

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

**MINTWOOD LTC RX, INC., DBA MINTWOOD PHARMACY,
RENATA SHLAIN,
Community Pharmacy Applicant,**

Respondent.

Agency Case No. 7443

OAH No. 2023120890

PROPOSED DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on October 3, 2024.

It is so ORDERED on September 3, 2024.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D.
Board President

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PROPOSED DECISION

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard this matter on May 21, 2024. Deputy Attorney General Langston Edwards represented complainant Ann Sodergren acting in her official capacity as the Executive Officer of the Board of Pharmacy (Board). Attorney Rob D. Cucher represented respondent Mintwood LTC Rx, Inc. doing business as Mintwood Pharmacy (Mintwood Corporation), Renata Shlain (Dr. Shlain) (collectively, respondent), a community pharmacy license applicant.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on the hearing date. On June 5, 2024, the undersigned ALJ issued an order (June Order) reopening the record and directing the parties to brief three issues related to Mintwood Corporation's status as a dissolved corporation and whether, given its dissolved status, Dr. Shlain has standing as an individual to defend against the allegations in the matter's operative pleading, the Statement of Issues.

The parties each timely submitted briefs responsive to the June Order. Complainant's brief was marked Exhibit 9 and respondent's brief was marked Exhibit B. Both briefs were lodged with the record.

SUMMARY

Respondent applied for a community pharmacy license which the Board denied. In a Statement of Issues, as grounds to deny the license, complainant alleges Dr. Shlain, Mintwood Corporation's sole shareholder and officer, made false representations in the application. Dr. Shlain denies these allegations.

Before the hearing commenced, the Mintwood Corporation was dissolved. The parties agree that, with the dissolution, Mintwood Corporation loses its standing and legal capacity to pursue its community pharmacy license. Dr. Shlain argued that, nonetheless, because the allegations in the Statement of Issues implicate her personal and professional integrity, she should have the opportunity to defend against them in the instant proceeding.

The dissolution of the Mintwood Corporation renders its application for a community pharmacy license moot. Further, because Dr. Shlain is not named in her individual capacity as a party to the matter and her license as a pharmacist is not the

subject of the Board's actions, she has no standing to challenge the Board within the confines of the instant matter. Under these circumstances, OAH lacks jurisdiction to adjudicate respondent's appeal and it must be dismissed.

FACTUAL FINDINGS

Jurisdictional Issues

1. On December 19, 2022, the Board received an application for a community pharmacy license from respondent. Respondent sought the license in order to purchase a previously existing pharmacy, Mintwood Pharmaceuticals. The Board denied the application on January 6, 2023. Respondent appealed the denial.

2. On July 20, 2023, complainant signed the Statement of Issues setting out the grounds for the Board's denial of respondent's community pharmacy license application. Respondent timely filed a notice of defense seeking a hearing on the matter.

3. The parties agree Mintwood Corporation has been dissolved for at least a year and half. The parties further agree that, as a dissolved corporation, Mintwood Corporation's application for a community pharmacy application is now moot.

4. Complainant, through counsel, argues that, as a dissolved corporation, has no standing or legal capacity to adjudicate an appeal of the Board's original decision and therefore cannot even appear in the proceeding. Complainant therefore argued the matter should be treated as a default pursuant to Government Code section 11520 and remanded back to the Board. Conversely, respondent, through counsel, argues Dr. Shlain should be permitted to stand in place of Mintwood

Corporation and, as not only the sole responsible individual acting on behalf of Mintwood Corporation but an aggrieved party in her own right, is entitled to a full evidentiary hearing to defend against the allegations in the Statement of Issues.

5. As set out more fully in Legal Conclusions 8 through 10 below, the dissolution of Mintwood Corporation before the commencement of the hearing divests OAH of jurisdiction to decide the ultimate question at issue, i.e., whether respondent's application for a community pharmacy license should be granted.

Grounds for Denial

6. In the Statement of Issues, complainant set out the factual contentions underlying the Board's denial of respondent's application, all of which involved alleged misrepresentations in the application as follows:

(i) In the "Ownership" portion, respondent answered in the negative questions regarding whether anyone other than the applicant had a "direct or indirect" ownership interest in the business for which the license was sought.

(ii) Respondent answered in the negative questions regarding whether pharmacy-related licenses or certifications associated with the business for the license sought had been disciplined.

(iii) Regarding a question about whether the applicant's spouse had incurred license discipline, respondent failed to provide a written explanation as required.

(iv) In a section entitled "Financial Affidavit in Support of Application," respondent represented Dr. Shlain's spouse does not have any vested or financial interest and management control in the business.

(v) In a section entitled "Individual Financial Affidavit," respondent responded in the negative to a question asking whether funding for the project for which the license was sought would be provided from any source which had incurred discipline on its Board-issued license or certificate.

7. Dr. Shlain is married to L.S., a former pharmacy technician whose certification was revoked by the Board in February 2022 based on his conviction for a "substantially related" crime and the acts constituting the crime. In financing the project of purchasing and licensing the pharmacy Mintwood Corporation intended to purchase, respondent accessed \$10,000 from a bank account Dr. Shlain held jointly with L.S. Also, respondent entered into a promissory note with the former Mintwood pharmacy, Mintwood Pharmaceutical, to receive a loan of \$240,000. The Board disciplined Mintwood Pharmaceutical registration in October 2022, resulting in its stipulated surrender of the registration as part of a settlement of the Board's case against it. Based on these circumstances, complainant contended respondent's answers to the questions outlined above in Factual Finding 6 were false and the failure to provide a written explanation of L.S.'s disciplinary history with the Board, a lie by omission.

8. Complainant further contends these acts of misrepresentation constitute grounds for denying the application under Business and Professions Code section 480 (further statutory references are to the Business and Professions Code unless otherwise designated), which provides that "[a] board may deny a license regulated by [the Business and Professions Code] on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license." Complainant also contends respondent's application is subject to denial based on section 4300, subdivision (c) which states a license may be denied based on

the applicant's unprofessional conduct, including, pursuant to section 4301, subdivision (o), conduct violating any state law governing pharmacy. Section 480 is applicable to pharmacy therefore any violation of it also constitutes unprofessional conduct.

Respondent's Evidence

9. During the hearing, Dr. Shlain maintained she did not knowingly or willfully make any false statements though she made have made some mistakes. Dr. Shlain hired a consultant she believed to be an expert to help her complete the application and followed his advice. Dr. Shlain was also under severe personal and professional pressure as she was the proprietor of another pharmacy which burned down and she was trying to quickly find another suitable establishment. She was also fighting cancer, depression, and anxiety.

10. Regarding the specific allegations of misrepresentation, though she acknowledged, part of the funding for Mintwood Pharmacy came from a joint account she shared with her husband, Dr. Shlain was steadfast in maintaining he was never involved or intended to have an ownership or any other type of interest or role developing Mintwood Pharmacy. In fact, according to Dr. Shlain's testimony, the \$10,000 she withdrew from their joint checking account was for an "earnest money" deposit pending completion of the sale. Under these circumstances, Dr. Shlain did not believe she had to disclose his disciplinary history.

11. Regarding why, when responding to questions about whether any source of funding for the project itself had incurred license discipline, respondent had not disclosed Mintwood Pharmaceutical's own disciplinary history, respondent noted that, per the Board's own website, the discipline imposed on Mintwood Pharmaceuticals'

discipline, the license surrender, was not scheduled to take effect until after the date of respondent's application.

LEGAL CONCLUSIONS

1. Under Government Code section 11504, a Statement of Issues initiates "[a] hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed . . ."

2. In the instant case, the Statement of Issues sets out the grounds for denying respondent's community pharmacy license. The hearing's sole purpose is to determine whether the grounds for denial suffice or whether the license should be granted. Because the corporation was dissolved prior to the hearing, however, and therefore could not be granted a license under any circumstances, the issue is moot.

3. There are limited exceptions for adjudicating moot matters (see, *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473). These exceptions are reserved for matters implicating broad public interest or likely to recur. Neither party here has argued this case falls into an exception allowing circumvention around the mootness doctrine and the undersigned ALJ is not aware of any basis for such a finding.

4. Respondent argues for a full evidentiary hearing based on the interests not of a party to the proceeding, but those of Dr. Shlain who, separate and apart from her role as the shareholder and officer of Mintwood Corporation, feels aggrieved and compromised by the allegations made against her in her efforts to obtain licensure on behalf of Mintwood Corporation. Respondent's brief sets out the argument as follows:

Not only does [Dr. Shlain] have an individual interest in the allegations since the allegations allege her own wrongdoing, but she also has a right to fight for her now defunct corporation given that her interests were inherently tied to that corporation's interest in the application. [¶] . . . [¶]

The denial of the application for the Pharmacy Permit and the allegations against [Dr. Shlain] together presented an arbitrary administrative procedure which denied the corporation and its owner of their rights to a fair and equitable review of the application.

(Exh. B. , p. B10.)

5. Essentially respondent is arguing for an adjudicative process to clear Dr. Shlain's name. Aggrieved by the Board's actions in denying her application and yet no longer seeking the license which precipitated her engagement with the Board in the first place, Dr. Shlain finds herself in a kind of bureaucratic limbo and seeks to use OAH's adjudicative process to extricate or at least defend herself from the allegations in the Statement of Issues. Respondent relies on the seminal administrative due process case, *People v. Ramirez* (1979) 25 Cal.3d 260, 268-69 (*Ramirez*) to support of her position that the OAH hearing in the instant matter should afford her this opportunity.

6. In *Ramirez*, the appellant, Lawrence Ramirez, was criminally convicted of two crimes in a two-year period, burglary and possession of heroin. The criminal court determined he was a narcotics addict or in danger of becoming an addict and, staying

the criminal proceeding and sentencing, committed him for treatment in the California Rehabilitation Center (CRC) where he was subsequently granted outpatient status. Mr. Ramirez then was arrested and charged with additional crimes, leading to CRC's director to find him unfit for continued participation in the CRC program. In a later proceeding, the trial court upheld the CRC's director's decision, finding he had not abused his discretion. Mr. Ramirez was remanded to prison for the narcotics offense.

The question the California Supreme Court considered in *Ramirez* was whether the procedures used by the CRC in determining to exclude Mr. Ramirez from the program violated his constitutional due process rights. Much of the analysis of the case is specifically focused on prisoners' rights but the Court also addresses more global principles regarding governmental power including highlighting "the important due process value of promoting accuracy and reasonable predictability in governmental decision making when individuals are subject to deprivatory action." (*Ramirez*, 25 Cal.3d at p. 267.)

7. Ramirez is especially known for clearly delineating the concept of "dignitary rights" ensured to citizens as they interact with the often faceless, monolithic nature of government bureaucracies:

"For government to dispose of a person's significant interest without offering him a chance to be heard is to risk treating him as a nonperson, an object, rather than a respected, participating citizen" . . . Thus, even in cases in which the decision-making procedure will not alter the outcome of governmental action, due process may nevertheless require that certain procedural protections be granted the individual in order to protect important

dignitary values, or in other words, "to ensure that the method of interaction itself is fair in terms of what are perceived as minimum standards of political accountability of modes of interaction which express a collective judgment that human beings are important in their own right, and that they must be treated with understanding, respect, and even compassion."

(*Ramirez*, 25 Cal.3d at pp. 267-268 [citations omitted].)

8. The dignitary rights delineated in *Ramirez* presents a compelling basis for according to Dr. Schlain the adjudicatory platform she seeks. Nonetheless, there are important distinctions in the two cases: first, unlike Mr. Ramirez, Dr. Schlain is neither the subject of the Board's underlying action in denying Mintwood Corporation's application nor, as an individual, a party to the instant matter. She is an officer of a now-defunct corporation. If she is damaged by the Board's actions, this damage is collateral. Second, the forum for review in the *Ramirez* case, the criminal division of the California Superior Court, has far wider and broader subject matter jurisdiction than does OAH. OAH is essentially deputized to hear certain types of cases under certain circumstances, here under the circumstances and limitations set out in Government Code section 11504. Nothing in respondent's brief supports a finding that this forum has the authority to address Dr. Schlain's reputational concerns and dignitary interests outside the narrow issue of licensure presented by the Statement of Issues and the undersigned ALJ has no knowledge of any such authority.

9. On the other hand, complainant's argument that respondent's status as a dissolved corporation should result in a default judgment and remand of the matter back to the Board without further proceedings is a bridge too far. Government Code

section 11520, entitled Defaults and uncontested cases, allows agencies to take action on matters without evidence if a respondent fails to appear or timely file a notice of defense and has the burden of proof. Here, respondent bears the burden of proof (see, e.g., Evid. Code, § 500), and so to adopt complainant's position and allow respondent's appearance to be treated as a default, means allowing the Board to act without even considering the facts and legal arguments respondent presented at hearing. Under these circumstances, the Board would be acting in a vacuum and without even acknowledging the complex facts and circumstances at play. At the least, respondent should be allowed to make its record and the Board must consider next steps in the context of the human toll on Dr. Shlail she flagged during the hearing process.

10. Considering the pertinent facts and law, there is no basis to find OAH has jurisdiction to address Dr. Shlail's defenses. Her situation is concerning and raises important issues of fairness and due process. But leapfrogging over the clear procedural limitations on OAH's authority is not the answer. Her appeal must be dismissed consistent with the order below.

ORDER

The appeal of respondent Mintwood LTC Rx, Inc. doing business as Mintwood Pharmacy, Renata Shlain is dismissed.

DATE: 08/01/2024


Deena R. Ghaly (Aug 1, 2024 16:54 PDT)

DEENA R. GHALY

Administrative Law Judge

Office of Administrative Hearings

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10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

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Against:

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13 **MINTWOOD LTC RX, INC. DBA**
14 **MINTWOOD PHARMACY, RENATA**
15 **SHLAIN**

STATEMENT OF ISSUES

16 **Community Pharmacy License Applicant**

17 Respondent.

18
19
20 **PARTIES**

21 1. Anne Sodergren (Complainant) brings this Statement of Issues solely in her official
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about December 19, 2022, the Board of Pharmacy, Department of Consumer
24 Affairs received an application for a Community Pharmacy License from Mintwood LTC RX,
25 Inc. dba Mintwood Pharmacy, Renata Shlain (Respondent). On or about December 13, 2022,
26 Mintwood Pharmacy certified under penalty of perjury to the truthfulness of all statements,
27 answers, and representations in the application. The Board denied the application on January 6,
28 2023.

1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension/
6 expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of
7 jurisdiction to proceed with a disciplinary action during the period within which the license may
8 be renewed, restored, reissued or reinstated.

9
10 **STATUTORY PROVISIONS**

11 5. Section 480 subdivision (e) of the Code states that “[a] board may deny a license
12 regulated by this code on the ground that the applicant knowingly made a false statement of fact
13 that is required to be revealed in the application for the license. A board shall not deny a license
14 based solely on an applicant’s failure to disclose a fact that would not have been cause for denial
15 of the license had it been disclosed.”

16 6. Section 4300, subdivision (c) of the Code states that the board may refuse a license to
17 any applicant guilty of unprofessional conduct.

18 7. Section 4301, subdivision (o) of the Code states, in pertinent part that unprofessional
19 conduct includes, but is not limited to, violating or attempting to violate, directly or indirectly, or
20 assisting in or abetting the violation of or conspiring to violate any provision or term of this
21 chapter or of the applicable federal and state laws and regulations governing pharmacy including
22 regulations established by the board or by any other state or federal regulatory agency.

23
24 **FACTUAL ALLEGATIONS**

25 8. In the “Ownership” portion of the application for a Community Pharmacy License
26 submitted by Respondent on December 13, 2022, Respondent falsely represented under penalty
27 of perjury that “[n]o person other than the applicant ... has any direct or indirect interest or
28

1 management and control in the applicant business to be conducted under the license for which
2 this application is made.”

3 9. In response to the “Disciplinary History” portion of the application, Respondent
4 responded “No” to each of the following questions:

5 a. “Have you ever had pharmacy technician, intern pharmacist, pharmacist ...
6 registration suspended, revoked, placed on probation or had other disciplinary action taken
7 against it?”

8 b. “Have you ever had a pharmacy, wholesaler, third-party logistics provider, and/or any
9 other entity license denied, suspended, revoked, placed on probation, or had other disciplinary
10 action taken against a license you hold?”

11 10. The application requested that “[i]f any of the above actions (described in paragraph
12 9) have occurred with your spouse ... attach a statement of explanation that describes the event,
13 regulatory agency involved and date for each incident.” Respondent failed to provide a written
14 statement regarding her spouse, L.S., whose Pharmacy Technician Registration No. TCH 7291
15 was revoked by the Board on February 2, 2022 pursuant to a Default Decision and Order finding
16 that L.S. was convicted of a substantially related crime and committing acts involving moral
17 turpitude, dishonest, fraud or deceit.¹

18 11. In the “Financial Affidavit In Support of Application”, Respondent represented that
19 her spouse, L.S., does “not have any vested or financial interest and management control in the
20 business” however, Respondent admits that \$10,000 will be provided as cash investment from a
21 JP Morgan Chase Bank Account shared with L.S.

22 12. In the “Individual Financial Affidavit”, Respondent falsely responded “No” to the
23 question, “will funding be provided in any amount from an individual, partnership or corporation

24 ¹ The underlying facts are that on or about March 1, 2021, L.S. pled guilty and was
25 convicted of one (1) felony count of violating Penal Code section 487, subdivision (a) (grand
26 theft) in the criminal proceeding entitled: *The People of the State of California v. Len A. Shlain*
27 (Super. Ct. L.A. County, 2021, No. BA476057). The court placed L.S. on probation for two (2)
28 years with terms and conditions. The circumstances surrounding the conviction are that between
September 2016 through December 2017, L.S. defrauded Medi-Cal by billing and submitting
claims for the high-cost brand medication, Abilify, while purchasing and dispensing the cheaper
generic medication, Aripiprazole, to Medi-Cal beneficiaries to generate higher profits through the
submission of fraudulent claims.

1 whose professional or vocational license has been revoked, denied or in any other manner
2 disciplined by a regulatory board in California or any other state.” However, Respondent entered
3 into a promissory note to receive a loan in the amount of \$240,000 from seller Mintwood
4 Pharmaceuticals, Inc. dba Mintwood Pharmacy Permit No. PHY 56896 whose registration was
5 disciplined by the Board on October 12, 2022 pursuant to a Stipulated Surrender of License and
6 Order in Agency Case No. 7167.

7
8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

9 (False Statement)

10 13. Respondent’s application is subject to denial under section 480, subdivision (e), in
11 that Respondent made a false statement of fact in the application for licensure. Complainant
12 incorporates paragraphs 8 – 12 by reference as if set forth fully herein.

13
14 **SECOND CAUSE FOR DENIAL OF APPLICATION**

15 (Unprofessional Conduct)

16 14. Respondent’s application is subject to denial under section 4300, subdivision (c), in
17 that Respondent engaged in acts of unprofessional conduct. Complainant incorporates paragraphs
18 8 – 12 by reference as if set forth fully herein.

19
20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 (Violating Provisions Governing Pharmacy)

22 15. Respondent’s application is subject to denial under section 4301, subdivision (o), in
23 that Respondent engaged in acts of unprofessional conduct. Complainant incorporates paragraphs
24 8 – 12 by reference as if set forth fully herein.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Denying the application of Mintwood LTC RX, Inc. dba Mintwood Pharmacy, Renata Shlain for a Community Pharmacy License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 7/20/2023

Sodergren,
 Anne@DCA
 Digitally signed by Sodergren, Anne@DCA
 Date: 2023.07.20 21:42:45 -07'00'

 ANNE SODERGREN
 Executive Officer
 Board of Pharmacy
 Department of Consumer Affairs
 State of California
Complainant

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