist at those two locations, as well—a physical impossibility. In addition for the 2002 permit period, the application lists Babatunde Ajayi as a full-time pharmacist at that location. Mr. Ajayi stated under oath that he works full time for Rite Aid and only works for Ms. Arrey on his days off.

3. On June 22, 2001, at approximately 9:00 a.m., Larry Friedman, Division of Drug Control (DDC), Inspector, observed pharmacist Oluwatosin Adekoya open the store. Mr. Friedman entered the Respondent-Pharmacy where he conducted an inspection, which disclosed, among other things, a number of faxed prescriptions for Schedule II controlled dangerous substances (CDS) without a corresponding hard copy original. Mr. Friedman took twenty-two of these to DDC.

4. On January 4, 2002, Deitra Gale, Compliance Specialist, arrived at the Respondent-Pharmacy at approximately 2:15 p.m., finding the store unlocked and open for business. There was no pharmacist on duty at that time only a technician. Ms. Gale was told that the pharmacist would be "right back." Approximately 10 minutes lapsed, at which time Ms. Arrey arrived and explained that she had entrusted the technician to "lock the door." Ms. Gale explained that a technician could not be left alone in the pharmacy area, regardless of whether it was locked.

5. The technician stated, under oath, that the other technician, "Emmanuel," had a key to the store.

6. The Respondent-Pharmacy allowed unlicensed³ individuals to be in the pharmacy when no licensed pharmacist was present and allowed an unlicensed individual access to the pharmacy by giving him the key.

³ Section 12-301 of the Act states:

(a) Except as otherwise provided in this title, an individual shall be licensed by the Board before the individual may practice pharmacy in this State.

7. In response to the Board's concerns that the Respondent-Pharmacy was not staffed by a pharmacist during all times when it was opened to the public, the Board required Ms. Arrey to provide to it a schedule listing which pharmacist was on duty and the hours, for the period of October through December, 2001. The work schedule belatedly provided to the Board by Ms. Arrey listed pharmacist Bonnie Enwezor as the pharmacist on duty for October 5 and November 16, 2001. Ms. Enwezor stated under oath that she did not, in fact, work at the Respondent-Pharmacy for those dates. Therefore, based on the schedule provided by Ms. Arrey, the Respondent-Pharmacy did not have a pharmacist on duty during those dates, as required. If, in fact, the Respondent-Pharmacy had a licensed pharmacist on duty during those dates, the Respondent-Pharmacy submitted false documentation to the Board during the course of its investigation.

8. On January 29, 2002, Mr. Ajayi reviewed the work schedule of his hours provided by Ms. Arrey to the Board. Furthermore, he compared his schedule as a full-time pharmacist at Rite-Aid with that supplied by Respondent. Although Ms. Arrey's work schedule claimed that Mr. Ajayi worked January 3, 2002 at the Respondent-Pharmacy, the Rite Aid schedule, confirmed by Mr. Ajayi under oath, indicated that he was, in fact, working at Rite Aid on that date. Inasmuch as Mr. Ajayi was listed as the only pharmacist on duty at the Respondent-Pharmacy on that date, there was either, in actuality, no pharmacist on duty at the Respondent-Pharmacy on that date or the Respondent-

Pharmacy falsified the records submitted to the Board regarding coverage for the Respondent-Pharmacy.

9. In the records supplied to the Board, Ms. Arrey listed Olujimi Odusanya, as having worked at the Respondent-Pharmacy on January 14, 2002. Ms. Olujimi stated under oath that she was a recent hire, has only worked one or two dates at the Respondent-Pharmacy, and was not the pharmacist on duty for the week of January 14, 2002, as listed. The Respondent-Pharmacy submitted falsified records regarding its coverage for those dates.

10. As set forth above, by the Respondent-Pharmacy's operating without a pharmacist on duty, posing a grave public danger, submitting false records regarding coverage and failing to have hard copies of Schedule II prescriptions, among other deficiencies, found by the DDC, allowing her minor daughter to sign for pharmaceutical supplies; the dispensing of drugs by fax without a hard copy, a technician's dispensing prescriptions. The Respondent-Pharmacy is in violation of the Act and regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent-Pharmacy violated § 12-313 (3), (6), (24) and (28); § 12-403 (b) (1), (3), (4) and (9); and § 12-409 (a) (1), (2) and (3). The Board further finds that the Respondent-Pharmacy violated

the Code Md. Regs. tit. 10 § 34.05. (1980) .02 A (3), B (3), C (2) and D (3), .03 A, .05 A and B; Code Md. Regs. tit. 10 § 34.07.01 B; as well as Code Md. Regs. tit. 10 § 34.10 (2000) .01 A. (1) (a) through (e).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 20th day of November, 2002, by a majority of a quorum of the Board,

ORDERED that the Respondent-Pharmacy's permit to operate as a pharmacy is hereby **SUSPENDED**, and that that Suspension be **STAYED**; and be it further

ORDERED that the Respondent-Pharmacy be placed on Probation for one year, subject to the following conditions:

1. The Respondent-Pharmacy shall submit to random inspections by the Division of Drug Control (DDC) on a quarterly basis;

2. The Respondent-Pharmacy shall pay a fine to the Board of Fifteen Hundred Dollars (\$1500); and be it further

ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

ORDERED that should the Board receive a report that the Respondent-Pharmacy's practice is a threat to the public health, welfare and safety, the Board may take immediate action against the Respondent-Pharmacy, including lifting the Stay of Suspension, or

revocation, providing notice and an opportunity to be heard are provided to the Respondent-Pharmacy in a reasonable time thereafter. Should the Board receive in good faith information that the Respondent-Pharmacy has substantially violated the Act or if the Respondent-Pharmacy violates any conditions of this Order or of Probation, after providing the Respondent-Pharmacy with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent-Pharmacy, including lifting the Stay of Suspension, or revocation. The burden of proof for any action brought against the Respondent-Pharmacy as a result of a breach of the conditions of the Order or of Probation/Suspension shall be on the Respondent-Pharmacy to demonstrate compliance with the Order or conditions; and be it

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

ORDERED that, at the end of the Probationary period, the Respondent-Pharmacy may petition the Board to be reinstated without any conditions or restrictions on its permit, provided that it can demonstrate compliance with the conditions of this Order. Should the Respondent-Pharmacy fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary. Should the Respondent-Pharmacy fail to petition the Board for reinstatement, the conditions of Probation shall remain as is;

ORDERED that for purposes of public disclosure, as permitted by Md. State Govt. Code Ann. §10-617(h) (Repl. Vol. 1999), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank that it is mandated to report to.



Stanton G. Ades, President
State Board of Pharmacy

**CONSENT OF PAMELA ARREY ON BEHALF OF
MEDICINE SHOPPE #23**

I, Pamela Arrey, owner of Medicine Shoppe #23, on its behalf, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Joseph Kum, and have been advised by him of the legal implication of signing this Consent Order;

2. I am aware that without my consent, the pharmacy's permit to operate as a pharmacy in this State cannot be limited except pursuant to the provisions of § 12-409 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et seq., (1999 Repl. Vol.)

3. I am aware that the pharmacy is entitled to a formal evidentiary hearing before the Board

By this Consent Order, I, on behalf of the Respondent-Pharmacy, hereby consent and admit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. By doing so, I waive my right to a formal hearing as set forth in § 12-411 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in §12-412 of the Act and §10-201, et seq., of the APA. I acknowledge that my failure to abide by the conditions set forth in this Order and following

proper procedures, the Respondent-Pharmacy may suffer disciplinary action, possibly including revocation, against its permit to operate as a pharmacy in the State of Maryland.

11-13-02
Date
Medicine Shoppes #23

Pamela Arrey
Pamela Arrey, P.D., on behalf of the

STATE OF
CITY/COUNTY OF Montgomery :

I HEREBY CERTIFY that on this 13th day of November, 2002 before me, JOHN N. EPIE, a Notary Public of the foregoing State and (City/County),
(Print Name)
personally appeared Pamela Arrey, on behalf of Medicine Shoppe #23, Permit P01709, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

EPIE JOHN NKEDE
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires February 8, 2006

E. John Nkede
Notary Public

My Commission Expires: Feb. 8, 2006