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| IN THE MATTER OF | * | BEFORE THE MARYLAND |
| FRANKFORD FAMILY PHARMACY | * | STATE BOARD OF |
| PERMIT NO. P06707 | * | PHARMACY |
| Respondent-Pharmacy | * | Case No. 17-148 |
| * * * * * | | * * * |

**ORDER OF
SUMMARY SUSPENSION**

Background

Based on information received and a subsequent investigation by the Maryland Board of Pharmacy (the “Board”), and subject to the Maryland Pharmacy Act (the “Act”), Md. Code Ann., Health Occ. §§ 12-101, *et seq.*, and the Maryland Administrative Procedure Act, Md. Code Ann., State Gov’t §§ 10-201 *et seq.*, the Board issued a Notice of Intent to Summarily Suspend Permit, on August 16, 2017, in which it notified Frankford Family Pharmacy (the “Respondent”) of its intent to summarily suspend the Pharmacy’s permit unless the Pharmacy demonstrated that the public health, safety or welfare did not imperatively require such emergency action, pursuant to Md. Code Ann., State Gov't §10-226(c)(2).

On September 6, 2017, the Board held a show cause hearing before a quorum of the Board to allow the Respondent the opportunity to show cause why the continued operation of the Respondent’s pharmacy did not pose an imminent threat to the health, safety and welfare of the public. The Board finds the Respondent was not able to demonstrate that continued operation of the pharmacy did not imperatively require emergency action to protect the public health, safety and welfare. Subsequent to the hearing, the Board’s inspector visited the Respondent pharmacy and reported further violations that buttressed the Board’s concerns.

FINDINGS OF FACT

1. On February 24, 2015, the Respondent was issued a permit by the Board to operate a pharmacy in Maryland under Permit No. P06707. The permit expires on May 31, 2018.

2. At all times relevant herein, the Respondent operated a community pharmacy located on Sinclair Lane, Baltimore, Maryland.

3. The Respondent's permit application indicated that the pharmacy was co-owned by David Robinson, a licensed pharmacist (License No. 14295) and a second pharmacist, Co-owner A.

4. At time some time in 2015, Mr. Robinson purchased Co-owner A's share of ownership of the Respondent pharmacy. The Respondent pharmacy did not submit to the Board a permit application based on the change of ownership, or otherwise notify the Board of the change of ownership as required by law. Pharmacy permits are not transferable and require new applications to the Board for review and approval prior to change in ownership.

5. On June 21, 2017, an arrest warrant was issued for Mr. Robinson in the United States District Court for the District of Maryland (Case No. JFM-17-0341).

6. On or about June 22, 2017, a Federal Grand Jury for the District of Maryland issued a nine-count indictment (the "Indictment") against Mr. Robinson. The Indictment charged Mr. Robinson with:

Count One – From at least August 2015, up to at least May 2016, in the District of Maryland, [Mr. Robinson], did knowingly and willfully combine, conspire, confederate, and agree with others known and unknown...to knowingly, intentionally, and unlawfully distribute and possess with intent to distribute a mixture or substance containing oxycodone, a schedule II controlled substance, and alprazolam, schedule IV controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), 21 U.S.C. § 846.

Count Two – On or about January 15, 2016, in the District of Maryland, [Mr. Robinson] did knowingly and intentionally distribute and possess with the intent to distribute a quantity of a mixture or substance containing a detectable amount of alprazolam, a Schedule IV controlled substance. 21 U.S.C. § 841(a)(1), 18 U.S.C. § 2.

Count Three – On or about January 19, 2016, in the District of Maryland, [Mr. Robinson] did knowingly and intentionally distribute and possess with the intent to distribute a quantity of a mixture or substance containing a detectable amount of alprazolam, a Schedule IV controlled substance. 21 U.S.C. § 841(a)(1), 18 U.S.C. § 2.

Count Four – On or about February 23, 2016, in the District of Maryland, [Mr. Robinson] did knowingly and intentionally distribute and possess with the intent to distribute a quantity of a mixture or substance containing a detectable amount of alprazolam, a Schedule IV controlled substance. 21 U.S.C. § 841(a)(1), 18 U.S.C. § 2.

Count Five – On or about March 9, 2016, in the District of Maryland, [Mr. Robinson] did knowingly and intentionally distribute and possess with the intent to distribute a quantity of a mixture or substance containing a detectable amount of oxycodone, a Schedule II controlled substance, and a quantity of a mixture or substance containing a detectable amount of alprazolam, a Schedule IV controlled substance. 21 U.S.C. § 841(a)(1), 18 U.S.C. § 2.

Count Six – On or about April 20, 2016, in the District of Maryland, [Mr. Robinson] did knowingly and intentionally distribute and possess with the intent to distribute a quantity of a mixture or substance containing a detectable amount of oxycodone, a Schedule II controlled substance, and a quantity of a mixture or substance containing a detectable amount of alprazolam, a Schedule IV controlled substance. 21 U.S.C. § 841(a)(1), 18 U.S.C. § 2.

Count Seven – On or about May 11, 2016, in the District of Maryland, [Mr. Robinson] did knowingly and intentionally distribute and possess with the intent to distribute a quantity of a mixture or substance containing a detectable amount of alprazolam, a Schedule IV controlled substance. 21 U.S.C. § 841(a)(1), 18 U.S.C. § 2.

Count Eight – On or about June 6, 2016, in the District of Maryland, [Mr. Robinson] did knowingly and intentionally distribute and possess with the intent to distribute a quantity of a mixture or substance containing a detectable amount of oxycodone, a Schedule II controlled substance, and a quantity of a mixture or substance containing a detectable amount of alprazolam, a Schedule IV controlled substance. 21 U.S.C. § 841(a)(1), 18 U.S.C. § 2.

Count Nine – On or about July 29, 2016, in the District of Maryland, [Mr. Robinson] did knowingly and intentionally distribute and possess with the intent

to distribute a quantity of a mixture or substance containing a detectable amount of alprazolam, a Schedule IV controlled substance. 21 U.S.C. § 841(a)(1), 18 U.S.C. § 2.

7. A trial date has not been set in the above case.

8. On or about June 23, 2017, a search and seizure warrant was issued for the Respondent pharmacy.

9. The Board's compliance coordinator ("Compliance Coordinator") was present at the Respondent pharmacy when the search and seizure warrant was executed. The Compliance Coordinator observed the recovery and confiscation of an assault rifle with ammunition (AR-15, .223 ammunition) and a large sum of cash. The Compliance Coordinator also observed the DEA confiscate records and certain controlled substances, including alprazolam and oxycodone.

10. The Compliance Coordinator observed that controlled dangerous substances remained in the Respondent pharmacy's inventory after execution of the search and seizure warrant, including but not limited to fentanyl patches (Schedule II), hydrocodone (Schedule II), hydromorphone (Schedule II), oxymorphone (Schedule II), and Tramadol (Schedule IV).

11. On June 28, 2017, the Respondent was released on personal recognizance. According to the Order Setting Conditions of Release, "[u]pon finding that release by one of the above methods will not by itself reasonably assure [Mr. Robinson's] appearance and the safety of other persons or the community, it is further ordered that [Mr. Robinson's] release is subject to "conditions, including: 1) "notify Md. Board of Pharmacy of these charges by COB on 7/3/17. To be confirmed by PTS"; 2) [Mr. Robinson] "is not to enter [the Pharmacy] but may perform off-site management functions not involving drugs or pharmacist duties"; and 3) [Mr. Robinson] is "to notify current or potential employers of pendency of this action."

12. Effective July 28, 2017, the Maryland Department of Health ("MDH"), pursuant to 42 C.F.R. § 455.23, suspended all Medicaid payments to the Respondent pharmacy as a provider

under the Maryland Medicaid program, which includes any payments from a Managed Care Organization in Maryland's Medicaid program. The MDH Office of the Inspector General and the Medicaid program found "evidence of a credible allegation of fraud committed by the [Respondent pharmacy]."

13. Due to the Medicaid suspension, the Respondent Pharmacy may only fill prescriptions that are paid for by cash, or private insurance.

14. On August 7, 2017, the Board issued an Order for Summary Suspension of David Robinson's license to practice pharmacy based on the Federal Grand Jury indictment referenced in Finding #6 above.

15. Mr. Robinson asserts that, although he is prohibited by court order from entering the pharmacy premises, the Respondent pharmacy is operational and is being appropriately supervised by three (3) part-time staff pharmacists. However, Mr. Robinsons was unable to indicate an approximate dispensing volume for his pharmacy.

16. A Board inspector attempted to inspect the Respondent pharmacy on Monday, September 11, 2017 at 4:00 p.m., the day after the show cause hearing. The Respondent pharmacy was closed and not operational although the business hours are Monday-Friday, 10:00 a.m. – 7:00 p.m.

17. A Board inspector again attempted to inspect the Respondent pharmacy on Tuesday, September 12, 2017 at 10:00 a.m. The Respondent pharmacy was again closed to the public; however, there was an individual named "Monique" inside the Respondent pharmacy. The inspector observed that "Monique" had a key to the pharmacy premises, the gates to the prescription area and pharmacy drug inventory were open, and she was going back and forth from the pharmacy to her car. The inspector approached "Monique" and asked if she was a

pharmacist, to which she indicated that she was not. "Monique" stated that if a prescription was needed the inspector would have to call the pharmacy and the prescription would be delivered. "Monique" also indicated that she did not know when a pharmacist would be arriving. The inspector provided "Monique" with her Board of Pharmacy business card and instructed her to have the pharmacist call the inspector when he arrived at the pharmacy. The inspector never received a telephone call from a pharmacist at the Respondent pharmacy.

18. The Maryland Pharmacy Act requires that a pharmacy permit holder ensure that a licensed pharmacist has sole means of access to a pharmacy and be on the pharmacy premises at all times the pharmacy is in operation in order to ensure the security and appropriate access and handling of controlled dangerous substances, among other things. A permit holder must also prevent any individual from being in the prescription area unless a pharmacist is immediately available on the premises to provide pharmacy services. Health Occ. § 12-403(c)(4); COMAR 10.34.05.02A-B.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that emergency action is imperatively required in order to protect the public health, safety and welfare in accordance with Md. Code Ann., Health Gen. § 10-226(c)(2).

ORDER

Based on agreement of the parties, it is this 25th day of Sept, 2017, by an affirmative vote of the Board, hereby

ORDERED that the Respondent's pharmacy permit be SUMMARILY SUSPENDED;

ORDERED that the Respondent shall, WITHIN THIRTY (30) DAYS, comply with the

Board's regulations regarding a pharmacy ceasing operations, COMAR 10.34.14, to include:

1. Immediately and appropriately transferring all remaining prescription drug inventory, including controlled dangerous substances, to a reverse distributor, original wholesale distributor, or another DEA registrant;
2. Submit to a closing inspection by the Board or its designee and provide documentation of its closing CDS inventory and records of all CDS transfers;
3. Submit the pharmacy's permit to the Board;
4. Notify its patients of the temporary closure and that any remaining refills of prescriptions held by the Respondent pharmacy may be transferred to another pharmacy of the patient's choice. All such transfers shall be completed within thirty (30) days of the date of this Order;
5. Notify its patients of the location to which patient records will be transferred during the suspension period;
6. Notify its wholesale distributors of this Order; and be it further,

ORDERED that the Respondent pharmacy shall be subject to Board inspections to monitor compliance with this Order; and be it further,

ORDERED that the Respondent pharmacy shall not allow David Robinson, License No. 14295, to be on the premises or provide any service, wherever located, to or on behalf of the Respondent pharmacy that requires a pharmacist's license in implementing the terms of this Order; and be it further,

ORDERED that in the event that the federal criminal proceedings in the *United States v. David Robinson*, Case No. JFM-17-0341, does not result in a finding of guilt, this summary suspension shall be lifted; and be it further,

ORDERED that in the event the Respondent pharmacy transfers ownership of the pharmacy or its assets, the Respondent pharmacy shall comply with the Maryland Pharmacy Act, its underlying regulations, and federal laws; and be it further,

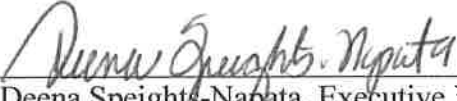
ORDERED that the Respondent shall at all times cooperate with the Board in the monitoring, supervision, and investigation of the Respondent's compliance with the terms and conditions of this Order; and be it further,

ORDERED that the Respondent's failure to fully cooperate with the Board shall be deemed a violation of the terms and a violation of this Order; and be it further,

ORDERED that this document constitutes a formal disciplinary action of the Maryland Board of Pharmacy and is therefore a public document for purposes of public disclosure, pursuant to the Public Information Act., General Provisions Art. § 4-333.

9-25-17

Date



Deena Speights-Napata, Executive Director
for
Mitra Gavvani, Pharm.D.
President, Board of Pharmacy

NOTICE OF HEARING

The Respondent Pharmacy has the right to a full evidentiary hearing before the Board regarding the issuance of this Order for Summary Suspension in accordance with the Administrative Procedure Act, §10-201 et seq., and the Board's hearing regulations, COMAR 10.34.01, which include the following rights: to be represented by counsel, to subpoena witnesses, to call witnesses on its own behalf, to present evidence, to cross-examine witnesses, to testify, and to present summation and argument. If the Pharmacy requests a hearing but fails to appear, the Board may nevertheless hear and determine the matter in the Pharmacy's absence. A request for an evidentiary hearing must be made in writing and directed to Lisa Sanderoff, R.Ph., Board Investigator Supervisor.