

IN THE MATTER OF	*	BEFORE THE STATE
ROBB FOOTE, P.D.	*	BOARD OF
LICENSE No: 12098	*	PHARMACY
Respondent	*	CASE No.: 07-114

* * * * *

CONSENT ORDER

On April 4, 2012, the Maryland State Board of Pharmacy (“the Board”) summarily suspended the pharmacy license of **ROBB FOOTE, LICENSE NUMBER 12098, (the “Respondent”)** (D.O.B. 12/09/1964), after finding that the public health, safety and welfare required emergency action. Subsequently, on April 18, 2012, 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 2011 Supp.).

Specifically, the Board charged the Respondent based on the following provisions of H.O. §12-313:

(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 pharmacist’s 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 as license;
- (7) Willfully makes or files a false report or record as part of a practicing pharmacy; [and]
- (25) Violates any rule or regulation adopted by the Board; to wit:

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

On August 29, 2012, the Respondent 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. The Respondent was represented by counsel. At the conclusion of the CRC, the Respondent agreed to enter into this Consent Order to resolve the pending charges. 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 the following:

1. The Respondent is licensed to practice pharmacy in the State of Maryland under License Number 12098. The Respondent was first licensed on July 27, 1990. The Respondent's license is current and is scheduled to expire on December 31, 2012.
2. On or about March 19, 2012, the Board received information alleging that the Respondent submitted a fraudulent prescription and falsified patient medical records to the Board.
3. Thereafter the Board initiated an investigation.

I. 1999 Summary Suspension

4. In 1998, the Respondent was employed as a pharmacist at Pharmacy A in Annapolis, Maryland.¹

¹ In order to maintain confidentiality, pharmacy, facility and witness names will not be used in this document, but will be provided to the Respondent upon request.

5. On or about December 29, 1998, McKesson Wholesale Drug Distributors ("McKesson") shipped Pharmacy A 47 one-gram bottles of hydromorphone, a Schedule II controlled dangerous substance ("CDS").
6. The Respondent signed for the shipment of hydromorphone when it arrived at Pharmacy A.
7. The Respondent failed to record the receipt of the shipment of hydromorphone from McKesson in Pharmacy A's inventory log.
8. On or about January 8, 1999, Pharmacy A staff discovered 23 bottles of hydromorphone missing from their inventory.
9. The missing hydromorphone bottles were part of the December 29, 1998 shipment from McKesson.
10. On or about February 19, 1999, Pharmacy A staff discovered that several bottles of hydromorphone showed evidence of tampering.
11. As a result of the discovery of inventory shortages and tampering in the pharmacy, Pharmacy A staff placed a video camera in the pharmacy.
12. On or about April 15, 1999, the Respondent was recorded by Pharmacy A's video camera removing two discarded bottles of hydromorphone from the narcotics cabinet.
13. The video camera also recorded the Respondent extracting the contents of the hydromorphone with a syringe and placing the contents of the syringe into a container. The video camera further recorded the Respondent placing the container of hydromorphone in his pocket.

14. On April 16, 1999, the Respondent was arrested and charged with one count of possession with intent to distribute a CDS of schedule II, to wit; hydromorphone; one count of distribution of hydromorphone; and one count of theft over \$300.

15. On May 6, 1999, the Respondent's license was summarily suspended.

16. On October 4, 1999, in the Circuit Court for Howard County, the Respondent pleaded guilty to one count of possession of hydromorphone and was sentenced to a six month suspended sentence. He was also placed on supervised probation for a period of two years and ordered to undergo substance abuse therapy and urinalysis.

17. On June 11, 1998, the Board permitted the Respondent to surrender his license to practice pharmacy.

18. On June 21, 2000, the Board reinstated the Respondent's license to practice pharmacy, and placed him on probation for a period of two years.

II. 2008 Summary Suspension and 2008 Consent Order

19. In or around March 2007, the Respondent was working as a full-time pharmacist at Pharmacy B in Glen Burnie, Maryland, when the pharmacy supervisor discovered missing narcotics.

20. In April 2007, the pharmacy supervisor did a complete inventory audit of Pharmacy B for the period of April 29, 2006 through March 23, 2007.

21. At the conclusion of the audit, the pharmacy supervisor determined that the following schedule II narcotics were missing:

Hydromorphone 8 mg	635 tablets
Hydromorphone 4 mg	691 tablets
Morphine 15 mg	120 tablets
Methadone 5 mg	203 tablets
Methadone 40 mg	55 tablets

Morphine 30 mg	600 tablets
Hydromorphone 8 mg	95 tablets
Hydromorphone 2 mg	244 tablets
Morphine 100 mg	390 tablets
Methadone 10 mg	525 tablets

22. During the audit, the pharmacy supervisor reviewed the Pharmacy B's purchase orders and discovered that the Respondent had received orders that included hydromorphone.

23. The Respondent did not record the receipt of the hydromorphone orders in Pharmacy B's perpetual inventory form for schedule II CDS.

24. The pharmacy supervisor also compared Pharmacy B's computer records with hard copies of the prescriptions for patients who had been prescribed CDS. The hard copies of prescriptions could not be located.

25. The computer records indicated that the prescriptions with missing hard copies had been filled and dispensed by the Respondent.

26. The pharmacy supervisor contacted the doctors of patients whose prescription hard copies could not be located in the pharmacy. Each patient's doctor indicated that s/he did not authorize the prescriptions.

27. On or about April 25, 2007, the pharmacy supervisor and the detectives from the Anne Arundel County Police Department met with the Respondent.

28. The Respondent admitted that he had taken narcotics from Pharmacy B, created prescriptions in the names of patients, and taken the medication himself.

29. On June 13, 2007, the Respondent was charged with three counts of obtaining a schedule II CDS, to wit: hydromorphone.

30. On July 25, 2007, the Board summarily suspended the Respondent's license.

31. On January 30, 2008, the Board held a hearing to allow the Respondent to show cause why he did not pose an imminent threat to the health, safety and welfare of the public.

32. On April 4, 2008, in lieu of a continued summary suspension, the Board and the Respondent entered into a Consent Order Terminating Summary Suspension ("2008 Consent Order") to resolve the matter.

33. Pursuant to the 2008 Consent Order, the Respondent's license was suspended for a period of at least two years beginning July 25, 2007.

34. During the suspension period, the Respondent was ordered to participate in a Board-approved substance abuse program, including NA/AA meetings and individual therapy; to submit to Board-ordered random urinalysis; and to refrain from working as a pharmacist in any capacity.

35. The 2008 Consent Order also stated that upon reinstatement, the Respondent would be placed on immediate probation for three years.

III. 2010 Consent Order

36. On May 19, 2010, in response to the Respondent's request, the Board voted to lift the suspension and reinstate the Respondent's license.

37. By the Order Lifting Suspension ("2010 Consent Order") dated June 18, 2010, the Board lifted the suspension and placed the Respondent on probation for a period of at least three years.

38. The Respondent was permitted to work as a pharmacist under certain terms and conditions set forth in the 2010 Consent Order.

39. The 2010 Consent Order contained myriad terms and conditions, including but not limited to the following:

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

- (1) [The Respondent] 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 [the Respondent's] physician or other authorized medical practitioner;
- (3) [The Respondent] must provide the Board, in writing, within 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; and (d) a signed statement consenting to the release of all medical information about [the Respondent] from the prescriber to the Board[.]

...

ORDERED that in the event the Board finds for any good faith reason that [the Respondent] has violated any of the conditions of probation herein, or in the event that the Board finds for any good faith reason that [the Respondent] has committed a violation of Title 12 of the Health Occupations Article or regulations adopted thereunder, the Board may immediately summarily suspend [the Respondent's] license prior to a hearing, provided that [the Respondent] is given the opportunity for a show cause hearing within a reasonable amount of time of such action[.]

IV. Current Allegations

40. On February 14, 2012, the Respondent petitioned the Board to modify his probation to reduce his random urinalysis from weekly to monthly.

41. The Board's Compliance Coordinator asked the Respondent to provide the required documentation from his physician to explain the Respondent's recent positive urinalysis results. The Respondent's urinalysis was positive for Tramadol, a narcotic pain reliever, on March 1, 2012 and March 6, 2012.²

42. On March 9, 2012, the Board's Compliance Coordinator began his attempts to contact the Respondent's physician, Dr. A., to verify that the Respondent had a lawful prescription for Tramadol.³

43. On March 15, 2012, the Respondent's urinalysis was again positive for Tramadol.

44. On March 15, 2012, the Respondent received two documents from Dr. A's office. One document was a telephone triage note documenting a March 14, 2012 telephone call from the Respondent stating the following:

Pt states he was seen at Urgent Care last summer for foot pain dx'd bone spur. Rx'd Tramadol, which he has taken sporadically, including last week when he had more foot pain p exercise. Reports recent drug testing positive for Tramadol and that compliance coordinator from State of MD will be calling for more info. HO Dilaudid addiction.

The second document was a list of the Respondent's current medications, which did not include Tramadol.

² In 2010, the Respondent had a valid prescription for Tramadol from his physician, but it hadn't been updated.

³ In order to maintain confidentiality, names of individuals other than the Respondent will not be used in this document, but will be provided to the Respondent or his attorney upon request.

45. On March 15, 2012, the Board's Compliance Coordinator spoke with the Respondent and instructed him to fax a copy of the Tramadol prescription and the medical report from his visit to urgent care.

46. On March 19, 2012, the Respondent faxed the requested documents, which reflect the Respondent's alleged September 3, 2011 visit to Facility A in Ellicott City, Maryland.⁴

47. The medical report reflects that the Respondent was seen by Dr. B for right foot pain. The Respondent also provided a copy of the prescription, with Dr. B's signature, for Ultram 50 mg Tabs, 1-2 tab po q4-6h prn.⁵

48. Upon receipt of the documents, the Board's Compliance Coordinator contacted Facility A to verify the accuracy of the information. The Board's Compliance Coordinator faxed the documents to Facility A and spoke with the office manager.

49. Facility A's office manager reviewed the documents and stated that the Respondent's prescription for Ultram, purportedly written by Dr. B, was not from Facility A and the signature on the prescription was not Dr. B's signature.

50. Furthermore, Facility A's office manager stated that the Respondent had not been seen for an appointment at either location on September 3, 2011. The Respondent's last visit to Facility A was on October 1, 2009.

51. At that time Facility A's office manager faxed the Board's Compliance Coordinator the Respondent's medical records in their entirety.

⁴ Facility A also has a location in Columbia, Maryland.

⁵ Ultram is the brand name for Tramadol. The prescription instructed the Respondent to take one to two tablets by mouth every four to six hours as needed.

52. A review of the Respondent's Facility A medical records revealed substantial similarities between the notes from the Respondent's December 4, 2008 visit and his alleged September 3, 2011 visit.

53. Furthermore, Dr. B's signature on the prescription provided by the Respondent does not match Dr. B's signature on documents provided by Facility A.

54. On March 20, 2011, the Board received correspondence from Dr. A stating that the Respondent was evaluated at Facility A for foot pain and prescribed Ultram/Tramadol for pain. The correspondence also included a copy of the visit alleged to have occurred on September 3, 2011.

55. The Board's Compliance Coordinator contacted Dr. A regarding this correspondence and Dr. A stated that the Respondent had provided him with the notes from the Facility A visit. Dr. A stated that he wrote his letter to the Board based only on the documents provided by the Respondent and did not independently confirm that the Respondent visited Facility A on September 3, 2011.

FINDINGS OF FACT

Based on the foregoing Findings of Fact, the Board finds by a preponderance of evidence and concludes that the Respondent violated H.O. §§ 12-313(b)(2) Fraudulently or deceptively uses as license; (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.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the Respondent's license to practice pharmacy is hereby **SUSPENDED** for a period of at least **TWO (2) YEARS** beginning on April 1, 2012; and it is further

ORDERED that upon reinstatement, the Respondent's license shall be placed on probation for a period of at least **THREE (3) YEARS** with terms and conditions to be determined by the Board at that time; and it is further

ORDERED that no earlier than **THREE (3) YEARS** from the commencement of the probationary period, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated, through an order of the Board. The Board will grant the termination if the Respondent has fully and satisfactorily complied with all of the probationary terms and conditions and there are no pending complaints related to the charges; and it is further

ORDERED that during the period of suspension, the Respondent shall submit to monthly, random urinalysis to test for controlled dangerous substances and other drugs of abuse, including but not limited to Tramadol. The Respondent shall submit to urinalysis within 24 hours of contact, and must be observed by appropriate personnel. A positive result on a urinalysis shall constitute a violation of Probation and this Consent Order unless the result is positive for a lawfully prescribed medication; and it is further

ORDERED that the Respondent shall attend and actively participate in a substance abuse support group program, such as Narcotics Anonymous, at least once per week. The Respondent shall provide written verification of attendance from the substance abuse support group and submit it to the Board on a quarterly basis; and it is further

ORDERED that the Respondent's execution of this Consent Order shall constitute a release of any and all medical health reports, substance abuse treatment records, and psychological/psychiatric records pertaining to the Respondent to the Board; and be it further

ORDERED that the Respondent will continue his participation in substance abuse therapy with his current psychiatrist; and it is further

ORDERED that the Respondent's psychiatrist shall provide the Board with quarterly reports on the Respondent's treatment progress; and it is further

ORDERED that during the period of suspension, the Respondent shall successfully complete the required **thirty (30) credit hours** of continuing education, including six (6) credit hours related to ethics; and it is further

ORDERED that prior to applying for reinstatement of his license to practice pharmacy, the Respondent shall take and pass the Maryland Jurisprudence Examination; and it is further

ORDERED that the Respondent shall completely abstain from the use of controlled substances, mood altering drugs or drugs of abuse, including narcotic analgesics and alcoholic beverages, in any form except under the following conditions:

1. The Respondent is a *bona fide* patient of a licensed health care practitioner who is aware of the Respondent's treatment contract and urine monitoring contract and the terms of this Order;
2. Such medications were lawfully prescribed by the Respondent's treating practitioner or such medications approved by the substance abuse treatment facility and other treatment providers; and it is further

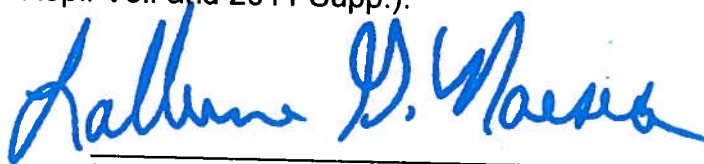
ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board, may impose any sanction which the Board may have imposed in

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 the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of the Consent Order; and it is further

ORDERED that this Order is a PUBLIC DOCUMENT, pursuant to Md. Code Ann., State Govt. § 10-611 et seq. (2009 Repl. Vol. and 2011 Supp.).

10/16/2012
Date



LaVerne Naesea, Executive Director
State Board of Pharmacy

CONSENT

I, Robb Foote, acknowledge that I have had the opportunity to consult 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.

10/15/12
Date

Robb Foote
Robb Foote, P.D.

M. Natalie McSherry
Read and approved by:
M. Natalie McSherry, Esq, Counsel for Mr. Foote

NOTARY

STATE OF MARYLAND

CITY/COUNTY OF Baltimore :

I HEREBY CERTIFY that on this 15th day of October, 2012, before me, a Notary Public of the foregoing State personally appeared Robb Foote, 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.

Constance S. Sellars
Notary Public

My Commission Expires: March 13, 2014

