

IN THE MATTER OF
MICHAEL BALL, P.D.
LICENSE NO. 09572

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BEFORE THE MARYLAND
STATE BOARD OF
PHARMACY

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**CONSENT ORDER TERMINATING
SUMMARY SUSPENSION**

Background

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board"), and subject to the Maryland Pharmacy Act (the "Act"), Md. Code Ann., Health Occ. §§ 12-101, *et seq.*, (2005 Repl. Vol.), and the Maryland Administrative Procedure Act, Md. Code Ann., Health Occ. §§ 10-201 *et seq.*, the Board issued an Order for Summary Suspension dated December 11, 2008, in which it summarily suspended the pharmacist's license held by Michael Ball, P.D. (the "Respondent"). Specifically, the Board found reliable evidence demonstrated that the public health, safety or welfare imperatively required emergency action, pursuant to Md. Code Ann., State Gov't §10-226(c)(2)(2004 Repl. Vol.).

On January 14, 2009, the Board held a hearing before a quorum of the Board to allow the Respondent the opportunity to show cause why the Respondent did not pose an imminent threat to the health, safety and welfare of the public. In lieu of a continued summary suspension, the Respondent and the Board agree to resolve the matter by way of this Consent Order with the terms contained herein.

FINDINGS OF FACT

1. The Respondent is licensed to practice pharmacy in the State of Maryland under License Number 09572. The Respondent was first licensed on October 30, 1981. The Respondent's license expires in May of 2010.

2. At all times relevant, Respondent was employed as a pharmacist at Suburban Hospital ("Suburban") in Bethesda, Maryland.

3. On or about June 18, 2008, the Board received a complaint from Suburban regarding the Respondent. The complainant reported that on June 13, 2008 at approximately 1:30 a.m., a pharmacy technician found the Respondent unresponsive on the floor of the pharmacy.

4. The pharmacy technician initiated a "code blue" call and CPR. The Code Team responded and found the Respondent on the floor, unresponsive, with "agonal breathing, snoring respirations with pulses." The Code Team administered bag respirations, started an intravenous line, and placed the Respondent on a cardiac monitor. Respondent's blood sugar was 240.

5. A 10cc syringe with bloody needle, one empty vial of Versed 5mg/5cc, and two empty vials of Ultiva 1 mg each were found in the Respondent's left pocket.¹ A Ziplock bag filled with additional controlled dangerous substances was found in the Respondent's personal bag. The Ziplock bag contained 15 Remifentanil 1 mg vials, 10 Diazepam 10 mg carpulets, 1 Morphine 10 mg carpulets, 10 Cocaine 4% vials.²

6. The Respondent was observed to have a hematoma on the left side of his forehead, as well as multiple large, red and bloody needle markings on the right side of his

¹ Versed (generic: Midazolam) is an anesthetic used to produce sleepiness or drowsiness and to relieve anxiety prior to surgical procedures. Ultiva (generic: Remifentanil) is a narcotic pain reliever.

² Diazepam (brand name: Valium) is a benzodiazepine used in the treatment of anxiety disorders. Morphine is a narcotic analgesic used to treat moderate to severe pain. Cocaine is used as a local anesthetic.

abdomen. When the Respondent was later questioned about the needle markings on his abdomen, he stated that he is a diabetic and takes insulin.

7. The Respondent was transported to Suburban's Emergency Department ("ED"), where he was medically stabilized.

8. While the Respondent was a patient in the ED, the Respondent consented to substance abuse testing. On the form entitled, "Consent for Substance Abuse Testing for Current Employees," the Respondent was asked to list any medications taken in the last 30 days, including the type of medication, dates taken and reason/circumstances for the medication. The Respondent disclosed that he took Midazolam 2 mg (Versed) and Ultiva 2 mg (Remifenanil) but did not provide any further information.

9. The results of the urine drug screen revealed that the Respondent tested positive for presumptive benzodiazepines.

10. Based upon the finding of assorted controlled dangerous substances in the Respondent's personal bag, Suburban ran a CII Safe Compare report and it was discovered that the Respondent had been outdating medications and not returning the medications to the vault.³ However, the Respondent's activity was not at a level to be flagged on transaction audit reports. The following is a list of the Respondent's outdate transactions:

Date	Drug	Strength	Quantity Outdated
5/20/2008	Morphine, epidural	10 mg	2
5/29/2008	Fentanyl	100 mcg amp	1
5/30/2008	Morphine, epidural	10 mg	3
5/30/2008	Morphine, epidural	10 mg	1
5/30/2008	Midazolam	5 mg vial	4
5/30/2008	Morphine, epidural	10 mg	4

³ A CII Safe Compare Report compares the medications dispensed to patients on the hospital units with the medications that were dispensed from the pharmacy. At Suburban, this report is usually generated on a weekly/daily basis by a pharmacy technician. However, in the month of May 2008, the pharmacy technician was pulled from all other activities and asked to focus on a different task. The Respondent's outdating activity began in May, coincidentally the same time that the report was not being generated.

5/30/2008	Morphine, epidural	10 mg	3
6/3/2008	Remifentanil	1 mg vial	10
6/5/2008	Remifentanil	1 mg vial	8
6/9/2008	Remifentanil	1 mg vial	10
6/12/2008	Remifentanil	1 mg vial	3
6/12/2008	Remifentanil	1 mg vial	2
6/12/2008	Remifentanil	1 mg vial	7
6/12/2008	Remifentanil	1 mg vial	5
6/12/2008	Cocaine	4% vial	10
6/12/2008	Diazepam	10 mg carpujet	10

11. The Respondent admitted to diverting and using narcotics while on duty, but stated that the drugs were "expired." The drugs found in the Respondent's personal belongings were not expired. The Respondent admitted to a substance abuse problem, but stated that the problem had only been going on for a month due to hip pain.

12. The Respondent participated in a Behavioral Health Intake Assessment, during which he stated that he suffered from chronic hip pain and attempted to self-medicate due to financial concerns. The Respondent denied abusing drugs outside of the work setting. Outpatient substance abuse treatment was recommended.

13. The Respondent took a six week leave of absence from his employment, but was subsequently terminated.

14. The Respondent entered into a contract with the Pharmacists Education and Advocacy Council in June 2008 and has been active in Narcotics Anonymous.

15. Prior to working at Suburban Hospital, the Respondent was practicing in a nuclear pharmacy which does not typically store controlled substances in its inventory, but left this employment for the position at Suburban Hospital.

Prior Board History

16. In March 1996, the Board received a communication from the Office of Occupational Health and Safety at Johns Hopkins Hospital regarding the circumstances of the Respondent's resignation. The Respondent was accused of sexual harassment, mood swings and behavior changes, and had threatened to "bring a gun to the work place to settle things." The investigation into these allegations included a random drug screen that was positive for benzodiazepines. The Respondent was permitted to resign.

17. The allegations against the Respondent were resolved after the Respondent met informally with two Board members and the Board's Executive Director in April 1996. The Board's case was closed in September 1996.

18. The Board received information that on May 31, 1997, the Respondent was noted to be "confused, disoriented, and not lucid" while on duty at Kmart Pharmacy. Errors were found in 9 of the 17 prescriptions filled by the Respondent on that date, and there were numerous consumer complaints. The Respondent was observed with impaired motor skills, slow reaction time and slurred speech. The Respondent was terminated from his employment at Kmart Pharmacy on June 2, 1997. The Board did not take action against the Respondent.

19. On August 31, 2000, a representative from Rite Aid Corporation notified the Board of the Respondent's termination pursuant to his admission that he forged controlled dangerous substance prescriptions for personal use. The Respondent's ex-wife also contacted the Board to report concerns regarding the Respondent's substance abuse. The Board did not take action against the Respondent.

DISCUSSION

The Respondent has a protracted history of serious substance abuse issues that need to be wholly addressed and treated before the Respondent is able to practice pharmacy in a safe and competent manner. The Respondent has had numerous opportunities to recognize and treat his addiction in the past, yet has been unable to remain abstinent for any prolonged period of time.

The Board's first and primary mandate is to protect the public. The Board is concerned that the Respondent, fully aware of his substance abuse issues, accepted a position at Suburban Hospital pharmacy which allowed him access to controlled substances. And, not surprisingly, the Respondent quickly relapsed. More egregious, however, was that the Respondent abused controlled substances while practicing - to the point where he was found unresponsive on the pharmacy floor. There can be no clearer example of the danger that an impaired pharmacist can pose to the public. It is only by sheer providence that the Respondent, in such an impaired state, did not make serious medication errors that had disastrous effects on patients in the hospital. That this is not the first time the Respondent has been found to be abusing drugs while on duty further buttresses the Board's decision with respect to its sanction herein.

The Board commends the Respondent for his efforts in recovery thus far. However, given the Respondent's history, the Board requires that he demonstrate a substantial period of recovery and strict compliance with monitoring before the Board can reasonably determine that the Respondent is mentally and professionally fit to return to practice. At present, the Respondent is not mentally competent to practice pharmacy in any capacity without compromising the standard of care due to the public. The Board further finds, and the Respondent concedes, that due to the pervasiveness of the Respondent's substance abuse issues, it is in both the public's and the Respondent's best interests that he never practice pharmacy in a setting in which he has access to controlled substances. In addition, the Board intends this sanction to serve as a deterrent to other pharmacists who choose to abuse drugs while on duty and endanger Maryland patients.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that the Respondent violated Md. Code Ann., Health Occ. §§ 12-313(b)(5) and (21).

ORDER

Based on agreement of the parties, it is this 30th day of January, 2009, by an affirmative vote of the Board, hereby:

ORDERED that, notwithstanding the sanctions contained herein, in lieu of increased suspension and/or revocation of the Respondent's pharmacist license, the Respondent's ability to practice pharmacy is hereby permanently restricted to prohibit the Respondent's access to controlled substances; and be it further,

ORDERED that the Respondent's license be SUSPENDED for at least TWO YEARS, beginning December 11, 2008; and be it further,

ORDERED that during the suspension period, the Respondent shall satisfy the following conditions:

1. The Respondent shall submit to random urine screenings to be ordered by the Board and conducted at a CLIA-certified laboratory on a weekly basis;
2. For the first year of suspension, the Respondent shall submit to random breathalyzer screenings to be ordered by the Board and conducted at a CLIA-certified laboratory on a weekly basis;
3. The Respondent shall continue weekly participation in NA, AA, or similar substance abuse rehabilitation support group;

4. The Respondent shall participate weekly in a 12-step or similar program that is comprised of healthcare professionals, and provide the Board with documentation of attendance;

5. The Respondent shall not work, in any capacity, for a pharmacy, distributor, manufacturer, or other facility that would enable the Respondent to have access to controlled substances; and be it further,

ORDERED that the Respondent may petition the Board to lift the suspension no earlier than December 11, 2010, provided that the Respondent has fully complied with all conditions during the suspension period; and be it further,

ORDERED that upon the Board's lifting of the suspension, the Respondent shall be placed on immediate PROBATION for at least FIVE (5) years during which the Respondent shall:

1. Practice only in a non-dispensing role;
2. Not have access to controlled substances;
3. Provide all pharmacy employers with a copy of the Consent Order; and
3. Adhere to any and all conditions imposed by the Board at that time relating to the Board's monitoring of the Respondent's rehabilitation efforts;

ORDERED that the Respondent shall bear all expenses associated with this Order; and be it further,

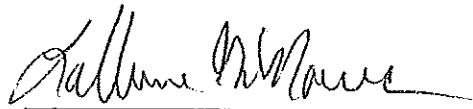
ORDERED that the Respondent's execution of this Consent Order shall constitute a release of any and all medical health related records, substance abuse treatment records, and psychological/psychiatric records pertaining to the Respondent to the Board in complying with the terms and conditions set forth herein; and be it further,

ORDERED that the Respondent shall at all times cooperate with the Board in the

monitoring, supervision, and investigation of the Respondent's compliance with the terms and conditions of this Consent Order; and be it further,

ORDERED that this document constitutes a formal disciplinary action of the Maryland State Board of Pharmacy and is therefore a public document for purposes of public disclosure, pursuant to the Public Information Act., State Gov't § 10-611 *et seq.* and COMAR 10.34.01.12.

1/30/09
Date



LaVerne G. Naesea, Executive Director
Maryland Board of Pharmacy

[CONSENT PAGE TO FOLLOW]

CONSENT

By signing this Consent, I hereby consent to the foregoing Findings of Fact and Conclusions of Law, and agree to be bound by the foregoing Consent Order and its conditions.

1. By this Consent, I submit to the foregoing Consent Order as a resolution of this matter. By signing this Consent, I waive any rights I may have had to contest the findings of fact and conclusions of law contained in this Consent Order.

2. I acknowledge the validity of this Consent Order as if it were made after a hearing in which I would have had the right to counsel, to confront witnesses on my own behalf, and to all other substantial procedural protections provided by law.

3. I acknowledge the legal authority and the jurisdiction of the Board to enter and enforce this Consent Order.

4. I acknowledge that, by entering into this Consent Order, I am waiving my right to appeal any adverse ruling of the Board that might have followed an evidentiary hearing.

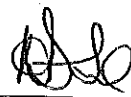
5. I sign this Consent Order freely and voluntarily, after having had the opportunity to consult with counsel. I fully understand the language, meaning, and effect of this Consent Order.

2/11/2009
Date

Michael D Ball, P.D.
Michael Ball, P.D.

STATE OF MARYLAND
COUNTY/CITY OF FREDERICK :

I hereby certify that on this 11 day of February, 2009, before me, a Notary Public of the State of Maryland and County/City aforesaid, personally appeared MICHAEL BALL, and made an oath in due form that the foregoing Consent was his voluntary act and deed.

ANNE ELADANE-OWENS 
Notary Public
My commission expires: 12/11/2012