

BEFORE THE KANSAS BOARD OF PHARMACY

Filed By

OCT 24 2019

KANSAS STATE BOARD OF PHARMACY

In the Matter of)
)
Ergo Midwest, Inc.)
)
Registration No. 16-110091)

Case No. 19-438

SUMMARY ORDER

NOW, on this 24th day of October 2019, comes before the Kansas Board of Pharmacy (the "Board"), through its Executive Director, the matter of Ergo Midwest, Inc. ("Respondent").

Pursuant to the authority granted to the Board by the Kansas Pharmacy Act, K.S.A. 65-1625, *et seq.*, and in accordance with the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*, the Board's Executive Secretary enters this Summary Order in the above-captioned matter. After reviewing the investigation materials and being otherwise duly advised in the premises, makes the following findings, conclusions and order:

FINDINGS OF FACT

1. On February 20, 2013, the Board issued Durable Medical Equipment ("DME") provider registration number 16-44378 to Frederick M. Floeck, owner, to operate Ergo Midwest, Inc. as a DME facility in the State of Kansas.
2. DME registration 16-44378 was timely renewed each year prior to expiration from 2013 through 2019.
3. In May 2016, the ownership of Respondent's facility was changed from Frederick M. Floeck to Ergo Midwest, Inc., owned by corporate parent company Systems Leasing, Inc.

4. On June 6, 2016, Respondent renewed DME registration 16-44378, which still listed Frederick M. Floeck as the owner and was approved by the Board on June 8, 2016.

5. On May 31, 2017, Respondent renewed DME registration 16-44378, which still listed Frederick M. Floeck as the owner and was approved by the Board on May 31, 2017.

6. On May 17, 2018, Respondent renewed DME registration 16-44378, which still listed Frederick M. Floeck as the owner and was approved by the Board on May 17, 2018.

7. On or about June 27, 2019, the Board received from Respondent a Form BA-16 DME Provider Registration Application (“Respondent’s Application”) notifying of the change in ownership that became effective May 2016 and applying for a new DME registration listing Systems Leasing, Inc. as the owner.

8. On July 18, 2019, the Board approved Respondent’s Application and issued DME registration number 16-110091 effective immediately.

CONCLUSIONS OF LAW

1. Pursuant to K.S.A. 65-1658, the Board may assess a civil fine not to exceed \$5,000, after notice and an opportunity to be heard, to any registrant for violation of the pharmacy act of the state of Kansas or any other rules or regulations of the state board of pharmacy.

2. Pursuant to K.S.A. 16-1643(m), it shall be unlawful for any person to sell or lease durable medical equipment without first obtaining a registration from the Board, in accordance with rules and regulations adopted by the Board.

3. Respondent’s failure to notify the Board of its change in ownership and obtain a new DME provider registration until June 27, 2019 – more than three years after the ownership change occurred – means Respondent was operating as a DME without a valid permit, in violation of K.S.A. 1643(m).

4. Pursuant to K.S.A. 65-1627(f), a registration to sell durable medical equipment or a registration for the place of business where any such operation is conducted may be suspended, revoked, placed in a probationary status or the renewal of such registration may be denied by the board upon a finding that the registrant or the registrant's agent has materially falsified any application filed pursuant to or required by the pharmacy act of the state of Kansas.

5. Pursuant to K.S.A. 65-1645(e), all DME registrations shall expire every year, shall be required to be renewed annually, and are not transferable.

6. Respondent materially falsified a renewal application required by the Board by applying for renewal of DME registration 16-44378 in 2016, 2017, and 2018 which was owned by Frederick M. Floeck. Therefore, Respondent violated K.S.A. 65-1627(f) on three separate occasions.

7. Respondent failed to notify the Board of a change in ownership for Respondent's facility that occurred in May 2016, prior to the renewals submitted by Respondent in 2016, 2017, and 2018. Respondent operated a DME registration issued to another owner, thereby attempting to transfer to the DME registration to Respondent, which is a violation of K.S.A. 65-1645(e).

ORDER

Based upon the foregoing findings of fact and conclusions of law, Respondent is deemed in violation of the Act, and pursuant to K.S.A. 65-1658 is ordered to pay to the Board the following: a fine of \$500 for a violation of K.S.A. 16-1643(m); a fine of \$500 for the 2016 violation of K.S.A. 65-1627(f); a fine of \$500 for the 2017 violation of K.S.A. 65-1627(f); and a fine of \$500 for the 2018 violation of K.S.A. 65-1627(f). **Respondent has thirty (30) days from the date of this order to pay to the Board the fines here ordered, totaling \$2,000.**

NOTICES

The Respondent is hereby notified as follows:


1. The Respondent may request a hearing pursuant to the Kansas Administrative Procedure Act by filing a written request with the Kansas Board of Pharmacy, 800 SW Jackson, Suite 1414, Topeka, KS 66612-1231 within fifteen (15) days after service of this order.
2. If a hearing is not requested as described above, the Order shall become a final order of the Board, effective upon the expiration of the time to request a hearing.
3. Within fifteen (15) days after entry of a final agency order, either party may file a petition for reconsideration pursuant to K.S.A. 77-529.
4. Within the time limits established in K.S.A. 77-613, either party may seek judicial review of a final agency order, pursuant to said statute. The agency officer designated to receive service of a petition for judicial review is:

Alexandra Blasi
Executive Secretary
Kansas Board of Pharmacy
800 SW Jackson, Suite 1414
Topeka, KS 66612

IT IS SO ORDERED.

Date

10/24/19

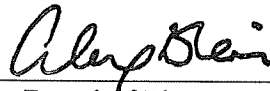


Kansas Board of Pharmacy

CERTIFICATE OF SERVICE

I hereby certify that I did, on the 24th day of October 2019, deposit in business mail a copy of the foregoing Summary Order, which is then placed in the United States Mail, postage prepaid, properly addressed to the following:

ERGO MIDWEST, INC.
3621 NOLAND CT
INDEPENDENCE, MO 64055



Kansas Board of Pharmacy Staff