

IN THE MATTER OF
STEPHEN CAPPELLI, P.D.

Respondent

LICENSE NO: 17402

* BEFORE THE
* STATE BOARD OF
* PHARMACY
* Case No.: PT-13-035

* * * * *

CONSENT ORDER

On March 8, 2013, the Maryland State Board of Pharmacy (“the Board”), issued an Order for Summary Suspension of the pharmacy license of **STEPHEN CAPPELLI, P.D., License Number 17402, (the “Respondent”)**, after finding that the public health, safety or welfare imperatively required emergency action, pursuant to Md. State Gov’t Code Ann. § 10-226(c)(2)(i) (2009 Repl. Vol.). The Respondent failed to request a show cause hearing. Subsequently, on May 19, 2013, the Board issued a Notice of Intent to Revoke the Respondent’s pharmacy license based on his violation of the Maryland Pharmacy Act (the “Act”), codified at Md. Health Occ. Code Ann. (“H.O.”) §§ 12-101, *et seq.* (2009 Repl. Vol. and 2012 Supp.).

The pertinent provisions of H.O. § 12-313 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:

(2) Fraudulently or deceptively uses a license;

(7) Willfully makes or files a false report or record as part of practicing pharmacy; and

(21) Is professionally, physically or mentally incompetent[.]

On September 11, 2013, the Respondent, who was represented by counsel, appeared before members of the Board and the Board's counsel for a Case Resolution Conference (CRC) 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

1. The Respondent is registered to practice pharmacy in the State of Maryland under License Number 17402. The Respondent was first licensed on October 5, 2004. The Respondent's license is active and is scheduled to expire on July 31, 2014.

2. At all times relevant, Respondent was employed as a pharmacist at Pharmacy A in Hagerstown, Maryland.

3. On or about December 19, 2012, the Board received information from Pharmacy A that the Respondent was terminated from his employment after he admitted to taking generic Opana tablets, altering pharmacy records, and creating false prescriptions.

4. Thereafter the Board initiated an investigation.

5. The Board's investigation revealed that on December 11, 2012, Pharmacy A became aware of discrepancies with generic Opana 10 mg. As a result, the Respondent was removed from the schedule pending further investigation.

6. In a written statement, the Respondent admitted to taking generic Opana tablets from Pharmacy A's stock in order to fill his wife's prescription before it was due. He then admitted to replacing the tablets when his wife's prescription was legitimately filled.

7. The Respondent further admitted to altering Pharmacy A's records on two occasions by indicating that only five bottles of generic Opana were ordered, when the correct number was six bottles.

8. The Respondent stated that he created forged prescriptions to obtain more medication "a couple of times" over a period of two to three months.

9. The Respondent admitted to taking approximately seven bottles of Opana from Pharmacy A.

10. Pharmacy A determined that the Respondent stole approximately 700 tablets of generic Opana, which is valued at \$3,744.51.

11. The Respondent further disclosed that he is dependent on generic Opana. He stated that he was prescribed the medication for a medical condition from 2008 until 2012, but continued to take the medication from his wife.

12. According to the Washington County Sheriff's Office ("WCSO") Investigative Report, the Respondent presented seven fraudulent prescriptions between August 23, 2012 and November 14, 2012. The following is a summary of the fraudulent prescriptions, which have a street value of \$11,700:

Date	Prescription
August 23, 2012	Oxymorphone HCl 10 mg #240
September 19, 2012	Oxymorphone HCl 10 mg #240

September 19, 2012	Oxymorphone HCl 5 mg #120
October 17, 2012	Oxymorphone HCl 10 mg #240
October 17, 2012	Oxymorphone HCl 5 mg #120
November 14, 2012	Oxymorphone HCl 5 mg #180
November 14, 2012	Oxymorphone HCl 10 mg #240

13. All of the fraudulent prescriptions were written for "Adam C. Townsend" by Physician A in Hagerstown, Maryland.

14. Pharmacy A contacted Physician A, who confirmed that all seven prescriptions were fraudulent and that he did not have a patient by that name. Physician A further stated that he would never prescribe this type of medication and stated that it would be for a terminal patient in the hospital.

15. During an interview with the WCSO, the Respondent stated that he paid for the fraudulent prescriptions in order to hide the thefts from Pharmacy A.

16. The Respondent was terminated from his employment at Pharmacy A, effective December 19, 2012.

17. On or about January 6, 2013, in the District Court of Maryland for Washington County, the Respondent was charged with 32 counts related to his theft of CDS from Pharmacy A and forging prescriptions. The Respondent's criminal case (number 6V00080947) is pending.

18. On or about March 8, 2013, the Board summarily suspended the Respondent's license to practice pharmacy in the State of Maryland. The Respondent

was notified that he had 30 days to request a post-deprivation show cause hearing. He did not request a hearing. His license remains summarily suspended.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board finds by a preponderance of evidence and concludes that the Respondent's conduct as described above violates H.O. §§12-313(b)(2); (7) and (21).

ORDER

Based on agreement of the parties, it is therefore this 20th day of September 2013, by an affirmative vote of the Board, hereby:

ORDERED that the summary suspension of the Respondent's license to practice pharmacy is hereby lifted; and it is further

ORDERED that the Respondent's license is immediately suspended for a period of **ONE (1) YEAR with ninety (90) days stayed**; and it is further

ORDERED that the Respondent shall continue his participation in Alternative Drug and Alcohol Counseling ("ADAC"), including individual therapy sessions, and follow any and all recommendations of his provider(s); and it is further

ORDERED that the Respondent shall sign all necessary waivers and releases to enable the Board to receive information on his treatment and progress; and it is further

ORDERED that the Respondent shall participate in a twelve-step program and provide written documentation to the Board, on a monthly basis, of his attendance at a minimum of three (3) meetings per week; and it is further

ORDERED that the Respondent shall completely abstain from the ingestion of alcohol, controlled dangerous substances ("CDS"), narcotics, illegal drugs and other

mood-altering substances, and any other prescription drugs with high abuse potential. The Respondent may take CDS or other prohibited prescription drugs referenced above, but only if prescribed by a licensed health care provider for a legitimate medical purpose and only as prescribed. Prior to accepting any 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 3 business days of being prescribed a prohibited prescription drug referenced herein, the Respondent shall notify the Board, in writing, of the prescription drug prescribed, the prescriber, the medical conditions prescribed for, the pharmacy at which the prescription was filled, and the amount and dosage prescribed, and it is further

ORDERED that during the period of suspension, the Respondent shall submit to weekly, random urinalysis. Failure to submit to urinalysis or a positive test may result in a violation of this Consent Order; and it is further

ORDERED that all urine screens under this Order shall be:

(1) Submitted by the Respondent within 24 hours of the Board staff instructing him to submit a urine sample; and

(2) Submitted at a CLIA-certified laboratory;

ORDERED that at the conclusion of the period of suspension, the Respondent may petition the Board to terminate the suspension of his license provided that the Respondent:

(1) has fully and satisfactorily complied with the conditions of suspension

(2) there are no pending complaints against him; and

(3) submits to an evaluation to be conducted by a Board-assigned evaluator, at the Board's expense; and it is further

ORDERED that upon reinstatement of the Respondent's license, the Respondent shall be placed on probation for a period of at least **THREE (3) YEARS**, subject to terms and conditions determined by the Board based on its review of the recommendations set forth by the Board-assigned evaluator and the Respondent's compliance with the terms of suspension; and it is 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 the Respondent shall comply with the Act and all laws, statutes, and regulations pertaining to the practice of pharmacy; and it is further

ORDERED that the Respondent 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 the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order, except for the cost of the Board-assigned evaluator; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and opportunity for a show cause hearing before the Board, may impose any sanction which the Board may have imposed in this case, including a probationary term and conditions of probation, reprimand, suspension, revocation and/or a monetary penalty, said allegations of

violation of the terms and condition of this Consent Order shall be proven by a preponderance of the evidence; and it is further

ORDERED that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't. Code Ann. § 10-611 *et seq.* (2009 Repl. Vol. and 2011 Supp.).

9/20/13
Date


for Lenna Israbian-Jamgochian, Pharm.D.
President, Maryland Board of Pharmacy

CONSENT

I, Stephen Cappelli, acknowledge that I have consulted with counsel before signing this document. By this Consent, I accept 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 my 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 also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, 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.

9-16-13
Date

A. Stephen Cappelli
Stephen Cappelli

Read and approved:

Edward Button
Edward Button, Esq,
Counsel for Stephen Cappelli

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF Washington:

I HEREBY CERTIFY that on this 16th day of September, 2013, before me, a Notary Public of the foregoing State personally appeared Stephen Cappelli 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.

Donna Kay Button
Notary Public

My Commission Expires: 10/23/13