

IN THE MATTER OF  
NELCHA PHARMACY

Respondent

PERMIT No: PW0457

\* BEFORE THE  
\* MARYLAND BOARD  
\* OF PHARMACY  
\* Case No.: PI-15-053

\* \* \* \* \*

**FINAL ORDER OF REVOCATION**

On May 18, 2016, the Maryland State Board of Pharmacy (the "Board") issued a Notice of Intent to Revoke the Pharmacy Permit (the "Notice") of **NELCHA PHARMACY** (the "Respondent-Pharmacy"), Permit No. PW0457, based on its violation of the Maryland Pharmacy Act (the "Act"), codified at Md. Health Occ. II Code Ann. ("H.O.") §§ 12-101, *et seq.*, (2014Repl. Vol.)

The Board found that the Respondent-Pharmacy violated the following provisions of the Act provide as follows:

**§ 12-403. Required Standards.**

(c) 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 a ground for Board action against a licensed pharmacist under § 12-313 of this title, a registered pharmacy technician under § 12-6B-09 of this title, or a registered pharmacy intern under § 12-6D-11 of this title; [and]

(12) Shall store all prescription or nonprescription drugs or devices properly and safely subject to the rules and regulations adopted by the Board[.]

**§ 12-313. Required Standards.**

(b) In general.-- 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 . . . suspend or revoke a license of a pharmacist if the applicant or licensee:

(2) Fraudulently or deceptively uses a license [and]

(22) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside[.]

(25) Violates any rule or regulation adopted by the Board, to wit:

COMAR 10.34.05.02 Prescription Area.

A. The pharmacy permit holder shall:

(2) Provide a means of securing the prescription area;

(3) Prevent an individual from being in the prescription area unless a pharmacist is immediately available on the premises to provide pharmacy services;

(4) Monitor unauthorized or emergency entry after the prescription area has been secured by the pharmacist;

B. The pharmacist shall:

(1) Secure the prescription area and its contents in order that the pharmacy permit holder or the pharmacy permit holder's agent may:

(a) Monitor unauthorized or emergency entry after the prescription area has been secured by the pharmacist[;]

(2) Have sole possession of a means of access to the pharmacy, except in emergencies;

C. Security.

(1) A pharmacy shall be secure from unauthorized entry as follows:

(a) Access from outside the premises shall be:

(i) Kept to a minimum; and

(ii) Well controlled;

(c) Entry into areas where prescription drugs or devices and patient records are stored shall be limited to authorized personnel.

On or about May 26, 2016, 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.

### **FINDINGS OF FACT**

The Board finds:

1. The Respondent-Pharmacy is licensed to operate a waiver pharmacy in the State of Maryland under permit number PW0457. The Respondent-Pharmacy was first issued a permit on March 20, 2014.<sup>1</sup> The Respondent-Pharmacy's permit is currently suspended.
2. At all times relevant, the Respondent-Pharmacy was owned and operated by Kenneth Chatmon, who is not licensed by the Board. The Respondent-Pharmacy was located at 529 Snow Hill Road, Salisbury, Maryland 21804.
3. According to the Respondent-Pharmacy's Application for Maryland Pharmacy Permit, the Respondent-Pharmacy's hours of operation were Monday through Friday, 9:00 a.m. to 5:00 p.m.

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<sup>1</sup> The Respondent-Pharmacy initially applied for a retail pharmacy permit (P06312). After the Respondent-Pharmacy's opening inspection on March 20, 2014, the Respondent-Pharmacy submitted a waiver application to replace the retail pharmacy application. The Board granted the waiver application (PW0457).

4. Michael Tulish (20015) is listed on the Respondent-Pharmacy's application as its full-time pharmacist.

I. **BACKGROUND**

5. On September 15, 2014 at approximately 10:45 a.m., the Division of Drug Control ("DDC") attempted to make a routine inspection of the Respondent-Pharmacy. The DDC was unable to conduct an inspection because the pharmacy was not open. The building appeared to be empty and there was no signage indicating that a pharmacy was located at that address.

6. On October 20, 2014 at approximately 11:05 a.m., the DDC attempted to conduct a routine inspection of the Respondent-Pharmacy. The DDC Inspector knocked on the door and there was no response.

7. The DDC Inspector went to the rear of the building and observed a door propped open and two workmen going in and out of the building. The workmen stated that the owner of the pharmacy had let them into the building and then left.

8. After several unsuccessful attempts to contact Mr. Chatman, the DDC Inspector entered the premises to ascertain whether the pharmacy was secure and that there was no access to drugs.

9. The DDC Inspector walked through the building and discovered one locked door.

10. The last room the DDC Inspector entered, which was unlocked, contained indicia of an Internet pharmacy operation. Specifically, the room contained the following items:

- a. Stock bottles of 1000 tramadol 50 mg tablets being repackaged into prescription vials;
- b. Two boxes of prescription vials containing tramadol 50 mg for specific patients;
- c. A box of prescriptions;
- d. A stack of prescriptions with labels from MorningStar Specialty Pharmacy in Washington, D.C.;
- e. A stack of mailing labels for patients throughout the United States;
- f. Shipping cartons containing bottles of 1000 tablets of tramadol 50 mg; and
- g. Unopened mailing envelopes of returned medications addressed to Mr. Chatmon.

11. The DDC Inspector notified law enforcement, who arrived on the scene shortly thereafter.

12. Two female employees then arrived at the Respondent-Pharmacy and entered the building. One of the employees entered the unlocked room where the drugs were located. Neither employee was a licensed pharmacist or registered pharmacy technician and were therefore asked to leave the building.

13. Mr. Chatmon arrived at the Respondent-Pharmacy, along with several members of the Division of Drug Enforcement ("DEA") task force associated with the Maryland State Police.

14. Mr. Chatmon did not have a key to the locked pharmacy area. As a result, the DEA contacted the pharmacist, Mr. Tulish, and requested that he come to the Respondent-Pharmacy with a key, which he did.

15. Mr. Tulish stated that he works as a part-time pharmacist for the Respondent-Pharmacy and was hired to assist in setting up a computer system

16. The DEA conducted a thorough search of the premises.

17. Mr. Chatmon was taken into custody by the State Police officers.

18. Subsequently, a search warrant was obtained for the locked pharmacy area and 355,000 tramadol 50 mg tablets were found and confiscated along with records and computers from the Respondent-Pharmacy.

## **II. CURRENT ALLEGATIONS**

19. On or about March 4, 2015, in the Circuit Court of Maryland for Wicomico County, Mr. Chatmon pleaded guilty to two counts of controlled dangerous substance (CDS) possession with intent to distribute. Two additional counts were dismissed.

20. On or about March 26, 2015, Mr. Chatmon was sentenced to five years in jail, with all but six months suspended, and three years of supervised probation. On count two, Mr. Chatmon was sentenced to five years in jail, suspended, consecutive to count one.

## **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. §§ 12-403(c)(1), (9) and (12); H.O. §§ 12-313(b)(2), (22) and (25) to wit: COMAR 10.34.05.02A(2), (3) and (4); 10.34.05.02B(1)(a) and (2); COMAR 10.34.05.02C(1)(a)(i)

and (ii) and (c).

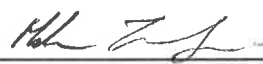
**ORDER**

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., Gen. Prov. §§ 4-101 *et seq.*

7/20/16  
Date

  
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Mitra Gavvani, Board 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 State Govt. §§ 10-201 *et seq.* (2014 Repl. Vol.), and Title 7, Chapter 200 of the Maryland Rules.