

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

*** BEFORE THE
* MARYLAND STATE
* BOARD OF PHARMACY
*
* Case No. 08-110**

Respondent

* * * * *

FINAL DECISION AND ORDER

Background

On December 11, 2008, the Maryland Board of Pharmacy issued an Order for Summary Suspension of the pharmacist’s license held by Michael Ball, License No. 09572, based on Mr. Ball’s overdose of prescription drugs while on duty at Suburban Hospital. On January 14, 2009, the Board held a show cause hearing to allow Mr. Ball an opportunity to show cause why the Board should not continue the summary suspension of his license. On February 11, 2009, the Board entered into a Consent Order with Mr. Ball which suspended his license to practice pharmacy for two (2) years, beginning December 11, 2008. The February 11, 2009, Consent Order required that Mr. Ball submit to random urine screenings. On November 20, 2009, the Maryland Board of Pharmacy (the “Board”) issued a Notice of Intent to Revoke Mr. Ball’s license based on Mr. Ball’s urine screens indicating positive results for opiates.

A contested case hearing was held under the Administrative Procedure Act, Md. Code Ann., State Gov’t §10-201 *et seq.*, and COMAR 10.34.01, before a quorum of the Board on March 17, 2010, for the purpose of adjudicating the charges. After the conclusion of the hearing, the Board convened to deliberate and voted unanimously to sanction the license held by Mr. Ball for the reasons set forth in this Final Decision and Order.

SUMMARY OF THE EVIDENCE

A. Documents.

The following documents were admitted into evidence.

- State's Exhibit No. 1 - Order of Summary Suspension, 12/11/08
- State's Exhibit No. 2 - Consent Order Terminating Summary Suspension, 1/30/09
- State's Exhibit No. 3 - Packet of instructions to M. Ball, 3/14/09
- State's Exhibit No. 4 - Email correspondence from M. Ball to S. Kreindler, 6/24/09
- State's Exhibit No. 5 - Correspondence to M. Ball from L. Naesea, 7/2009
- State's Exhibit No. 6 - Positive urine screening results, Friends Medical Laboratory, Inc., 8/26/09
- State's Exhibit No. 7 - Note to file re: telephone call from M. Ball to S. Kreindler, 9/2/09
- State's Exhibit No. 8 - Letter to M. Ball from S. Kreindler, 9/3/09
- State's Exhibit No. 9 - Response from M. Ball, 9/10/09
- State's Exhibit No. 10 - Information submitted by M. Ball, 9/15/09
- State's Exhibit No. 11 - Positive urine screening results, Friends Medical Laboratory, Inc., 10/21/09
- State's Exhibit No. 12 - Positive urine screenings results, Friends Medical Laboratory, Inc. 11/11/09
- State's Exhibit No. 13 - Notice of Intent to Revoke the Respondent's Pharmacist License, 11/20/09

B. Witnesses.

State: Steven Kreindler – Compliance Coordinator, Board of Pharmacy

Respondent: Diana Ball, P.D., Spouse of Respondent
Michael Ball, P.D., Respondent

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. Mr. Ball was first licensed to practice pharmacy in Maryland on October 30, 1981 under License No. 09572. (State's Ex. 1)
2. On December 11, 2008, Mr. Ball's license to practice pharmacy was summarily suspended based on his drug overdose while on duty at Suburban Hospital. (State's Ex. 1)
3. Following a show cause hearing on January 14, 2009, the Board and Mr. Ball entered into a Consent Order Terminating Summary Suspension ("Consent Order"), dated February 11, 2009. Pursuant to the Consent Order, Mr. Ball's license was suspended for a period of at least two (2) years. During the suspension period, Mr. Ball was ordered to abide by certain conditions, including random urine and breathalyzer screenings. (State's Ex. 2)
4. By certified letter received on July 25, 2009, the Board notified Mr. Ball that he was not in compliance with the conditions of his Consent Order because he failed to submit to a urine and breathalyzer screen within 48 hours of the Board's directive to do so on June 22, 2009. (State's Ex. 5)

5. On August 26, 2009, and October 21, 2009, Mr. Ball tested positive for opiates. (State's Exs. 6 and 11)
6. On September 9, 2009, Mr. Ball was contacted by Mr. Kreindler via telephone and asked to explain the August 2009 positive opiate result. Mr. Ball indicated that it was probably due to "hand contamination" because of his handling of his wife's medications. (State's Ex. 7)
7. Subsequently, on September 10, 2010, in a letter to the Board, Mr. Ball stated that the positive urine screen was due to his use of a previous Hydrocodone prescription he received in April 2009 for an ear infection. According to Mr. Ball, he got another infection in August 2009. He could not afford to see a physician again, so he self-medicated with the remaining Hydrocodone. (State's Ex. 9)
8. Mr. Ball provided a prescription and patient records from an urgent care center, dated April 20, 2009, which indicated that Mr. Ball was prescribed Hydrocodone to treat pain associated with an ear infection. Hydrocodone is a Schedule III narcotic pain reliever. (State's Ex. 10)
9. Mr. Ball stated that the urgent care center knew about his substance abuse issues and had documented this in his patient file. However, Mr. Ball's patient information sheet from his April 20, 2009, visit, only indicates: "Social History - Tobacco Use: Has no significant smoking history, and Alcohol: Drinks alcohol occasionally, on a less than daily basis." (State's Ex. 10)
10. Mrs. Ball acts as the "gatekeeper" to the controlled substances in the Ball household, and hides Mr. Ball's CDS prescriptions in various places. (T. 40, 50) She also

testified that she hides her own CDS prescriptions from both Mr. Ball and her daughters, but she sometimes forgets where she hid them. (T. 51, 54)

11. Mrs. Ball is also a pharmacist who is currently not practicing due to health issues. (T. 42)

12. Mrs. Ball testified that in April 2009, she only gave Mr. Ball two Hydrocodone pills for his ear infection and flushed the remaining pills. She also testified that she again gave Mr. Ball Hydrocodone in August 2009 due to pain associated with a sinus infection. Mrs. Ball stated that Mr. Ball had pain “in the sinus area and in the jaw...and his tooth hurt.” Mrs. Ball also acknowledged that she would give him Hydrocodone as a cough suppressant. Mrs. Ball was unclear as to where the Hydrocodone came from. (T. 50-51)

13. Although Mr. Ball asserts that he took leftover Hydrocodone from the April 2009 prescription as a cough suppressant, he was not prescribed Hydrocodone as a cough suppressant. (T. 65) Mr. Ball did not consult with a physician regarding his alleged infection in August 2009, and therefore he did not have a valid prescription to support his positive urine screen in August 2009.

14. Similarly, Mr. Ball again self-medicated with Hydrocodone in October 2009. (T. 68) Mr. Ball did not consult with a physician regarding any ailment he may have had in October and thus, did not have a valid prescription to support his positive urine screen in October 2009.

15. Since Mr. Ball has not practiced pharmacy in any capacity during his suspension period, he has been working in landscaping and grocery stores. (T. 70-73)

OPINION

Mr. Ball concedes that he has a serious addiction problem. His addiction spiraled out of control in 2008 when he was found unconscious on the floor of the hospital pharmacy in which he was working, with an IV needle still stuck in his arm. The hospital initiated a “code blue” and, fortunately, Mr. Ball was resuscitated. Mr. Ball’s addiction has been a longstanding struggle, and he has had myriad opportunities, dating back to 1996, to seek rehabilitation. Given Mr. Ball’s prolonged struggle with prescription drug addiction, it is incomprehensible that he now appears before the Board with such feeble excuses for his positive drug screens. As a pharmacist, Mr. Ball should be acutely aware of the standard prescription requirements, particularly for controlled substances. As an addict and a pharmacist under Board order, Mr. Ball should be acutely aware of the issues involved in ingesting controlled substances for which he does not have a valid prescription.

However, despite being a pharmacist and an addict, Mr. Ball contends that he felt it was wholly appropriate to take Hydrocodone, a Schedule III controlled substance, for a “cough” he was experiencing due to a sinus infection. It did not occur to Mr. Ball that despite being prescribed Hydrocodone for pain associated with an “ear ache” in April 2009, he did not have the authority to self-prescribe and ingest the leftover Hydrocodone for his cough, or any other symptom, in August and October 2009. And although Mr. Ball indicated that the urgent care center had his substance abuse issues documented in his patient chart, he stated that he did not verbally remind the physician of his issues, even when his physician was prescribing a narcotic.

Mr. Ball read into the record an excerpt from the Narcotics Anonymous handbook, which stated in relevant part:

This is a program of total abstinence. There are times, however, in cases of health problems when medication may be valid. This does not constitute a license to use.

*There is no safe use of drugs for us. Our bodies don't know the difference between the drugs prescribed by a physician for pain and the drugs prescribed by ourselves to get high. As addicts, our skill at self-deception will be at its peak in such a situation. Often our minds will manufacture additional pain as an excuse to use. ... Physicians should have specific knowledge of our addiction. Remember that we, not our doctors, are ultimately responsible for our recovery and our decisions....*In this program of total abstinence, however, we need to feel no guilt after having taken a minimal amount of medication prescribed by an informed professional for *extreme physical pain.* (T. 60-61)

Emphasis added.

In applying the above standard to Mr. Ball's case, it appears that Mr. Ball is engaging in the very conduct NA warns against. Mr. Ball may have manufactured additional pain in order to obtain his initial prescription for Hydrocodone for his ear ache in April 2009. The Board, through its years, has seen instances in which addicts refused narcotic pain relievers after invasive surgery in order to prevent any possible relapse. Mr. Ball, however, accepted the Hydrocodone prescription for an ear ache without any concern. Notwithstanding the propriety of Mr. Ball's April 2009 Hydrocodone prescription, Mr. Ball's ingestion of Hydrocodone in both August and October of 2009 was clearly both illegal and a violation of the Narcotics Anonymous pledge to which he supposedly subscribes. Mr. Ball ingested Hydrocodone in August 2009 to treat his cough, not to treat "extreme physical pain". Surely, there were alternative, less addictive cough suppressants he could have taken, particularly given his addiction issues and disciplinary status with the Board. More importantly, as a pharmacist, Mr. Ball should know that the April 2009 Hydrocodone prescription was only legally valid to treat the ear infection with which he presented in April 2009.

Furthermore, the Board does not find Mr. Ball's testimony credible. When first questioned about the April positive urine result, Mr. Ball stated that it was probably the result of "hand contamination" from handling his wife's medications. After having some time to think it

through, Mr. Ball then supplemented his response by explaining that he had taken leftover Hydrocodone to treat “ear pain”. Mr. Ball was conveniently unable to provide any documentation that he had an infection in August 2009 because a doctor’s “visit would have cost him \$150.” The Board notes, however, that Mr. Ball did have sufficient funds to purchase a sailboat from e-Bay in June 2009.

In addition, Mr. Ball testified that he specifically informed the physician’s assistant about his substance abuse problems when he was prescribed the Hydrocodone in April 2009. However, Mr. Ball’s patient record only documents occasional alcohol use and fails to indicate any issue of substance abuse. Furthermore, Mr. Ball conversely testified that he would not consistently advise a prescriber about his substance abuse problem, even if the prescriber was going to prescribe a narcotic, since this information is already in his patient records.

Lastly, Mr. Ball asserted in his correspondence that he took the leftover Hydrocodone in August 2009 to treat ear pain. However, at the hearing, Mr. Ball acknowledged that he took the leftover Hydrocodone as a cough suppressant, which is not why the Hydrocodone was originally prescribed and was certainly not an appropriate use of a narcotic by an individual with a serious substance abuse problem.

At this juncture, the Board has little confidence that Mr. Ball is taking his rehabilitation seriously. Based on the serious nature of Mr. Ball’s issues and the lack of insight and credibility he demonstrated in his testimony, the Board finds that continued suspension of Mr. Ball’s license is warranted.

CONCLUSION

Based upon the foregoing summary of evidence, findings of fact, and opinion, the Board concludes that the Respondent is subject to discipline pursuant to Md. Code Ann., Health Occ. §§ 12-313(b)(21).

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 SUSPENSION of Mr. Ball's pharmacist's license shall be SUSPENDED until December 31, 2012; and be it further,

ORDERED during the suspension period, Mr. Ball:

1. Shall submit to weekly random urine screenings to be ordered by the Board;
2. Shall continue weekly participation in NA, AA or similar substance abuse rehabilitation support group and provide the Board with attendance slips of such participation on a monthly basis;
3. Mr. Ball shall provide the Board with written notification in advance of any period of time during which he may be unreachable due to travel or other reason; and be it further,

ORDERED that all urine screens under this Order shall be:

1. Submitted by Mr. Ball within 24 hours of the Board staff instructing him to submit a urine sample;
2. Submitted at a CLIA-certified laboratory;
3. Observed; and

4. Negative for any controlled dangerous substance, narcotics, cocaine, or other mood-altering substance, except as provided below; and be it further,

ORDERED that Mr. Ball shall abstain from the ingestion of controlled dangerous substances, narcotics, cocaine, or other mood-altering substances, except that Mr. Ball may only ingest prescribed controlled dangerous substances for legitimate medical reasons under the following conditions:

1. Mr. Ball must be a bona fide patient of a licensed Maryland prescriber who is aware of this Order;
2. The medication must be lawfully prescribed by Mr. Ball's physician or other authorized medical practitioner;
3. Mr. Ball must provide the Board, in writing, within seventy-two (72) hours of receiving the medication: (a) the name and address of the prescriber; (b) the illness or medical condition diagnosed; (c) the type, strength, amount and dosage of the medication; (d) and a signed statement consenting to the release of relevant medical information about Mr. Ball from the prescriber to the Board; and be it further,

ORDERED that on or after December 31, 2012, Mr. Ball may petition the Board for lifting of the suspension provided that he has fully complied with all of the terms of suspension and has submitted to a substance abuse evaluation by a Board-appointed evaluator; and be it further,

ORDERED that upon any lifting of the suspension, Mr. Ball shall be placed on immediate PROBATION for at least FIVE (5) YEARS during which Mr. Ball:

1. Practice only in a non-dispensing role;

2. Not have access to controlled substances;
3. Provide all pharmacy employers with a copy of this Order; and
4. Adhere to any and all conditions imposed by the Board at that time relating to the Board's monitoring of Mr. Ball's rehabilitation efforts; and be it further,

ORDERED that Mr. Ball shall bear all expenses associated with compliance under this Order; and be it further,

ORDERED that Mr. Ball shall at all times cooperate with the Board in the monitoring, supervision, and investigation of Mr. Ball's compliance with the terms and conditions of this Order; and be it further,

ORDERED that Mr. Ball's failure to fully cooperate with the Board shall be deemed a violation of the terms of suspension and a violation of this Order; and be it further,

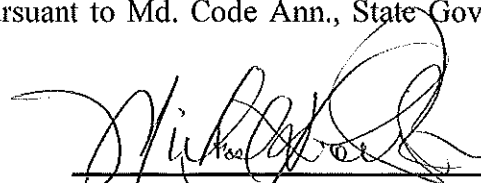
ORDERED that in the event the Board finds for any good faith reason that Mr. Ball has relapsed or otherwise violated any of the conditions of suspension herein, or in the event that the Board finds for any good faith reason that Mr. Ball has committed a violation of Title 12 of the Health Occupations Article or regulations adopted thereunder, the Board may take further disciplinary action against Mr. Ball's license, provided that Mr. Ball is given the opportunity to a hearing prior to such action; and be it further,

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

seq.

July 21, 2010

Date



Michael N. Souranis, 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.