

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

* * * * *

FINAL ORDER OF REVOCATION

On June 20, 2012, the Maryland State Board of Pharmacy (the "Board") issued a Notice of Intent to Revoke the Pharmacy Permit (the "Notice") of **PRIORITY HEALTHCARE, LLC** (the "Respondent-Pharmacy"), Permit No. PW0275, based on its violation of the Maryland Pharmacy Act (the "Act"), codified at Md. Health Occ. Code Ann. ("H.O.") §§ 12-101, *et seq.*, (2009 Repl. Vol. and 2011 Supp.).

The Board found that the Respondent-Pharmacy violated the following 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.

H.O. § 12-6C-03. Permit required.

(a) *Wholesale distributor.* – A wholesale distributor shall hold a permit issued by the Board before the wholesale distributor engages in wholesale distribution in this state.

The Board further found that the Respondent-Pharmacy violated the following provisions of the Code of Maryland Regulations:

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.

On June 29, 2012, the Respondent-Pharmacy received the Board's Notice. The Board notified the Respondent-Pharmacy that this Final Order would be executed thirty (30) days from the Respondent-Pharmacy's receipt of the Board's Notice, unless the

Respondent-Pharmacy requested a hearing. The Respondent-Pharmacy did not request a hearing within thirty (30) days.

FINDINGS OF FACT

The Board finds the following:

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.
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. According to the Respondent-Pharmacy's November 25, 2011 renewal application, its hours of operation are Monday through Thursday 10:00 a.m. to 2:00 p.m.
5. On or about February 6, 2012 at approximately 12:50 p.m., the Board's Inspectors presented to the Respondent-Pharmacy for an annual inspection. There was no pharmacist available on site to conduct an inspection. The only individual on premises was the office manager, who stated that the pharmacist ("Pharmacist A") had car trouble and did not come to work.
6. According to the office manager, Pharmacist A worked four days per week at the Respondent-Pharmacy and on an as-needed basis at another pharmacy.
7. The office manager had a key to the pharmacy area, and allowed the Board's

Inspectors access to look around.

8. The Board's inspector's noted that in order to access the bathroom, the staff would have to unlock and pass through the pharmacy area.

9. According to the office manager's recollection, during her employment, the Respondent-Pharmacy had only one customer, Medicare Health of New Jersey ("Medicare").

10. The office manager stated that the Respondent-Pharmacy orders, receives and checks drugs and then distributes them to Medicare.

11. The office manager also stated that sometimes the drugs would be invoiced to Tri-Med America, LLC. ("Tri-Med"), located in New Jersey, which would invoice and distributes the drugs to Medicare.¹

12. During the course of the Board's investigation, the Board received information that Tri-Med is a secondary wholesaler and has a facade office.

13. Tri-Med is owned Gabor Szilagyi, Ms. Pesti's husband. However, Ms. Pesti is named on Tri-Med's pedigree (signed as "Marianna Szilagyi").

14. Neither Ms. Pesti nor Mr. Szilagyi is present at the Tri-Med office on a regular basis and 90% of the location is used for concrete restoration. The remaining 10% is a locked door office with no signage.

15. The Board's investigation further revealed that Medicare is also a secondary wholesaler.

16. Billing invoices revealed that drugs were coming from the Respondent-

Pharmacy to Tri-Med to Medicare.

17. The Board's investigator conducted an interview of Pharmacist B, who worked for the Respondent-Pharmacy from September 12, 2011 through January 5, 2012.

18. According to Pharmacist B, she was trained by Mr. Szilagyi and the office manager to receive drugs that had been ordered, record in a binder the name of the drugs received, the expiration date and NDC number for the drugs received, and check that all drugs orders have been received. If any of the drugs were damaged, the office manager would return them to the vendor.

19. Pharmacist B worked during the Respondent-Pharmacy's posted hours; however, she stated that on her days off, the office manager would receive drugs and distribute them, even though Pharmacist B had told her not to do that.

20. Pharmacist B stated that she did not know how orders from Tri-Med or Medicare were received because Mr. Szilagyi handled that aspect of the business at home.

21. Pharmacist B stated that she never saw any invoices for drugs distributed by the Respondent-Pharmacy because Mr. Szilagyi prepared those invoices. Pharmacist B saw only the invoices for drugs received by the Respondent-Pharmacy.

22. According to Pharmacist B, all drugs ordered by the Respondent-Pharmacy were distributed, and the office manager was responsible for printing the addresses and placing the stickers on the boxes.

23. Pharmacist B stated that in or around October or November 2011, Mr. Szilagyi told her that they had new software installed so that the Respondent-Pharmacy

¹ According to New Jersey Department of Health and Senior Services, Tri-Med's wholesale drug establishment

could fill prescriptions for long-term care facilities.

24. During her employment, Pharmacist B never saw or filled any prescriptions for a long-term care facility. Mr. Szilagyi never told her the names of the long-term facilities for which the Respondent-Pharmacy would be filling prescriptions.

25. Pharmacist B stated that she filled two prescriptions during her employment at the Respondent-Pharmacy—one was for the office manager's husband (blood pressure medication) and one was for the office manager (birth control pills).

26. On February 2, 2012, the Respondent-Pharmacy notified the Board by e-mail that as of that date, Pharmacist A was designated the "Pharmacist-in-Charge." It is unclear who was working as the pharmacist between January 6, 2012 and February 2, 2012.

27. On April 4, 2012, the Respondent-Pharmacy notified the Board of its intention to cease operating as a pharmacy, effective April 17, 2012 at 5:00 p.m.

28. On April 13, 2012 at 9:45 a.m., the Board's Inspectors presented to the Respondent-Pharmacy to conduct a closing inspection. A sign at the entrance indicated that the Respondent-Pharmacy was closed.

29. The office manager was present and the Board Inspectors were permitted to enter, at which time they observed the pharmacy door open. The office manager stated that she was putting boxes of syringes away in the pharmacy. However, no pharmacist was on site.

30. The office manager informed the Board Inspectors that Pharmacist A died in

registration was revoked.

early March 2012 and the Respondent-Pharmacy has not had a pharmacist since that time.

31. The Board Inspectors were permitted to inspect an invoice dated March 22, 2012, indicating that the Respondent-Pharmacy was distributing prescription drugs without a permit.

32. The Board Inspectors were unable to perform a closing inspection because the Respondent-Pharmacy still possessed a CDS permit.

33. The Respondent-Pharmacy's conduct as outlined above in pertinent part constitutes in whole or in part a violation of one or more of the following provisions 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.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent-Pharmacy's conduct as described above constitutes a violation of H.O. § 12-402; § 12-403(b)(3); § 12-403(b)(4); § 12-413(c); § 12-702(a); § 12-702(b); §12-6C-03; COMAR 10.34.05.02A(3); COMAR 10.34.05.02B(2); COMAR 10.34.05.03A.

ORDER

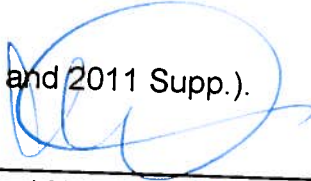
Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the Respondent-Pharmacy's permit to operate a pharmacy in the State of Maryland hereby **REVOKED**;

ORDERED that this Order is a PUBLIC DOCUMENT, pursuant to Md. Code Ann.,

State Govt. § 10-611 *et seq.* (2009 Repl. Vol. and 2011 Supp.).

SEPTEMBER 19, 2012
Date



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

NOTICE OF RIGHT TO APPEAL

Pursuant to H.O. §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 Order and shall be made as provided for judicial review of a final decision in the S.G. §§ 10-201 *et seq.* (2009 Repl. Vol. and 2011 Supp.), and Title 7, Chapter 200 of the Maryland Rules.