

IN THE MATTER OF	*	BEFORE THE
JEROME BERGER, P.D.	*	STATE BOARD
LICENSE NO.: 6065	*	OF PHARMACY
Respondent	*	Case No. PI-08-020

* * * * *

FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board"), and subject to Md. Health Occ. Ann. § 12-101, *et seq.*, (2005 Repl. Vol. 2007 Supp.) (the "Act"), the Board charged Jerome Berger, P.D., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with violation of the following provisions of § 12-313:

(b) 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 licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

- (7) Willfully fails to file or record any report that is required by law;
- (20) Is professionally . . . incompetent;
- (24) Violates any rule or regulation adopted by the Board;
- (28) Fails to cooperate with a lawful investigation conducted by the Board or the Division of Drug Control.

The Board further charged the Respondent with violations of its Code of Conduct, Code Md. Regs. tit.10. §34.10. (February 19, 1990):

.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:

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(a) United States Code, Title 21,

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

(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;

(3) Maintain proper sanitation, hygiene, biohazard precautions, and infection control when performing tasks in the prescription process.

B. A pharmacist may not:

(1) Engage in conduct which departs from the standard of care ordinarily exercised by a pharmacist;

(2) Practice pharmacy under circumstances or conditions which prevent the proper exercise of professional judgment; or

(3) Engage in unprofessional conduct.

The Respondent was given notice of the issues underlying the Board's charges by letter dated August 1, 2008. Accordingly, a Case Resolution Conference was held on September 17, 2008, and was attended by Mayer Handelman, P.D., and Alland Leandre, Board members, and, Linda Bethman, Assistant Attorney General, Counsel to the Board. Also in attendance were the Respondent, who knowingly and voluntarily waived his right to an attorney, and the Administrative Prosecutor, Roberta Gill, Assistant Attorney General.

Following the Case Resolution Conference, the parties and the Board agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

FINDINGS OF FACT

1. At all times relevant to the charges herein, the Respondent was licensed to practice pharmacy in the State of Maryland. The Respondent was first licensed on December 31, 1960. The Respondent's license expires on July 31, 2009.
2. At all times relevant hereto, the Respondent was the 25% owner and President of State Pharmacy ("State") in Baltimore County, Maryland. The Respondent was also a dispensing pharmacist of State, along with another pharmacist-employee.
3. On November 16, 2007, a Division of Drug Control (DDC) Inspector inspected State while the Respondent was present. The Inspector found that the CDS biennial inventory was not properly completed. The main area of non-compliance, however, which could present a public safety issue, was the presence of scores of outdated drugs alongside the unexpired drugs. The Respondent was informed that the outdated drugs had to be removed and listed prior to wasting them or properly disposing of them.
4. As a result of this report, the Deputy Director of DDC informed the Inspector that the outdated drugs should be listed and that she should return to do a re-inspection to determine if the outdated drugs were removed.
5. When the Inspector returned to State on February 11, 2008—almost three months later--the Respondent was not there, but the other dispensing

pharmacist was. When the Inspector looked to see if all of the expired drugs had been removed, she found the condition to be the same as it was on the previous inspection. As a result, she removed all of the outdated drugs and listed them, as required by law. It took the Inspector four hours to perform this task, which should have been performed by the Respondent.

6. As a result of being informed of the outdated drugs, on February 20, 2008, the Board wrote the Respondent a letter stating that he needed to show how the deficiencies have been corrected and what steps have been taken to ensure that they will not recur in the future.
7. By an undated letter, which may have been received by the Board on March 17, 2008, the Respondent informed the Board that, henceforth, he would be using a removal service and that he and the other pharmacist will alternate monthly on the first of every month to inspect the dates on all prescriptions.¹
8. As set forth above, the Respondent is in violation of the Act and regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated §12-313 (b) (7), (20), (24) and (28) and Code Md. Regs. tit. 10 § 34.10A. (1) and (3) and B. (1) – (3).

¹ When the Inspector returned for a third inspection on June 10, 2008, she found that the Respondent had begun using the returns specialists and that there were no longer any outdated drugs in the pharmacy.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 19th day of November, 2008, by a majority of a quorum of the Board,

ORDERED that the Respondent is hereby **REPRIMANDED**; and it is further hereby.

ORDERED that the Respondent shall pay of fine of \$1500 to the Board within 90 days of the effective date of the Consent Order.

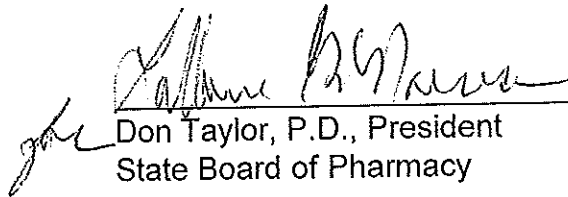
ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

ORDERED that, should the Board receive a report that the Respondent has violated the Act or if the Respondent violates any conditions of this Order, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order shall be on the Respondent to demonstrate compliance with the Order; and be it

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing the practice of pharmacy in Maryland; and be it further

ORDERED that for purposes of public disclosure, as permitted by Md. State Gov't.

Code Ann. §10-617(h) (Repl. Vol. 2004), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank that it is mandated to report to.


Don Taylor, P.D., President
State Board of Pharmacy

CONSENT OF JEROME BERGER, P.D.

I, Jerome Berger, P.D., by affixing my signature hereto, acknowledge that:

1. I am not represented by an attorney and have knowingly and voluntarily waived my right to counsel;
2. I am aware that without my consent, my license to practice pharmacy in this State cannot be limited except pursuant to the provisions of § 12-313 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et seq., (2004 Repl. Vol.).
3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I hereby consent and admit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. By doing so, I waive my right to a formal hearing as set forth in § 12-

315 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in § 316 of the Act and §10-201, et seq., of the APA. I acknowledge that my failure to abide by the conditions set forth in this Order and, following proper procedures, I may suffer disciplinary action, possibly including revocation, against my license to practice pharmacy in the State of Maryland.

10/23/2008
Date

Jerome Berger, P.D.
Jerome Berger, P.D.

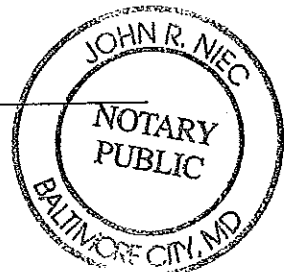
STATE OF MARYLAND :

CITY/COUNTY OF Baltimore :

I HEREBY CERTIFY that on this 23rd day of October, 2008, before me, John R. Niec, a Notary Public of the foregoing State and (City/County),
(Print Name)
personally appeared Jerome Berger, License No.6065, 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 WITNESSETH my hand and notarial seal.

John R. Niec
Notary Public



JOHN R. NIEC
Notary Public State of Maryland
My Commission Expires January 1, 2010