

IN THE MATTER OF

\*

BEFORE THE

JEFFREY YANNELLO, P.D.

\*

MARYLAND STATE

LICENSE NO. 10664

\*

BOARD OF PHARMACY

Respondent

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**FINAL DECISION AND ORDER**

**Background**

This case arose out of allegations that Jeffrey Yannello, P.D. ("Respondent") entered a guilty plea to a felony and as a result was disciplined by the licensing authorities of two states other than Maryland where he was licensed to practice pharmacy. Specifically, the Respondent was charged with entering a guilty plea to a one-count Information charging him with illegal distribution of drug samples arising from his receipt and sale of stolen drug samples while he was the owner of First Choice Pharmacy, Inc., in Philadelphia, Pennsylvania. Further, it was alleged that subsequent to that plea Mr. Yannello was disciplined by the Boards of Pharmacy in Pennsylvania and Arizona for this activity. Based upon its investigation, on April 19, 2006, the Maryland State Board of Pharmacy (the "Board") issued Charges against the Respondent.

A contested case hearing was held under the Administrative Procedure Act, Md. Code Ann., State Gov't §10-201 *et seq.*, before a quorum of the Board on November 15, 2006. Ms. Roberta Gill, AAG, presented the State's evidence against Mr. Yannello and Mr. Yannello represented himself. At the conclusion of the hearing and on that date, November 15, 2006, the same quorum of the Board convened to deliberate and voted to

affirm certain of the charges against the Respondent and to dismiss others. The Board further voted 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 licensing information from files of Pharmacy Board
- State's Exhibit No. 2 - Jeffrey Yannello's 1998 Pharmacy license renewal application
- State's Exhibit No. 3A - Guilty Plea Agreement, dated 11/10/99
- 3B - Criminal Information, dated 8/21/00
- State's Exhibit No. 4A - PA Pharm. Bd. Show Cause Order dated 2/14/01
- 4B - PA Certificate of Service, dated 2/20/01
- 4C - PA Pharm. Bd. Order, dated 10/19/01
- State's Exhibit No. 5A - PA Pharm Bd. letter to Ariz. Pharm. Bd. enclosing documents re Jeffrey Yannello
- 5B - Letter of Jeffrey Yanello to Ariz. Pharm. Bd. dated 12/20/01
- 5C - Ariz. Pharm. Bd. Order, dated 1/10/02
- State's Exhibit No. 6A - Yannello 2002 Pharm. Bd. Renewal application, dated 12/15/02 with attachments
- 6B - Yannello 2004 Pharm. Bd. Renewal application, dated 10/29/04 with attachment
- 6C - Copy of Maryland Pharm. Bd. License, expiration date 12/31/06
- State's Exhibit No. 7A - Letter to Md. Pharm. Bd. from PA Pharm. Bd. dated 2/2/05
- 7B - Copies of Yannello file from PA Pharm. Bd.
- State's Exhibit No. 8A - Investigative Report of Md. Pharm. Bd.

- 8B - Investigative Report from Philadelphia Branch of DEA, dated 06/01/2005
- 8C - Facsimile of correspondence with Texas and Wash. Bds. of Pharm.
- State's Exhibit No. 9A - Notice of Hearing and Charges to Jeffrey Yannello, dated 4/19/06, to Maryland address
- 9B - Notice of Hearing and Charges to Jeffrey Yannello, dated 4/19/06, to PA address
- 9C - Charging Document to Jeffrey Yannello of same date
- 9D - Summons and Notice of Hearing Date
- 9E - Signed Return Receipt for charging documents

**B. Summary of Pertinent Witness Testimony**

**Colin Eversley, Compliance Investigator for Maryland Pharmacy Board**

Mr. Eversley provided a copy of Mr. Yannello's Pharmacist profile from the Pharmacy Board's computer files as State Exhibit 1. He testified that Mr. Yannello had an active license to practice pharmacy in Maryland and was licensed as well in Arizona, Texas, Washington (State) and Pennsylvania. He provided a copy of a one-count criminal Information filed against Mr. Yannello on August 10, 2000 by the U.S. Attorney for the Eastern District of Pennsylvania (State Exhibit 3B) alleging that Mr. Yannello had obtained "thousands" of drug samples from an individual who stole them from his employer, a Maryland physician. According to the Information, Mr. Yannello placed those samples in the inventory of his pharmacy and sold them to "unsuspecting patients and other individuals" between March of '97 and June of '98. The stolen drugs sold were prescription drugs within the meaning of Title 21 U.S.Code, §353(b)(1)B and were drug

samples within the meaning of Title 21, U.S.Code, §353(c) such that they were not intended to be sold.

Mr. Eversley also provided (State Exhibit 3A) a copy of a Guilty Plea Agreement dated November 10, 1999 between Mr. Yannello and David R. Hoffman, Asst. U.S. Attorney, in which Mr. Yannello agreed to plead guilty to the Information, pay a special victims assessment of \$100.00, and provide information and testimony regarding his knowledge of and participation in the illegal receipt and distribution of drug samples. Included in Exhibit 3B was a record of the sentencing proceeding which followed Mr. Yannello's entry of the guilty plea. At that hearing, which occurred on November 20, 2000, Mr. Yannello was sentenced to be incarcerated for not less than 8 months, followed by two years of supervised release, pay a \$10,000 fine and \$13,785.25 in restitution.

Next, Mr. Eversley identified documents (State Exhibits 4A, B and C) from the Pennsylvania Board of Pharmacy: an Order to Show Cause containing factual allegations concerning Mr. Yannello's guilty plea dated February 14, 2001, and an Adjudication and Order dated October 19, 2001, finding Mr. Yannello guilty of pleading guilty to a felony and suspending his license to practice pharmacy indefinitely, but no less than 3 years. He also offered documents (State Exhibits 5A, B and C) showing action taken by the Arizona Pharmacy Board based on charges of being convicted of a felony, having his pharmacy license suspended in another jurisdiction and being convicted of a felony involving prescription-only drugs. Based on finding Mr. Yannello guilty of those charges, the Arizona Board also suspended his Arizona pharmacy license on January 10, 2002.

Mr. Eversley next identified Mr. Yannello's 2002 Maryland Pharmacy Board Renewal Application dated December 15, 2002. (State Exhibit 6A) On that application, Mr. Yanello answered "Yes" to question 2, "Has any State Licensing or Disciplinary Board . . . denied your application for licensure, reinstatement or renewal, or taken any action against your license, including but not limited to reprimand, suspension, or revocation?". He answered "No" to the question "Have you pled guilty, nolo contendere, or been convicted of, or received probation before judgment of any criminal act (excluding traffic violations)?" In his attached explanation, Mr. Yannello indicated that he had explained in his previous renewal application that he had pled guilty to Illegal Distribution of Prescription Drug Samples and that subsequent to that plea his licenses to practice pharmacy in Pennsylvania and Arizona had been suspended. The Pharmacy Board's response to his application indicated that he had failed to answer questions on the form seeking information about his place of employment. The Board subsequently renewed his license for the 2002-2004 period and for the 2004 - 2006 period. (State Exhibits 6B and C).

Mr. Eversley indicated that there had to have been a breakdown in the Board's disciplinary system (T. 28) in processing Mr. Yannello's 2002 renewal application because when an applicant indicates that he has been disciplined by a licensing Board in another state, (as Mr. Yannello did in 2002) the case is sent to the compliance division and then discussed before the Board's disciplinary committee.

Mr. Eversley also discussed more recent documentation from the Pennsylvania Pharmacy Board (See, State Exhibit 7A - B) indicating that in 2005, Mr. Yannello sought reinstatement of his pharmacy license in that state. The Pennsylvania Board found in

those proceedings that Mr. Yannello had not practiced pharmacy for three years and that his license to practice pharmacy in Maryland and Washington (state) had never been suspended. On March 16, 2005, the Pennsylvania Pharmacy Board declined to reinstate Mr. Yannello's license to practice, indicating that he failed to establish "that he has the requisite moral and professional character to practice pharmacy." (State Exhibit 7B, p. 57) Mr. Eversley's investigative report prepared for the Maryland Board of Pharmacy indicated that the Maryland Board did not realize that Mr. Yannello had been disciplined in two other states until the Pennsylvania Board contacted them in February, 2005 in connection with his application for reinstatement. (See, State Exhibit 8A) He also identified an investigative report from a Drug Enforcement Administration investigator who indicated that at the reinstatement hearing before the Pennsylvania Board, Mr. Yannello showed "little to no remorse" and still attempted to justify his actions by presenting them as an attempt to "help people."

Mr. Eversley provided documentation of his attempts to contact the Texas and Washington Pharmacy Boards. The Washington Board indicated that it had no information and the Texas Board responded that Mr. Yannello's Texas pharmacy license had expired in 2000.

#### **Jeffrey Yanello, Respondent**

Mr. Yannello contended that the attorney who represented him in the criminal action "was not a health care attorney", that he (Yannello) did not know what was going on and that he did not realize at the time he pled guilty that he would have to cooperate with the prosecutors in providing information about the other participants in the theft of

the drug samples. Had he known that, he contended, he would not have agreed because, "I don't believe in that." (T. 39) He further claimed that had he known that the guilty plea would entail exclusion from the Medicare and Medicaid programs, he never would have agreed. The drug samples that he sold were not stolen, according to Mr. Yannello. Rather, they were "going to be discarded and I said I could use them." *Id.*

Mr. Yannello claimed that he provided the drugs to people who couldn't afford them and only charged them the co-pay. (T. 41, 43) He also contended that his actions did not amount to "selling" the samples because selling means obtaining the full reimbursement amount and he did not do that. (T. 43, 52) He indicated that he felt that it was "unjust" that he was being prosecuted for these actions now when he had fully described these actions in his 2000 renewal. (T. 40)

### **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. Respondent, Jeffery Yannello, was at all relevant times licensed to practice pharmacy in the State of Maryland.
2. Respondent purchased prescription drug samples from a person employed in a physician's office in Maryland; he brought them to his pharmacy in Philadelphia, Pennsylvania and sold them to persons who came to his pharmacy. These actions occurred between March of 1997 and June of 1998.
3. On November 11, 1999, the Respondent entered into a Guilty Plea Agreement with the U.S. Attorney for the Eastern District of Pennsylvania (State Exhibit

- 3A) in which he agreed to plead guilty to a Federal Criminal Information charging him with illegally receiving and distributing stolen drug samples.
4. Based on this plea, the Pennsylvania Pharmacy Board ordered an indefinite suspension of Respondent's license to practice pharmacy on October 19, 2001.
  5. Based on Respondent's guilty plea and the actions of the Pennsylvania Pharmacy Board, the Arizona Pharmacy Board issued an indefinite suspension of Respondent's license to practice pharmacy in Arizona on January 10, 2002.
  6. On his 2002 Maryland Pharmacy License Renewal form, Respondent indicated in response to a question on the form that he had been suspended from practicing pharmacy in both Pennsylvania and Arizona based on pleading guilty to Illegal Distribution of Prescription Drug Samples.
  7. As a consequence of the 1999 guilty plea, Respondent was excluded from participation in the Medicare and Medicaid programs for a 10-year period<sup>1</sup> and was unable to work in a pharmacy where such prescriptions were filled.
  8. Because of his exclusion from the Medicare and Medicaid programs, Respondent had only practiced pharmacy in Maryland for a 6-month period in 2002.
  9. In October of 2004, Respondent applied to the Pennsylvania Board for reinstatement of his license to practice pharmacy in that state. In connection with that application, the Pennsylvania Board contacted the Maryland Pharmacy Board on February 2, 2005, to inquire about Respondent's

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<sup>1</sup> The ten-year period of exclusion is based on Respondent's statement that he was subject to the exclusion until 2009. (T. 44)

Maryland license. The Pennsylvania Board forwarded to the Maryland Board copies of the Charges, Adjudication and Order issued by the Pennsylvania Board in 2001.

10. According to testimony by the Colin Eversley, this contact caused the Maryland Board to become aware of its administrative error in previously failing to investigate the Respondent's guilty plea and license suspensions in Pennsylvania and Arizona.
11. The Pennsylvania Board also sent the Maryland Board copies of the Final Adjudication and Order in the Pennsylvania Board's Reinstatement Proceedings which indicated that by Order dated March 16, 2005, the Pennsylvania Pharmacy Board denied Respondent's request for reinstatement of his pharmacy license.
12. A Report of Investigation by James Corbett, an investigator for the Drug Enforcement Administration in Philadelphia dated June 1, 2005, indicated that the Pennsylvania Board's denial of reinstatement to Respondent resulted from Respondent's failure to take responsibility for his illegal actions. According to the report, Respondent "continually attempted to justify his actions by stating that he was trying to help people." Although his demeanor and testimony indicated that Respondent knew that what he did was wrong, "he still feels justified in illegally distributing drug samples and shows little to no remorse." As a result, claimed the report, Respondent failed to convince the Pennsylvania Board that he had the requisite moral and professional character to practice pharmacy.

## DISCUSSION

Respondent Jeffrey Yannello was charged with violating five sections of the Board's disciplinary statute, Health Occ. ("H.O.") § 12-313, and COMAR 10.31.10 as follows:

- 1) HO §12-313(b)(2) Fraudulently or deceptively uses a license;
- 2) HO §12-313(b)(16) Violates any provision of §12-505 of this title, which concerns the labeling requirement for prescriptions for drugs, devices, or diagnostics<sup>2</sup>;
- 3) HO §12-313(b)(21) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;
- 4) HO §12-313(b)(23) Is disciplined by a licensing or disciplinary authority of any state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes<sup>3</sup>;
- 5) HO §12-313(b)(24) Violates any rule or regulation adopted by the Board;

And:

COMAR 10.34.10.01. Patient Safety and Welfare.

A. A pharmacist shall:

1) Abide by all federal and State laws relating to the practice of pharmacy and the dispensing, distribution, storage, and labeling of drugs and devices, including but not limited to:

a) United States Code, Title 21,

b) Health-General Article, Titles 21 and 22, Annotated Code of Maryland,

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<sup>2</sup> Although this charge was incorrectly labeled "HO §12-313(b)(3)" in the Board's charging document, the language of the charge corresponded exactly to the language of HO §12-313(16) which was the correct charge. Citation to an incorrect section number does not override the words of the charge. *Kirsner v. State*, 24 Md. App. 579, 583 (1975).

<sup>3</sup> Although this charge was incorrectly labeled HO §12-313(b)(5) in the Board's charging document, its language corresponded exactly to the language of HO §12-313(b)(23). See, Footnote 2.

- c) Health Occupations Article, Title 12, Annotated Code of Maryland,
- d) Criminal Law Article, Title 5, Annotated Code of Maryland, and
- e) COMAR 10.19.03.

Each of these charges will be considered below in the order provided above.

The charge of fraudulently or deceptively using a license is based on Respondent's answering "No" to the question, "Have you ever pled guilty, *nolo contendere*, or been convicted of, or received probation before judgment of any criminal act (excluding traffic violations)?" Respondent explained in his testimony that he had provided notice of the guilty plea that he entered on the Federal Criminal information relating to his receipt and sale of stolen drug samples on his Maryland pharmacy renewal application for 2000. The Board was unable to locate a copy of that renewal application. Further, as indicated by the wording of the same question on the Maryland 2002 renewal application, the 2002 question specifically inquired whether since your last registration (which for Respondent would have been in 2000) Respondent had pled guilty, *nolo contendere*, or been convicted of, or received probation before judgment of any criminal act (excluding traffic violations)? Because Respondent's entry into the plea agreement had occurred on November 11, 1999, the agreement was used in connection with charges filed on August 10, 2000 and the entire matter had been disclosed to the Board on Respondent's 2000 renewal application, Respondent's guilty plea had not been entered "since his last registration." Thus, the correct answer to that question by Respondent on his 2002 Pharmacy License Renewal application, was, as it should have been, "no." As a result, Respondent is not guilty of violating HO §12-313(b)(2).

Respondent's violation of HO §12-313(b)(16) did not appear to be based on any allegations in the Statement of Charges, nor did any testimony indicate in any definitive manner that the stolen drugs which Respondent sold to patients were mislabeled. Respondent is not guilty of this charge.

Respondent's violation of HO §12-313(21), on the other hand, is eminently clear. The Board's exhibits included: 1) the guilty plea agreement which Respondent signed in 1999, admitting that he had, in fact, obtained stolen prescription drug samples and distributed them to persons who came to his pharmacy (State Exhibit 3A), 2) the Criminal Information charging him with these offenses, dated August 21, 2000, and 3) the record of the sentencing proceeding based on that guilty plea which took place in November of 2000 (State Exhibit 3B). Although Respondent claimed that he was not represented by a lawyer well versed in health care, that he did not know that the drugs were "stolen" and that he didn't "sell" the stolen drugs, these claims were readily discounted. Naturally, the lawyer who handled Respondent's criminal case was a criminal lawyer. While a criminal lawyer may not be fully aware of the implications of Medicare and Medicaid exclusions to a pharmacist, his duty was to represent Respondent in the criminal proceedings against him, and as to that representation Respondent has made no complaint. Respondent's claim that he did not know that the drugs were stolen was largely nullified by his admission upon questioning by a Board member that he knew that only physicians were permitted to dispense drug samples and that the acquaintance from whom he bought the samples was not a physician. Lastly, his claim that he did not "sell" the stolen samples was similarly undermined by his own statement that to him "sell" meant to obtain the full charge for the prescription, including both the co-pay and

the insurance amount and he only charged the co-pay amount. Clearly, Respondent violated HO §12-313(b)(21).

Similarly, Respondent's violation of HO §12-313(23) is clear. The Pharmacy Board investigator, Colin Eversley, offered in evidence a copy of both the charges and dispositions in the cases brought by the Pennsylvania and Arizona Pharmacy Boards, showing that Respondent was disciplined for his guilty plea by the Pennsylvania Pharmacy Board in October of 2001 and by the Arizona Pharmacy Board in January of 2002. Furthermore, the Pennsylvania recently denied the Respondent's Petition for Reinstatement in 2005, based upon the finding that the Respondent continued to lack the "requisite moral and professional character to practice pharmacy." (State's Ex. 7B)

The charges relating to HO §12-313(24) violating any rule or regulation of the Board, and specifically the regulation that requires a licensee to abide by all State and federal laws relating to the practice of pharmacy and the dispensing, distribution, storage, and labeling of drugs and devices, are supported by the Respondent's guilty plea to violations of Title 21 of the United States Code.

Respondent claimed during the hearing that because he notified the Maryland Board of Pharmacy of his guilty plea to the criminal information in his 2000 Pharmacy Renewal application, and of the disciplinary actions by the Pennsylvania and Arizona Pharmacy Boards in his 2002 Maryland Pharmacy Renewal application and despite these notifications, the Board renewed his license, he should not be subject to discipline for those offenses at this juncture. The renewal of a license to practice pharmacy, however, is in no way a waiver of the Board's right to take disciplinary action for offenses which

occurred prior to the renewal. *Board of Physicians Quality Assurance v. Banks*, 354 Md. 59, 67-68 (1999). Nor do the Pharmacy Board's disciplinary provisions contain a statute of limitations requiring that particular offenses be charged within a specified time period or they will be dropped.

Prior to this action, and despite the Respondent's disclosure, the Board had no knowledge of either of Respondent's disciplinary transgressions. Further, once knowledge of these problems came to the attention of the disciplinary committee, the Board took immediate action. In addition, the Board is cognizant of the recent decision by the Pennsylvania Board (on March 16, 2005) not to reinstate Respondent's license to practice pharmacy. That decision, based on an investigative report by James Corbett, a DEA investigator from the Baltimore region, resulted from Respondent's continuing argument that his actions were justified, even if illegal, because "he was trying to help people." (See, State Exhibit 8B, p. 63) Further, according to the report, Respondent "shows little to no remorse." As a result of these actions by Respondent, the Pennsylvania Board found that he "lacked the moral and professional character to practice pharmacy."

#### **CONCLUSIONS OF LAW**

Based upon the foregoing summary of evidence, findings of fact, and discussion, the Board concludes that the Respondent violated Md. Code Ann., Health Occ. §12-313(b)(21), (23) and (24).

## ORDER

Based on the foregoing Findings of Fact, Discussion, and Conclusions of Law, by a unanimous decision of a quorum of the Board it is hereby:

**ORDERED** that the Respondent's license to practice pharmacy be **SUSPENDED** for three (3) years, with one (1) year **STAYED**; and be it further,

**ORDERED** that upon termination of the suspension, the Respondent shall be placed on **PROBATION** subject to certain terms and conditions to be determined at the time of the termination of suspension; and be it further

**ORDERED** that the Respondent shall not work in a pharmacy as a technician during the period of active suspension; and be it further

**ORDERED** that the Respondent shall not own or manage a pharmacy; and be it further

**ORDERED** that should the Respondent violate any of the terms and/or conditions of this Order, the Board, in its discretion, after notice and an opportunity for a hearing, may impose any additional sanctions, including revocation and/or a monetary penalty authorized under the Maryland Pharmacy Act; and be it further,

**ORDERED** that the Respondent shall submit his wall certificate, wallet license, and renewal certificate to practice pharmacy to the Board of Pharmacy to be held by the Board during the active suspension period; and be it further,

**ORDERED** that this is a formal 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.*

2/15/07  
Date

  
LaVerne Naesea, Executive Director  
for  
Mark Levi, P.D.  
President, Board of Pharmacy

**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 (30) days of your receipt of this Final Order and shall provide for judicial review of a final decision in accordance with the Maryland Administrative Procedure Act, *Md. Code Ann.*, State Gov't §§ 10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.