

IN THE MATTER OF * BEFORE THE
TOWNE PHARMACY * STATE BOARD OF
APPLICANT * PHARMACY
* CASE NO.: 12-145/12-445

* * * * *

FINAL OF DENIAL OF APPLICATION FOR NON- RESIDENT PHARMACY PERMIT

The State Board of Pharmacy (“the Board”) notified Towne Pharmacy of the Board’s intent to deny the Application for Non-Resident Pharmacy Permit under the Maryland Pharmacy Act, (“the Act”) Md. Health Occ. Code Ann., (“H. O.”) § §12-101 *et seq.* (2009 Repl. Vol.). The pertinent provisions state:

H.O. § 12-402. Qualifications of Applicants. Denials reprimands, suspensions, and revocations-grounds.

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.

- (a) This section does not require a nonresident pharmacy to violate the laws or regulations of the state in which it is located.
- (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 or a registered pharmacy technician under § 12–6B–09 of this title;

(e) *Application by nonresident pharmacy* (1) In order to obtain a pharmacy permit from the Board, a nonresident pharmacy shall:

(i) Submit an application to the Board on the form that the Board requires;

(ii) Pay to the Board an application fee set by the Board;

(iii) Submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which the nonresident pharmacy is located; and

(iv) On the required permit application, identify the name and current address of an agent located in this State officially designated to accept service of process.

(2) A nonresident pharmacy shall report a change in the name or address of the resident agent in writing to the Board 30 days prior to the change.

(f) *Compliance by nonresident pharmacy.* - a nonresidential pharmacy shall:

(1) Comply with the laws of the state in which it is located:

(2) On an annual basis and within 30 days after a change of office, corporate officer, or pharmacist, disclose to the Board the location, names, and titles of all principal corporate officers and all pharmacists who are dispensing prescriptions for drugs or devices to persons in this State;

(3) Comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is located and all requests for information made by the Board pursuant to this section;

(9) Comply with the requirements of subsection (b)(17) and (20) of this section.

(g) Subject to the hearing provisions of § 12-411 of this subtitle, if a pharmacy or a nonresident pharmacy is operated in violation of this section, the Board may suspend the applicable pharmacy permit until the pharmacy complies with this section.

H.O. § 12-409. Suspensions and revocations-Grounds.

(b) *Nonresidential pharmacy* -A nonresidential pharmacy is subject to the disciplinary actions stated in this subsection.

(2) The Board may fine a nonresident pharmacy in accordance §12-410 of this subtitle or deny, revoke, or suspend the permit of a nonresident pharmacy for any violation of § 12 -403 (d) though (g) of this subtitle.

FINDINGS OF FACT

The Board finds that:

1. On or about January 10, 2012, the Board received an Application for Non-Resident Pharmacy Permit (the Application “) from Towne Pharmacy.
2. Towne Pharmacy (“Applicant-Pharmacy”) is located at 2 Washington Avenue, Dunellen, New Jersey.
3. The Applicant-Pharmacy is owned and operated by Pharmacist A, a pharmacist, who is licensed in the State of New Jersey.¹
4. PBR Drugs Inc. is a New Jersey corporation doing business as (d/b/a) Towne Pharmacy.
5. PBR Drugs Inc. is owned by Pharmacist A.
6. In the Application, Pharmacist A answered “no” to the following questions
 - g. Has the Corporation or any officer thereof, or any partner, or the individual owner been convicted of violation of any federal, State, or local laws or regulations dealing with drug products or alcohol?

¹ The names of the Pharmacist A and Pharmacist B have been omitted in order to protect their identity

h. Have you, or any person or entity having ownership in the pharmacy, or any the licensed or registered staff ever been subjected to any disciplinary action by the Board of Pharmacy in your state or any other state?"

7. The Board records reveal that on or about, January 7, 2009, P.B.R. Drugs Inc., t/b/a Towne Pharmacy pled guilty, in the United State District Court for the District for New Jersey, to one (1) count Health Care Fraud , in violation 18 U.S.C.§1347 and 2.

8. P.B.R. Drugs Inc. had been charged by way of a criminal information with knowingly and willfully executing and attempting to execute a scheme or artifice to defraud a health care benefits program in violation of 18 U.S.C.§1347.

9. On or about July 29, 2010, P.B.R. Inc. was found guilty by United States District Court Judge Freda Wolfson of one (1) count of Health Care Fraud, in violation of 18 U.S.C. §1347and 2.

10. P.B.R Drugs Inc. was placed on probation for a term of one (1) one year and ordered to pay restitution in the amount of \$750,258.44.

11. Pharmacist A failed to inform the Board that P.B.R. Drugs Inc., a company owned by Pharmacist A, was is doing business as Towne Pharmacy.

12. The Board records also reveal that in or around March 2009, Pharmacist B, who was employed as a managing pharmacist at Towne Pharmacy, pled guilty to one (1) count of Conspiracy To Commit Health Care Fraud, in violation of 18 U.S.C. § 371.

13. Pharmacist B had been charged by way of a criminal information with Conspiracy to Commit Health Care Fraud, in violation of 18 U.S.C.§371.

14. Pharmacist Bar was found guilty by United State District Judge Freda L.

Wilson of one (1) count of Conspiracy to Commit Health Care Fraud, in violation of 18 U.S.C. § 371.

15. On or about March 10, 2010, Pharmacist B's license to practice pharmacy was suspended by the New Jersey State Board of Pharmacy.

16. Pharmacist B's March 2009 guilty plea and subsequent conviction formed the basis of the State of New Jersey Board of Pharmacy's disciplinary action against him.

17. The failure to answer truthfully on the Applicant-Pharmacy's Application is a violation of H.O. § 12-403 (b) (1) and (9).

18. The conduct as set forth above provides grounds for denial of the Applicant-Pharmacy's Application.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that the fails to meet the qualifications for a non-resident pharmacy permit. The Applicant-Pharmacy has not satisfied the Board that the Applicant-Pharmacy will operate in accordance with standard set forth on § 12-403. The Board concludes that the owner of Applicant's failure to truthfully answer all questions on the Application and the Applicant-Pharmacy's Health Care Fraud conviction, as set forth in the findings of fact, are violations of § 12-403 (b) (1) and (9).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 21st day

of August 2013, by a majority of the quorum of the Board, hereby

ORDERED that the Applicant-Pharmacy's Application to operate a nonresident pharmacy, is hereby **DENIED**; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. State Govt. Code Ann. §§ 10-601 *et seq.* (2009 Repl. Vol.), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law, and Order, and is reportable to any entity to whom the Board is obligated to report; and it is further

ORDERED that this Order is final and a public document pursuant to Md. State Govt. Code Ann. §§ 10-601 *et seq.* (2009 Repl. Vol.).

8/21/13

Date



Harry Finkle Jr. P.D.
~~Lenna Israbian-Jamgochian, PharmD.~~
President *SECRETARY*
State Board of Pharmacy