

IN THE MATTER OF * **BEFORE THE**
BEST CARE PHARMACY * **MARYLAND STATE**
Permit No. P06113 * **BOARD OF PHARMACY**
Respondent * **Case No. 20-040**

* * * * *

FINAL DECISION AND ORDER

Procedural Background

This case arose from allegations that Best Care Pharmacy (the "Respondent-Pharmacy"), Permit Number P06113, among other things, closed its pharmacy operations without notice to the Board or documentation regarding proper transfer of the Respondent-Pharmacy's prescription drug inventory, including controlled dangerous substances. Based upon the investigation of the Board of Pharmacy (the "Board") and pursuant to its authority under the Maryland Pharmacy Act, *Md. Code Ann.*, Health Occ. §12-101 *et seq.* (the "Practice Act"), the Board issued a Notice of Intent to Revoke Pharmacy Permit, dated April 24, 2020, against the Respondent-Pharmacy for violating the Practice Act. The Board's Notice of Intent to Revoke was sent to the Respondent-Pharmacy's address of record as well as a personal address found for the pharmacy owner. The Respondent-Pharmacy responded to the Board's Notice by submitting a written request for a hearing on May 5, 2020.

On September 18, 2020, the Board delegated authority to the Office of Administrative Hearings ("OAH") to conduct a contested case hearing and prepare proposed findings of fact, proposed conclusions of law, and a proposed order. The Board

sent a copy of its OAH delegation letter to the Respondent-Pharmacy at both the address of record as well as the personal address of the pharmacy owner. Subsequently, OAH sent a Notice scheduling a telephone prehearing conference for December 21, 2020, at 9:30 a.m. The Notice stated the date and time of the pre-hearing conference and included instructions for participation in the telephonic prehearing conference. The Notice was sent to the Respondent-Pharmacy's address of record but was returned to OAH as undeliverable. The Respondent is legally required to maintain a current address with the Board. The Notice included a statement that failure to appear may result in a dismissal of the case or a decision against the party for failing to appear. The Administrative Law Judge ("ALJ") convened the telephonic pre-hearing conference on December 21, 2020, at 9:30 a.m. as scheduled. The Administrative Prosecutor appeared on behalf of the State. No one appeared on behalf of the Respondent-Pharmacy.

At the pre-hearing conference, the Administrative Prosecutor represented that the Notice of Intent to Revoke issued in April 2020 was mailed by certified and regular mail to the Respondent-Pharmacy's same address of record and was not returned as undeliverable. The Respondent-Pharmacy thereafter requested a hearing in the matter. In addition, the Administrative Prosecutor sent required pre-hearing documents to the Respondent-Pharmacy at the pharmacy's address of record as well as via electronic mail, and those documents were not returned as undeliverable. The Respondent-Pharmacy did not request any postponement nor did the Respondent-Pharmacy contact the Administrative Prosecutor or ALJ with questions or concerns about the process, or advising of its inability to appear.

The ALJ waited for twenty (20) minutes after which the Administrative Prosecutor filed a Motion for Default against the Respondent-Pharmacy pursuant to COMAR 28.02.01.23A. The ALJ granted the Motion for Default and issued the Proposed Default Order, dated December 30, 2020, wherein the ALJ proposed that the Allegations of Fact as set forth in the Board's Notice of Intent to Revoke be adopted as findings of fact, the conclusions of law be affirmed, and that the Board may impose any disciplinary action against the Respondent-Pharmacy that it finds appropriate, including revocation.

The ALJ mailed copies of the Proposed Default Order to the Respondent-Pharmacy, the Administrative Prosecutor, and the Board at the parties' respective addresses of record. In addition, the Board sent a copy of the Proposed Default Order to the Respondent-Pharmacy via electronic mail to the pharmacy owner. The Proposed Default Order notified the parties that they may file written exceptions to the proposed order but must do so within 30 days of the receipt of the Proposed Default Order. The Proposed Default Order stated that any exceptions and request for a hearing must be sent to the Board with a copy provided to the opposing party. Neither party filed exceptions.

FINDINGS OF FACT

Because the Board concludes that the Respondent-Pharmacy failed to appear at the OAH prehearing conference without good cause and did not file exceptions to the ALJ's Proposed Default Order, the following findings of fact are adopted from the allegations of fact in the April 24, 2020 Notice of Intent to Revoke. Those pertinent findings are set out below.

1. At all times relevant hereto, the Respondent-Pharmacy was licensed to operate as a pharmacy in the State of Maryland.¹

2. The Respondent-Pharmacy was originally issued a permit to operate as a pharmacy in Maryland on or about September 10, 2013.

3. At all times relevant hereto, the Respondent-Pharmacy was located in Baltimore, Maryland on Hilton Street.

4. The Respondent-Pharmacy's permit expired on May 31, 2020.

5. On or about April 30, 2019, an inspector went to the Respondent-Pharmacy's premises to determine if the pharmacy was operational. The inspector arrived at the Respondent-Pharmacy at approximately 3:45 p.m. The Respondent-Pharmacy's hours of operation on record with the Board were 9:00 a.m. to 5:00 p.m., Monday through Friday.

6. Upon arriving at the Respondent-Pharmacy's location, the inspector observed a sign posted on the side of the building that indicated that a pharmacy and an adult care center were coming soon.

7. The inspector also noticed that the metal front door of the Respondent-Pharmacy was down. The inspector further noticed that Respondent-Pharmacy was empty when she looked through a window. The inspector also observed that the parking lot adjacent to the Respondent-Pharmacy was empty.

¹ The Board's licensing records reflect that the Respondent-Pharmacy has previously been issued two other pharmacy permits since 2011 for two additional locations in the Baltimore area. Both of those locations are also closed, and there is no record of either undergoing a closing inspection.

8. In a letter dated September 27, 2019, the inspector notified the owner of the Respondent-Pharmacy of his failure to inform the Board of the closure of the Respondent-Pharmacy. The letter also informed the owner of the Respondent-Pharmacy of his failure to remove the signage posted outside of the Respondent-Pharmacy.

9. The owner of the Respondent-Pharmacy was asked to provide a written response within seven (7) days, explaining the circumstances surrounding the closure of the Respondent-Pharmacy and any action that he may have taken.

10. On or about November 1, 2019, the owner of the Respondent-Pharmacy contacted the inspector regarding the closure of the Respondent-Pharmacy. The owner of the Respondent-Pharmacy told the inspector that Respondent-Pharmacy had closed because a pipe had burst inside the Respondent-Pharmacy. The owner of Respondent-Pharmacy also told the inspector that he moved the pharmacy to a new location.

11. When asked about the medication that was inside the Respondent-Pharmacy, the owner told the inspector that the medication was stored at the new location.

12. On or about November 7, 2019, the Board received a letter from the pharmacist in charge (the "Pharmacist") of the Respondent-Pharmacy. The Pharmacist informed the Board that the Respondent-Pharmacy had closed in May 2019 and the Respondent-Pharmacy had moved to a new location.

13. The Pharmacist also informed the Board the medication that was inside the Respondent-Pharmacy was located at the new location. The Pharmacist did not indicate the location of the patient records.

14. The owner of the Respondent-Pharmacy failed notify the Board of the Respondent-Pharmacy's closure and failed to request a closing inspection.²

15. The owner of the Respondent-Pharmacy does not have a permit to operate a pharmacy at a new location.

CONCLUSIONS OF LAW

The Board affirms the finding of default by ALJ Sinrod in accordance with COMAR 28.02.01.23A. Furthermore, based on the foregoing, the Board adopts the ALJ's proposed Conclusions of Law and concludes that the Respondent-Pharmacy is subject to discipline based on *Md. Code Ann.*, Health Occ. § 12-409(a)(2) and (3), § 12-403(c)(1) and (9), § 12-313(b)(21) and (25); COMAR 10.34.10.01A(1), 10.34.10.01B(1) and (3), 10.34.14.03A(1)(a) and (b), 10.34.14.03A(2) and 10.34.14.04B and G.

SANCTION

The Board adopts the recommendation by the ALJ to impose a sanction, and thus, imposes a revocation of the Respondent-Pharmacy's permit to operate a pharmacy in Maryland. Although the Respondent-Pharmacy purportedly ceased operations in May 2019, the Board's imposition of a revocation of the Respondent-Pharmacy's permit is warranted based on the Respondent-Pharmacy's failure to provide documentation of proper transfer of its controlled dangerous substances and other prescription drug inventory and confidential patient records to a DEA registrant or other authorized entity,

² A closing inspection is required under the Board's regulations, COMAR 10.34.14.03-04-.05, in order to provide documentation that a pharmacy has, among other things, legally transferred or returned prescription drug inventory,

and otherwise comply with notice and process requirements relating to closure of a pharmacy. The Respondent-Pharmacy's transfer of prescription drugs, including controlled dangerous substances, to an unidentified, unlicensed location demonstrates disregard for the myriad laws in place to ensure the safe storage and closed system transfer of potentially dangerous and addictive drugs and the confidentiality of patient records.

ORDER

It is on this 17th day of September, 2021, on the affirmative vote of a quorum of the Board, hereby,

ORDERED that the pharmacy permit issued to BEST CARE PHARMACY, INC., Permit No. P06113, is **REVOKED**; and it is further

ORDERED that this is a final order and public document in accordance with General Provisions Art., § 4-301.

9-17-21
Date


Deena Speights, Napata, MA
Executive Director

including controlled dangerous substances, as well as confidential patient prescription records.

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Md. Code Ann., Health Occ. § 12-412, the Respondent-Pharmacy has the right to seek judicial review of this Order. Any petition for judicial review shall be filed within thirty (30) days from the date of mailing of this Order. The cover letter accompanying this Order indicates the date the decision is mailed. Any petition for judicial review shall be made as provided for in the Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If the Respondent-Pharmacy files a petition for judicial review, the Board is a party and should be served with the court's process at the following address:

Maryland Board of Pharmacy
Deena Speights-Napata, MA, Executive Director
4201 Patterson Avenue, 5th Floor
Baltimore, Maryland 21215

Notice of any petition should also be sent to the Board's counsel at the following address:

Linda M. Bethman
Assistant Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, Maryland 21201