

<b>IN THE MATTER OF</b>	*	<b>BEFORE THE</b>
<b>SEAN PARK, Pharm.D.</b>	*	<b>MARYLAND BOARD</b>
<b>LICENSE No: 17609</b>	*	<b>OF PHARMACY</b>
<b>Respondent</b>	*	<b>Case No.: PI-14-033</b>
* * * * *	*	* * * * *

**CONSENT ORDER**

On March 19, 2014, the State Board of Pharmacy (the Board") charged Sean Park, Pharm.D. ("the Respondent"), License No.: 17609, under the Maryland Pharmacy Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§.12-101 et seq. (2009 Rept. Vol.). Specifically, the Board charged the Respondent with violation of the following provisions of the Act under H. O. § 12-313:

(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 for a pharmacists license, reprimand any licensee, place any licensee on probation, or suspend or revoke a license of a pharmacist if the applicant or licensee:

- (21) Is professionally, physically, or mentally incompetent;
- (25) Violates any rule or regulation adopted by the Board[.]

The pertinent provisions of Code Md. Regs ("COMAR"), tit. 10, §34.10.01 provide as follows:

- . A (1) 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;

### **10.19.03.07**

C. Purpose of Issue of Prescription.

(1) A prescription for a controlled dangerous substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of the individual practitioner's professional practice. The responsibility for the proper prescribing and dispensing of controlled dangerous substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of the Maryland Controlled Dangerous Substances Act Criminal Law Article, §§5-501—5-505, Annotated Code of Maryland, and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled dangerous substances.

### **10.19.03.09A**

A. Requirement of Prescriptions Listed in Schedules III, IV, and V (21 CFR §1306.21).

(1) A pharmacist may dispense directly a controlled dangerous substance listed in Schedules III, IV, or V, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, or State Law, only pursuant to either a written prescription signed by a prescribing individual practitioner or a facsimile received by facsimile equipment of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the pharmacy or pursuant to an oral prescription made by a

prescribing individual practitioner and immediately reduced to writing by the pharmacist containing all information required in Regulation .07 of this chapter, except the signature of the prescribing individual practitioner.

On March 12, 2014, a Case Resolution Conference was convened regarding this matter. Present at the Case Resolution Conference was Debra A. Smith, Administrative Prosecutor and M. Natalie McSherry, counsel for the Respondent, and Sean Park, Pharm.D. As a result of this Case Resolution Conference, the Parties agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

### **FINDINGS OF FACT**

1. The Respondent is licensed to practice pharmacy in the State of Maryland under License Number 17609. The Respondent was first licensed on August 2005. The Respondent's license is currently active and will expire in February 2015.

2. At all times relevant, Respondent was employed as a pharmacist at Brookville Pharmacy, a retail pharmacy at 7025 Brookville Rd. Chevy Chase, MD 20815 (the "Pharmacy").

3. On or about August 28, 2012, the Board conducted an annual inspection of the Pharmacy which revealed that the Pharmacy filled a significant number of prescriptions for controlled dangerous substances ("CDS") for out of state patients.

4. During the inspection, the Board's inspector observed 128 prescriptions dated in or about June 2012 through August 2012 for out of state patients from Physician A in Gaithersburg, Maryland. Many of the patients were from Ohio, Kentucky and West Virginia. Many of the prescriptions were for controlled dangerous substances (CDS.)

5. On or about September 26, 2012 two Board inspectors conducted a follow-up inspection of the Pharmacy. The Board inspectors obtained a dispensing report for prescriptions from Physician A for January 1, 2012 through September 25, 2012 that revealed the following:

a. The Pharmacy filled 497 prescriptions from Physician A between January 1, 2012 and September 25, 2012;

b. Of the 497 prescriptions, 415 were for controlled dangerous substances;

c. Of the 497 prescriptions, almost all were written for patients who reside outside of the state of Maryland, with some addresses in Kentucky, West Virginia and Ohio;

d. Of the 497 prescriptions, the majority of the patients were prescribed oxycodone (15 mg. and 30 mg.) Some were also prescribed methadone and Alprazolam; and

e. Almost all of the out of state prescriptions were filled by the Respondent.

6. The Board inspectors obtained a drug tracking report that indicated that the Pharmacy filled 237 prescriptions for oxycodone (15 mg) between March 1, 2012 and September 25, 2012. The Respondent filled 169 of the 237 prescriptions for out of state customers. The majority of the out of state customers were from Kentucky, Ohio, Florida and West Virginia.

7. The Respondent also filled eight out of state prescriptions for oxycodone

(30 mg) between March 1, 2012 and September 25, 2012.

8. The Respondent, during the time in question, was the single full time pharmacist, staffing the Pharmacy Monday through Friday during regular business hours and some additional hours.

9. The Respondent followed a predetermined procedure whenever presented with a prescription for controlled dangerous substance that included:

- a. require that the prescription be brought in during business hours so it can be checked with the prescribing physician;
- b. check the NPI data base to confirm physician's phone number;
- c. call the physician and obtain ICD diagnostic code - speaking directly to the physician for the first such prescription for each patient;
- d. check the DEA online listing to confirm physician's DEA status;
- e. confirm therapeutic dose;
- f. confirm frequency of prescriptions/refills;
- g. review pain management contract and verify with physician.

10. The Respondent states he obtained copies of written pain management contracts with the majority of Physician A's patients, confirming that they had agreed to use only one physician and one pharmacist to obtain all controlled substances, and that they were subject to random screenings to ensure compliance.

11. In June 2012, the Respondent states that he contacted his contact in the Montgomery County Police Department to inquire whether there were any investigations

pending of Physician A. The Respondent states he was told by his contact that there was not.

12. The prescriptions at issue in the Charges were for 104 patients out of a total patient base served by Respondent in the same time period of approximately 3000. Over the time period when the Respondent filled the 497 prescriptions at issue, he filled a total of over 25,000 prescriptions.

13. At the time of the second inspection, Respondent notified Physician A, who still held a valid Maryland license to practice medicine, that he would no longer fill prescriptions written by him, based on the inspection results.

14. As soon as it was available, Respondent enrolled in the Maryland PDMP and CRISP programs. He has also created a checklist of "red flags" for use in his pharmacy to help prevent abuse. He also enrolled in and attended a webinar on "Controlled Substances, Understanding Pharmacists' Obligations and Risks."

### **CONCLUSIONS OF LAW**

I. Based on the foregoing Findings of Fact, the Board concludes that the Respondent violated the following provisions of the Act and Regulations:

H. O. § 12-313:

(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 for a pharmacists license, reprimand any licensee, place any licensee on probation, or suspend or revoke a license of a pharmacist if the applicant or licensee:

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

The pertinent provisions of Code Md. Rags ("COMAR"), provide as follows:

10. 34.10.01. 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:

(2)

- (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;

COMAR 10.19.03.97 provides:

B. Purpose of Issue of Prescription.

(1) A prescription for a controlled dangerous substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of the individual practitioner's professional practice. The responsibility for the proper prescribing and dispensing of controlled dangerous substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of the Maryland Controlled Dangerous Substances Act Criminal Law Article, §§5-501—5-505, Annotated Code of Maryland, and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled dangerous substances.

II. The Board hereby **DISMISSES** the Charge of violation of H. O. § 12-313:

(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 for a pharmacist's license,

reprimand any licensee, place any licensee on probation, or suspend or revoke a license of a pharmacist if the applicant or licensee:

(21) Is professionally, physically, or mentally incompetent;

**ORDER**

By agreement of the parties, and by an affirmative vote of the Board, it is this

16<sup>th</sup> day of July, 2014 hereby:

**ORDERED** that the Respondent's license to practice pharmacy in the State of Maryland is hereby placed on **PROBATION** for a period of two (2) years, subject to the following terms and conditions:

1. Within one year from the date of this Consent Order, the Respondent shall successfully complete a Board approved continuing education six (6) credit course in recognizing the validity of prescriptions for controlled dangerous substances;
2. This course shall not count towards the continuing education requirements that the Respondent must complete to maintain his license to practice pharmacy in Maryland;
3. Within the period of probation, the Respondent shall take and pass the MPJE examination; and it is further

**ORDERED** that the Respondent shall bear all expenses associated with this Order; and it is further

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

**ORDERED** that, at a time to coincide with the expiration of two (2) years from the date of this Consent Order, the Respondent may submit a written petition to the Board

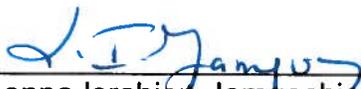
requesting termination of probation at the conclusion of the two (2) year probationary period, but only if the Respondent has fully and satisfactorily complied with all the probationary terms and conditions and there are no pending complaints. After consideration of the petition, the probation may be terminated through an order of the Board; and it is further

**ORDERED** that any violation of the terms/and or conditions of the Consent Order, including failure to complete the conditions described above, shall be deemed a violation of this Consent Order; and be it further

**ORDERED** that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board, may impose any other disciplinary action that the Board may impose under the Act, including a term of probation with conditions of probation, reprimand, suspension, and/or a monetary penalty; and it is further

**ORDERED** that the Respondent shall comply with the Maryland Pharmacy Act and with all applicable laws, statutes and regulations pertaining to the practice of pharmacy; and it is further

**ORDERED** that this document constitutes a formal action of the Maryland State Board of Pharmacy and is therefore a **PUBLIC DOCUMENT** for purposes of public disclosure, pursuant to the Public Information Act, State Gov't. § 10-611 *et seq.* (2009 Repl Vol.) and COMAR 10.34.00 *et seq.*

  
Lenna Israbian-Jamgochian, P.D. *Lenna D.*  
President State Board of Pharmacy

## CONSENT

I, Sean Park, Pharm.D. (License No. 17609), by affixing my signature hereto, acknowledge that:

1. I have/had the opportunity to consult with counsel before signing this document. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept that I am bound by this Consent Order and its conditions and restrictions.

2. I am aware that I am entitled to a hearing pursuant to Md. Health Occ. Code Ann. § 12-411, and Md. State Gov't Code Ann §§ 10-201 *et seq.* Gov't Code Ann §§ 10-201 *et seq.*

3. 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 as provided by law.

I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order.

4. I voluntarily enter into and agree to abide by the terms and conditions set forth herein as a resolution of the Charges against me. I waive my right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.

5. I acknowledge that by failing to abide by the conditions set forth in this

Consent Order, I may be subject to further disciplinary action in accordance with the Act.

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

6/25/14  
Date

  
Sean Park, Pharm.D., Respondent

Reviewed and approved by:

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M. Natalie McSherry,  
Attorney for Respondent

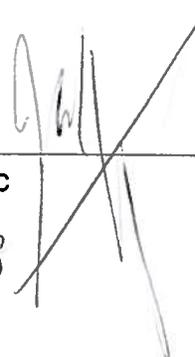
**STATE OF MARYLAND**

**CITY/COUNTY OF** Montgomery

I HEREBY CERTIFY that on this 25th day of June, 2014,  
before me, a Notary Public of the foregoing State personally appeared Sean Park,  
Pharm.D., License Number 17609, 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 WITNESSETH my hand and notarial seal.

My Commission Expires: \_\_\_\_\_  
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Notary Public  
JOSEPH WONG  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires April 12, 2018