

IN THE MATTER OF \* BEFORE THE  
MOHAMMAD HUSSAIN, P.D. \* MARYLAND STATE  
LICENSE NO. 11704 \* BOARD OF PHARMACY  
RESPONDENT \* 98-BP-125

\* \* \* \* \*

**ORDER FOR REVOCATION**

Pursuant to the Md. Code Ann., State Gov't §10-226(c), the Maryland Board of Pharmacy (the "Board") hereby **REVOKES** the pharmacist license of **Mohammad Hussain** (the "Respondent"), license number 11704, under the Maryland Pharmacy Act, Md. Code Ann., Health Occ. §12-101 et seq. (the "Act").

**PROCEDURAL HISTORY**

On June 10, 1998 a quorum of the Board voted to Summarily Suspend the pharmacist license of the Respondent finding that the public health, safety, and welfare required such an action. On November 5, 1998 the Board served notice on the Respondent of the Board's intent to issue an unexecuted Order of Revocation. The Board provided the Respondent with an opportunity to request a hearing, which hearing was held before a quorum of the Board on February 17, 1999. At the hearing, the Respondent was represented by Alexander McMullen, Esquire. The State was represented by Lisa Hall, Administrative Prosecutor.

**FINDINGS OF FACT**

1. At all times relevant, Respondent was licensed to practice pharmacy in the State of Maryland.

2. The Respondent was charged by criminal indictment and found guilty by a jury in the U.S. District Court of Maryland in criminal case no. 97-CR-475-ALL of conspiracy, wire fraud, aiding and abetting, and selling sample drugs. (Attached hereto and incorporated herein is Exhibit A-Indictment).

3. The Respondent owned and operated a pharmacy located at 8309 Grubb Road in Silver Spring, Maryland, trading under the name "Rock Creek Pharmacy."

4. Under Count One it was alleged that between on or about May 1995 and until on or about October 1996 that the Respondent did unlawfully, willfully, and knowingly combine, conspire and agree with other persons to: **(a)** alter, mutilate, destroy, obliterate, and remove the whole and part of the labeling of, and to do other acts with respect to a prescription drug, while such article is held for sale after shipment in interstate commerce and which results in such article being misbranded, with the intent to defraud and mislead the FDA, insurance companies, and consumers in violation of 21 U.S.C. Section 331(k) and 333(a)(2); and **(b)** to sell and offer to sell prescription drugs subject to Title 21, United States Code Section 353(b), which had been purchased by a private hospital within the meaning of Title 21, United States Code Section 353(c)(3)(A)(ii), with the intent to defraud and mislead the FDA, insurance companies, and consumers, in violation of 21 U.S.C. Sections 331(t) and 333(a)(2).

5. The conspiracy involved the receipt by the Respondent of prescription drugs from a licensed pharmacist. Those drugs were stolen from a private hospital. Those prescription drugs were originally labeled in packaging which contained the lot number and expiration dates for the prescription drugs. These prescription drugs were then

removed from their original packaging and placed in new packaging. The new packaging did not contain information regarding the lot number and expiration dates. This served to misbrand the drugs which is a violation under 21 U.S.C. Sections 331 and 352(a), (c) and (f). This conspiracy deprived the true owners of their property and the manner of new packaging was done to avoid detection by the FDA, consumer, and insurance companies.

6. The Respondent did not keep records of the source of the stolen prescription drugs and he would later sell the misbranded drugs to customers without informing them that the prescription drugs were misbranded or stolen. Additionally, the Respondent caused the transmittal to customers' insurance companies claims for payment of the stolen and misbranded prescription drugs.

7. The Respondent paid the pharmacist cash for receipt of the stolen prescription drugs.

8. The Respondent was found guilty of Count One.

9. Under Count Two the Respondent was indicted for violation of 21 U.S.C. Sections 331(a) and 333(a)(2), which state in pertinent part: "to introduce, and deliver for introduction into interstate commerce, prescription drugs that were misbranded, with the intent to defraud and mislead the FDA, insurance companies, and consumers."

10. It was alleged that the Respondent did "receive in interstate commerce prescription drugs that were misbranded, and to deliver and to proffer delivery of misbranded prescription drugs for pay and otherwise, with the intent to defraud and mislead the FDA, insurance companies, in violation of 21 U.S.C. Section 331(c) and

333(a)(2).

11. Under Count Two the Criminal Indictment alleges that the Respondent did: "alter, mutilate, destroy, obliterate, and remove the whole and part of the labeling of, and to do other acts with respect to a prescription drug, while such article is held for sale after shipment in interstate commerce and which results in such article being misbranded, with the intend to defraud and mislead the FDA, insurance companies, and consumers in violation of 21 U.S.C. Section 331(k) and 333(a)(2)."

12. Factually the conspiracy under Count Two involved Pharmacist A obtaining prescription drugs unlawfully and providing the prescription drugs to Pharmacist B. Under the scheme the Respondent would pay cash for the prescription drugs in order to conceal the nature of the transactions.

13. These prescription drugs were likewise removed from their original packaging and placed in packaging without identification of the expiration date or lot number. The original package contained this information. This act caused the prescription drugs to be misbranded which is a violation under 21 U.S.C. Sections 331 and 352(a), (c) and (f).

14. On or about February 10, 1997 Pharmacist A had a telephone conversation with the Respondent in which a transaction was discussed which involved the unlawful obtainment of pharmaceuticals.

15. On or about February 10, 1997 Pharmacist B delivered stolen pharmaceutical to a person for the purpose of delivery to the Respondent.

16. The Respondent was found guilty of Count Two.

17. Under Count Three the Respondent "knowingly and willfully devised and intended a scheme and artifice to defraud insurance companies; and to obtain from them money and property by means of false and fraudulent pretenses, representations, and promises, well knowing that the pretenses, representation, and promises would be and were false..."

18. Part of Respondent's scheme was to cause claims for payments to be made to insurance companies for prescriptions and refills of prescriptions which were not authorized by a physician or other licensed medical provider.

19. The Respondent additionally caused claims for payments to be made to insurance companies for quantities greater than authorized by the medical provider.

20. On or about December 21, 1995, the Respondent caused the transmittal of claims via electronic transmission in Silver Spring, Maryland to Parsippany, New Jersey a claim for reimbursement which included 24 Rowasa for Patient 1 knowing that this quantity had not been authorized by a physician or other licensed medical provider.

21. The Respondent was found guilty of Count Three.

22. Count Four states that the Respondent on or about January 8, 1997 caused the electronic transmittal from Silver Spring, Maryland to Parsippany, New Jersey a claim for reimbursement which included a refill for an antibiotic for Patient 2 which had not been authorized by a physician or other licensed medical provider.

23. The Respondent was found guilty of Count Four.

24. Under Count Six the Respondent was alleged to have sold a quantity of Pepcid 40 mg on or about March 30, 1996 to Patient 3 which constituted a drug

sample. Respondent caused a claim for reimbursement to be sent to PCS Health System, Inc.

25. The Respondent was found guilty of Count Six.

26. The Respondent was found guilty of Counts 1,2,3,4, and 6 which constitute violations under 18 U.S.C. 371; 18 U.S.C. 1343 and 1342; 21 U.S.C. 331(a),(c),(k) and (t); 21 U.S.C. 333(a), (b)(1); 18 U.S.C. 2 and 18 U.S.C. 2(6).

27. On June 23, 1998 the Respondent was sentenced in criminal case 97-CR-475-ALL. The Respondent received 36 months of imprisonment, concurrent on all accounts, 3 years of supervised release and was ordered to pay restitution in the amount of \$80,358.08. The Respondent is currently incarcerated. (Attached and incorporated herein is Exhibit B-Judgement in a Criminal Case and C-Criminal Docket).

#### **CONCLUSIONS OF LAW**

The Respondent's conduct, as described above in ¶¶2 through 27 of the foregoing Findings of Fact, of misbranding prescription pharmaceutical, conspiracy, wire fraud, aiding and abetting, the refill of pharmaceutical without a valid prescription, and the selling of sample drugs to consumers, is a violation of the Act in that the conduct is a violation of §12-313 (b)(21) (Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside) and (23) (Is disciplined by a licensing or disciplinary authority of any state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statute), to wit: (2)(Fraudulently or deceptively uses a

license); (5) (Submits a false statement to collect a fee); (14) (Without having first received a written or oral prescription for the drug from an authorized provider, dispenses any drug for which a prescription is required); and (20) (Is professionally, physically, or mentally incompetent);

### **OPINION REGARDING SANCTION**

The foregoing Findings of Fact and Conclusions of Law are based on the Respondent's conviction by a jury in federal court, which conviction was not disputed by the Respondent. The hearing was conducted to give the Respondent an opportunity to be heard prior to the Board's contemplated revocation of his pharmacist's license for this conviction. Thus, the hearing was entirely devoted to the Board's consideration of potentially aggravating and/or mitigating factors related to the accepted fact of the Respondent's conviction.

Michele Palmer, Special Agent, United States Food and Drug Administration, testified regarding the existence of many aggravating factors in this case. First, in an audit for the period of February 20, 1995 to February 10, 1997, she found a discrepancy of \$333,000.00 for which the Respondent could not account. (T. 15, 16). This figure only included the audit of sixty drugs out of the pharmacy's entire inventory. (T. 22). For example, although the Respondent only bought 540 Axid tablets, he sold 5,534 tablets. He also had sold 5,958 Cipro tablets, none of which he had purchased from a legitimate wholesaler. (T. 20). The Respondent could not account for how he had purchased eighty percent of the sixty drugs audited. (T. 23). The Board finds that such huge discrepancies may be explained only by the Respondent's greed in

purchasing numerous quantities of stolen drugs at half-price from a licensed pharmacist. (T. 17). The Respondent's participation in the theft of at least several hundred thousand dollars worth of drugs over a two-year period shows that Respondent engaged in a long-term pattern of fraud and therefore is not morally fit to practice pharmacy.<sup>1</sup>

Second, the Respondent had several items in his pharmacy inventory that were unlabeled, having no lot number or expiration date. (T 25-26). In addition, he had a bag of loose pills stuffed inside a box on his shelf. (T. 28). Such products pose a danger to patients, and their existence in his inventory demonstrate his incompetence and his neglect of patient health.<sup>2</sup>

Third, the Respondent had billed an insurance company for a prescription drug for a patient when that drug had never been prescribed and had not been dispensed to the patient. (T. 28). Finally, the Respondent had billed insurance companies for the drugs he had not legitimately purchased, and all of the insurance companies stated that they would not have paid for the drugs if they had known they were stolen. (T. 28-29).

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<sup>1</sup>This use of stolen drugs also presents a direct health threat to patients, as there is no knowledge of the drugs' lot numbers or expiration dates. Instead these drugs were mixed into the existing stock, stuffed into stock bottles one hundred pills at a time when those bottles were meant to hold only 30 pills. (T. 27). The Board agrees with the Administrative Prosecutor's argument that recalled drugs such as Cipro could not have been identified due to the lack of lot numbers or expiration dates. (T. 78). The Respondent's mixing of sample drugs into the pharmacy stock poses similar threats to the public health. (T. 28).

<sup>2</sup>The Administrative Prosecutor noted that Judge Deborah Chasanow added to the Respondent's sentence because she found that his actions had created a risk of serious harm or injury to his patients. (T. 80).

All of these facts show that the Respondent is not morally fit to practice pharmacy.

In mitigation, the Respondent offered the testimony of his relief pharmacist, Cecilia Hoey Tillman, who testified that in her opinion the Respondent was a competent pharmacist who had a good rapport with his customers. (T. 63-64, 68-69). However, Ms. Tillman formed her opinion of the Respondent without being aware of the Respondent's confessions to various criminal acts regarding his pharmacy practice. (69-70).<sup>3</sup> Thus, the Board will give her opinion little weight. Even assuming that the Respondent was otherwise competent and helpful to patients, this fact would hardly mitigate the very serious violations of law that he committed, which violations endangered the public health. In addition, the integrity of the pharmacy profession must be protected from the acts of wholesale fraud committed by the Respondent. On balance, the Board finds that the aggravating factors in this case far outweigh the mitigating factors and merit the revocation of Respondent's license to practice pharmacy.

The testimony of Samina Hussain, the Respondent's wife, shows the financial consequences to one's family that inevitably result when major crimes are committed. While the Board is sympathetic to the plight of the Respondent's family, the

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<sup>3</sup>Ms. Tillman also testified that she felt it was unlikely that there existed the large amount of drugs that the FDA audit revealed to be missing because she never remembered seeing overstocked bottles. (T. 65-66). However, this testimony would only be relevant to the issue of whether these facts took place. As these facts were found by a jury to be true, the Board will not second-guess the jury's judgment. In any event, Ms. Tillman was an admittedly part-time employee who testified that "if you didn't have all of the invoices showing the things that you bought, then there would be a big discrepancy in that case." (T. 67). And that is precisely what the FDA audit showed.

responsibility for their financial situation falls squarely on the Respondent for choosing to commit fraud. Therefore, the Board does not find the resulting financial impact on his family to be a mitigating factor in this case. The Board also rejects the Respondent's argument that his struggles to make his pharmacy survive financially serve to mitigate the wholesale fraud that he committed. (T. 81). If the Respondent's pharmacy could not compete by means of legitimate business practices, he should have closed his pharmacy and found other means of using his pharmacy expertise to earn his livelihood.

Nor does the Board find to be persuasive the fact that David Denoyer, Board investigator, testified that as of his inspection on April 17, 1998, the pharmacy was operating in compliance with legal requirements and was not putting the public at risk. (T. 49-50). This inspection took place nine months after the FDA had already seized drugs and pharmacy records. (T. 51). It is hardly surprising that in the midst of a criminal prosecution that the Respondent was complying with pharmacy laws. The mere fact that he was intelligent enough not to further compound his legal troubles once he had been indicted in no way serves to mitigate the severity of his violations.

Finally, the Board rejects the Respondent's argument that because this case did not involve narcotics that somehow that fact mitigates the severity of the Respondent's violations. (T. 82). The Respondent's conduct was reprehensible. The fact that he did not also commit an even more reprehensible act does not serve to mitigate the severity of his violations.

**ORDER**

Based on the foregoing Findings of Fact, Conclusions of Law, and Opinion Regarding Sanction, by a unanimous vote of a quorum of the Board present, it is hereby

**ORDERED** on this 20 day of September, 1999, by the Board, that the license of the Respondent, Mohammad Hussain, to practice pharmacy in the State of Maryland, be and is hereby **REVOKED**; and be it further

**ORDERED**, upon presentation of this Order for Revocation, the Respondent shall immediately cause to be delivered to the Board, through the Board's executive director, Norene Pease, the display, renewal certificate, and wallet-sized license to practice pharmacy previously issued by the Board; and be it further

**ORDERED**, that this is a Final Order of the Board and as such is a Public Document pursuant to Md. Code Ann., State Gov't §10-611 et seq.

9/20/99  
Date

W. Irving Lottier, Jr.  
W. Irving Lottier, Jr., P.D.  
Secretary, Board of Pharmacy

## **NOTICE OF RIGHT TO APPEAL**

Pursuant to Md. Code Ann., Health Occ. §12-316, you have a right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this 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.

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