

IN THE MATTER OF

BJ PHARMACY
a/k/a BJ KENSINGTON PHARMACY

License No.: P02564

Respondent-Pharmacy

* BEFORE THE
* STATE BOARD
* OF PHARMACY
* Case Number: 05-034
*

* * * * *

FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board"), and subject to Md. Health Occ. Ann. §12-101, *et seq.*, (2000 Repl. Vol. and 2004 Supp.) (the "Act"), the Board charged BJ Pharmacy a/k/a BJ Kensington Pharmacy, (the "Respondent-Pharmacy"), with violations of the Act. Specifically, the Board charged the Respondent-Pharmacy with violation of the following provisions of §12-409:

Subject to the hearing provisions of § 12-411 of this subtitle, the Board may suspend or revoke any pharmacy permit, if the pharmacy:

- (1) Is conducted so as to endanger the public health or safety;
- (2) Violates any of the standards specified in § 12-403 of this subtitle; or
- (3) Otherwise is not conducted in accordance with the law.

The board further charged that the Respondent-Pharmacy further violated Section 12-403, Required standards:

(b) 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;

- (9) May not participate in any activity that is a ground for Board action against a licensed pharmacist under § 12-313 of this title [;].

The Board also charged that the Respondent-Pharmacy violated the following sections of § 12-313:

(b) 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 deny a license to any applicant, reprimand any licensee, place any licensee on probation; or suspend or revoke a license if the applicant or licensee:

- (20) Is professionally, physically, or mentally incompetent;
- (24) Violates any rule or regulation adopted by the Board [;].

The Board further charged the Respondent-Pharmacy with a violation of Code Md. Regs. tit. 10, 34.10 (November 12, 2001):

.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 [;].

The Respondent was given notice of the issues underlying the Board's charges by letter dated January 11, 2005. Accordingly, a Case Resolution Conference was held on February 25, 2005, and was attended by Melvin N. Rubin, P.D., Board Member, LaVerne Naesea, Executive Director of the Board, and Linda Bethman, Counsel to the Board. Also in attendance were the Respondent-Pharmacy's co-owners Patrica G. Goodarzi, and Joseph H. Wong, and their attorney, Joseph S. Kaufman, as well as the Administrative Prosecutor, Roberta Gill, Assistant Attorney General.

Following the Case Resolution Conference ("CRC"), and over the objection of the Prosecutor, the Respondent-Pharmacy and the Board agreed to resolve the matter by way of settlement as follows:

FINDINGS OF FACT OF THE BOARD ONLY

1. At all times relevant hereto, the Respondent-Pharmacy was licensed to operate as a pharmacy in Maryland. The Respondent-Pharmacy was first licensed on December 21, 2000. The Respondent-Pharmacy's license expires on December 31, 2005.

2. The Respondent-Pharmacy is owned by Patricia G. Goodarzi, Secretary, who owns 50% of same; Joseph H. Wong, P.D., General Manager, who owns 25 %; and, Josephine M. Chow, Treasurer, who owns 25%. Behrooz Goodarzi, P.D., is employed by the pharmacy on a

full-time basis. Mr. Goodarzi is the husband of Patricia Goodarzi, the majority owner of the Respondent-Pharmacy.

3. In April 1999, Mr. Goodarzi was the owner and principal dispensing pharmacist of Melwood Pharmacy when the Board issued a Summary Suspension to the pharmacy because over 500 expired drugs were found to be on the pharmacy's shelves, which was a threat to the public health, welfare or safety. On April 21, 1999, the Board summarily suspended Mr. Goodarzi's license because his practice endangered the public health, welfare or safety.

4. Following an evidentiary hearing held on May 20, 1999, the Board issued an Interim Order Pending Final Decision and Order, finding that sufficient evidence was presented at the hearing to justify continuation of the Summary Suspension Order. However, the Board lifted the Respondent-Pharmacy's suspension and required Mr. Goodarzi to work under the supervision of another pharmacist who would send written reports to the Board every six months. Subsequently, Melwood Pharmacy closed.

5. On July 15, 2004, Peter Smith, P.D., a Division of Drug Control (DDC) Inspector, in response to a complaint regarding the Respondent-Pharmacy's dispensing of expired drugs, conducted an inspection.

6. At that time, Mr. Goodarzi was the pharmacist on duty. Mr. Smith found the following items that were expired on the Respondent-Pharmacy's shelves:

OTC: Nutritionals: 3 items (8/1/03, 2 x 1/1/04). Eye products: 3 items (10/03, 2 x 1/04).
Brought to the attention of Joseph Wong, store manager.

Rx: PLEASE CHECK PHARMACY STOCK
Drug shelves: 40 items. (Cordran SP 0.05% 12/01, Cormax 0.05% cream 4/02, Metaproterenol sulfate inhalation solution USP 2.5ml vials: 0.4% 11/02, 0.6% 2 x 9/02, Retin-A cream 0.025% 1/03, Methotrexate LPF sodium 250mg single use vial 10ml 1/03, Benzoyl peroxide wash 2.5% 3/03, Beconase inhalation aerosol 16.8g 6/03, Lidocaine

HC1 2% and epinephrine 1:100,000 Injection USP 30ml vial 6/1/03, Phenobarbital elixer USP 20mg/5ml 7/03, Lidocaine HC1 1% 50m1 MDV 2 x 7/1/03, Rondec syrup 8/03, Potassium chloride oral solution USP 20% 10/03, Amantadine HC1 syrup USP 50mg/5m1 10/03, Hydro-Tussin DM 10/03, Aerobid-M inhaler system 7g 11/03, Histex HC liquid 12/03, Rocephin for injection 250mg single dose vial 12/03, Primidone 50mg tablets 1/04, Diazepam oral solution 5mg/5m12/04, Erythromycin ethylsuccinate and Sulfisoxazole acetyl for oral suspension 200mg/600mg/5m1 150m14/1/04, 200m1 1/1/04, Niferex-PN forte 4/04, Novarel 10,000 USP units 4/04, Cyclosporin capsules USP (Modified) 100mg 4/04, Lindane shampoo USP 1 % 4/04, Verapamil HC1 extended-release tablets 240mg 4/04, Cardec-S syrup 5/04, Meperidine HC1 syrup 50rng/5ml 5/04, Triple Tannate pediatric suspension 5/04, Leucovorin calcium tablets USP 5mg 5/04, Atropine sulfate injection USP 0.4mg/ml120ml MDV 5/04, Cleocin T lotion 1% 6/04, Xopenex inhalation solution 0.31mg 6/04, Repronex 75 6/04, Betaxolol Cl ophthalmic solution 0.5% as base 15m16/04, Dexamethasone sodium phosphate injection SP 4mg/ml 1ml single dose vial 6/04, 0.9% Sodium chloride injection USP 10m1 vials 7/1/04). Noted: short dated 7/04 items.

Drug refrigerator: 5 items. (Novolin R PenFil 3m1 9/03, Recombivax pediatricadolescent formulation preservative free 1 dose vial 0.5ml 10/3/03, Leukeran 2mg tablets 12/03, Combipatch 5/250 2/04, Humalog 1.5m1 cartridges 6/1/04).

7. In addition, Mr. Smith found that the Respondent-Pharmacy maintained drugs over which stickers covered important information on the labels.

8. As a result of these findings, on August 18, 2004, the Board voted to issue an unexecuted summary suspension of the Respondent-Pharmacy's permit. The Board set several dates for the Show Cause hearing to determine whether the Summary Suspension should be issued for the Respondent-Pharmacy. However, the Respondent-Pharmacy's attorney could not make any of those dates. Meanwhile on October 27, 2004, the DDC conducted a follow-up inspection of the Respondent-Pharmacy during which the following violations were found:

Outdated

ZanaFlex 2mg 9/04, Singulair 5mg
Nexium 20mg, Expiration Date not readable
Label over expiration date, Univasc 9/04
Niaspan 9/04

9. As set forth above, a pharmacy which has a large amount of expired medication, and labels covered, and other violations, is in violation of the Act and the regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent-Pharmacy violated Md. Health Occ. Code Ann. § 12-409 (a) and (b) (1) and (9); and, § 12-313 (b) (20) and (24) (2000 Repl. Vol. and 2004 Supp.). The Board further finds that the Respondent-Pharmacy violated Code Md. Regs tit. 10, 34.10.01 A and B (November 12, 2001).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the Board and the Respondent, it is this 2nd day of November, 2005, by a majority of a quorum of the Board,

ORDERED that the Respondent-Pharmacy pay a fine to the Board in the amount of \$1,000 (One thousand dollars).


ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

ORDERED that should the Board receive information that the Respondent-Pharmacy has substantially violated the Act or if the Respondent-Pharmacy violates any condition of this Order, after providing the Respondent-Pharmacy with notice and an

opportunity for a hearing, the Board may take further disciplinary action against the Respondent-Pharmacy, including suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order shall be on the Respondent to demonstrate compliance with the Order; and be it

ORDERED that the Respondent-Pharmacy shall practice in accordance with the laws and regulations governing the practice of pharmacy in Maryland; and be it further

ORDERED that for purposes of public disclosure, as permitted by Md. State Govt. Code Ann. §10-617(h) (Repl. Vol. 2004), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank that it is mandated to report to.


John Howard Balch, P.D., President
State Board of Pharmacy

CONSENT OF B.J. Pharmacy a/k/a B.J. Kensington Pharmacy,

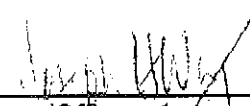
I, BJ Kensington Pharmacy aka B.J. Kensington Pharmacy, by the undersigned, owner/officer, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney Joseph S. Kaufman, Esquire, and have been advised by him of the legal implication of signing this Consent Order;

2. I am aware that without my consent, the Respondent-Pharmacy's permit to operate as a pharmacy in this State cannot be limited except pursuant to the provisions of § 12-313 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et seq.(2004 Repl. Vol.).

3. I am aware that the Respondent-Pharmacy is entitled to a formal evidentiary hearing before the Board. By this Consent Order, I hereby waive my right to a formal hearing without admissions of liability or Findings of Fact as set forth in § 12-315 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in § 12-316 of the Act and §10-201, et seq., of the APA. I acknowledge that my failure to abide by the conditions set forth in this Order and following proper procedures, the Respondent-Pharmacy may suffer disciplinary action, possibly including revocation, against its permit to operate as a pharmacy in the State of Maryland.

10/21/2005
Date



Owner/Officer of
B.J. Kensington Pharmacy
a/k/a B.J. Kensington Pharmacy

OCT-19-2005 10:28 FROM: DAG DHM

410 333 5831

TO: 410 576 0544

P.B.12

NOTARY

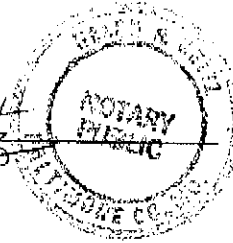
STATE OF Maryland

~~CITY/COUNTY OF~~ Baltimore :

I HEREBY CERTIFY that on this 21st day of October, 2005, before me, HELEN P. KEITZ, a Notary Public of the foregoing State and (~~City~~/County), personally appeared B.J. Kensington Pharmacy a/k/a B.J. Pharmacy, Permit Number P02564, and made oath in due form of law that signing the foregoing Consent Order was his/her voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Helen P. Keitz
Notary Public



My Commission Expires: 10/11/06