

IN THE MATTER OF	*	BEFORE THE
BRADLEY L. BURTON,	*	MARYLAND BOARD
LICENSE No: 17977	*	OF PHARMACY
Respondent	*	Case No.: 16-053

* * * * *

CONSENT ORDER

On November 16, 2016, the Maryland State Board of Pharmacy (the “Board”) charged **BRADLEY L. BURTON (the “Respondent”)** (License No: 17977), under the Maryland Pharmacy Act (the “Act”), Md. Health Occ. Code Ann. (“H.O.”) §§ 12-101 *et seq.* (2014 Repl. Vol. and 2015 Supp.).

The pertinent provisions of §12-313 the Act provide as follows:

(b) *In general.* – 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 for a pharmacists license, reprimand any licensee, place any licensee on probation, or suspend or revoke a license of a pharmacist if the applicant or licensee:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- (7) Willfully makes or files a false report or record as part of practicing pharmacy; [and]
- (25) Violates any rule or regulation adopted by the Board, to wit:

COMAR 10.34.10.01 B. A pharmacist may not: (3) Engage in unprofessional conduct.

On January 4, 2017, the Respondent participated in a Case Resolution Conference (CRC) before a panel of Board members to discuss the potential resolution of the Charges by consent. At the conclusion of the CRC, the Respondent agreed to enter into this Consent Order to resolve the pending charges and to avoid the expense

and time of proceeding to an administrative hearing. The Respondent and the Board agreed to the inclusion of Findings of Fact and Conclusions of Law as required by the Board, and with the terms and conditions set forth herein.

FINDINGS OF FACT

The Board finds:

I. Background

1. The Respondent is licensed to practice pharmacy in the State of Maryland under License Number 17977. The Respondent was first licensed on June 21, 2006. The Respondent's license is currently active and will expire on August 31, 2017.

2. At all times relevant, the Respondent was employed as a pharmacist at Facility A, a hospital in Baltimore, Maryland.¹

II. Insurance Fraud Allegations

3. On or about December 11, 2015, the Maryland Insurance Administration (the "MIA") reported to the Board that on July 25, 2015 it entered an Order ("2015 Order") assessing civil fines against the Respondent for insurance fraud. Specifically, the Respondent was assessed a civil fine for lying on a medical history questionnaire relating to two insurance policy applications submitted to Insurance Company A.

4. A review of the 2015 Order revealed that on or about August 8, 2014, the Respondent applied for a disability insurance policy with Insurance Company A. During the application process, the Respondent was required to complete a medical history questionnaire.

¹ In order to maintain confidentiality, names will be used in this Consent Order.

5. The Respondent answered "no" to the question, "In the last 10 years, have you used, marijuana, cocaine, heroin, methamphetamine, hallucinogens, or any other illegal drug or substance?"

6. Also, on August 8, 2014, the Respondent submitted to a paramedical examination to determine his insurability. The paramedical examination included a urinalysis.

7. On or about August 15, 2014, a representative from Insurance Company A conducted a telephone interview with the Respondent. The Respondent answered "no" when asked "In the last 10 years, have you used, marijuana, cocaine, heroin, or any illegal drug."

8. On or about August 20, 2014, the laboratory notified Insurance Company A that the Respondent's urine specimen was positive for an illegal drug.

9. On September 20, 2014, the Respondent was notified that Insurance Company A was unable to issue the policies because his urine specimen was positive for an illegal drug.

10. The Respondent later admitted that he used an illegal drug on August 7, 2014.

11. The 2015 Order found that the Respondent violated Md. Code Ann., Insurance § 27-406(1) by "knowingly or willfully making a false or fraudulent statement or representation in or with reference to an application for insurance" ordered that the Respondent pay an administrative penalty of \$5,000, subject to the right to request a hearing.

12. The Respondent filed a timely request for a hearing.

13. On January 28, 2016, the MIA took further action when it issued an Amended Order (2016 Order). The Amended Order added additional facts regarding a second misrepresentation that the Respondent allegedly made on his insurance policy application. The Amended Order raised the administrative penalty to \$6,500, subject to the right to request a hearing.

14. Specifically, the Respondent answered "no" to the question "Have you ever sought, received, or been advised to seek treatment, counseling, or participation in a support group for the use of alcohol or drugs." The Respondent also answered "no" to the question "Have you ever been advised to reduce or discontinue the use of alcohol?"

15. On his insurance policy applications, the Respondent stated that his attorney recommended alcohol treatment, not a court order.

16. Subsequently, the MIA learned that the Respondent was required to complete a court ordered addiction counseling program as a condition of probation for his 2010 Driving Under the Influence ("DUI") charge.

17. In furtherance of its investigation, the Board issued a subpoena *duces tecum* to the United States District Court for the District of Maryland for the Respondent's court documents in his DUI case.

18. According to the court documents, on July 19, 2010, the Respondent pleaded guilty to driving under the influence of alcohol and was sentenced to one year of supervised probation. The Respondent was also ordered by the court to participate in

a substance and/or alcohol abuse treatment program, as well as successfully complete an addiction program.

19. On March 1 and 2, 2016, a hearing was held before the MIA. A Memorandum and Final Order dated May 25, 2016 found that the Respondent violated § 27-406(f)(1) of the Insurance Article by knowingly providing a false answer of "no" to questions regarding substance abuse treatment on his insurance applications.² The Respondent ordered to pay a fine in the amount of \$3,250. The Respondent appealed and the case is pending.

III. 2013 and 2015 Renewal Application Allegations

20. During the course of the Board's investigation, the Board's investigator reviewed the Respondent's license renewal applications from 2013 and 2015.

21. On both renewal applications, the Respondent answered "no" to the question, "Have you committed a criminal act for which you pled guilty or nolo contendere (see definition below), or for which you were convicted or received probation before judgment?"

22. On both applications, the Respondent also answered "no" to the question, "Have you committed an offense involving alcohol or controlled substances to which you pled guilty or nolo contendere, or for which you were convicted or received probation before judgment?"

23. The Respondent should have answered "yes" to both questions, on both applications, as a result of his DUI conviction in 2010.

² The MIA found that the Respondent's "no" answer to the question regarding his drug use was not done "willfully or knowingly."

IV. Psychological Evaluation

24. On or about June 17, 2016, the Board ordered that the Respondent undergo a psychological evaluation by a Board-approved evaluator to determine whether the Respondent has a substance abuse disorder that would impair his ability to perform his duties as a pharmacist.

25. On June 30, 2016, the Respondent submitted to a psychological evaluation with a Board-approved evaluator (the "evaluator").

26. The evaluator opined that the Respondent has a substance abuse disorder.

27. Since January 2016, the Respondent has participated in an intensive outpatient substance abuse program, an aftercare program, as well as individual and group therapy. The Respondent also submits to random urinalysis approximately every two weeks to as frequently as twice weekly and daily breathalyzer testing through his employer. To date, all urinalysis and breathalyzer testing is negative.

28. The evaluator stated that as long as the Respondent continues to participate in his recovery program (group therapy, support group meetings, individual therapy, abstinence from mood altering drugs with weekly monitoring) and his participation is monitored, he can safely practice as a pharmacist.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following provision of the Act: H.O. §§ 12-313(b)(1), (7), and (25) and of COMAR 10.34.10.01B(3).

ORDER

Based on agreement of the parties, it is therefore this 18th day of January 2017, by an affirmative vote of the Board, hereby:

ORDERED that the Respondent's license to practice pharmacy in the State of Maryland shall be **SUSPENDED** for a period of **THIRTY (30) DAYS**, with all thirty (30) days **STAYED**; and it is further

ORDERED that the Respondent shall pay a fine in the amount of **\$5,000**, payable to the Maryland Board of Pharmacy in a single, lump sum payment; and it is further

ORDERED that the Respondent shall be placed on **PROBATION** for a period of three (3) years, subject to the following terms and conditions:

1. Within five (5) business days from the date of this Consent Order, the Respondent shall provide a copy of this Consent Order to his employer. The Respondent shall provide documentary evidence to the Board that his employer has received a copy of this Consent Order;

2. No later than ten (10) business days from the date of this Consent Order, the Respondent shall sign any written release/consent forms, and update them, as required by the Board and his substance abuse recovery program. Specifically, he shall sign any written release/consent forms required by the Board to authorize his substance abuse recovery program to make verbal and written disclosures to the Board, including disclosure of any and all records and files and confidential drug and alcohol abuse information about the Respondent;

3. Within ninety (90) days from the date of this Consent Order, the Respondent shall enroll in and successfully complete a course in ethics. The credits earned by completing this course shall be in addition to the continuing education credits necessary for license renewal. The Respondent shall bear the expenses associated with fulfilling this condition;

4. The Respondent shall completely abstain from the ingestion of alcohol, unprescribed controlled dangerous substances ("CDS"), narcotics, illegal drugs and other mood-altering substances. The Respondent may take CDS, but only if prescribed by a licensed health care provider for a legitimate medical purpose and only as prescribed. Prior to accepting any CDS medication prescription from a licensed health care provider, the Respondent shall provide the licensed health care provider with a copy of the Consent Order. Within 48 hours of being prescribed CDS, the Respondent shall notify the Board of the CDS prescribed, the prescriber, the medical conditions prescribed for, the pharmacy at which the prescription was filled, and the amount and dosage prescribed;

5. The Respondent shall continue to participate in the Kolmac Clinic's substance abuse recovery program and support groups, including at least weekly AA/NA and Self Management Recovery and Training (SMART) meetings and follow any and all recommendations of his providers, including but not limited to, group therapy, support group meetings, individual therapy, abstinence from mood altering drugs with appropriate monitoring;

6. The Respondent's individual therapist shall provide quarterly reports to the

Board regarding the Respondent's progress and recommendations as to the continuation, frequency, and/or termination of treatment. The first report shall be due two (2) weeks from the date of this Consent Order, and subsequent reports shall be due quarterly thereafter;

7. The Respondent shall continue to submit to at least monthly random urinalysis and breathalyzer testing through his employer. The Respondent shall sign the necessary waiver(s) to allow his employer to send his urinalysis and breathalyzer results to the Board on a monthly basis. A positive urinalysis or breathalyzer result shall be deemed a violation of the Consent Order. If the Respondent's employer reduces the frequency of the random urinalysis to fewer than monthly, the Respondent shall notify the Board;

8. In the event that the Respondent's employer decreases the frequency of the urinalysis testing, or if the Respondent ceases to work for Facility A, the Respondent shall submit to monthly screens as ordered by the Board, and the urine screens shall be:

- a. Submitted by the Respondent within 24 hours of the Board staff instructing him to submit a urine sample;
- b. Submitted at a CLIA-certified laboratory; and
- d. Negative for any controlled dangerous substance, narcotics, cocaine, alcohol, or other mood-altering substance, except as provided above in paragraph 4; and be it further,

ORDERED that after two (2) years of probation, and after the Respondent has


satisfied all of the required terms and conditions, including payment in full of the fine and successful completion of the required courses, the Respondent may file a written petition for early termination of his probationary status without further conditions or restrictions, but only if the Respondent has satisfactorily complied with all conditions of the Consent Order and if there are no pending complaints before the Board regarding the Respondent's practice; and it is further

ORDERED that failure to comply with the terms and conditions of this Consent Order, including but not limited to failure to pay the required fine and/or failure to successfully complete the required course and/or a positive urinalysis or breathalyzer result constitutes a violation of this Consent Order and the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board may impose any appropriate sanction under the Act; and it is further

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

ORDERED that the Respondent shall practice according to the Maryland Pharmacy Act and in accordance with all applicable laws, statutes and regulations pertaining to the practice of pharmacy; and it is further

ORDERED that this document constitutes a formal disciplinary action of the State Board of Pharmacy and is therefore a public document pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.*


Mitra Gargani, President Zeno St. Cyr, II, Secretary
State Board of Pharmacy

CONSENT


I, Bradley L. Burton, acknowledge that I have had the opportunity to consult with legal counsel before signing this document. By this Consent, I agree to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on his own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I waive any right to appeal any adverse ruling of the Board that might have followed any such hearing.

I do not admit the allegations in the amended charges but accept the Findings of Fact and enter into this agreement for purposes of compromise and settlement, and the execution and delivery of this consent order shall not constitute or be construed as an admission of any liability or wrongdoing on my behalf.

I sign this Consent Order and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

1/17/17
Date



Bradley L. Burton

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF Montgomery :

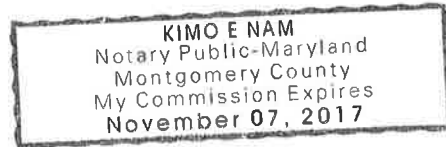
I HEREBY CERTIFY that on this 17 day of January, 2017,
before me, a Notary Public of the foregoing State personally appeared **Bradley L. Burton** and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.



Notary Public

My Commission Expires: 11/07/2017



Read and approved:



Donald C. Discepolo, Esq., Attorney for Mr. Burton

~~ADCD~~
ADCD

4/17/17