

No NL

IN THE MATTER OF
David S. Becker, P.D.
License No. 10475
Respondent

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHARMACY
*

* * * * *

CONSENT ORDER

BACKGROUND

Based on the information received and a subsequent investigation by the Maryland State Board of Pharmacy (the "Board") and subject to the Maryland Pharmacy Act, Maryland Pharmacy Act, Md. Code Ann., Health Occ. §12-101 et seq. (1994 Repl. Vol.), (the "Act"), the Board charged David S. Becker, P.D. License Number: 10475 (the "Respondent"), with violation of certain provisions of §12-313. Specifically, the Board charged the Respondent with violation of the following provisions of §12-313 of the Act:

Subject to the hearing provisions of §12-315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any license to any applicant, reprimand any licensee, place any licensee on probation; or suspend or revoke a license if the applicant of licensee

- (14) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- (24) Violates any rule or regulation adopted by the Board.

The Board also charged the Respondent with violating COMAR 10.34.18.02 which states in pertinent part that:

- (A) A pharmacist licensed to practice in Maryland applying for renewal shall earn 30 hours of approved continuing pharmaceutical education within the 2 year period immediately preceding the licensee's renewal application.

(B) A pharmacist shall attest to the fact that the pharmacist has completed the continuing education requirement on the verified form. The licensee shall retain supporting documents for inspection by the Board for 4 years after the date of renewal for which the continuing education credits were used.

The Respondent was given notice of the charges and the issues underlying those charges, by letter and charging document dated January 7, 1997. A case resolution conference was held on February 13, 1997. The case resolution conference was attended by Board member, Theodore S. Litwin, Esquire, Norene Pease, Executive to the Board, and Paul Ballard, Assistant Attorney General and Counsel to the Board, Sherrai V. Hamm, Assistant Attorney General and Administrative Prosecutor, the Respondent, and James A. Johnson, Esquire, Counsel for the Respondent. As a result of discussions held at the foregoing case resolution conference, the parties agreed to enter into this final consent order.

FINDINGS OF FACT

The Board bases its charges on the following facts that the Board has caused to believe are true:

1. At all times relevant to the charges herein, the Respondent was licensed to practice pharmacy in the State of Maryland.

2. On or about September 21, 1996, the Respondent submitted an application for renewal of his pharmacy license. On his September 1995 renewal application, the Respondent indicated that he had earned thirty-one and one-half (31.5) continuing education hours. The Respondent also submitted a list containing the names and sponsors of the continuing education programs he had taken and

the number of hours he had earned.

3. In February of 1996, the Board informed the Respondent that he had been randomly selected for an audit of his continuing education requirements. As part of the audit process, the Board asked the Respondent to provide them with copies of his continuing education certificates for the courses listed on his September 1995 renewal application. The audit of the Respondent's continuing education requirement covered the period between October 1, 1993 and September 30, 1995.

4. In response to the Board's February 1996 request, the Respondent submitted eighteen acceptable continuing education certificates out of thirty-one and one-half (31.5) hours listed on his September 1995 renewal application. The Respondent also included a letter indicating that he could not locate the remaining certificates for the credits that were listed on his September 1995 renewal application.

5. The Board contacted the Respondent and granted him additional time to locate and/or replace the missing continuing education certificates. The Board required that the Respondent submit the remaining continuing education certificates by May 15, 1996. The Respondent did not submit the remaining certificates by the May 15, 1996 deadline even though the Board advised the Respondent to contact the program sponsors for duplicate certificates.

6. In June of 1996, the Board notified the Respondent and requested that he attend an informal meeting with the Board

scheduled for July 17, 1996. The purpose of the meeting was to discuss the recent audit of the Respondent's continuing education credits. At the informal meeting Respondent presented certificates covering eighteen (18) continuing education credits during the pertinent time period. The Respondent told the Board that he believed that he had received, but misplaced, certificates for the remaining thirteen and one-half (13.5) credits. Respondent referred to dated answer sheets he had filled out indicating that he had taken the credits for which he could not find certificates.

7. The Board contacted Power Pack and was informed that Power Pack's computer records indicated that Respondent had taken only two continuing education courses during the period between October 1, 1993 and September 30, 1995. In response to inquiry by Counsel for Respondent, Power Pack refused to go beyond its computerized records to check its hard copies of answer sheets received from Respondent.

8. At the case resolution conference held on February 13, 1997, Respondent presented the following documents:

- a. For the renewal period from October 1, 1989 to September 30, 1991, certificates verifying that he had earned 33.50 credits of continuing education, 3.5 credits more than the number required;
- b. For the renewal period from October 1, 1991 to September 30, 1993, certificates verifying that he had earned 32.50 credits of continuing education, 2.50 credits more than the number required;
- c. For the renewal period from October 1, 1993 to September 30, 1995, certificates verifying that he had earned 18 credits of continuing

education and dated answer sheets which he claimed were supporting documentation that he had earned an additional 13 credits of continuing education;

- d. For the first half of the renewal period from October 1, 1995 to September 30, 1997, certificates verifying that Respondent had already earned 24 credits of continuing education.

9. At the case resolution conference on February 13, 1997, Respondent, through his counsel, took the position that Respondent had not violated §12-313 of the Act and that Respondent had complied with COMAR 10.34.18.02. Respondent, through his counsel, took the position that, by covering the course materials, filling out the answer sheets and mailing the answer sheets, Respondent had done everything he could to "earn" the required hours of continuing education. Further, Respondent, through his counsel, argued that the certificates and dated answer sheets he presented were "supporting documents" under the regulation.

CONCLUSION OF LAW

Based upon the foregoing Findings of Fact, the Board finds that continuing education hours are not earned under the regulation until a pharmacist receives a certificate from a continuing education provider and that dated answer sheets are not sufficient "supporting documents" under the regulations. Based on the presentation at the case resolution conference, the Board hereby dismisses the charge that the Respondent fraudulently or deceptively obtained a license but finds that the Respondent violated §12-313 of the Act and COMAR 10.34.18.02 by failing to earn 30 hours of approved continuing

pharmaceutical education within the two-year period from October 1, 1993 to September 30, 1995.

ORDER

Based upon the foregoing Findings of Facts, Conclusions of Law and agreement of the parties, it is this 16 day of ~~March~~ ^{April} 1997, by a majority of the quorum of the Board, hereby

ORDERED that the Respondent be placed on **PROBATION** for a period of **TWELVE (12) MONTHS**, subject to the following conditions:

1. The Respondent shall earn a total of forty-two Board-approved continuing education credits. Six of the forty-two continuing education credits shall be in the area of Ethics. The continuing education credits required by this order cannot be used to satisfy the continuing education requirements for the renewal of Respondent's pharmacy license;

2. The Respondent shall pay a fine in the amount of two hundred and fifty dollars (\$250); and be it further

ORDERED, that the Respondent shall be audited for three (3) consecutive license renewal periods; and be it further

ORDERED, that in the event that the State Board of Pharmacy receives an unsatisfactory report which it believes in good faith to be accurate, or in the event that the State Board of Pharmacy finds for any reason, in good faith, that the Respondent has violated any provision of Title 12 of the Health Occupation article or regulations thereunder, or has violated the conditions of the probation herein, the Board may take immediate action against the Respondent's license, including but not limited to, revocation or

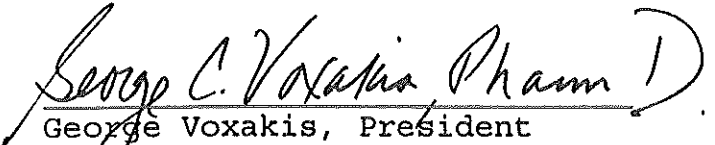
suspension, after giving the Respondent notice of the charges and the opportunity for a hearing; and be it further

ORDERED, that no later than (1) year from the commencement date of the Respondent's probation, the Board shall entertain a written petition for termination of the Respondent's probationary status. The Board shall terminate the Respondent's probationary status only after the Respondent has demonstrated to the Board that he has complied with the terms of this Consent Order; and be it further

ORDERED, that the conditions of this Consent Order be and the same hereby are, effective as of the date of this Order; and be it further

ORDERED, that this is a FINAL ORDER and as such is a public document pursuant to §10-611 et seq. of Md. Code Ann., State Gov't Art.

ORDERED that for purposes of public disclosure, as permitted by §10-617(h), Md. Code Ann., State Gov't Art. this document consists of the contents of the foregoing Background, Findings of Facts, Conclusions of Law and Order.

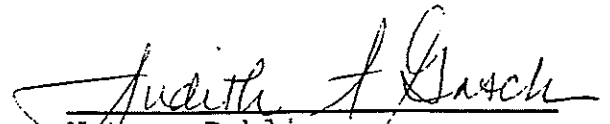

George C. Voxakis, President
Board of Pharmacy

STATE OF MARYLAND

CITY/COUNTY OF: Anne Arundel

I HEREBY CERTIFY that on this 29 day of March, 1997,
a Notary Public of the State of Maryland and (City/County), _____
Anne Arundel, personally appeared David S. Becker, P.D., License
Number 10475, and made oath in due form of law that signing the
foregoing Consent Order was his voluntary act and deed, and the
statements made herein are true and correct.

AS WITNESS my hand and Notarial Seal.



JUDITH A. GASCH Notary Public
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 26, 1998

My Commission Expires:

SS #220547

CONSENT OF DAVID S. BECKER, P.D.

I, David S. Becker, P.D., by affixing my signature hereto, acknowledge that:

1. I am represented by James A. Johnson, Esquire and I have had the opportunity to consult with counsel before signing this document;

2. I am aware that without my consent, my license to practice as a pharmacist in this State, cannot be limited except pursuant to the provisions of §13-316 of the Act and §10-205 et seq. of the Administrative Procedure Act, Md. Code Ann., State Gov't, Art. ("APA").

3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I hereby consent and submit to the foregoing Findings of Fact, Conclusions of Law, and Order. By doing so, I waive my right to a formal hearing as set forth in §12-215 of the APA, and any right to appeal as set forth in §12-316 of the Act and §10-215 of the APA. I acknowledge that by failure to abide by the conditions set forth in this Order and following proper procedures, I may suffer disciplinary action.

3-29-97

Date



David S. Becker, P.D.