

IN THE MATTER OF * BEFORE THE
PRIORITY HEALTHCARE, LLC. * STATE BOARD
Respondent * OF PHARMACY
PERMIT No: PW0275 * Case No.: PI-10-042

* * * * *

CONSENT ORDER

On June 15, 2011, the State Board of Pharmacy (the "Board") issued a Notice of Intent to Revoke the pharmacy permit of **Priority Healthcare, LLC. ("Respondent-Pharmacy")**, Permit No.: **PW0275**, under the Maryland Pharmacy Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 12-101 *et seq.* (2009 Repl. Vol.).

The pertinent provisions of the Act provide as follows:

H.O. § 12-402. Qualifications of applicants.

To qualify for a pharmacy permit, an applicant shall satisfy the Board that the pharmacy for which the application is made will be operated in accordance with the standards specified in § 12-403 of this subtitle.

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 until this title:

(3) Shall ensure that a licensed pharmacist be immediately available on the premises to provide pharmacy services at all times the pharmacy is in operation;

(4) Shall be supervised by a licensed pharmacist who is responsible for the operations of the pharmacy at all times the pharmacy is in operation;

H.O. § 12-413. Entry and inspection.

(c) *Hindering inspections.* – A person may not hinder an inspection or an investigation conducted under this section.

H.O. § 12-702. License obtained by false representation.

(a) *In general.* – A person may not obtain a license by making any false representation.

(b) *Penalty.* – On conviction of a person for obtaining a license by false representation, the license held by that person is void.

COMAR 10.34.05.02 Prescription Area. A. The pharmacy permit holder shall: (3) Prevent an individual from being in the prescription area unless a pharmacist is immediately available on the premises to provide pharmacy services;

COMAR 10.34.05.02 Prescription Area. B. The pharmacist shall: 2. Have sole possession of a means of access to the pharmacy, except in emergencies;

COMAR 10.34.05.03 Pharmacy Operation. A. A pharmacist shall be immediately available on the premises to provide pharmacy services at all times the pharmacy is in operation.

FINDINGS OF FACT

The Board bases its charges on the following facts that the Board has cause to believe are true:

1. At all times relevant to the charges herein, the Respondent-Pharmacy was permitted to operate as a waiver pharmacy in the State of Maryland, having been issued permit number PW0275. The Respondent-Pharmacy was first issued a permit on August 16, 2006. The Respondent-Pharmacy's permit will expire on December 31, 2011.

2. At all times relevant, the Respondent-Pharmacy was owned by Marianna Pesti. Ms. Pesti is also the President of the Respondent-Pharmacy.

3. The Respondent-Pharmacy is located at 751 Elkton Blvd, Elkton, Maryland 21921.

4. On the Respondent-Pharmacy's May 2, 2006 Application for Waiver from Full Service Pharmacy Requirements, the Respondent-Pharmacy requested a waiver to specialize in providing services to long term care facilities and nursing homes.

5. On the Respondent-Pharmacy's Application for Pharmacy Permit, received by the Board on May 26, 2006, Ms. Pesti disclosed that Pharmacist A¹ was employed as the Respondent-Pharmacy's full-time pharmacist. The application also stated that the Respondent-Pharmacy would be open for business Monday through Friday from 9:00 a.m. to 5:00 p.m.

6. On or about November 30, 2006, the Board received the Respondent-Pharmacy's Application for Pharmacy License Renewal, which listed Pharmacist A as a part-time pharmacist. No other personnel were listed.

7. On June 18, 2010 at 10:00 a.m., the Board's inspector and Pharmacist Compliance Officer ("Compliance Officer") arrived at the Respondent-Pharmacy's location in Elkton, Maryland to conduct a routine inspection.

8. The Respondent-Pharmacy was closed.

9. A sign on the door of the Respondent-Pharmacy indicated that the hours of operation were Monday through Friday, 10:00 a.m. to 2:00 p.m.

10. According to the staff and owner of a neighboring business, All Shore, Inc. ("All Shore"), there was seldom anyone present at the Respondent-Pharmacy.

11. A 35-year employee of All Shore, Witness A, who works Monday through Friday from 7:00 a.m. to 4:00 p.m. stated that he had never seen anyone at the Respondent-

¹ In order to maintain confidentiality, names of individuals other than the Respondent-Pharmacy and its owners

Pharmacy more frequently than “once every 6 business days at best.” Witness A further stated that the United Parcel Service is often attempting deliveries and asking for a signature because “no one is ever there [at the Respondent-Pharmacy].”

12. Witness A also stated that a man and woman, believed to be husband and wife, “show up every once in a while.”

13. The owner of the property where the Respondent-Pharmacy leases its space stated that he hasn’t seen “the guy” (referring to Ms. Pesti’s husband) in one to one-and-a-half years. He stated that he picks up a rent check every month after hours.

14. On June 21, 2010 at approximately 12:00p.m., the Compliance Officer returned to the Respondent-Pharmacy during regular business hours to serve two subpoenas. The Respondent-Pharmacy was closed and no one answered the door. The Compliance Officer called all of the telephone numbers listed on the Board’s records for the Respondent-Pharmacy. Two of the telephone numbers were non-working/disconnected. The other two telephone numbers were working numbers, although only one was identified in the answering machine greeting as the telephone number for the Respondent-Pharmacy. The Compliance Officer left messages at both working telephone numbers.

15. The Compliance Officer observed several pieces of mail with postmark dates ranging from June 14, 2010 to June 17, 2010 from McKesson Med/Surg, ConMed, Fisher Scientific, Hollister, Inc., BSN Medical, GSK Contract Operations, and Verizon.

16. At approximately 12:30 p.m., the Compliance Officer received a call from Gabor Szilagy, who identified himself as the manager of the Respondent-Pharmacy and husband

will not be used in this document, but will be provided to the Respondent upon request.

of Ms. Pesti.

17. Mr. Szilagyi asked that the Compliance Officer “come back tomorrow” because he didn’t have childcare. The Compliance Officer stated that she would wait for him, and he estimated that he would arrive in two hours because he was in New Jersey.

18. Mr. Szilagyi and Ms. Pesti arrived at the Respondent-Pharmacy at 4:30p.m. and allowed the Compliance Officer to inspect the premises. The Compliance Officer also served a subpoena.²

19. Mr. Szilagyi stated the following, some of which applies to the Respondent-Pharmacy’s distributor permit:

- a. The Respondent-Pharmacy only distributes and dispenses durable medical equipment, ostomy supplies, and other related medical supplies to long-term care facilities;
- b. The Respondent-Pharmacy does not distribute or dispense any prescription drugs yet;
- c. The Respondent-Pharmacy is attempting to open an account with McKesson to purchase drugs, but “[McKesson] wanted a business plan. . . and all of this stuff. . .it’s really difficult to get on with them;”
- d. The Respondent-Pharmacy’s only clients are nursing homes;
- e. The Respondent-Pharmacy receives its orders by telephone and email;

² The subpoenas demanded the following information from the Respondent-Pharmacy: (1) List of current customers/clients; (2) Copies of orders from May 1, 2010 through May 30, 2010; (3) Copies with the name of your wholesaler of record and any business [sic] that have supplied you with prescriptions drugs or devices from May 1, 2010 through May 30, 2010; (4) List of your current staff and designated representative. The information was required to be delivered to the Board on or before June 25, 2010. The Respondent-Pharmacy did not comply with the subpoena.

- f. The Respondent-Pharmacy has some clients in New Jersey and West Virginia, but most are in Maryland;
- g. The Respondent-Pharmacy has accounts with the United Postal Service and Federal Express, and make local deliveries using the owner's personal vehicle;
- h. The Respondent-Pharmacy does not have any pharmacy technician employees or other employees other than Pharmacist A, their pharmacist;
- i. Pharmacist A is at present at the Respondent-Pharmacy "most of the time, every day," but was on vacation that week.

20. In furtherance of its investigation, the Board interviewed Pharmacist A on July 23, 2010. Pharmacist A stated that he is employed as a "consultant" for the Respondent-Pharmacy and had only been to the Respondent-Pharmacy "three or four times" over a one year period. He further stated that he does not receive a salary from the Respondent-Pharmacy, but his travel expenses are paid, in cash, if he has to visit the Respondent-Pharmacy.

21. Pharmacist A never dispensed any medications from the Respondent-Pharmacy. Pharmacist A further stated that upon Mr. Szilagy's request, he provided a copy of his wall certificate to display at the Respondent-Pharmacy.

22. According to Pharmacist A, he informed Mr. Szilagy that he was unable to be at the Respondent-Pharmacy every day.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following provision of the Act: under H.O. § 12-402; and/or § 12-403(b)(3); and/or § 12-403(b)(4); and/or § 12-413(c); and/or § 12-702(a); and/or § 12-702(b); and/or COMAR 10.34.05.02A(3); and/or COMAR 10.34.05.02B(2); and/or COMAR 10.34.05.03A.

ORDER

Based on agreement of the parties, it is therefore this 19TH day of October 2011, by an affirmative vote of the Board, hereby:

ORDERED that the Respondent-Pharmacy shall pay a fine in the amount of \$2,000, payable to the Maryland Board of Pharmacy, **no later than December 31, 2011**; and it is further

ORDERED that the Respondent-Pharmacy must establish business (i.e. service clients, fill prescriptions, etc.) using its pharmacy waiver permit **no later than December 31, 2011**, or the Board will not renew the pharmacy waiver permit; and it is further

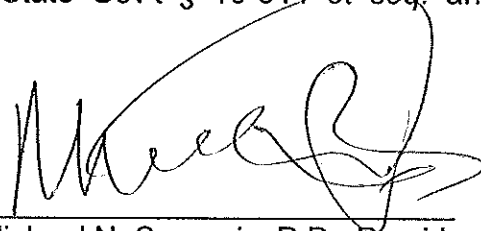
ORDERED that if the Board fails to renew the Respondent-Pharmacy's permit, nothing in this Consent Order shall be construed to prevent the Respondent-Pharmacy from re-applying for a pharmacy permit; and it is further

ORDERED that the Respondent-Pharmacy shall bear all expenses associated with this Order; and it is further

ORDERED that the Respondent-Pharmacy shall operate according to the Maryland

Pharmacy Act and in accordance with all applicable laws, statutes and regulations pertaining to the practice of pharmacy; and it is further .

ORDERED that this document constitutes a formal disciplinary action of the State Board of Pharmacy and is therefore a public document for purposes of public disclosure, pursuant to the Public Information Act, State Gov't § 10-611 *et seq.* and COMAR 10.34.01.12.

A handwritten signature in black ink, appearing to read "Michael N. Souranis", written over a horizontal line.

Michael N. Souranis, P.D., President
State Board of Pharmacy

CONSENT

I, Mariana Pesti, owner and operator of Priority Healthcare, LLC, acknowledge that I opted not to consult with legal counsel before signing this document. By this Consent, I 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 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.

10/05/11
Date

Marianna Pesti
Marianna Pesti, owner and operator
Priority Healthcare, LLC, Respondent-Pharmacy

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF Warren, NJ:

I HEREBY CERTIFY that on this 5 day of October, 2011, before me, a Notary Public of the foregoing State personally appeared Marianna Pesti, owner and operator of Priority Healthcare, LLC, Permit Number PW0275, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

Danielle Deuel
Notary Public

My Commission Expires: 12/27/2014

