

**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL
LICENSURE AND CERTIFICATION**

BOARD OF PHARMACY

**In Re: Rite Aid Pharmacy - 1631 Elm Street,
Manchester, New Hampshire
Permit # 0522**

Docket No.: 2023-PHARM-006

**ORDER OF EMERGENCY
SUSPENSION – 05/01/23**

I. CASE SUMMARY/PROCEDURAL HISTORY:

On or about 02/09/23, the Office of Professional Licensure and Certification, Division of Enforcement (“OPLC Enforcement”), acting on behalf of the Board of Pharmacy (“Board”), issued the Rite Aid Pharmacy located at 1631 Elm Street, Manchester, New Hampshire (“Permittee”) a violation for unfit place to practice/unsanitary conditions due to alleged flooding on its premises. Further investigation by OPLC Enforcement revealed that the flooding conditions were not resolved as of late April 2023. On 05/01/23, the Board held an emergency meeting pursuant to RSA 318:30-a, N.H. Code Admin. R., Title Ph 204.06 ("Rules"), and N.H. Code Admin. R., Title Plc 206.07, and voted to suspend the Permittee’s permit on an emergency basis. This Order of Emergency Suspension follows.

II. LEGAL STANDARD:

“In cases involving imminent danger to life or health, the board may order suspension of a license, permit, registration, certification, or privilege granted under this chapter pending hearing for a period of no more than 60 days...” RSA 318:30-a. The Board has further interpreted that to mean: [p]ursuant to RSA 318:30-a, if the board finds that public welfare requires emergency action against a Permittee, and the board incorporates a finding to that effect in an order, the board shall order the immediate suspension of

a permit pending an adjudicative proceeding which shall be commenced not later than 30 working days after the date of the board's order suspending the permit..." Rule 204.06.

III. EVIDENCE PRESENTED AND FINDINGS OF FACT:

A. Evidence Presented

The Board was presented with and/or considered the following evidence: 1) 04/25/23 Confidential Memo from Elsa Croteau, Compliance Inspector/Investigator with attachments¹ and 2) sworn testimony from Chief Pharmacy Compliance Inspector/Investigator, Kaitlyn Simoneau. The Board also relied on its expertise in the field it regulates. A review of the evidence presented, and the reasonable inferences taken there from, allows the Board to find the following facts.

B. Findings of Fact

During a 02/08/23 follow-up inspection for another matter, OPLC Inspector Elsa Croteau noticed flooding in the drive-thru window area at the Permittee's location on 1631 Elm Street, Manchester, New Hampshire. In response to what she saw, Inspector Croteau issued the Permittee a 02/09/23 violation for unfit place to practice/unsanitary conditions. On 04/17/23, OPLC Inspectors Croteau and Kaitlyn Simoneau followed up on the sanitation concerns at the Permittee's location. Exhibits 1 through 3 show the following things observed by the inspectors at the Permittee's location that day: 1) unreplaced, wet carpet tiles in the medication storage area of the pharmacy; 2) a rusted drive-thru drawer; 3) and unreplaced, wet carpeting in the drive-thru area near electrical wires. At the time of the inspection, the Permittee's District Manager represented that to his knowledge the landlord had fixed the leak. The District Manager stated that he was awaiting documentation of the repairs, and that there had been no significant rain since the repairs were made.

¹ Exhibit 1: pictures dated 04/17/23 (6 total); Exhibit 2: pictures dated 04/17/23 (2 total); Exhibit 3: pictures dated 04/17/23 (4 total); Exhibit 4: pictures dated 04/24/23 (2 total); 11 second undated video (IMG_0920 1.MOV).

Consequently, on 04/24/23 (after a day of rain in the Manchester area) Inspector Croteau returned to the Permittee's location on Elm Street. While there she noticed that the carpet was visibly saturated with puddles of water in the drive-thru area and multiple electrical cords and an exposed circuit board just above the soaked carpeting. *See* Exh. 4 and 11 second video. Based on her training and experience and observations that day, Ms. Croteau had significant concerns for patient safety due to the ongoing nature of the matter and the potential for bacteria and mold growth in standing water that could contaminate medications, supplies, equipment, patients and/or staff. As of the time of the inspection, the Permittee did not have an action plan in place for remedying the issues, and the location is busy.

IV. CONCLUSIONS OF LAW:

The Board concludes there is a reasonable basis to suspend the Permittee's New Hampshire permit on an emergency basis pursuant to RSA 318:30-a. The central facts are straightforward—the evidence demonstrates the Permittee has significant, persistent standing water issues on its premises. Based on its combined training and experience, the Board finds and concludes that this environment does not appear to meet the basic pharmacy standards for storage and distribution of medications, supplies, and equipment in the industry or as set forth in Board rules. *See i.e.*, Rule 1002 et al.; *see also* RSA 318:29, V and is unsanitary and unsafe. The Board acknowledges that the conditions existing onsite may be caused in part or in whole by external forces beyond the control of the Permittee. Nonetheless, on its face, the persistent, ongoing inherent danger of potential bacteria and mold growth in standing water that could contaminate and/or adulterate medications, supplies, equipment, patients and/or staff warrants immediate emergency suspension of the Permittee's permit pursuant to RSA 318:30-a, pending a follow-up emergency suspension hearing.

V. ORDER:

Pursuant to RSA 318:30-a, the Board hereby orders the immediate emergency suspension of Permittee's Permit, pending a follow up emergency hearing in this matter. A Notice of Emergency Hearing with an appropriate date/time shall follow forthwith. Additionally, OPLC Enforcement is ordered to serve this emergency suspension order in-hand on the Permittee's authorized representative within 24 hours of receipt. Further, the Permittee, upon receipt of this order, shall promptly take action to ensure their clients/customers with outstanding prescription orders are provided appropriate direction on how to obtain their prescriptions in a timely fashion from another pharmacy.

DATED: 5/1/2023

_____/s/ Nikolas Frye_____
Hearings Examiner
Authorized Representative of the Board of
Pharmacy-
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