

**IN THE MATTER OF
MEDICAL PHARMACY OF
CHEVY CHASE**

PERMIT NO: P02003

Respondent-Pharmacy

*** BEFORE THE
* STATE BOARD
* OF PHARMACY**

* CASE NUMBER: 05-109**

*** * * * ***

FINAL DECISION AND ORDER

Background

On August 15, 2001, the Respondent-Pharmacy entered into a Consent Order with the Board of Pharmacy (the "Board") as a settlement of charges stemming from a violation of the Maryland Pharmacy Act, codified at *Md. Code Ann.*, Health Occ. § 12-101 *et seq.* ("the Act"). The Consent Order was based upon an audit disclosing a shortage of 14.02 grams of medicinal cocaine in the Respondent-Pharmacy's inventory. The Consent Order mandated that the Respondent-Pharmacy's permit to operate as a pharmacy in Maryland be placed on probation for one (1) year, with the condition that the Division of Drug Control ("DDC") conduct three (3) random audits of Schedule II substances during the probationary period, and that there be no other problems (i.e. shortages or overages) revealed by the audits.

The Respondent-Pharmacy was subsequently convicted of felony Medicaid fraud by the Maryland Office of the Attorney General. Specifically, on January 4, 2005, the Respondent-Pharmacy entered into a Plea Agreement in the Circuit Court for Baltimore City wherein the Respondent-Pharmacy pled guilty to one (1) count of felony Medicaid fraud in violation of Article 27 § 230B and C of the Annotated Code of Maryland, currently codified at Criminal Law Article § 8-509(2). Based upon the Plea Agreement, the Respondent-

Pharmacy was found guilty of felony Medicaid fraud, and was ordered to pay a fine of \$50,000.

As a result of the Respondent-Pharmacy's felony conviction, as well as the Respondent-Pharmacy's failure to comply with the Consent Order, the Board issued an unexecuted Order of Revocation, which alleged the following violations of the Act: §§ 12-409(a)(2) and (3), and 12-403(b)(1) and (9), *to wit*: § 12-313(b)(21) and (24), as well as the Code of Conduct, Code Md. Regs. tit. 10 § 34.10.01. On January 25, 2006, the Board held a contested case hearing under the Administrative Procedure Act, *Md. Code Ann.*, State Gov't § 10-201 *et seq.*, before a quorum of the Board. Following the conclusion of the hearing, the same quorum of the Board convened to deliberate and voted to uphold the charges against the Respondent-Pharmacy and to impose the sanctions contained in this Final Decision and Order.

SUMMARY OF THE EVIDENCE

A. Documents

The following documents were admitted into evidence.

- | | | |
|------------------------|---|---|
| State's Exhibit No. 1A | - | Computer Printout Info for Respondent |
| B | - | Computer Printout Info for Respondent-Pharmacy |
| State's Exhibit No. 2A | - | 8/15/01 Board Order for Respondent-Pharmacy |
| B | - | 8/15/01 Board Order for Respondent |
| C | - | MPJE test results |
| D | - | CEU Record, dated 5/5/04 |
| State's Exhibit No. 3 | - | Medicaid Fraud Unit documents |
| State's Exhibit No. 4 | - | Respondent-Pharmacy renewal documents and License |
| State's Exhibit No. 5A | - | Respondent's renewal documents, 5/05, and license |
| B | - | New York Order |

- State's Exhibit No. 6A - Press Releases
- B - Court-related documents

- State's Exhibit No. 7 - Chandra Mouli's investigative report

B. Summary of Pertinent Witness Testimony

Chandra Mouli, the Board's Compliance Officer, testified that he is responsible for investigating the complaints filed with the Board and that he conducted the investigation into the Respondent-Pharmacy's indictment and conviction in 2005. (T. 23-25) Mr. Mouli also testified regarding the Respondent-Pharmacy's disciplinary history. (T. 12)

The Arthur Weinstein, owner of the Respondent-Pharmacy, testified that he owned and operated the Respondent-Pharmacy for approximately 9-10 years. (T. 44) Mr. Weinstein further testified that he, and the Respondent-Pharmacy, provided pharmaceutical services to intermediate care facilities for mentally retarded, and that the residents of these facilities were receiving approximately 15-20 drugs per month. (T. 38) Mr. Weinstein admitted that he, through the Respondent-Pharmacy, billed the State Medicaid program for drugs that were not prescribed or dispensed because the drugs that were prescribed were not on the Medicaid program's formulary. (T. 50) Mr. Weinstein further admitted that he, through the Respondent-Pharmacy, billed the State Medicaid program for excess quantities of drugs to accommodate the different settings of the residents. (T. 39-40)

FINDINGS OF FACT

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

2. The Respondent-Pharmacy was originally issued a permit by the Board on August 13, 1996. The Respondent-Pharmacy last renewed its permit on December 7, 2005.

3. Arthur Weinstein, P.D., is the sole dispensing pharmacist and the owner of the Respondent-Pharmacy, which is a retail pharmacy operated in Chevy Chase, Montgomery County, Maryland. The corporate name of the Respondent-Pharmacy is Bellview Ltd.

4. On August 15, 2001, the Respondent-Pharmacy entered into a Consent Order with the Board as a settlement of charges that the Respondent-Pharmacy maintained a significant shortage in medicinal cocaine.

5. On January 4, 2005, the Respondent-Pharmacy entered into a Plea Agreement in the Circuit Court for Baltimore City wherein the Respondent-Pharmacy pled guilty to one (1) count of felony Medicaid fraud in violation of Article 27 § 230B and C of the Annotated Code of Maryland, currently codified at Criminal Law Article § 8-509(2). The Plea was based upon the fact that Mr. Weinstein, the owner of the Respondent-Pharmacy, billed the Medicaid Program for excess quantities of drugs than were prescribed and dispensed and billed the Medicaid Program for drugs that were never prescribed or dispensed.

6. On January 4, 2005, the Honorable Paul Smith accepted the Plea and found the Respondent-Pharmacy guilty of felony Medicaid fraud. The Respondent-Pharmacy was ordered to pay a fine of \$50,000.¹

7. A pharmacy which is found guilty of Medicaid fraud, a felony and a crime of moral turpitude, is in violation of the Act and the regulations thereunder.

¹ The owner of the Respondent-Pharmacy, Mr. Weinstein, was similarly found guilty of felony Medicaid fraud and ordered to pay \$320,000 in restitution, a fine of \$80,000, and \$20,000 for reimbursement of investigative costs.

CONCLUSION

Based upon the foregoing summary of the evidence and findings of fact, the Board concludes that the Respondent-Pharmacy is in violation of Health-Occupations Article §§ 12-403(b)(1) and (9) and 12-409(a)(2) and (3).

SANCTIONS

The Respondent-Pharmacy was subject to disciplinary action by the Board in 2001 due to the existence of significant shortages of medicinal cocaine. Subsequently, the Respondent-Pharmacy was convicted in 2005 of felony Medicaid fraud. The Respondent-Pharmacy has demonstrated, through its disciplinary and criminal convictions, an inability to operate in accordance with Maryland law. Based upon the Respondent-Pharmacy's repeated violations of the law, the Board believes that the Respondent-Pharmacy has forfeited its right to operate as a pharmacy in the State of Maryland.

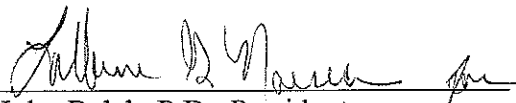
ORDER

Based on the foregoing Findings of Fact and Conclusion, by a unanimous decision of a quorum of the Board it is this 26th day of April, 2006, hereby:

ORDERED that the Respondent-Pharmacy's permit to operate as a pharmacy in the State of Maryland be and is hereby REVOKED, effective sixty (60) days from the date of this Order; and be it further,

ORDERED that, within sixty (60) days of the date of this Order, the Respondent-Pharmacy shall return to the Board its permit to operate a pharmacy in the State of Maryland; and be it further,

ORDERED that this is a formal Order of the Maryland Board of Pharmacy, and as such is a public document pursuant to the Maryland Public Information Act, codified at *Md. Code Ann.*, State Gov't § 10-611, *et. seq.*, (2004 Repl. Vol.).


John Balch, P.D., President
Maryland 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 Judicial Review must be filed within thirty (30) days of your receipt of this executed Order, and shall petition for judicial review of a final decision pursuant to the Administrative Procedure Act, codified at State Gov't § 10-201, *et seq.* (2004 Repl. Vol.).