

**IN THE MATTER OF
SHEILA DERMAN, P.D.
LICENSE NO.: 06449**

*** BEFORE THE
* STATE BOARD
* OF PHARMACY
* CASE NO.: 12-003**

Respondent

* * * * *

FINAL CONSENT ORDER

BACKGROUND

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., (2009 Repl. Vol. and 2012 Supp.) (the "Act"), the Board charged Sheila Derman, P.D., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with violation of the following provisions of §12-313:

- (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:
 - (2) Fraudulently or deceptively uses a license;
 - (7) Willfully makes or files a false report or record as part of practicing pharmacy;
 - (15) Dispenses any drug, device, or diagnostic for which a prescription is required without a written, oral, or electronically transmitted prescription from an authorized prescriber;
 - (16) Except as provided in § 12-506 of this title, unless an authorized prescriber authorizes the refill, refills a prescription for any drug, device, or diagnostic for which a prescription is required;

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

The Board further charged the Respondent with a violation of its Pharmacist and Pharmacist Technician Code of Ethics, 10.34.10. (November 12, 2001):

.01 Patient Safety and Welfare.

A. A pharmacist shall:

- (1) Abide by all federal and State laws relating to the practice of pharmacy and the dispensing, distribution, storage, and labeling of drugs and devices, 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) Criminal Law Article, Title 5, Annotated Code of Maryland, and
 - (e) COMAR 10.19.03;

B. A pharmacist may not:

- (1) Engage in conduct which departs from the standard of care ordinarily exercised by a pharmacist;
- (3) Engage in unprofessional conduct

The Respondent was given notice of the issues underlying the Board's Charges by Letter dated December 19, 2012. Accordingly, a Case Resolution Conference was held on April 24, 2013, and was attended by David Chason, P.D. and Harry Fink, P.D., Board Members, Linda Bethman, AAG, Board Counsel, and Steven Kreindler, Compliance Coordinator, Board Staff. Also in attendance were the Respondent and her attorney, Lynn

Weinberg, and the Administrative Prosecutor, Roberta Gill, and her Administrative Assistant, Gloria T. Brown.

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 to the charges herein, the Respondent was licensed to practice pharmacy in the State of Maryland. The Respondent was first licensed on December 31, 1963. The Respondent's license expires on December 31, 2013.

2. At all times relevant herein, the Respondent was employed as a pharmacist at a National chain pharmacy in Baltimore City. The Respondent had been employed at the same pharmacy for 45 years with no prior complaints and had volunteered countless hours representing the Board and the profession at community events, such as the Flower Mart and advising persons about Medicare Part D.

3. On or about June 29, 2011, the Board received a complaint form from a Certified Registered Nurse Practitioner (CRNP) who provided the following information:

A. On June 27, 2011, the CRNP treated Patient A. Patient A had been a patient of Physician A, who had sold his practice to a hospital's network where the CRNP worked;

B. Patient A was the son of the Respondent. Patient A was unable to tell the CRNP about his medications, causing the CRNP to look them up in the

prescribing program used at the practice;

C. Upon checking that data base, the CRNP noticed that Patient A had received prescriptions in Physician A's name, and he had also received prescriptions in the CRNP's name over the past year;

D. The CRNP denies prescribing any medication for Patient A. Furthermore, none of the medication allegedly prescribed by Physician A who used to provide for the patient, but has since moved out of State, is documented in the patient's medical record. Physician A also denied prescribing the medication.

4. As a result of the complaint, the Board began an investigation, whereby it determined that the CRNP also had contacted the Respondent's employer. The Respondent provided a written report to her employer admitting that she filled the prescriptions for her son without written or oral prescriptions from Physician A or the CRNP.

5. The Respondent explained that her son, Patient A, has a complicated medical diagnosis which requires many medications and can be difficult to manage, requiring daily attention from his parents. Patient A was a patient of Physician A for approximately 18 years when, suddenly, in June, 2010, Physician A retired. The Respondent claimed that she called the practice and received oral authority to refill Patient A's prescriptions, but did not document the conversation. She continued to fill the medication and billed them to Patient A's insurance. From the Fall 2010 through September 2011, the Respondent's husband, who shared parenting responsibilities regarding Patient A, became gravely ill and was hospitalized between 6-8 times,

including at the coronary care units at two local hospitals. Based upon the crisis situation of the Respondent's husband, the Respondent continued to fill Patient A's medication and keep records of same, as she thought she was authorized to do so, but failed to ensure that Patient A kept his medical appointments.

6. However, as a result of filling the aforesaid unauthorized prescriptions, the Respondent was terminated from employment. Due to the Respondent's age, she has found it difficult to find a new job, with the exception of working one or two days a week as a pharmacist part time, which she needs to do, based on her husband's illness, which forced him to retire from his full-time job. The Respondent is now pursuing a job in an administrative position.

5. As set forth above, writing and filling unauthorized prescriptions is a violation of the Act and regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated § 12-313 (b) (7) (15), (16) and (25), and COMAR 10.34.10.01 A (1) (a) through (e) and B (1) and (3). The Board concludes that the Respondent did not violate HO § 12-213- (b) (2).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 21st day of August, 2013, by a majority of a quorum of the

Board,

ORDERED, that the Respondent shall be **SUSPENDED** for a period of One Year, all **STAYED**, and the Respondent shall immediately be placed on **PROBATION** for three (3) years, during which the following shall occur:

1. The Respondent shall take and pass the Multi-State Pharmacy Jurisprudence Examination (MPJE);
2. If practicing in a dispensing role, the Respondent shall ensure that the pharmacy employer(s) submit(s) to the Board quarterly reports; and,
3. The Respondent shall pay a fine of \$500 to the Board within the Probationary period;

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 has violated the Act or if the Respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order or of Probation shall be on the Respondent to demonstrate compliance with the Order or conditions; and be it

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

ORDERED that, at the end of the Probationary period, the Respondent may petition the Board to remove any conditions or restrictions on her license, provided that she can demonstrate compliance with the conditions of this Order. Should the Respondent fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary;

ORDERED that, for purposes of public disclosure, as permitted by Md. State Gov't. Code Ann. §10-617(h) (Repl. Vol. 2009 and 2012 Supp.), 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.



~~Lenna Israbian-Jamgochian, P.D.~~
~~President~~ SECRETARY ~~HARRY FINK JR. P.D.~~
Board of Pharmacy

CONSENT OF SHEILA DERMAN, P.D.

I, Sheila Derman, P.D., acknowledge that I am represented by counsel, Lynn Weinberg, and have consulted with counsel before entering into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed after any such hearing.

I sign this Consent Order, voluntarily and without reservation, after having an opportunity to consult with counsel, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

7/31/13
Date

Sheila Derman
Sheila Derman, P.D.

STATE OF Maryland :

CITY/COUNTY OF Baltimore :

I HEREBY CERTIFY that on this 31st day of July, 2013, before me, LARISA SHARON, a Notary Public of the foregoing State and (City/County),
(Print Name)

personally appeared **Sheila Derman, P.D., License No. 06449** 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.

Larisa Sharon
Notary Public

My Commission Expires: 12/7/16

LARISA SHARON
Notary Public
Baltimore County
Maryland
My Commission Expires Dec. 7, 2016