

IN THE MATTER OF

*

BEFORE THE

JOHN D. HOELSCHER, P.D.

*

MARYLAND STATE

LICENSE NO. 11115

*

BOARD OF PHARMACY

Respondent

*

* * * * *

ORDER CONTINUING SUMMARY SUSPENSION

Pursuant to Md. Code Ann., State Gov't § 10-226(c)(1999), the State Board of Pharmacy (the "Board") hereby continues the summary suspension of the license to practice pharmacy issued to John D. Hoelscher, P.D. (the "Respondent"), under the Maryland Pharmacy Act (the "Act"), Title 12, Health Occupations Article (2000). This Order is based on the following investigative findings, which the Board has reason to believe are true:

Background

1. At all times relevant hereto, the Respondent was licensed to practice pharmacy in Maryland. The Respondent was first licensed on July 30, 1987. The Respondent's license expires on July 31, 2001. At all time relevant herein, the Respondent was working at either Heritage Pharmacy in Bolliver, West Virginia, or at K-Mart in Frederick, Maryland.

2. The Respondent has a history of substance abuse and self-prescribing. As a result, the Respondent voluntarily surrendered his pharmacist license on June 30, 1995, after being reported to the Board that he was practicing pharmacy while under the influence of unprescribed Darvocet N-100 while he was the owner and sole pharmacist at Medicap Pharmacy in Walkersville, Maryland.

3. The Board reinstated the Respondent's license on April 23, 1996, and contemporaneously placed him on probation contingent upon several probationary conditions.

4. On May 14, 1997, the Board summarily suspended the Respondent's license after receiving reports that he was self-medicating with carisoprodol and meprobamate.

5. The Board reinstated the Respondent's license on September 17, 1997, and placed him on probation for two years pursuant to several probationary conditions.

6. The Board released the Respondent from probation in September 1999.

7. On or about March 7, 2001, the Board received an anonymous telephone report that the Respondent was self-medicating and diverting Serzone, Oxycodone and Hydrocodone from his former place of employment, Heritage Pharmacy. The caller also informed the Board that the Respondent was then employed at K-Mart.

8. Heritage Pharmacy had closed for business on February 1, 2001, and the pharmacy records were transferred to Jefferson Pharmacy. An investigator for the West Virginia Board of Pharmacy conducted an audit of Heritage Pharmacy's CDS records for the period from December 1999 to February 2001. The investigator's audit found significant shortages of Hydrocodone (-8774), Propoxyphene (-487), Oxycontin (-529), Oxazepam (-353), and Adderall (-495).

9. On April 10, 2001, Jack Freedman and Cathy Putz of the Division of Drug Control, conducted an audit at K-Mart in Frederick, Maryland. The audit disclosed that the Respondent filled for himself two prescriptions of Adderall 20 mg with double quantities of Adderall 10 mg. It is against K-Mart policy for employees to fill their own prescriptions.

10. In addition, the Respondent's supervisor, Kelly Shanahan, found various other discrepancies in the Respondent's dispensing practices which, along with operational problems cited, resulted in the Respondent's termination from K-Mart on April 16, 2001. The Respondent had only worked at K-Mart for approximately two months at the time of his termination.

11. Specifically, Ms. Shanahan reported the following: (1) a number of stock bottles on the shelves were left uncapped; (2) 6 prescription vials that were "return to stock" were misplaced on an empty shelf with no caps; (3) a number of medications were placed on incorrect shelves in front of the wrong scanner labels and in the wrong order; (4) several prescriptions were filled under an incorrect patient name; (5) a branded Tylenol #3 tablet was placed in a bottle of generic Tylenol #3; (6) prescriptions for Percocet 5 were dispensed with Roxicet 5/325, but recorded as Roxicet 5/500 or Roxicet Solution, and prescriptions for OxylIR 5 were dispensed with Oxycodone 5/500, but recorded as Oxycodone 5 mg; and (7) hard copies of 12 prescriptions for Schedule II CDS drugs were missing.

FINDINGS

1. The Respondent, as pharmacy manager at Heritage Pharmacy, permitted massive shortages of controlled dangerous substances. The Respondent stated that Heritage Pharmacy only filled approximately 40 prescriptions per day. Based on the small volume of prescriptions dispensed, the Board finds suspect that such large amounts of Hydrocodone, Oxycontin, etc., were ordered into stock. Adding to that, the subsequent unexplained shortage of these drugs causes the Board to seriously question the Respondent's competency as a pharmacist. The Board also questions whether the

Respondent has relapsed into substance abuse once again considering the nature of the drug shortages and the complaint that the Respondent was self-medicating. The Respondent's lack of competency in allowing such shortages, coupled with the possibility that the Respondent is engaging in substance abuse again, poses a significant risk to the public should the Respondent be permitted to practice pharmacy.

2. The Respondent's work performance at K-Mart also evidences to the Board that the Respondent's competency is seriously at issue. The Respondent filled his own prescription for a CDS, which was not only a violation of K-Mart policy, but demonstrated poor judgment considering his past history of substance abuse. Furthermore, Ms. Shanahan's detailed report demonstrates that the Respondent is unable to practice pharmacy in a safe and effective manner.

3. The Respondent proffered that he was given a job offer with Eastern Isotopes in which he would be practicing nuclear pharmacy and would not have access to CDS. The Board does not find that this position would assuage its concerns with respect to the risk the Respondent's apparent lack of competency poses to the public. Although the Respondent would not be working with CDS in this position, he would still be compounding, distributing and/or dispensing medications for use by the most ailing and medically vulnerable patients. In light of the Board's serious doubts as to the Respondent's competency to practice pharmacy, the Respondent's proffer does not sway the Board's decision.

CONCLUSION OF LAW

Based upon the foregoing, the Board concludes that the public health, safety and welfare imperatively require emergency action, pursuant to Md. Code Ann., State Gov't Article § 10-226(c)(2)(1999).

ORDER

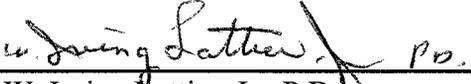
Based on the foregoing, on this **16 th** day of **May, 2001**, by a unanimous vote of a quorum of the Board, by authority granted to the Board by Md. Code Ann., State Gov't Art. § 10-226(c)(2)(1999), it is hereby,

ORDERED that the license held by the Respondent to practice pharmacy in Maryland, License No. 1115, shall continue to be **SUMMARILY SUSPENDED**; and be it further,

ORDERED that an evidentiary hearing shall be scheduled in October 2001, regarding the necessity for continuation of the emergency suspension, which hearing shall be consolidated with a hearing on the Board's charges that the Respondent violated the Act; and, be it further

ORDERED that this is document constitutes a final order of the State Board of Pharmacy and is therefore a public document for purposes of public disclosure, as required by Md. Code Ann., State Gov't Art., §§10-617(h)(1999).

May 22, 2001
Date


W. Irving Lottier, Jr., P.D.
Secretary, Board of Pharmacy

NOTICE OF HEARING

A full evidentiary hearing will be held before the Board of Pharmacy at 4201 Patterson Avenue, Baltimore, Maryland 21215, on the merits of the Board's Order Continuing Summary Suspension in October 2001.