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| IN THE MATTER OF | * | BEFORE THE |
| | | |
| RITE AID OF MARYLAND, INC | * | STATE BOARD |
| d/b/a RITE AID DISCOUNT | | |
| PHARMACIES #347 AND #2207 | * | OF PHARMACY |
| | | |
| PERMIT NOS. P00666 and | * | |
| P01335, respectively | | |
| | | |
| Respondent-Pharmacies | * | |

* * * * *

FINAL CONSENT ORDER

Based on information received by the State Board of Pharmacy (the "Board"), and subject to Md. Health Occ. Code Ann. § 12-101, *et. seq.*, (2000 Repl. Vol.) (the "Act"), the Board charged Rite Aid of Maryland, Inc. d/b/a Rite Aid Discount Pharmacies Numbers 347 and 2207, (the "Respondent-Pharmacies"), with violations of the Act.

Specifically, the Board charged the Respondent-Pharmacies with violation of, *inter alia*, the following provisions of:

12-409. Suspensions and revocations – Grounds.

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

(2) Violates any of the standards specified in § 12-403 of this subtitle[;].

§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:

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

and §12-313 **Denials, reprimands, suspensions, and revocations - Grounds:**

(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:

(3) Aids an unauthorized individual to practice pharmacy or to represent that the individual is a pharmacist[:].

The Respondent-Pharmacies were given notice of the issues underlying the Board's charges by letter dated May 18, 2001. Accordingly, a Case Resolution Conference (CRC) was held on August 23, 2001, and was attended by Melvin Rubin and Ramona Hawkins, Pharmacist-members of the Board, LaVerne Naesea, Executive Director of the Board, and Paul Ballard, Counsel to the Board. Also in attendance were Jason DeLoach, Attorney for the Respondent-Pharmacies, Donna Hazel, Pharmacy Development Manager/representative of the Respondent-Pharmacies¹, and the Administrative Prosecutor, Roberta Gill.

¹ During the course of the CRC, James Krahulec, Vice President, Government and Trade Relations, participated via speaker telephone from headquarters of the Respondent-Pharmacies, in Camp Hills, Pennsylvania.

Following the Case Resolution Conference, the parties and the Board agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

FINDINGS OF FACT

1. At all times relevant to the charges herein, the Respondent-Pharmacies were permitted to operate as pharmacies in the State of Maryland. The Respondent-Pharmacies are part of a chain of pharmacies, and were incorporated in the State of Maryland on January 24, 1975. The Respondent-Pharmacies are both owned by Rite Aid of Maryland Inc., headquartered in Pennsylvania.

2. The Respondent-Pharmacy #347 is located in Carroll County, Maryland. The Respondent-Pharmacy #347 was first issued a permit by the Board on March 31, 1998. On or about October 19, 2000, the Board received a renewal application for the Respondent-Pharmacy #347, which listed only W. G.², as employed full-time by the Respondent-Pharmacy #347 as a pharmacist. A renewal permit for the Respondent-Pharmacy #347 was issued by the Board on January 1, 2001; the permit expires on December 31, 2001. The renewal application was filed by James Krahulec, a Vice President of the corporation.

3. The Respondent-Pharmacy #2207 is located in Baltimore, Maryland. The Respondent-Pharmacy #2207 was first issued a permit by the Board on July 29,

² Inasmuch as only the conduct of one specific individual is relevant herein, the identities of the pharmacists who are at the two locations are differentiated by initials only.

1997. On or about December 2, 1999, the Board received a renewal application for the Respondent-Pharmacy #2207, filed by James Krahulec, Government & Trade Relations, on which M. F. and H. N., were listed as full-time pharmacists at that location. The Board issued to the Respondent-Pharmacy a renewal permit on January 1, 2000, which expired December 31, 2000.³

4. As a result of information received by the Board, the Board conducted an investigation of #2207 which disclosed that, on or about August 8, 2000, there were three dispensing pharmacists at this pharmacy location. The pharmacy manager identified Maria Johnson, P.D., as one of the pharmacists.

5. Upon checking the Board's licensing file on March 7, 2001, for Ms. Johnson, it was discovered that Ms. Johnson's license had expired on August 31, 1999.

6. On March 8, 2001, Ms. Johnson was still employed as a pharmacist for the chain and was then working at the Respondent-Pharmacy #347. On March 9, 2001, Ms. Johnson admitted to Michelle Andoll, Board Staff, that she had failed to renew her license, yet had been working as a pharmacist for the chain in Maryland since September 1, 1999. In addition, Ms. Johnson acknowledged that she could not locate her Continuing Education Units (CEUs) to cover the period of October 1, 1997-August 31,

³ Subsequently, on or about October 19, 2000, the Board received a renewal permit for the Respondent-Pharmacy # 2207, listing G. B., as the only full-time pharmacist at that location. On January 1, 2001, a renewal permit was issued by the Board for the Respondent-Pharmacy #2207, which expires

1999. Ms. Johnson also acknowledged that she had not applied for and was not licensed for the period beginning September 1, 1999.⁴ Ms. Johnson has admitted that these events had occurred without the knowledge of the Respondent-Pharmacies.

7. As set forth above, by employing as a dispensing pharmacist an individual who was not licensed to practice pharmacy since September 1, 1999, the Respondent-Pharmacies violated the Act.

8. The Board makes no finding of any conduct or action for any problem regarding the health, safety or welfare of any individual.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated § 12-409 (2), 12-403 (b) (9), and 12-313 (3). The Board reaches no conclusions regarding the other alleged violations in the original charges.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 17 day of October, 2001, by a majority of a quorum of the Board,

on December 31, 2001.

⁴ According to § 12-308, a license may not be renewed for more than 2 years.

ORDERED that the Respondent-Pharmacies' permits to operate pharmacies in Maryland be **REPRIMANDED** and that they be placed on **PROBATION** for a period of one year, subject to the following conditions:

1. That the Respondent-Pharmacies pay a combined total fine to the Board of \$2500, prior to the end of the probationary period;
2. During the one year period of Probation, that the Regional Pharmacy Manager or an equivalent individual designated by Respondent-Pharmacies submit to the Board a monthly letter verifying the status of the licenses of all pharmacists employed by it in Maryland.

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 a report that the Respondent-Pharmacies' operations are a threat to the public health, welfare and safety, the Board may take immediate action against the Respondent-Pharmacies, including suspension or revocation, providing notice and an opportunity to be heard, in accordance with the Administrative Procedure Act (APA), Md. State Govt. Code Ann. § 10-201, *et. seq.*, (1999 Repl. Vol.), are provided to the Respondent in a reasonable time thereafter. Should the Board receive in good faith information that the Respondent-Pharmacies have substantially violated the Act or if the Respondent-Pharmacies or each of them

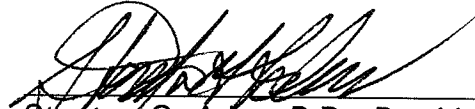
violate(s) any conditions of this Order or of Probation, after providing the Respondent-Pharmacies with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent-Pharmacies, including suspension or revocation. The burden of proof for any action brought against the Respondent-Pharmacies as a result of an alleged breach of the conditions of the Order or of Probation shall be on the Respondent-Pharmacies to demonstrate compliance with the Order or conditions; and be it

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

ORDERED that, at the end of the Probationary period, the Respondent-Pharmacies may petition the Board to be reinstated without any conditions or restrictions on their permits, provided that they can demonstrate compliance with the conditions of this Order. Should the Respondent-Pharmacies fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary;

ORDERED that for purposes of public disclosure, as permitted by Md. State Govt. Code Ann. §10-617(h) (Repl. Vol. 1999), 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.



Stanton G. Ades, P.D., President
State Board of Pharmacy

**CONSENT OF JAMES KRAHULEC, ON BEHALF OF RITE AID OF MARYLAND, INC.,
d/b/a RITE AID DISCOUNT PHARMACIES NUMBERS 347 AND 2207**

I, James Krahulec, Vice President, Government and Trade Relations, on behalf of Rite Aid of Maryland, Inc., d/b/a Rite Aid Discount Pharmacies, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Jason DeLoach, 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-Pharmacies' permits to operate pharmacies in this State cannot be limited except pursuant to the provisions of § 12-409 of the Act and the Administrative Procedure Act (APA), Md. State Govt. Code Ann. §10-201, *et seq.*, (1999 Repl. Vol.).

3. I am aware that the Respondent-Pharmacies are entitled to a formal evidentiary hearing before the Board.

By this Consent Order, on behalf of the Respondent-Pharmacies, I hereby consent and admit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. By doing so, I waive any right on their behalf to a formal hearing as set forth in §12-411 of the Act and §10-201, *et seq.*, of the APA, and any right to appeal as set forth in § 12-412 of the Act and §10-201, *et seq.*, of the APA. I acknowledge that the failure of the Respondent-Pharmacies to abide by the conditions set forth in this Order and following

proper procedures, they may suffer disciplinary action, possibly including revocation, against their permits to operate pharmacies in the State of Maryland.

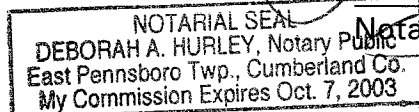
October 7, 2001
Date

James Krahulec
James Krahulec, Vice President,
Government and Trade Relations, on
behalf of Rite Aid Discount
Pharmacies Nos. 347 and 2207

STATE OF Pennsylvania
CITY/COUNTY OF Cumberland :

I HEREBY CERTIFY that on this 9th day of October, 2001, before me, Deborah A. Hurley, a Notary Public of the aforesaid State and City/County, on behalf of the Respondent-Pharmacies personally appeared James Krahulec, Vice President, Government and Trade Relations, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.



My Commission Expires: _____