

IN THE MATTER OF

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BEFORE THE

LEONARD MODZELEWSKI, P.D.  
License No. 12822

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STATE BOARD

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OF PHARMACY

RESPONDENT

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**FINAL WRITTEN DECISION AND  
ORDER CONTINUING SUMMARY SUSPENSION**

This case arises from allegations that Leonard Modzelewski, P.D. (the "Respondent"), License Number 12822, stole from a pharmacy an unopened bottle of generic Lortabs, that is, hydrocodone bitartrate, a Schedule III controlled dangerous substance ("CDS") that is habit-forming, and was subsequently arrested and charged with possession of CDS, felony intent to distribute CDS, and theft of less than \$300. Based on this information and pursuant to its authority under both Md. Code Ann., Health Occ. Article, §§12-101, et seq. and Md. Code Ann., State Gov't Article, §10-226(c), the State Board of Pharmacy (the "Board") initiated proceedings which resulted in the summary suspension of Respondent's pharmacist's license in order to protect the public health, safety, and welfare from the Respondent's drug use and/or his unauthorized distribution of controlled dangerous substances.

On March 3, 1997, and pursuant to the authority of S.G. §10-226(c), the Board issued an Order for Summary Suspension that summarily suspended Respondent's pharmacist's license. On March 19, 1997, the Board held a contested case hearing under the Administrative Procedure Act, Md. Code Ann., State Gov't Article,

§§10-201 et seq. to determine whether that order should continue in effect. Following an extensive hearing at which the Board heard the testimony of numerous witnesses, on April 3, 1997 the Board issued an Order Continuing Summary Suspension Pending Final Written Decision, in which decision the Board unanimously concluded that "sufficient evidence was presented at that hearing to support the conclusion that a summary suspension of Leonard Modzelewski's license is imperatively required to protect the public health, safety and welfare under Md. Code Ann., State Gov't Article, §10-226(c) in order to prevent further diversion of habit-forming controlled dangerous substances by Dr. Modzelewski." The Board stated that a more detailed final written decision would be issued at a later date. The instant decision constitutes that final written decision continuing in effect the summary suspension of Respondent's pharmacist's license.

#### **FINDINGS OF FACT**

1. At all times relevant hereto the Respondent was licensed to practice pharmacy in the State of Maryland and was employed by Wal-Mart as a relief pharmacist who would work at various Wal-Mart pharmacies when the regularly assigned pharmacists were absent. (Transcript of Proceedings ("T."), 271).

2. On December 3, 1996, around 11:30 A.M., the Respondent entered the pharmacy area of a Wal-Mart store located on Baltimore National Pike in Baltimore County, Maryland ("Catonsville Store"). The Respondent was not scheduled to work in that store on that date

and time, had no authorization to be in the pharmacy area, and had not requested permission to enter the pharmacy area from the pharmacist on duty that day, Tarik Ideis, P.D. (T. 61-62, 67-68).

3. When the Respondent entered the pharmacy, Dr. Ideis was completing paperwork in the back of the pharmacy area and heard his pharmacy technician, Syed Umran Ashruf, say hello to the Respondent. Dr. Ideis then interrupted his paperwork and left his desk to ascertain why the Respondent had entered the pharmacy area. While walking up one of the aisles to get to the prescription counter and entrance to the pharmacy, Dr. Ideis heard a "cling." Responding to this sound, Dr. Ideis walked into the next aisle and confronted the Respondent. (T. 65-67).

4. Upon being confronted by Dr. Ideis, the Respondent was startled. When Dr. Ideis reached out to shake the Respondent's hand, Dr. Ideis noticed what appeared to be a prescription bottle in a soda cup held by the Respondent. Dr. Ideis then requested to see what was in the Respondent's soda cup, a request that the Respondent evaded by saying "It's just my soda, Tarik." When Dr. Ideis reached for the soda cup, the Respondent resisted and a struggle for the cup ensued. Dr. Ideis then directed an aide, Jackie Tackett, to call store security. (T. 68-71, 234) Mr. Ashruf then assisted Dr. Ideis by holding the Respondent until Dr. Ideis was able to take the soda cup from the Respondent. (T. 72, 136)

5. Upon unsnapping the lid of the soda cup, Dr. Ideis found a bottle containing generic Lortabs and showed the bottle to Mr. Ashruf. (T. 72, 136-137). The Respondent then told Dr. Ideis that

he had brought the bottle with him into the store and that was the reason he had come to talk to him. (T. 73, 138). However, the bottle had the serial number of the Catonsville Store printed on it. (T. 138). Also, the actual bottle would not have been needed for the Respondent to discuss dispensing errors with him. (T. 79). In any event, Dr. Ideis was not the Respondent's supervisor and consequently there would have been no reason for him to discuss dispensing errors with him. (T. 82-83).

6. When Dr. Ideis returned to the aisle where the generic Lortabs were kept, he observed that there was an empty space between a partially opened and tipped bottle of generic Lortabs and another full unopened bottle of generic Lortabs. (T. 74). This empty space would normally have been occupied by the unopened bottle of generic Lortabs recovered from the Respondent. (T. 144, 145). It was highly unusual for the partially opened bottle kept in the front of the shelf to be tipped over. (T. 74).

7. After the struggle with the Respondent, Dr. Ideis also called store security. (T. 74). Holly Snyder Neurell, store security officer, and Tom Gurthet, co-manager, arrived at the pharmacy and proceeded to detain the Respondent in the pharmacy storeroom at Dr. Ideis's request. (T. 74, 179, 211). Dr. Ideis then called the police. (T. 76-77). Shortly before the police arrived, the Respondent darted into the bathroom, locked the bathroom door and flushed the toilet, despite being instructed to come out of the bathroom and to refrain from flushing the toilet. (T. 213-214). Witnesses testified that the Respondent appeared to

be very anxious, bloodshot, jittery, and strung out. (T. 212, 259-260).

8. When the police arrived, Baltimore County police officer James McCormack ordered the Respondent to come out of the bathroom. Neither he nor the store personnel heard the Respondent urinating. (T. 201, 214, 240). After flushing the toilet and leaving the bathroom, the Respondent told Officer McCormack his version of events, which essentially consisted of an explanation that he was trying to ask Dr. Ideis how to dispense generic Lortabs. (T. 241-242). The Respondent also asked Ms. Neurell and Mr. Gurthet to find his car in the parking lot in order to roll up the windows in case it was going to rain. However, he gave them a false description of the car and a false license plate number. (T. 245-246). In fact, the Respondent's driver's license had been suspended and following the period of suspension his driver's license was to be subject to an alcohol restriction until the year 1999. (T. 246, 258-259).

9. After Dr. Ideis verified that the stolen drugs were generic Lortabs, Officer McCormack prepared and served a warrant for the Respondent's arrest for distribution and possession of CDS, and for theft. (T. 247-249). Two hours after the incident, Dr. Ideis ran an inventory of the generic Lortabs and found them to be 100 short, an amount equal to that contained in the stolen bottle. (T. 126). That bottle of 100 tablets of generic Lortab was taken into police custody. (T. 244).

10. On the morning of the foregoing incidents, the Respondent had been scheduled to meet with George Jenks, his district manager, in Laurel, Maryland. The purpose of the meeting was to discuss five dispensing errors that had been made by the Respondent during the past year. Normally, after five dispensing errors made during a one-year period, relief pharmacists such as the Respondent are terminated from their employment with Wal-Mart. However, Mr. Jenks had discussed with Respondent the possibility of sending him to a three-day training store. The Respondent never showed up for the meeting. Instead, Mr. Jenks learned of the Respondent's theft of CDS when Dr. Ideis telephoned him around noon. The Respondent was then terminated from employment at Wal-Mart. (T. 272-274).

11. The Respondent admitted that the bottle of generic Lortabs was in his soda cup. (T. 309) The Respondent admitted that it was not necessary for him to show Dr. Ideis the bottle of generic Lortabs in order to discuss dispensing errors with him. (T. 329-332, 349). The Respondent admitted to driving on a suspended license imposed due to his driving while under the influence and that an alcohol restriction was imposed on his license for a three-year period. Finally, the Respondent admitted that he had lied to the Wal-Mart employees regarding what type of car he had parked in the parking lot and that he had lied about his car's license plate number in order to avoid further punishment for driving on a suspended license. (T. 313-315).

12. The Board has difficulty accepting the Respondent's story that he was in the pharmacy to ask Mr. Ideis about dispensing

errors involving generic Lortabs and that the bottle of generic Lortabs dropped into his soda cup by accident. There was no need for the Respondent to take a bottle off the shelf to discuss dispensing errors because he could have instead simply looked at the paperwork. There was also no legitimate reason for him to take an unopened bottle rather than the already opened bottle in front on the shelf. Had the Respondent pulled the bottle off the shelf merely to discuss dispensing errors as he claims, there would have been no reason for the Respondent to resist Dr. Ideis's attempts to see the contents of the soda cup. In addition, the Respondent's story changed in that he had first told Dr. Ideis and Mr. Ashruf that he had brought the bottle with him into the store. But then he told Officer McCormack that he was trying to ask Dr. Ideis how to dispense generic Lortabs. Finally, the Respondent has demonstrated by his actions that he is quite willing to lie when a license is at stake when he gave the Wal-Mart employees a false description of his car and his license plates in order to avoid further punishment for driving on a suspended license. The Board finds the Respondent's testimony to be less than credible. Instead, the only reasonable explanation for the presence of generic Lortabs in his soda cup is that he intended to steal the generic Lortabs either for his own use or to unlawfully distribute them.

13. In contrast to the Respondent's less than credible testimony, the witnesses against him were credible and their testimony was consistent on all essential points. No pharmacist

had given the Respondent permission to enter the pharmacy. Dr. Ideis testified that he found the bottle of generic Lortabs in the Respondent's soda cup after a struggle for the cup, which testimony was corroborated by the eyewitness testimony of Mr. Ashruf. When detained by Wal-Mart personnel the Respondent suddenly bolted into the bathroom shortly before the police arrived and flushed the toilet against explicit instructions. Several witnesses observed the Respondent as appearing strung out and jittery. On the day of the incident the Respondent's continued access to CDS was in imminent jeopardy as he was about to be terminated or otherwise disciplined by Wal-Mart for five recent dispensing errors. The Respondent's driver license had recently been suspended and subject to alcohol restrictions for driving while under the influence. Based on the evidence presented at the hearing, it is the Board's opinion that Respondent had taken the habit-forming generic Lortabs for purposes of drug abuse and that he is an impaired pharmacist with a substance abuse problem, whose continued access to CDS would endanger the health, welfare and safety of his patients and requires emergency action. Alternatively, if the Respondent's theft of the generic Lortabs was done for purposes of unlawful distribution, his continued access to CDS also endangers the health, welfare, and safety of the public.

#### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, and after consideration of the hearing record, there is a preponderance of

evidence to support the conclusion by a majority of the full authorized membership of the Board that the standards for emergency actions set forth by the Md. Code Ann., State Government Article, §10-226(c) have been met, and the Board further finds that the public health, safety and welfare imperatively require that the Board take the emergency action of continuing in effect the summary suspension of the Respondent's license to practice pharmacy in the State of Maryland, pursuant to the aforementioned statute.

**ORDER**

It is this 17th day of September, 1997 by the State Board of Pharmacy hereby

**ORDERED** that, pursuant to the authority vested in the Board of Pharmacy by Md. Code Ann., State Gov't Article §10-226(c), the Respondent's license to practice pharmacy in the State of Maryland is hereby continued to be **SUMMARILY SUSPENDED**; and be it further

**ORDERED** that this document is a final public Order, pursuant to Md. Code Ann., State Gov't Article, §10-617(h).

*David Russo*

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David Russo, P.D., M.B.A.  
Board President

**NOTICE OF RIGHT TO APPEAL**

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