

IN THE MATTER OF	*	BEFORE THE
THE APOTHECARY, INC.	*	STATE
Permit No. P00017	*	BOARD OF
Respondent-Pharmacy	*	PHARMACY
* * * * *		* * * * *

**FINAL CONSENT ORDER**

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board"), and subject to Health Occupations Article, Title 12, Annotated Code of Maryland (the "Act"), the Board charged The Apothecary, Inc. (the "Respondent-pharmacy"), with violations of the Act.

Specifically, the Board charged the Respondent-pharmacy with violation of the following provisions of §§ 12-313 and 12-409:

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, of 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:

§12-409 Suspensions and revocations—Grounds.

- (a) In general.—Subject to the hearing provisions of §12-311 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;
  - (3) Otherwise is not conducted in accordance with the law.

§12-403. Required standards.

(b) In general. -- 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 grounds for Board action against a licensed pharmacist under §12-313 of this title.

§12-410. Penalty instead of suspension or in addition to suspension or revocation.

(c) Imposition of penalty --if after a hearing under §12-411 of this subtitle the Board finds that there are grounds under §12-409 of this subtitle to suspend or revoke a permit, the Board may impose a penalty not exceeding \$10,000;

- (1) Instead of suspending the permit; or
- (2) In addition to suspending or revoking the permit.

The Respondent-pharmacy was given notice of the Charges by letter dated September 15, 1999. Subsequently, on November 11, 1999, a Case Resolution Conference was held and was attended by Stanton Ades, P.D., President of the Board, Melvin Rubin<sup>1</sup> and Ramona McCarthy Hawkins, pharmacist-members of the Board, and Paul Ballard, Counsel to the Board. Also in attendance were Michael Weinstein, P.D., the Vice President of the Respondent-pharmacy, and his/its attorney, Joseph Kaufman, and the Administrative Prosecutor, Roberta L. Gill.

Inasmuch as no settlement was reached at the Case Resolution Conference, a

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<sup>1</sup> Mr. Rubin also served in the capacity of Acting Executive Director.

Prehearing Conference was held on December 6, 1999, attended by Mr. Ballard, Mr. Kaufman and Ms. Gill. At that time, settlement was agreed upon by the parties, which was ratified by the Board at its December 16, 1999 meeting. Accordingly, the parties and the Board agreed to the following:

### FINDINGS OF FACT

1. At all times relevant hereto, the Respondent-pharmacy was issued a permit to operate as a pharmacy in the State of Maryland. The Respondent-pharmacy was originally issued a permit on July 28, 1970. The Respondent-pharmacy last renewed its permit on January 1, 1999. The permit expires on December 31, 1999.

2. The Respondent-pharmacy is owned by Irwin Rosenberg, P.D., President, and Michael Weinstein, P.D. On or about December 1, 1998, Mr. Rosenberg submitted an application to the Board for renewal of the permit of Respondent-pharmacy. On the application is a listing of the pharmacists employed by the Respondent-pharmacy. David Olson is listed as a full-time pharmacist whose license expires 2/28/98 (sic), according to the application.<sup>2</sup>

3. Section 12-311 of the Act requires each licensee to display his/her license

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<sup>2</sup>The correct expiration date for Olson's license was 2/28/99. On the same application, Mr. Rosenberg lists his license as expiring on 11/30/98, which would mean that, at the time of the application, two pharmacists, Olson and Rosenberg, who are listed as full time, had expired licenses. Rosenberg's license was last renewed on 10/08/98 and expires on 10/31/00. Furthermore, Rosenberg listed as license numbers for all of the pharmacists the serial numbers of the renewal certificate, as opposed to the actual license number.

conspicuously in the office or place of business of the licensee. Had the Respondent-pharmacy adhered to the Act's mandatory requirements regarding display, the Respondent-pharmacy would have known that Olson's license had expired. Despite the fact that Olson's license expired on February 28, 1999, the Respondent-pharmacy continued to employ Olson full time as a dispensing pharmacist, as evidenced by his initials beside numerous medications dispensed at the Respondent-pharmacy after February 28, 1999.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated §§12-313 (3), 12-409 (a) (2) and (3), 12-403 (b) (1) and (9), and 12-410 (a) (1) and (2).

### **ORDER**

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 16<sup>TH</sup> day of FEBRUARY, 2000, by a majority of a quorum of the Board,

ORDERED that the Respondent-pharmacy be and is hereby fined the sum of Twenty-five Hundred Dollars (\$2500.00), payable immediately to the Board; and be it further

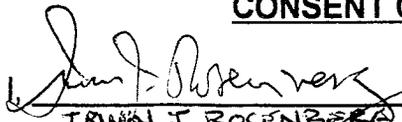
ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

ORDERED that should the Board receive in good faith information that the Respondent-pharmacy has substantially violated the Act or if the Respondent-pharmacy violates any conditions 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-pharmacy as a result of a breach of the conditions of the Order shall be on the Respondent-pharmacy to demonstrate compliance with the Order.

ORDERED that for purposes of public disclosure, as permitted by §10-617(h) State Government Article, Annotated Code of Maryland, this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order.

  
\_\_\_\_\_  
Stanton Ades, P.D., President  
State Board of Pharmacy

**CONSENT OF THE APOTHECARY, INC.**

 by affixing my signature hereto, acknowledge that:  
IRWIN J. ROSENBERG  
(President)

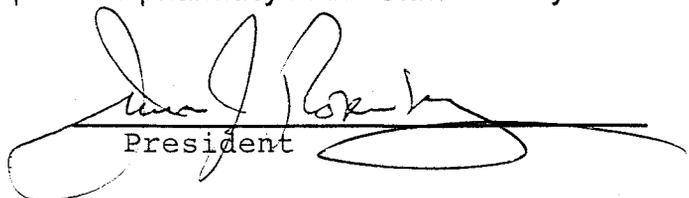
1. I am the co-owner and an officer/of the Respondent-pharmacy, which is represented by an attorney, Joseph Kaufman, and have been advised by him of the legal implication of signing this Consent Order.

2. I am aware that without my consent, the permit of the Respondent-pharmacy to operate as a pharmacy in this State cannot be limited except pursuant to the provisions of §12-401, *et seq.*, of the Act and §10-201 *et seq.* of the Administrative Procedure Act (APA), State Government Article, Annotated Code of Maryland;

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

By this Consent Order, 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, on behalf of the Respondent-pharmacy, I waive my right 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 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 a pharmacy in the State of Maryland.

1/11/00  
Date

  
President

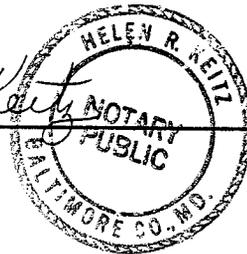
STATE OF MARYLAND

~~CITY~~ COUNTY OF BALTIMORE :

I HEREBY CERTIFY that on this 11th day of January, 2000, a Notary Public of the State of Maryland and (City/County), \_\_\_\_\_, personally appeared Irwin J. Rosenberg, License No. \_\_\_\_\_, President 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.

Helen R. Keitz  
Notary Public



My Commission Expires: 6/1/01