

**IN THE MATTER OF  
LAWRENCE APPEL, P.D.  
LICENSE NO. 08351**

**\* BEFORE THE  
\* MARYLAND STATE  
\* BOARD OF PHARMACY**

**Respondent**

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**\* \* \* \* \***

**FINAL DECISION AND ORDER**

**Background**

This case arose out of allegations that Lawrence Appel, P.D. (the “Respondent”) was abusing illegal drugs, specifically marijuana, and that the Respondent had brought marijuana into the pharmacy workplace.

The Board of Pharmacy (the “Board”) issued a Summary Suspension of Respondent’s license to practice pharmacy on July 7, 2003. (State’s Ex. 5A). On August 20, 2003, the Board held a show cause hearing to allow the Respondent an opportunity to show cause why the Board should not continue the summary suspension of his license. After hearing arguments from the State and the Respondent, the Board voted to continue the summary suspension of the Respondent’s license pending a full evidentiary hearing on the matter. (State’s Ex. 5D).

On September 23, 2003, the Board also issued charges against the Respondent based on the same factual allegations contained in the Summary Suspension Order. Specifically, the Respondent was charged with: (1) providing professional services while using any narcotic or controlled dangerous substance; (2) being professionally, physically, or mentally incompetent; and (3) violating any rule or regulation adopted by

the Board. The Board further charged the Respondent with violating the Code Md. Regs. tit. 10 § 34.10. (State's Ex. 7B)

The Board held a contested case hearing under the Administrative Procedure Act, Md. Code Ann., State Gov't §10-201 *et seq.*, before a quorum of the Board on November 17, 2003, to consider the merits of the Board's Summary Suspension Order and the Charges issued on September 23, 2003. On November 17, 2003, the same quorum of the Board convened to deliberate and voted to uphold the charges against the Respondent and to impose the sanctions contained in this Final Decision and Order.

### **SUMMARY OF THE EVIDENCE**

#### **A. Documents.**

The following documents were admitted into evidence.

- State's Exhibit No. 1 - Computer Printout of Licensure Information
- State's Exhibit No. 2 - Loss Prevention Statement of Fact
- State's Exhibit No. 3 - Respondent's Wal\*Mart personnel file
- State's Exhibit No. 4A - Interview with Uslin
- B - Interview with Muha
- C - Interview with Curtis
- State's Exhibit No. 5A - Order for Summary Suspension, dated 7/7/03
- B - Certificate of Service, dated 7/7/03
- C - Respondent's 7/16/03 hearing request
- D - Order Continuing Summary Suspension, dated 8/21/03
- E - Respondent's merits request, dated 8/27/03
- State's Exhibit No. 6A - Order of 9/14/92
- B - Final Consent Order of 11/15/00
- C - Letter from Pharmacists' Education and Assistance Committee, dated 11/21/00

- D - Letter from L. Naesea to Respondent, dated 12/19/00
- E - Facsimile from Board to R. Gill, dated 1/9/01
- F - Letter from Pharmacists' Education and Assistance Committee, dated 1/10/01
- G - Letter from Board to Respondent, dated 1/31/01
- H - Letter from Pharmacists' Education and Assistance Committee, dated 2/7/01
- I - Letter from Pharmacists' Education and Assistance Committee, dated 3/20/01
- J - Facsimile from Board to R. Gill, dated 3/23/01
- K - Subpoena Duces Tecum to McDuff, dated 3/23/01 with Attachments from McDuff
- L - Violation of Consent Order Under the Pharmacy Act, Charge Letter, dated 3/29/01
- M - Violation of Consent Order Under the Pharmacy Act
- N - Order of 7/27/01
- O - Amended Order of 11/30/01
  
- State's Exhibit No. 7A - Letter of Procedure, dated 9/23/03
- B - Charges
- C - Summons
  
- Respondent's Exhibit A - Correspondence from Crossroads Centers, dated 11/14/03, with urines screens for 10/15/03, 10/21/03, 10/29/03.
  
- Respondent's Exhibit B - Facsimile from Victor Fitterman, LCSW-C to Mr. Mann, dated 11/14/03

**B. Summary of Pertinent Witness Testimony.**

Catherine Putz, the Board's Compliance Officer, testified that she was responsible for investigating the most recent complaint filed against the Respondent that he violated Wal\*Mart's drug abuse policy while working there as a pharmacist. (T. 11). As part of her investigation, Ms. Putz interviewed Melanie Sue Uslin, District Manager, John Curtis, co-manager of the Wal\*Mart store at issue, and Joseph Muha, Loss Prevention

Coordinator. (T. 15-17). The interviewees stated that a bag of marijuana was found by the Pharmacy Manager, Susan Tirch, near the Wal\*Mart Pharmacy restroom on March 24, 2003. When the pharmacy staff, including the Respondent, was questioned about the marijuana, no one claimed it. Therefore, the staff was scheduled to undergo immediate drug screening. At that point, the Respondent refused to take the drug test, admitting that he had smoked marijuana the evening before. The Respondent was then terminated for failure to abide by Wal\*Mart's drug abuse policy. Later, the Respondent admitted to Susan Tirch that the marijuana found by the restroom was his. (State's Exs. 4A-C).

Ms. Putz further testified regarding the Respondent's protracted disciplinary history with the Board and the Respondent's failure to abide by the terms of his prior Consent Order. (T. 20-29). Ms. Putz testified that the Respondent enrolled into a substance rehabilitation program at Crossroads Center in October 2003. (T. 45). Ms. Putz opined that although a pharmacist with an addiction could possibly continue to practice while in a substance abuse program that required constant urine screenings, she added that the pharmacist should definitely have certain period of sobriety in addition to successful completion of a program. (T. 42-44).

Timur Yusufov testified on behalf of the Respondent. Mr. Yusufov is part owner of Healthway Pharmacy, where the Respondent had been practicing part-time for approximately 2½ years. Mr. Yusufov testified that the Respondent was a good employee and that he never appeared inebriated at work. Mr. Yusufov is an accountant and does not have any knowledge or experience as a pharmacist. (T. 53-55).

The Respondent testified that he resumed therapy with Victor Fittermanen, LCSW-C in August 2003. (T. 58-59). The Respondent also attends group therapy meetings at the

Crossroads Center and NA meetings. (T. 59-60). The Crossroads program also requires the Respondent to submit to weekly urine screenings. (T. 66). The Respondent is not currently under a physician's care or on any medication. (T. 70-71).

### **FINDINGS OF FACT**

Based upon the testimony and documentary evidence presented at the evidentiary hearing, the Board finds that the following facts are true:

1. The Respondent was at all relevant times licensed to practice pharmacy in the State of Maryland. The Respondent was originally licensed by the Board on July 22, 1976. The Respondent's license expires on February 28, 2005. (State's Ex. 1).
2. On March 17, 2003, the Respondent began training as a pharmacist at Wal\*Mart Pharmacy. On March 24, 2003, the Respondent began working his first shift as the pharmacist on duty. On that same day, March 24, 2003, pharmacy staff personnel discovered a bag of marijuana by the pharmacy restroom.
3. The pharmacy and store co-manager questioned the pharmacy staff, including the Respondent, regarding the marijuana, however no one at that time claimed ownership of it. The pharmacy staff was then scheduled for drug testing. While the Respondent was being escorted to the drug screening by John Curtis, co-manager, the Respondent admitted to Mr. Curtis that he had smoked marijuana the evening before and did not want to submit to the drug test.

4. The Respondent was terminated by Wal\*Mart on March 24, 2003, for failure to comply with its drug abuse policy and for gross misconduct. The Respondent admitted to Susan Tirch, Pharmacy Manager, subsequent to his termination, that the bag of marijuana was his.
5. The Respondent's disciplinary history with the Board includes the following:
  - a. On September 16, 1992, the Board issued a Consent Order based upon the Respondent's admitted addiction to Diazepam, Tylenol #3, Tylenol #4, and Phentermine, all controlled dangerous substances. After being notified by Frederick Memorial Hospital that the Respondent was self-medicating with diverted drugs, the Pharmacist Rehabilitation Committee made several attempts in 1990 to discuss the Respondent's impairment with him and to attempt to get him to enter into a treatment plan. The Respondent, however, refused to meet with the Committee. The Rehabilitation Committee therefore referred the Respondent's case to the Board for discipline. The Board's Consent Order placed the Respondent on probation for two years and required the Respondent to undergo substance abuse treatment while placing certain restrictions on his practice.
  - b. On August 25, 2000, the Respondent was summarily suspended and subsequently charged, for assaulting the husband of a patient while working as a pharmacist at Rite Aid. The Board also ordered that the Respondent undergo a mental evaluation with Ellen McDaniel, M.D. The findings of Dr. McDaniel's psychiatric evaluation were that the Respondent had a propensity for violence and that he was not a suitable candidate for rehabilitation because he was unwilling to acknowledge his own deficiencies.
  - c. Notwithstanding the results of Dr. McDaniel's evaluation, on November 15, 2000, the Board entered into a Consent Order with the Respondent in which the Respondent agreed to be placed on an indefinite period of probation during which time the Respondent was required to enter into a Board-approved treatment program with the Pharmacist Education and Assistance Committee ("PEAC") and practice under the supervision of another pharmacist.
  - d. On March 20, 2001, the Respondent was terminated from treatment by his treating psychiatrist, Dr. David McDuff, for failure to "establish a trusting relationship with his therapist" and his "difficulty keeping his emotional intensity in check". (State's Ex. 6I). The Respondent

furthermore failed to abide by the treatment recommendations of Dr. McDuff in his refusal to submit to urine screens. (State's Ex. 6K)

- e. On March 29, 2001, the Board issued a Violation of Consent Order against the Respondent based upon the Respondent's failure to abide by the terms of probation; specifically, his failure to provide the Board with an approved treatment plan and his failure to abide by the treatment plan resulting in Dr. McDuff's termination of his treatment. (State's Ex. 6M).
- f. The Board issued a Final Decision and Order on July 27, 2001, in which the Board ordered, among other things, that the Respondent submit to random drug testing during a period of probation. (State's Ex. 6N). After negotiations with the Respondent, the Board issued an Amended Final Decision and Order on November 30, 2001, requiring the Respondent to be drug tested one time. (State's Ex. 6O).
- g. The Board released the Respondent from probation in August 2002.

### OPINION

That the Respondent finds himself before this Board once again demonstrates that he has not taken heed of the myriad chances the Board has given him over the past ten years. Despite having had a 1992 Board Order against him that was based exclusively upon his substance addiction, the Respondent chose to abuse drugs again. And despite the obvious suspicions of the Board regarding the Respondent's possible relapse during the Respondent's 2000-2001 proceedings before the Board, the Respondent nevertheless began abusing drugs again. The Respondent made a conscious decision to terminate therapy sessions with his therapist, Victor Fitterman, soon after he was released from probation in August 2002. Knowing the extent of his own disciplinary history before the Board, the Respondent cannot now claim ignorance of the ramifications of his deliberate actions.

The Respondent's total lack of judgment was an issue in 2000 when he verbally assaulted a patient by yelling profanities at her and then was forced to physically defend himself against a physical assault as a result. Although the Board's evaluator, Dr. McDaniel, did not believe that the Respondent was capable of being rehabilitated because of his inability to recognize any of his own contributions to his problems, the Board opted to offer the Respondent a second chance to demonstrate that he is capable of practicing pharmacy in a safe and responsible manner. To assist the Respondent in addressing and treating the problems that continually brought him before the Board, the Board ordered that the Respondent undergo treatment. However, the Respondent rebuffed the

professional recommendations of his assigned therapist, Dr. David McDuff. Although Dr. McDuff specifically opined in his initial evaluation that the Respondent's "recovery from prescription drug dependence is incomplete having been blocked by serious personality problems", and recommended that the Respondent submit to random urine screens, the Respondent refused to comply. (State's Ex. 6K). In addition, the Respondent refused to accept any responsibility for his failure to forward Dr. McDuff's evaluation or progress reports to the Board in accordance with the probationary conditions of his Consent Order.

After the Respondent's above violations resulted in the Board issuing a Violation of Probation Final Order, the Respondent again refused to adhere to the Board's Final Order that mandated that he submit to random urine screens. The Board, again, capitulated and amended its Final Order to require only one drug test.

Perhaps the most astounding evidence of the Respondent's lack of judgment is that he smoked marijuana prior to his first official day of work and then proceeded to take

the bag of marijuana with him to the pharmacy. The Respondent has practiced in approximately 14 different pharmacies and has usually either quit or been terminated due to his inability to function with other pharmacy personnel. The Respondent's ability to obtain a pharmacist position at Wal\*Mart was considered a great accomplishment in the Respondent's own estimation. However, rather than abstaining from drug use and reporting for his first day of work in a responsible and ethical manner, the Respondent cast good judgment, and the law, aside and smoked marijuana and then proceeded to compound bad judgment with worse judgment by bringing the marijuana into the pharmacy the next day.

The fact that the Respondent practiced pharmacy while having smoked marijuana within the preceding 24-hour period posed a great risk to the health and safety of the public. Pharmacists are responsible for making critical decisions regarding the medication regimen of patients on a minute-by-minute basis. Retail pharmacies are an especially fast-paced and hectic environment. A pharmacist who habitually smokes marijuana is simply not competent to practice pharmacy because of the inherent risk of making medication errors that could cause serious injury or death to a patient.

Additionally, a pharmacy, much like any other healthcare setting, is a place where patients go for professional medical advice and services. Needless to say, to bring marijuana into the pharmacy setting not only violates state and federal laws, but also undermines the trust that patients have in their community pharmacy.

## CONCLUSION

Based upon the foregoing summary of evidence, findings of fact, and opinion, the Board concludes that the Respondent is in violation of Health Occupations Article §§ 12-313(b)(4), (20) and (24), and that the Respondent's actions posed an imminent threat to the public health, safety and welfare requiring emergency action under State Gov't Article § 10-226(c)(2).

## SANCTIONS

The Respondent asserts that he resumed therapy and enrolled in a substance abuse program after the Board issued the summary suspension of his license in August 2003. However, the Respondent argues that he must be able to practice pharmacy in order to continue with his treatment. The Board believes that the Respondent, through his actions, has forfeited his right to practice pharmacy at the present time. The Respondent has proven that he does not utilize the Board's disciplinary orders as tools from which to learn and better himself. The Respondent has also proven that he unwilling to cooperate with Board orders even when the Board gives him countless opportunities to do so. Lastly, the Respondent has only been in rehabilitation for a few months, which is certainly not a sufficient period of sobriety to demonstrate that he will not relapse again. The Board believes that the public's health and safety would be compromised if the Respondent is permitted to maintain his pharmacist's license. Although the Respondent claims that he must practice pharmacy in order to have the funds to pay for rehabilitation treatment, the Board is confident that if the Respondent is truly committed to his rehabilitation, he will be able to find other employment to finance his treatment.

**ORDER**

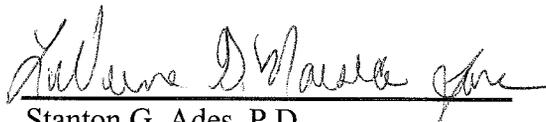
Based on the foregoing Findings of Fact, Opinion, and Conclusion, by a unanimous decision of a quorum of the Board it is hereby:

**ORDERED** that the Summary Suspension Order, dated July 7, 2003, and the Order Continuing Summary Suspension, dated August 21, 2003, were properly issued by the Board; and be it further,

**ORDERED** that the Respondent's license to practice pharmacy be REVOKED; and be it further,

**ORDERED** that this is a final order of the State Board of Pharmacy and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't Art., §§10-611, *et seq.*

Jan. 6, 2004  
Date

  
Stanton G. Ades, P.D.  
President, Board of Pharmacy

**NOTICE OF RIGHT TO APPEAL**

Pursuant to Md. Code Ann., Health Occ. Art., §12-316, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Act, Md. Code Ann., State Gov't Art., §§10-201, *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.