

IN THE MATTER OF * BEFORE THE
ROBB VINCENT FOOTE, P.D. * STATE BOARD
LICENSE NUMBER: 12098 * OF PHARMACY
RESPONDENT * CASE NUMBER: 07-114

* * * * *

ORDER OF SUMMARY SUSPENSION

Pursuant to Md. State Govt. Code Ann. § 10-226 (c)(2004 Repl. Vol. and 2006 Supp.), the State Board of Pharmacy (the "Board") hereby suspends the license to practice pharmacy in Maryland issued to Vincent Foote, P.D., d.o.b. 12/09/64, license number: 12098 (the "Respondent"), under the Maryland Pharmacy Act (the "Act"), Md. Health Occ. Code Ann. § 12-101, et seq., (2005 Repl. Vol. and 2006 Supp.). This Order of Summary Suspension ("Order") is based on the following investigative findings that the Board has reason to believe are true:

INVESTIGATIVE FINDINGS

BACKGROUND

1. The Respondent was initially issued a license to practice pharmacy in Maryland on July 27, 1990.
2. In 1998, the Respondent was employed as a pharmacist at NeighborCare Infusion Pharmacy ("NeighborCare") located at 9070 Junction Drive, Annapolis Junction, Maryland.
3. On or about December 29, 1998, McKesson Wholesale Drug Distributors ("McKesson") shipped NeighborCare forty (47) one gram bottles of hydromorphone.

4. The Respondent signed for the shipment of hydromorphone when it arrived at NeighborCare.

5. The Respondent failed to record the receipt of the shipment of hydromorphone from McKesson in NeighborCare's inventory log.

6. On or about January 8, 1998, NeighborCare staff discovered twenty-three (23) bottles of hydromorphone missing from inventory.

7. The missing hydromorphone bottles were part of the December 1998 shipment from McKesson.

8. On or about February 19, 1999, NeighborCare staff discovered that several bottles of hydromorphone showed evidence of tampering.

9. As a result of the recent discovery of inventory shortages and tampering in the pharmacy, NeighborCare staff placed a video camera in the pharmacy.

10. On or about April 15, 1999, the Respondent was recorded by NeighborCare's video camera removing two bottles of discarded hydromorphone from the narcotics cabinet.

11. The video camera recorded the Respondent extracting the contents of the discarded hydromorphone with a syringe and placing the contents of the syringe into a container.

12. The video camera further recorded the Respondent placing the container of hydromorphone in his pocket.

13. On April 16, 1999, the Respondent was arrested by the Howard County Police and charged with one (1) count of possession with intent to distribute, a controlled dangerous substance of schedule II, to wit: hydromorphone, in violation of

Md. Ann. Code art.27, §286; one (1) count of distribution of hydromorphone, a controlled dangerous substance of schedule II, in violation of Md. Ann. Code art.27, §286; and one (1) count of theft over \$300, in violation Md. Ann. Code art.27, §342 (a copy of the Statement of Charges and Application for Statement of Charges in *State of Maryland v. Robb Vincent Foote*, Case Number T00021140, are attached hereto and incorporated herein as **Exhibit A**).

14. On or about May 5, 1999, the Respondent was indicted by the Grand Jury sitting in Howard County, Maryland with one (1) count of possession of hydromorphone, a controlled dangerous substance, Schedule II, in violation of Md. Ann. Code art. 27, §287; one (1) count of possession of hydromorphone, a controlled dangerous substance, Schedule II, in violation of Md. Ann. Code art. 27, §288; and one (1) count of theft over \$300, in violation Md. Ann. Code art. 27, §342 (a copy of the Indictment in *State of Maryland v. Robb Vincent Foote*, Case Number 13-K-99-038112, is attached hereto and incorporated herein as **Exhibit B**).

15. On May 6, 1999, the Respondent's license to practice pharmacy was summarily suspended by the Board (a copy of the Order for Summary Suspension is attached hereto and incorporated here as **Exhibit C**).

16. On October 4, 1999, the Respondent pled guilty to one (1) count of possession of hydromorphone, a controlled dangerous substance, Schedule II, in violation of Md. Ann. Code art. 27, §287, in the Circuit County for Howard County.

17. The Respondent was sentenced by the Honorable Raymond Kane of the Circuit Court of Howard County to a six (6) months suspended sentence. The Respondent was placed on supervised probation for a period of two (2) years and ordered to undergo drug and alcohol therapy and urinalysis (a copy of the Docket Entries and the Order for Probation in *State of Maryland v. Robb Vincent Foote*, Case Number 13-K-99-038112, are attached hereto and incorporated herein as **Exhibit D**).

18. On June 11, 1998, the Board allowed the Respondent to surrender his license to practice pharmacy (a copy of the Irrevocable Letter of Surrender of Pharmacist's License, *In the matter of Robert Vincent Foote, P.D. License Number 12098* is attached hereto and incorporated herein as **Exhibit E**).

19. On June 21, 2000, the Board reinstated the Respondent's license to practice pharmacy.

20. The Board placed the Respondent on probation for a period of two (2) years (a copy of the Consent Order of Reinstatement *In the Matter of Robb Vincent Foote, License Number 12098* is attached hereto and incorporated herein as **Exhibit F**).

FINDINGS

21. In November 2004, the Respondent became employed by Giant pharmacy as a full-time pharmacist.

22. In or around March 2007, the Respondent was working as a pharmacist at the Giant pharmacy located at 7925 Ritchie Highway, Glen Burnie, Maryland, when the pharmacy supervisor discovered that narcotics were missing from the pharmacy.

23. In April 2007, the pharmacy supervisor conducted a complete inventory audit of the pharmacy for the period beginning April 29, 2006 through March 23, 2007.

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

HYDROMORPHONE 8mg.	635 Tablets
HYDROMORPHONE 4mg.	691 Tablets
MORPHINE 15 mg.	120 Tablets
METHADONE 5mg.	203 Tablets
METHADONE 40 mg.	55 Tablets
MORPHINE 30mg.	600 Tablets
HYDROMORPHONE 8 mg.	95 Tablets
HYDROMORPHONE 2mg.	244 Tablets
MORPHINE 100mg.	390 Tablets
METHADONE 10mg.	525 Tablets

25. During the audit, the pharmacy supervisor reviewed the pharmacy's purchase orders and discovered that that the Respondent had received orders that included Hydromorphone.

26. The Respondent did not record the receipt of the Hydromorphone orders in the pharmacy's perpetual inventory form for Schedule II controlled substances.

27. The pharmacy supervisor also compared the pharmacy computer records with the actual hard copies of the prescriptions for patients who had been prescribed controlled substances. The hard copies of prescriptions could not be located.

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

29. The pharmacy supervisor contacted the doctors of the patients whose hard copies of their prescriptions could not be located in the pharmacy.

30. Each patient's doctor indicated that he/she did not authorize the prescriptions.

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

32. The Respondent admitted during the meeting that he had taken narcotics from the pharmacy, creating prescriptions in the names of patients, and taking the medication himself.

33. On June 13, 2007, the Respondent was charged by the Anne Arundel County Police with three (3) counts of obtaining a controlled dangerous substance, Schedule II, to wit: hydromorphone, in violation of Md. Crim. Law Code Ann. § 5-602 (a) (2) (a copy of the Statement of Charges and Application for Statement of Charges in *State of Maryland v. Robb Vincent Foote*, Case Number A00179081, is attached hereto and incorporated herein as **Exhibit G**).

FINDINGS OF FACT

1. Based on the foregoing acts described above, the Board has cause to believe that the Respondent is a threat to the public health, welfare and safety.

2. As set forth above, the Respondent also violated the following:

Md. Health Occ. Code Ann. § 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, reprimand any licensee, place any licensee on probation; or suspend or revoke a license if the applicant or licensee:

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

(15) Dispenses any drug, device, or diagnostic for which a prescription is required without a written, oral, or

electronically transmitted prescription from an authorized prescriber;

- (21) Is professionally, physically, or mentally incompetent;
- (24) Violates any rule or regulation adopted by the Board.

The Respondent further violated the following Pharmacist Code of Conduct regulations:

Code Md. Regs. tit. 10, 34.10 (2001)

.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:
 - (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;
 - (e) COMAR 10.19.03.

B. A pharmacist may not:

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

CONCLUSIONS OF LAW

Based on the foregoing, the Board concludes that the public health, safety or welfare imperatively requires emergency action, pursuant to Md. St. Govt. Code Ann. §§ 10-226 (c) (2004 Repl. Vol. & 2005 Suppl.).

ORDER

Based on the foregoing investigative findings and conclusions of law, it is on this 25 day of July, 2007, the majority of the Board hereby:

ORDERED that the license issued to Robb Vincent Foote to practice pharmacy in the State of Maryland under license number: 12098 is hereby **SUMMARILY SUSPENDED**; and it is further

ORDERED that the Respondent is prohibited from practicing pharmacy in the State of Maryland; and it is it further

ORDERED that the Respondent shall return his wall certificate and wallet licenses to the Board, within five days (5) days of the date of this Order; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. State Govt. Code Ann. §10-617(h) *et seq.* (2004 Repl. Vol. & 2006 Supp.), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law, and Order, and is reportable to any entity to whom the Board is obligated to report; and be it further

ORDERED that this Order is a public document pursuant to Md. State Govt. Code Ann. §§ 10-601 *et seq.* (2004 Repl. Vol. & 2006 Supp.).

July 25, 2007
Date

LaVerne G. Naesea
LaVerne Naesea, Executive Director

NOTICE OF HEARING

A show cause hearing to determine whether the Summary Suspension shall be continued, lifted or terminated will be held before the Board at 4201 Patterson Avenue, Baltimore, 21215 following a written request for a show cause hearing by the Respondent.