

**IN THE MATTER OF
BEST PHARMACY**

Respondent

Permit Number: P07954

*** BEFORE THE
* MARYLAND STATE
* BOARD OF PHARMACY
* Case Number: 24-001**

* * * * *

CONSENT ORDER

On October 31, 2023, the Maryland State Board of Pharmacy (the “Board”) issued a Notice of Intent to Summarily Suspend the permit of **BEST PHARMACY** (the “Respondent-Pharmacy”), Permit Number P079054, to practice pharmacy in the State of Maryland, and on December 20, 2023, charged it with violating the following provisions of the Maryland Pharmacy Act (the “Act”), Md. Code Ann., Health Occ. (“Health Occ.”) §§ 12-101 *et seq.* (2021 Repl. Vol. and 2023 Supp.) and the Code of Maryland Regulations (“COMAR”).

The pertinent provisions of the Act and COMAR provide:

Health Occ. § 12-403. Required standards.

....

(c) *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;
- (2) Shall be located and equipped so that the pharmacy may be operated without endangering the public health or safety;

....

- (9) May not participate in any activity that is a ground for Board action against a licensed pharmacist under § 12-313 of this title, a registered pharmacy technician under § 12-6B-09 of this title, or a registered pharmacy intern under § 12-6D-11 of this title;

....

- (13) Shall:

- (i) Make and keep on file for at least 5 years a record of each prescription prepared or dispensed in the pharmacy;

....

- (iii) Keep additional records as required by the rules and regulations adopted by the Board;

....

- (15) Shall provide such personnel, automation, and technology as are necessary to allow the licensed pharmacist employee sufficient time to utilize the pharmacist's knowledge and training to perform competently the functions of a licensed pharmacist as required by law

**Health Occ. § 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;

....

- (21) Is professionally, physically, or mentally incompetent; [and]

....

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

The pertinent provisions of Md. Code Regs. (“COMAR”) provide as follows:

COMAR 10.34.24.03. Minimum Requirements for Maintenance of Drug Acquisition Records.

- A. A pharmacy permit holder shall maintain records for all drug inventory acquisitions.
- B. The records maintained shall include:
 - (1) The name and principal address of the source of the drugs;
 - (2) The identity and quantity of the drugs received; and
 - (3) The date the drugs were received.
- C. The acquisition record shall be kept for a period of 2 years from the date the inventory was received.

COMAR 10.34.24.04. Violation and Inspection.

- A. A pharmacy permit holder shall make the drug inventory acquisition records required under this chapter available for inspection upon request by any federal, state, or local law enforcement agent, or any other duly authorized agent of the Board of Pharmacy or the Division of Drug Control within 72 hours of the request.

COMAR 10.34.10.01. 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.

On February 14, 2024, a Case Resolution Conference ("CRC") was held before a committee of the Board. As a resolution of this matter, the Respondent-Pharmacy agreed to enter into this public Consent Order consisting of Findings of Fact, Conclusions of Law, and an Order.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

BACKGROUND

1. At all times relevant hereto, the Respondent-Pharmacy was permitted to operate as a pharmacy in the State of Maryland. The Respondent-Pharmacy was originally issued a permit to operate as a pharmacy in Maryland on October 18, 2018, under Permit Number P07954. The Respondent-Pharmacy's permit is scheduled to expire on May 31, 2024.

2. The Respondent-Pharmacy is located in Hyattsville, Maryland.
3. At all times relevant hereto, the Respondent-Pharmacy was owned by an individual (the "Owner")¹, who was not licensed as a pharmacist in Maryland.
4. At all times relevant hereto, the Owner employed a pharmacist ("Pharmacist 1") licensed to practice pharmacy in Maryland to provide pharmacy services.

THE COMPLAINT

5. On or about July 6, 2023, the Board received a referral from the Maryland Office of Controlled Substances Administration ("OCSA") regarding regulatory inspections it conducted of the Respondent-Pharmacy on June 8, 2023, and July 5, 2023.

6. At the June 8, 2023, inspection, an OCSA inspector met with Pharmacist 1 and spoke with the Owner by telephone. During the inspection, the OCSA inspector discovered the following deficiencies: major discrepancy between the actual count of Schedule II Controlled Dangerous Substances ("CDS") compared to the Respondent-Pharmacy's records; Pharmacist 1 could not produce Schedule II CDS invoices prior to October 2021; and the Respondent-Pharmacy's dispensing records indicated no dispensing of Schedule II CDS since May 23, 2019, even though the Respondent-Pharmacy consistently ordered large quantities of Schedule II CDS after May 23, 2019. Moreover, the Owner stated that the Respondent-Pharmacy had not ordered Schedule II CDS since October of 2021, even though records indicated that large quantities of oxycodone were

¹ In order to maintain confidentiality, names of individuals and facilities involved in this matter will not be used in this document but will be provided to the Respondent on request.

ordered in January of 2022. Finally, the Owner stated that large quantities of Schedule II CDS were stolen during a break-in a couple of months ago, but he could not produce a police report nor a DEA 106 Form. The OCSA inspector gave the Respondent-Pharmacy two weeks to produce documents to reconcile the significant discrepancies.

7. On or about July 5, 2023, OCSA inspectors conducted a follow-up inspection of the Respondent-Pharmacy. During the inspection, OCSA inspectors noted the following deficiencies: even though Pharmacist 1 produced Schedule II CDS invoices from 2019 to 2022, many invoices were missing; Pharmacist 1 was unable to open the Schedule II CDS safe to perform a drug count due to battery problems; and the Owner reporting that he had transferred Schedule II CDS inventory from the Respondent-Pharmacy to a new pharmacy (“Pharmacy 1”) he planned to open in Takoma Park, Maryland, even though Pharmacy 1 did not have a CDS or DEA registration. OCSA inspectors then traveled to Pharmacy 1 in Takoma Park, Maryland with the Owner, intending to conduct an inspection of Pharmacy 1. The Owner, however, was unable to open the padlock to the door, stating that the “delivery person” had the key.

8. After receiving the referral from OCSA, the Board initiated an investigation of the Respondent-Pharmacy.

BOARD INVESTIGATION

9. The Board’s investigation included but was not limited to: subpoenaing pharmacy records from the Respondent-Pharmacy; reviewing the Automation of Reports and Consolidated Orders System (“ARCOS”) report regarding CDS purchased by the Respondent-Pharmacy; reviewing the Prescription Drug Monitoring Program (“PDMP”)

report regarding CDS the Respondent-Pharmacy dispensed; onsite inspections and audits of the Respondent-Pharmacy and Pharmacy 1 on or about July 7, 2023, and August 2, 2023.

10. On or about July 7, 2023, Board inspectors conducted an onsite inspection of the Respondent-Pharmacy. Based on the ARCOS report, which detailed CDS the Respondent-Pharmacy purchased, as reported by the drug wholesalers, and the PDMP report, which detailed all CDS the Respondent-Pharmacy dispensed, the Respondent-Pharmacy was unable to account for large quantities of CDS. The major discrepancies included but were not limited to the following number of CDS tablets being unaccounted for: 32,710 tablets of oxycodone 30 mg; 17,691 tablets of oxycodone 20 mg; 21,904 tablets of oxycodone 15 mg; 5,610 tablets of amphetamine salts 30 mg; and 3,500 tablets of hydrocodone/acetaminophen 10/325 mg.

11. On or about August 2, 2023, OCSA inspectors conducted a follow-up inspection and audit of the Respondent-Pharmacy to determine if any of the unaccounted-for CDS could be reconciled. Present during the inspection were the Owner, another pharmacist ("Pharmacist 2"), and a pharmacy technician. At the August 2, 2023, follow-up inspection, OCSA inspectors and Pharmacist 2 engaged in a hand-count of tablets with respect to ten (10) different CDS drugs in the Respondent-Pharmacy's inventory. An analysis of the results of the hand-count compared to the Respondent-Pharmacy's records and reports again revealed major shortages of CDS drugs. These shortages included but were not limited to the following: oxycodone 30 mg (shortage of between 24,300 to 26,910 tablets); oxycodone 20 mg (shortage of between 7,200 to 16,391 tablets); oxycodone 15

mg (shortage of between 786 to 10,548 tablets); and amphetamine salts 30 mg (shortage of between 1,600 to 4,110 tablets).

12. Following a pre-deprivation hearing on November 15, 2023, the Board, on December 11, 2023, issued an interim order summarily suspending the Respondent-Pharmacy's permit to practice pharmacy in Maryland but stayed the suspension subject to the following conditions: 1) the Respondent-Pharmacy shall inventory and return all existing CDS inventory through its reverse distributor; 2) the Respondent-Pharmacy shall immediately return its DEA registration to the DEA and its CDS registration to OCSA; and 3) the Respondent-Pharmacy was prohibited from dispensing, purchasing, storing, or otherwise handling CDS.

13. On January 18, 2024, an OCSA inspector and DEA diversion investigators visited the Respondent-Pharmacy. During the visit, the Respondent-Pharmacy agreed to have the DEA investigators take possession of all of the Respondent-Pharmacy's CDS medications and destroy them at a later time. The Respondent-Pharmacy also surrendered its DEA registration to the DEA investigators and CDS registration to the OCSA inspector.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent-Pharmacy's actions, as described above, constitute: failing to operate in compliance with the law and with the rules and regulations of the Board, *i.e.* COMAR 10.34.10.01A(1) and/or (B)(1), (2), and/or (3), and/or COMAR 10.34.24.03A, B and/or C, and/or COMAR 10.34.24.04A, in violation of Health Occ. § 12-403(c)(1); failing to be located and equipped so that the pharmacy may be operated without endangering the public

health, in violation of Health Occ. § 12-403(c)(2); participating in any activity that is a ground for Board action against a licensed pharmacist under § 12-313 of this title, *i.e.* Health Occ. § 12-313(b)(2), (21) and/or (25), in violation of Health Occ. § 12-403(c)(9); failing to make or keep on file for at least 5 years a record of each prescription prepared or dispensed in the pharmacy, in violation of Health Occ. § 12-403(c)(13)(i); failing to keep additional records as required by the rules and regulations adopted by the Board, in violation of Health Occ. § 12-403(c)(13)(iii); and failing to provide such personnel, automation, and technology as are necessary to allow the licensed pharmacist employee sufficient time to utilize the pharmacist's knowledge and training to perform competently the functions of a licensed pharmacist as required by law, in violation of Health Occ. § 12-403(c)(15).

ORDER

It is, on the affirmative vote of a majority of the Board, hereby:

ORDERED that the permit held by the Respondent-Pharmacy (Permit No. P07954) is **REVOKED**, the revocation of which is **STAYED**; and it is further

ORDERED that the Respondent-Pharmacy's permit is placed on **PROBATION** for a minimum period of **THREE (3) YEARS**, subject to the following terms and conditions:

1. During the probationary period, the Respondent-Pharmacy is prohibited from dispensing, purchasing, storing, or otherwise handling CDS;
2. During the probationary period, the Respondent-Pharmacy shall not apply for reinstatement of its CDS registration with OCSA and DEA registration with the DEA;

3. During the probationary period, the Board, at its discretion, may conduct random inspections of the Respondent-Pharmacy;
4. During the probationary period, the Board shall obtain quarterly reports from PDMP for the Respondent-Pharmacy;
5. The Respondent-Pharmacy shall provide training to all pharmacy staff members regarding proper inventory of prescription medications. Such training shall occur within ninety (90) days of the effective date of the Consent Order and yearly thereafter for the duration of the probationary period. The Respondent-Pharmacy shall provide written documentation indicating successful completion of these trainings;
6. During the probationary period, the Respondent-Pharmacy shall be monitored by a Board-approved supervisor (the "Supervisor");
7. Within sixty (60) days of the effective date of this Consent Order, the Respondent-Pharmacy shall propose and obtain approval from the Board for the Supervisor;
8. The Respondent-Pharmacy's owner and pharmacy manager(s) shall meet in person with the Supervisor on a quarterly basis;
9. During the quarterly in person meetings, the Supervisor shall audit the Respondent-Pharmacy's inventories to ensure that medications at the Respondent-Pharmacy are properly inventoried and documented;
10. The Supervisor shall provide the Board with quarterly reports regarding its supervision and audit of the Respondent-Pharmacy. The Respondent-Pharmacy is responsible for ensuring that the Supervisor provide the quarterly reports to the Board in a timely manner;
11. Within one (1) year from the Effective Date of this Consent Order, the Respondent-Pharmacy shall pay a monetary fine in the amount of **FIVE THOUSAND DOLLARS (\$5,000)**, by certified check or money order payable to The Maryland Board of Pharmacy and sent to: Wells Fargo Bank, Attn: State of MD – Board of Pharmacy, Lockbox 2051, 401 Market Street, Philadelphia, PA 19106 with the reference "Case Number 24-001 – Best Pharmacy" on the certified check or money order;
12. The Respondent-Pharmacy shall operate in accordance with the laws and regulations governing the practice of pharmacy in Maryland; and

13. At the conclusion of two (2) years from the effective date of this Consent Order, the Respondent-Pharmacy may file a written petition requesting a modification of the probationary conditions. After reviewing the petition, the Board may grant or deny the petition at its discretion.

AND IT IS FURTHER ORDERED that at the conclusion of the entire **THREE (3) YEARS** from the effective date of this Consent Order, the Respondent-Pharmacy may submit a written petition to the Board requesting termination of probation, provided it has been fully compliant with this Consent Order and has no outstanding complaints; and it is further

ORDERED that if the Board determines, after notice and an opportunity for an evidentiary hearing before the Board if there is a genuine dispute as to a material fact or a show cause hearing before the Board if there is no genuine dispute as to a material fact, that the Respondent-Pharmacy has failed to comply with any terms or conditions of this Consent Order, the Board may lift the stay of the revocation; and it is further


ORDERED that the Respondent-Pharmacy shall at all times cooperate with the Board in the monitoring, supervision, and investigation of its compliance with the terms and conditions of this Consent Order; and it is further

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

ORDERED that the Effective Date of this Consent Order is the date on which the Consent Order is executed by the Board President or a designee, and it is further

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Provisions §§ 4-101 *et seq.* (2019 Repl. Vol.).

3-19-24
Date


Deena Speights-Napata, MA
Executive Director
Maryland State Board of Pharmacy

CONSENT

Best Pharmacy, through its owner Melo Forchu, acknowledges that it is represented by counsel and has consulted with counsel before entering into this Consent Order. By this Consent and for the purpose of resolving the issues, allegations, and disputed claims raised by the Board, Best Pharmacy agrees to be bound by the foregoing Consent Order and its conditions.

Best Pharmacy acknowledges the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which it would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on its own behalf, and to all other substantive and procedural protections provided by the law. Best Pharmacy agrees to forego any opportunity to challenge these allegations. Best Pharmacy acknowledges the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. Best Pharmacy affirms that it is waiving its right to appeal any adverse ruling of the Board that might have followed after any such hearing.

Best Pharmacy voluntarily and without reservation signs this Consent Order after having an opportunity to consult with counsel, and it fully understands and comprehends the language, meaning and terms of this Consent Order.

3-11-2024
Date



Melo Forchu
Owner of *Respondent-Pharmacy*

NOTARY

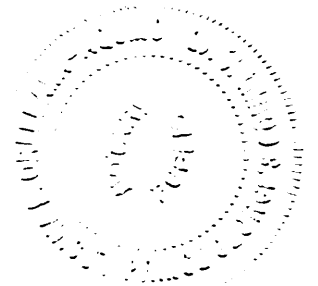
STATE OF MARYLAND
CITY/COUNTY OF Prince George's

I HEREBY CERTIFY that on this 11th day of March, 2024, before me, a Notary Public of the foregoing State and City/County personally appeared Melo Forchu and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notary seal.

Lesvia E. Orellana-Aquino
Notary Public

My commission expires: 05/19/2027



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