

IN THE MATTER OF
THOMAS JOHNSON PHARMACY

Respondent

Permit Number: P05438

BEFORE THE
MARYLAND STATE
BOARD OF PHARMACY

Case Number: PI-13-095/13-495

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On April 17, 2013, the Maryland State Board of Pharmacy (the "Board") charged the **THOMAS JOHNSON PHARMACY** (the "**Respondent-Pharmacy**"), **Permit Number: P05438**, under the Maryland Pharmacy Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 12-101 *et seq.* (2009 Repl. Vol. and 2012 Supp.) and the Code of Maryland ("COMAR") regulations.

The Board charged the Respondent-Pharmacy with violating the following provisions of the Act:

H.O. § 12-409. Suspensions and revocations – Grounds.

(a) *In general.* – 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.

H.O. § 12-403. Required Standards.

(b) *In general.* – 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;
- (9) May not participate in any activity that is a ground for Board action against a licensed pharmacist under 12-313 or a registered pharmacy technician under 12-6B-09 of this title; [and/or]
- (19) May not allow an unauthorized individual to represent that the individual is a pharmacist or registered pharmacy technician[.]

H.O. § 12-313. Denials, reprimands, suspensions, and revocations—Grounds.

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

- (2) Fraudulently or deceptively uses a license;
- (3) Aids an unauthorized individual to practice pharmacy or to represent that the individual is a pharmacist or a registered pharmacy technician; [and/or]
- (25) Violates any rule or regulation adopted by the Board[.]

The Board also charged the Respondent-Pharmacy with violating the following COMAR provisions:

COMAR 10.34.10. Pharmacist Code of Conduct

.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;
- (2) Practice pharmacy under circumstances or conditions which prevent the proper exercise of professional judgment; or
- (3) Engage in unprofessional conduct.

COMAR 10.34.10.08. Refusing to Dispense a Controlled Substance.

A. If, based on generally accepted standards for the practice of pharmacy, a pharmacist has reason to believe, or should have reason to believe, that a prescription for a controlled dangerous substance was not issued for a legitimate medical purpose in the usual course of the prescriber's practice, the pharmacist may not dispense the controlled dangerous substance until the pharmacist:

- (1) Consults with the prescriber; and
- (2) Verifies the medical legitimacy of the prescription.

B. If, after consulting with the prescriber, and based on generally accepted professional standards for the practice of pharmacy, a pharmacist has reason to believe that the prescription for a controlled dangerous substance was not issued for a legitimate medical purpose in the usual course of the prescriber's practice, the pharmacist shall:

- (1) Refuse to dispense the drug; and
- (2) Report the incident to the regulatory board that licenses the prescriber.

COMAR 10.34.21.04. Duties of a Pharmacist.

- A. The pharmacist shall provide supervision to unlicensed personnel.
- B. The pharmacist may not delegate any pharmacy acts to unlicensed personnel.

COMAR 10.19.03. Controlled Dangerous Substances

.07 Prescriptions.

C. Purpose of Issue of Prescriptions

- (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 violation of the provisions of the law relating to controlled dangerous substances.

On June 26, 2013, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, the Respondent-Pharmacy agreed to enter into this Consent Order, which consists of Procedural Background, Findings of Fact, Conclusions of Law, Order, Consent and Notary.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. On or about January 3, 2011, Farangis Emamhosseini, P.D., License Number 16775, applied to the Board for a permit to operate the Respondent-Pharmacy at 177 B Thomas Johnson Drive, Frederick, Maryland 21702. In her application, Farangis Emamhosseini, P.D., indicated that she owned the Respondent-Pharmacy with her brother, Mohammed Emamhosseini ("Mr. Emamhosseini").

2. The Board issued a permit for the Respondent-Pharmacy on or about January 25, 2011. The Respondent-Pharmacy's permit is currently active and will expire on December 31, 2013.

3. At all times relevant to these charges, the Respondent-Pharmacy had a permit to operate as a retail pharmacy in the State of Maryland.

4. The Board initiated an investigation of the Respondent-Pharmacy after Board inspectors conducted an annual inspection there in or around late 2012/early 2013. This investigation revealed that the Respondent-Pharmacy filled a disproportionately large number of Schedule II controlled dangerous substance ("CDS") prescriptions for opiates that were written by physicians whose licenses the Maryland State Board of Physicians (the "Board of Physicians") subsequently suspended or revoked for inappropriate/illegitimate prescribing practices and unprofessional conduct relating to prescribing improprieties. The Board of Physicians took such action after investigating complaints from a variety of sources including law enforcement agencies and pharmacists who refused to fill opioid prescriptions that were written by the physicians the Board of Physicians disciplined.

5. The Board also reviewed information that the Respondent-Pharmacy employed or otherwise permitted an unlicensed individual, Mr. Emamhosseini, to work as a pharmacy technician there without a registration or enrollment in a Board-approved training program.

The pharmacy inspection

6. Beginning in or around late 2012/early 2013, the Board conducted an annual inspection of the Respondent-Pharmacy. The Board reviewed the Respondent-Pharmacy's prescriptions from 2011 to 2012. The inspection revealed the following:

Charles J. Kessler, M.D.

(a) The Respondent-Pharmacy filled a large number of opioid prescriptions for out-of-state patients that were written by Charles J. Kessler, M.D. ("Dr. Kessler"), a physician who was then practicing in an office located in Gaithersburg, Maryland.

(b) On November 15, 2012, the Board of Physicians issued an Order for Summary Suspension in which it summarily suspended Dr. Kessler's Maryland medical license after it determined that his continued practice constituted a substantial likelihood of a risk of serious harm to the public health, safety and welfare. Dr. Kessler also permanently relinquished his license to practice medicine in Florida while under investigation for inappropriate prescribing practices.

(c) The Board of Physicians also charged Dr. Kessler with violating various provisions of the Maryland Medical Practice Act, H.O. § 14-101 *et seq.* Pursuant to a Consent Order, dated March 20, 2013, the Board of Physicians revoked Dr. Kessler's Maryland medical license. Dr. Kessler also has pending criminal charges against him in Florida for operating/practicing at an unregistered pain management clinic.

(d) From in or about June 2012 to December 2012, the Respondent-Pharmacy filled approximately 551 prescriptions that were written by Dr. Kessler. Many of these prescriptions were written for patients from Ohio, Kentucky, Tennessee and North Carolina. A smaller number of patients who filled opioid prescriptions came from Maryland. These prescriptions were for oxycodone 30 mg¹, oxycodone 15 mg, methadone 10 mg² and carisoprodol 350 mg,³ often in combination.

(e) The inspection revealed that the Respondent-Pharmacy filled a disproportionate number of prescriptions that were written by Dr. Kessler relative to the prescriptions it filled for opioid medications for other physicians. For example, of the 315 prescriptions for oxycodone 30 mg that the Respondent-Pharmacy filled during the above time period, 209 prescriptions, or 66 %, were written by Dr. Kessler. Of the 311 prescriptions for oxycodone 15 mg that the Respondent-Pharmacy filled, 215 prescriptions, or 69 %, were written by Dr. Kessler. Of the 54 prescriptions for carisoprodol 350 mg that the Respondent-Pharmacy filled, 25 prescriptions, or 46 %, were written by Dr. Kessler. Of the 58 prescriptions for methadone 10 mg that the Respondent-Pharmacy filled, 14 prescriptions, or 24 %, were written by Dr. Kessler.

N. David Tzou, M.D.

(f) The inspection determined that from May 11, 2011 to October 18, 2012, the Respondent-Pharmacy also filled approximately 75 prescriptions for various opioid Schedule II CDS medications (including oxycodone, methadone, hydromorphone⁴ and

¹ Oxycodone is an opioid analgesic and Schedule II CDS.

² Methadone is a synthetic opioid and Schedule II CDS.

³ Carisoprodol is muscle relaxant and Schedule IV CDS.

⁴ Hydromorphone is an opioid analgesic and Schedule II CDS.

morphine⁵) that were written by N. David Tzou, M.D. ("Dr. Tzou"), whose office address at the time was in Laurel, Maryland.

(g) On September 24, 2012, the Board of Physicians issued an Order for Summary Suspension in which it summarily suspended Dr. Tzou's Maryland medical license after it determined that his continued practice constituted a substantial likelihood of a risk of serious harm to the public health, safety and welfare.

(h) The Board of Physicians also charged Dr. Tzou with violating various provisions of the Maryland Medical Practice Act, including unprofessional conduct in the practice of medicine, professional incompetence, and prescribing drugs for illegal or illegitimate medical purposes.

(i) Pursuant to a Consent Order, dated January 23, 2013, the Board suspended Dr. Tzou's Maryland medical license for a minimum period of one year, and imposed other probationary conditions.

Healthy Life Medical Group

(j) The inspection also found that the Respondent-Pharmacy filled prescriptions for various opioid analgesics that were written by several physicians and a physician assistant who worked in a practice known as Healthy Life Medical Group ("Healthy Life"), which had offices in Timonium, Maryland and Reisterstown, Maryland.

(k) In March through August, 2012, the Board of Physicians issued a series of Orders for Summary Suspension in which it summarily suspended the medical licenses of three physicians from Healthy Life, Michael Q. Durry, M.D., William J. Crittenden, III, M.D., and Daniel J. Alexander, M.D., and a physician assistant, Marina Gajduko, P.A.,

⁵ Morphine is an opiate analgesic and Schedule II CDS.

after it determined that their continued practice constituted a substantial likelihood of a risk of serious harm to the public health, safety and welfare.

(l) The Board of Physicians also charged Drs. Durry, Crittenden and Alexander, and Ms. Gajduko with violating various provisions of the Maryland Medical Practice Act, H.O. § 14-101 *et seq.*, and the Maryland Physician Assistants Act, H.O. § 15-101 *et seq.*, respectively, relating to their inappropriate prescribing of opioid analgesic medications, some of which were filled by the Respondent-Pharmacy.

(m) Pursuant to two Consent Orders, dated June 27, 2012, the Board of Physicians suspended Dr. Durry's Maryland medical license for a minimum period of two years and revoked Dr. Crittenden's Maryland medical license. By a Consent Order dated October 25, 2012, the Board of Physicians suspended Dr. Alexander's Maryland medical license for two months, subject to several probationary conditions. By a Consent Order, dated August 22, 2012, the Board of Physicians suspended Ms. Gajduko's physician assistant license for one month, subject to several probationary conditions.

7. The Respondent-Pharmacy, as described above, through its operations, was conducted in a manner so as to endanger the public health or safety, violated the standards specified in H.O. § 12-403, and otherwise was not conducted in accordance with the law, in violation of H.O. § 12-409. The Respondent-Pharmacy violated standards specified in H.O. § 12-403 when it was not operated in compliance with the law and with the rules and regulations of the Board and/or participated in an activity that is grounds for Board action under H.O. § 12-313, *i.e.*, violating a rule or regulation of the Board, in violation of H.O. § 12-313, and failing to exercise its corresponding

responsibility when filling prescriptions for physicians who issued prescriptions which, under the circumstances, were not issued for a legitimate medical purpose, in violation of COMAR 10.19.03.07C(1). When filling such prescriptions, the Respondent-Pharmacy departed from the standard of care that is ordinarily exercised by a pharmacist and engaged in unprofessional conduct, in violation of COMAR 10.34.10.01B.

Use of unauthorized personnel

8. During the inspection that occurred on November 30, 2012, the Board's inspector observed Mr. Emamhosseini, who represented that he was a co-owner of the Respondent-Pharmacy, working there. Mr. Emamhosseini stated that he worked at the Respondent-Pharmacy as a technician, made deliveries, was involved in marketing and visited physicians' offices to advertise to get business.

9. Board investigation determined that Mr. Emamhosseini is not and has never been registered as a pharmacy technician and has never applied for a student exemption. Mr. Emamhosseini is a pharmacy school graduate but at all times relevant herein, was not licensed to practice pharmacy in the State of Maryland.

10. The Board's investigation determined that Mr. Emamhosseini worked as a pharmacy technician at the Respondent-Pharmacy without being registered by the Board. Mr. Emamhosseini has never obtained a registration to work as a pharmacy technician in the State of Maryland or applied for a student exemption to practice pharmacy.

11. Board investigation determined that the Respondent-Pharmacy, through its operations, aided an unauthorized person, Mr. Emamhosseini, to work as a

pharmacy technician. In doing so, the Respondent-Pharmacy's operations departed from the standard of care that is ordinarily exercised by a pharmacist, practiced pharmacy under circumstances or conditions that prevented the pharmacists working there from properly exercising professional judgment, engaged in unprofessional conduct, and failed to exercise its corresponding responsibility to ensure that the prescriptions that were presented at the Respondent-Pharmacy were issued for a legitimate medical purpose. The Respondent-Pharmacy's actions constitute a violation of the following provisions of the Act: H.O. § 12-409(a)(1), (2) and (3); H.O. 12-403(b)(1), (9) and (19); and H.O. § 12-313(b)(3) and (25). The Respondent-Pharmacy's actions constitute a violation of the following COMAR provisions: COMAR 10.19.03.07C, and COMAR 10.34.10.01A and B.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent-Pharmacy violated the following provisions of the Act: H.O. § 12-409(a)(1)(The Respondent-Pharmacy was conducted in a manner so as to endanger the public health or safety); H.O. § 12-409(a)(2)(Violated the standards specified in H.O. § 12-403); H.O. § 12-409(a)(3)(Was otherwise was not conducted in accordance with the law); H.O. § 12-403(b)(1)(Was not operated in compliance with the law or with the rules and regulations of the Board); H.O. § 12-403(b)(9)(Participated in an activity that is grounds for Board action against a licensed pharmacist under H.O. § 12-313 or a registered pharmacy technician under H.O. § 12-6B-09); and H.O. § 12-403(b)(19)(Allowed an unauthorized individual to represent that the individual is a registered pharmacy technician). Grounds for Board action under H.O. § 12-313

include H.O. § 12-313(b)(3)(Aids an unauthorized individual to represent that the individual is a registered pharmacy technician); and H.O. § 12-313(b)(25)(Violates any rule or regulation adopted by the Board). The Board also concludes that the Respondent-Pharmacy violated the following COMAR provisions: COMAR 10.19.03.07C (Purpose of Issue of Prescription—Corresponding Responsibility); and 10.34.10.01A and B (Patient Safety and Welfare).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 26th day of August, 2013, by the affirmative vote of a majority of the members of the Board then serving:

ORDERED that the Respondent-Pharmacy's permit to operate as a pharmacy in the State of Maryland shall be placed on **PROBATON** for a minimum period of **TWO (2) YEARS**, to commence on the date the Board executes this Consent Order, and continuing until the Respondent-Pharmacy successfully complies with the following terms and conditions:

1. Within the first six (6) months of probation, the Respondent-Pharmacy shall be subject to a random Board inspection, and thereafter shall be subject to further random inspections at the Board's discretion, to ensure compliance with all laws governing pharmacy operations.
2. Within sixty (60) days of the date the Board executes this Consent Order, the Respondent-Pharmacy shall pay a civil fine in the amount of **TWO THOUSAND (\$ 2000.00) DOLLARS**, payable by certified check or money order to The Maryland State Board of Pharmacy.

AND IT IS FURTHER ORDERED that no earlier than the conclusion of the **TWO (2) YEAR** period of **PROBATION**, and provided that the Respondent-Pharmacy has fulfilled all terms and conditions of this Consent Order and probation, and there are no new complaints against the Respondent-Pharmacy, the Respondent-Pharmacy may file a written petition to the Board requesting termination of its probation; and it is further

ORDERED that if the Respondent violates any of the terms or conditions of this Consent Order or of probation, the Board, in its discretion, after notice and an opportunity for a hearing, may impose any other disciplinary sanctions the Board may have imposed under section 12-409 of the Act, including a suspension, revocation and/or a monetary fine, said violation being proven by a preponderance of the evidence; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of the Consent Order; and it is further

ORDERED that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't. Code Ann. § 10-611 *et seq.* (2009 Repl. Vol. and 2012 Supp.).

Date 8/26/13


for, _____
Lenna Israbian-Jamgochian, P.D.
President
Maryland State Board of Pharmacy

CONSENT

I, Farangis Emamhosseini, P.D., co-owner of the permit holder, the Thomas Johnson Pharmacy, acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I agree and accept to be bound

by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

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. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

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

Aug 3, 2013
Date


Farangis Emamhosseini, P.D.
Co-Owner, Thomas Johnson
Pharmacy
Respondent-Pharmacy

Read and approved:

August 19, 2013
Date


Aaron L. Moore, Esquire
Counsel for Respondent

NOTARY

STATE OF Maryland

CITY/COUNTY OF: Montgomery

I HEREBY CERTIFY that on this 3rd day of August, 2013, before me, a Notary Public of the State and County aforesaid, personally appeared Farangis Emamhosseini, P.D., co-owner, the Thomas Johnson Pharmacy, and gave oath in due form of law that the foregoing Consent Order was her voluntary act and deed.

AS WITNESS, my hand and Notary Seal.



Notary Public

My commission expires: 9/9/13

LAURIE A. OUTSA
NOTARY PUBLIC
MONTGOMERY COUNTY
MARYLAND
MY COMMISSION EXPIRES SEPT. 9, 2013