

IN THE MATTER OF

ADERONKE ADEBANJO

License No. 11971

and

HOPE FOR ALL PHARMACY &  
STORES, INC.

Permit No. P04150

\* BEFORE THE

\* MARYLAND BOARD OF

\* PHARMACY

\* Cases No. DHMH-BPH-114-12-39231  
DHMH-BPH-114A-12-39406

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**FINAL DECISION AND ORDER**

On May 16, 2012, Aderonke Adebajo and Hope for All Pharmacy & Stores, Inc. (collectively referred to as the "Respondents"), were issued Notices of Intent to Revoke their pharmacist license and pharmacy permit, respectively, based on allegations that the Respondents were engaged in illegal pharmacy practices, provided false information to the Maryland Board of Pharmacy (the "Board"), and failed to cooperate with a lawful investigation of the Board, all of which constitute grounds for discipline under Md. Code Ann., Health Occ. §§ 12-313, 12-403, and 12-409.

An evidentiary hearing was held on these charges on February 21 and 22, 2013, at the Office of Administrative Hearings. Administrative Law Judge Marc Nachman issued a 64-page Proposed Decision on May 23, 2013, recommending the upholding of certain charges and dismissal of others. Further, Judge Nachman proposed a sanction against Ms. Adebajo's pharmacist license of 60 days suspension, probation for 3 years, and a fine of \$10,000; and a sanction

against the permit held by Hope for All Pharmacy of 60 days suspension, probation for 3 years, and a fine of \$10,000. The Respondents filed Exceptions with the Board, and an Exceptions Hearing was held before the Board on October 30, 2013. This Final Decision and Order constitutes the Board's final decision in this case.

### **FINDINGS OF FACT**

The Board adopts the findings of fact proposed by Administrative Law Judge Marc Nachman in the Proposed Decision, dated May 23, 2013 (the "Proposed Decision"). The Proposed Decision is incorporated into this Final Decision and Order and is attached as Attachment A.

### **OPINION**

The Board adopts the Opinion set forth in the Administrative Law Judge's Proposed Decision except as otherwise stated below.

#### **Internet Pharmacy Practice**

The Respondents were charged with professional incompetence in their filling of prescriptions for drugs with high potential for abuse without consideration as to the validity of the prescriptions. The Proposed Decision describes in sufficient detail the business model with which the Respondents utilized an internet broker. The internet broker provided the Respondents with as many prescriptions as they wished to fill. Almost all of the prescriptions, at least the prescriptions for which the Respondents maintained records, were filled for

Tramadol 50 mg, quantity 180, for patients located outside of Maryland (primarily in Texas). The prescribers contracted by the internet broker were located in the State of Washington, New York, and Pennsylvania.

The Respondents contend that because there are no specific laws prohibiting internet pharmacy practice, the Respondents committed no violation when dispensing prescriptions received via an internet broker. The Respondents further contend that because the drugs dispensed via the internet broker were not controlled substances, the Respondents had no obligation to ensure the validity of the prescriptions. The Board rejects both assertions as they clearly have no basis in competent and professional pharmacy practice.

The fact that the Respondents engaged in pharmacy practice via an internet broker does not relieve them of the inherent obligation to practice pharmacy in a manner that benefits the health of patients and, at minimum, does not cause harm. The practice of pharmacy, no matter the medium, must adhere to basic professional standards, including receipt of a valid prescription, maintaining documentation of the valid prescription, and engaging in basic pharmaceutical care.

The Respondents knew or should have known that the prescriptions received via the internet broker were not valid; that is, that the prescriptions were not based on a legitimate patient-prescriber relationship. The fact that all of the prescriptions were written at the specific request of patients located outside of Maryland by prescribers usually located in yet another state should have caused the Respondents concern that the prescriptions were not valid. The fact that all

of the prescriptions were written for the same drug and same quantity – Tramadol 50 mg, quantity 180 – regardless of the patient’s ailment, age, or medical history, should have caused the Respondents concern that the prescriptions were not valid. The sheer volume of prescriptions available for pharmacies to dispense via the internet broker, all for the same addictive drug, same large quantities, and written by the same prescribers for patients located throughout the U.S., should have caused the Respondents concern that the prescriptions were not valid.

Indeed, one patient, D.R., was prescribed 3 prescriptions within 2 days, all for Tramadol 50 mg, quantity 180, two of which were issued by the same prescriber just one second apart.<sup>1</sup> Another prescription for patient N.Y. indicated that she was currently under treatment for health problems, but there is no documented consultation with the prescriber. Similarly, patient R.A., a male, indicated that he was pregnant or nursing in the past 12 months, and taking other medications, and yet there is no documented consultation with the prescriber.

Furthermore, the Respondents failed to maintain basic prescription records for the prescriptions filled via the internet broker. The Respondents purchased 5,000 tablets of Tramadol on May 10, 2011, and filled one prescription for 30 tablets through the community pharmacy on May 18, 2011.<sup>2</sup> An audit of Tramadol in the pharmacy inventory, however, indicated a shortage of 4,788 tablets. The Respondents were unable to account for the massive shortage.

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<sup>1</sup> The directions for each prescription were take a maximum of 8 tablets per 24 hours, making each prescription a minimum 22-day supply.

<sup>2</sup> The Respondents also ordered 3,000 Tramadol tablets on April 29, 2011, and 1,000 on March 8, 2011. However, the Respondents’ community dispensing report indicates that only 280 tablets of Tramadol had been dispensed since March 27, 2010.

The Board infers that this shortage of Tramadol is due to the Respondent's filling of prescriptions through the internet broker.<sup>3</sup>

The fact that the Respondents maintained two separate prescription systems, one for the community practice and one for prescriptions obtained through the internet broker, is itself problematic from a clinical perspective. A pharmacist cannot effectively perform drug utilization reviews or check for adverse drug reactions if she is utilizing two separate systems of prescription profiles. In addition, the Respondents did not maintain required prescription records for prescriptions filled via the internet broker with the exception of the handful of records the inspectors found at the time of their inspection in May 2011. It goes without saying that medical records, including prescription records, must be maintained for every prescription filled, regardless of the manner in which it was filled. Merely because the Respondents were filling prescriptions through an internet broker does not relieve them of the basic requirement to maintain medical records for all prescriptions filled by the Respondents.

The Respondents also argue that they were under no obligation to question the validity of the internet broker's prescriptions because Tramadol is not a controlled substance. The Board is aware that Tramadol is not a controlled substance, but it is also aware that Tramadol has significant abuse potential, thus making it a popular drug obtained through internet brokers. See *In the Matter of Eastern Shore Pharmacy*, Case No. PI-11-069 (Nov. 28, 2012); *In the Matter of Apple Discount Drugs*, Case No. PT-10-025 (July 15, 2010).

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<sup>3</sup> The DDC inspectors found evidence of internet orders, some with labels attached, in the pharmacy during the May 2011 inspection that would account for approximately 6,200 tablets of Tramadol for the period April 28, 2011 through May 17, 2011 alone.

A pharmacist may only dispense a prescription drug, controlled or non-controlled, upon a valid prescription. To argue that a pharmacist is under no obligation to question suspect prescriptions merely because the prescriptions are not for controlled substances defies logic. A pharmacist is an independent licensed healthcare professional responsible for providing safe and appropriate medication therapy to patients. A pharmacist who blindly takes and fills prescription orders despite overwhelming indications that undermine the validity of the prescription is professionally incompetent. Respondent Adebajo testified that she began filling internet prescriptions after a short hiatus because "business was slow". This further buttresses the Board's determination that the Respondents deliberately ignored obvious indications that the internet "prescriptions" were not valid in favor of personal financial gain.

#### Filing a False Report or Record

The Respondents indicated on the 2009 pharmacy application that the pharmacy did not conduct business on the internet. On the November 2011 pharmacy renewal application, the Respondents indicated that the pharmacy only conducted internet business through SureScripts, which is an intermediary approved by the Maryland Health Care Commission. The evidence at the hearing demonstrated that the Respondents engaged in internet pharmacy practice in 2009 and 2011, and not only through SureScripts.

The ALJ found Respondent Adebajo's testimony was "tailored to exculpate her and her pharmacy." Respondent Adebajo testified that she engaged in internet practice in May, June, and July 2009. When reminded on

cross-examination that she told an inspector in June 2009 that she was not engaged in internet pharmacy, however, she altered her testimony to state that she ceased internet practice in May 2009, or that she could not recall. In addition, as stated above, the Respondents failed to maintain, or provide to the DDC, records of any prescriptions filled via the internet broker in 2009. Thus, the Board concurs with the ALJ and does not find Respondent Adebajo's testimony regarding the chronology of her pharmacy's internet practice to be credible.

Respondent Adebajo argues that the information in the application was truthful because she was not engaged in internet pharmacy at the precise time she filed the application, although she testified that her internet practice in 2009 was intermittent. Taken to its extreme, by the Respondents' logic, the Respondents could decide to cease internet practice the day before filing an application and re-engage in internet practice the day after without having to disclose such practice on the application. This interpretation is self-serving and simply not reasonable. The Respondents were engaged in internet pharmacy practice in 2009 and 2011 and should have indicated as such on the applications, as the ALJ correctly found that they should have truthfully indicated such information to the inspectors in 2009.

Furthermore, the Board rejects the Respondents' argument, and the ALJ's opinion, that the Respondents' untruthful answer regarding internet practice on the 2009 and 2011 applications was irrelevant because the question does not relate to a minimum qualification to obtain a pharmacy permit, such as pharmacy security and other facility requirements. First, the Board relies on truthful



information in the application as a whole. It does not infer various levels of truthfulness of particular answers based on a determination of the question's relevance by the applicant. Thus, any information set forth in an application or any other record provided by a licensee to the Board must be entirely truthful, not partially truthful. To posit otherwise would severely impair the licensing and oversight responsibilities of the Board.

Second, Respondent Adebajo signed an attestation affirming the truthfulness of all of the information provided in the application. It is manifest that an applicant should be held to this attestation. Respondent Adebajo cannot sign an attestation affirming the truthfulness of the information in the application and then argue that she cannot be held to her attestation because the information she is attesting to is, in her opinion, irrelevant.

Third, the Respondents argued that because internet pharmacy operations are not related to minimum requirements for pharmacy operations, the Board could not deny the application regardless of how the Respondents answered the question and therefore, the question is irrelevant. If the Respondents had chosen not to answer the question regarding internet practice, and the Board refused to issue a pharmacy permit because of the failure to fully complete the application, the Respondents' argument may have more merit. The Respondents, however, did not leave that question blank; they answered it untruthfully.

Finally, the Board does not agree that its application question regarding internet practice is irrelevant. First, the Board utilizes information provided on the



application, in addition to minimum legal requirements for a permit, in order to conduct mandated annual inspections. If a pharmacy indicates on the application that it engages in sterile compounding, for example, the Board will know to conduct a sterile compounding inspection; similarly, if a pharmacy indicates that it practices internet pharmacy, the Board will know to perform an inspection related to those services. The application also requires that a pharmacy submit a floor plan of the pharmacy area – this information is utilized by the inspectors as they determine which areas to inspect. Lastly, some pharmacies and pharmacists are under disciplinary orders that prohibit internet pharmacy practice based on prior violations. The Board would be able to deny an application from a pharmacy with such a restriction if it indicated, truthfully, that it engaged in internet practice.

Despite the ALJ's erroneous interpretation and application of Md. Code Ann., Health Occ. § 12-313(b)(7) to the facts herein, the Board has determined that it is unnecessary to modify the recommended conclusions of law given the Board findings with respect to the Respondents' other violations and its sanction in this matter.

*Failure to cooperate*

The Respondents failed to permit access to a locked room that was part of the pharmacy area during the May 18, 2011 inspection. The Board agrees that prior denial of access by the Respondents in 2008 and 2009 should have been contemporaneously documented in the inspection reports. The denial of access, however, was clearly documented in the 2011 inspection of the Respondents'

pharmacy premises. It is disingenuous of Respondent Adebajo to argue that she cooperated with inspectors by attempting to contact the accountant who supposedly leased the room space, when she in fact had access to her own key the entire time. When cross-examined as to why she did not tell the inspectors she had a key to the room at her home, she simply answered, "Because they didn't ask." It is irrelevant that the inspectors did not find inculpatory evidence in the room when they finally had access to it the next day.<sup>4</sup> The law requires that inspectors have ready access to all areas that are designated pharmacy areas. Should pharmacies be permitted to hinder inspectors' access as was done in this case, inculpatory evidence will likely never be discovered, and the public health and safety will be compromised.

### Sanction

The Respondents likened the facts of this case with two prior Board disciplinary cases: *In the Matter of Apple Discount Drugs*, Case No. PT-10-025 (July 15, 2010), and *In the Matter of Eastern Shore Pharmacy*, Case No. PI-11-069 (Nov. 28, 2012). To the extent that both cases involved inappropriate dispensing of non-controlled drugs through an internet broker, and misrepresentations to Board inspectors, the Board agrees that these cases provide guidance as to an appropriate sanction to address the Respondents' egregious violations. However, the Board also agrees with the State's argument that there are additional aggravating factors involved in this case that warrant more stringent sanctions.

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<sup>4</sup> The evidence suggests that the room had been "cleaned out" and the pharmacy had its lights on after hours at 9:15 p.m. the night before.

First, the Respondents have prior disciplinary history with the Board in which the Board issued a fine of \$500 and a reprimand to each. Although the Respondents attempted to diminish the nature of the prior case, the Board notes that the Respondents' prior violations also involved misleading actions in having a staff pharmacy technician present alone in the pharmacy wearing a white jacket labeled "Pharmacist".

Second, the Respondents in this matter failed to maintain any medical records of prescriptions filled through the internet broker, aside from the handful of prescriptions found at the time of the May 2011 inspection, and as such could not substantiate the massive shortage of Tramadol in their drug inventory. Third, the Respondents' level of untruthful or misleading representations to the Board and its inspectors far exceeded any attempted by the Respondents in the Eastern Shore Pharmacy and Apple Discount Drug cases.

Therefore, the Board has determined not to adopt the recommended sanctions as proposed and, instead, to issue the sanction below that will specifically address the violations herein while permitting pharmacy operations to continue.

### **CONCLUSIONS OF LAW**

The Board adopts the conclusions of law set out in the Administrative Law Judge's Proposed Decision.

## ORDER

Based on the foregoing Findings of Fact, Conclusions of Law, and Opinion, as amended, by a unanimous decision of a quorum of the Board, it is hereby:

***Re: Hope for All Pharmacy,***

**ORDERED** that the Pharmacy permit is SUSPENDED for sixty (60) days, all of which is STAYED; and be it further,

**ORDERED** that the Pharmacy shall pay a fine of \$10,000, payable to the Maryland Board of Pharmacy within six (6) months of the date of this order; and be it further,

**ORDERED** that the Pharmacy shall be subject to random inspections for compliance with all laws, to include the laws cited herein; and be it further,

***Re: Aderonke Adebajo, R.Ph.,***

**ORDERED** that Ms. Adebajo's license shall be SUSPENDED for sixty (60) days, with thirty (30) days STAYED, effective ten (10) business days from the date of this order; and be it further,

**ORDERED** that Ms. Adebajo shall submit to the Board her pharmacist's license to be held pending completion of the suspension period; and be it further,

**ORDERED** that Ms. Adebajo shall submit to the Board policies and procedures regarding the Pharmacy's recordkeeping of prescription drug purchases, patient prescription profiles, and clinical documentation within thirty (30) days of the date of this order; and be it further,

**ORDERED** that the Board shall lift the suspension after completion of the thirty (30) day suspension period and receipt of the Pharmacy's recordkeeping policies and procedures; and be it further,

**ORDERED** that upon lifting of the suspension, Ms. Adebajo's license shall be placed on IMMEDIATE PROBATION for three (3) years, during which time Ms. Adebajo shall:

1. Within the first year of probation, successfully complete a Board-approved college-level healthcare ethics course;

2. Within the first six (6) months of probation, successfully complete 6 continuing education credits in a Board-approved course(s) focusing on substance abuse treatment and detection; and

3. Within the first six (6) months of probation, submit a research paper, with appropriate references, on standards of practice in filling prescriptions through the internet; and be it further,

**ORDERED** that Ms. Adebajo shall pay a fine of \$2,500, payable to the Maryland Board of Pharmacy within six (6) months of the date of this order; and be it further,

**ORDERED** that Ms. Adebajo may petition the Board to terminate her probation after three (3) years, provided that she has fully complied with all terms of probation and does not have any complaints or Board investigations pending against her; and be it further,


**ORDERED** that the Respondents' failure to fully cooperate with the Board shall be deemed a violation of the probationary terms and/or a violation of this Order; and be it further,

**ORDERED** that in the event the Board finds in good faith that the Respondents have violated any of the conditions of probation herein or the order, or in the event the Board finds in good faith that the Respondents have committed a violation of Title 12 of the Health Occupations Article or regulations adopted thereunder, the Board may impose further disciplinary action against the Respondents, provided that the Respondents are first given the opportunity for a hearing; and be it further,

**ORDERED** that the Respondents shall bear all costs associated with compliance with this order; and be it further,

**ORDERED** that this is a formal order of the Board and as such is a public document pursuant to Md. Code Ann., State Gov't § 10-617(h).

4/14/14  
Date

  
LaVerne G. Naesea, Executive Director  
For  
Lenna Israbian-Jamgochian, Pharm.D.  
President, Board of Pharmacy

### **NOTICE OF RIGHT TO APPEAL**

Pursuant to Md. Code Ann., Health Occ. § 12-313, and Md. Code Ann., State Gov't § 10-222, Respondent Adebajo has the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty (30) days of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't §§10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.

Pursuant to Md. Code Ann., Health Occ. § 12-412, Respondent Hope for All Pharmacy has the right to appeal this action to the Board of Review of the Department of Health and Mental Hygiene.