

IN THE MATTER OF	*	BEFORE THE MARYLAND
DANTE T. FOWLKES	*	STATE BOARD OF PHARMACY
Respondent	*	
License Number: T01701	*	Case Number: PT-13-032
* * * * *	*	* * * * *

CONSENT ORDER

On or about September 11, 2013, the Maryland State Board of Pharmacy (the "Board") issued *Charges Under the Maryland Pharmacy Act* (the "Charges") against **Dante Fowlkes**, Pharm. Tech. (the "Respondent"), Registration Number T01701, under the Maryland Pharmacy Act (the "Act"), codified at Md. Code Ann., Health Occ. ("Health Occ.") §§ 12-101 *et seq.* (2009 Repl. Vol.).

The Board based the Charges on the following provisions of the Act:

§ 12-6B-09. Grounds for reprimand or denial, probation, suspension, or revocation of registration.

Subject to the hearing provision of § 12-315 of this title, the Board may deny a pharmacy technician's registration to any applicant, reprimand a registered pharmacy technician, place any pharmacy technician's registration on probation, or suspend or revoke a pharmacy technician's registration if the applicant or pharmacy technician registrant:

- (3) Fraudulently uses a pharmacy technician's registration;
- (27) Participates in any activity that is grounds for Board action under § 12-313 or § 12-409 of this title.

Pursuant to Health Occ. § 12-6B-09(27) shown above, the underlying grounds for Board action under Health Occ. § 12-313 included:

§ 12-313. Denials, reprimands, suspensions, and revocations – Grounds

- (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:

- (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;

On October 23, 2013, a Case Resolution Conference was held before a committee of the Board. As a resolution of the case, the Respondent agreed to enter into this public Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

1. At all times relevant hereto, the Respondent was registered to practice as a pharmacy technician in the State of Maryland. The Respondent was initially registered in Maryland on July 31, 2008, under registration number T01701. The Respondent's registration is current through December 31, 2013.

2. At all times relevant hereto, the Respondent was employed in the Department of Pharmacy at a hospital located in Baltimore ("Hospital A")¹.

Complaint

3. On or about February 21, 2013, the Board received a letter (the "Complaint") from a Program Coordinator at the Pharmacists' Education and Advocacy

¹ To ensure confidentiality, the names of individuals and healthcare facilities involved in this case are not disclosed in this document.

Council ("PEAC")² stating that the Respondent had been anonymously referred to PEAC by a colleague who believed the Respondent had a substance abuse problem.

4. The Complaint also stated that PEAC had sent two letters to the Respondent by certified mail on or about January 4, 2013, and January 18, 2013, offering to provide confidential support. However, PEAC received no response.

5. Based on the Complaint, the Board initiated an investigation.

Board Investigation

6. On or about May 20, 2013, the Board sent a letter via certified mail to the Respondent. In the letter, the Board informed the Respondent that it was in possession of a credible allegation that he may be impaired because of substance abuse issues. Accordingly, the Board ordered the Respondent to undergo evaluation pursuant to the authority granted in Health Occ. § 12-320, which states:

§ 12-320. Investigation and examination.

(a) Board may direct examination. -- In investigating an allegation brought against a licensee or registered pharmacy technician under this title, if the Board has reason to believe that a licensee or registered pharmacy technician may cause harm to a person affected by the licensee's practice or the acts of a registered pharmacy technician, the Board on its own initiative may direct the licensee or registered pharmacy technician to submit to an appropriate examination by a health care provider designated by the Board.

7. On or about June 13, 2013, the Board-approved evaluator ("Psychologist A"), a licensed psychologist operating in Towson, Maryland, submitted the report of his evaluation of the Respondent (the "Report") to the Board.

² Pharmacists' Education and Advocacy Council of Maryland is an independent, not-for-profit committed to providing confidential support and advocacy to pharmacists and technicians confronting the disease of drug and alcohol addiction.

8. According to the Report, the evaluation consisted of a two-hour clinical interview held on or about May 30, 2013, and a follow-up one-hour clinical interview on or about June 6, 2013. The evaluation also included a urine toxicology analysis, which returned a negative result for narcotics, as well as psychological tests.

9. During the evaluation, the Respondent stated that as part of his job, he hauled heavy Omnicell cabinets³ to various locations within Hospital A's Department of Pharmacy. The cabinets held numerous prescription medications.

10. The Respondent admitted that in or around October, 2012, while moving one of the cabinets, he removed a number of Percocet⁴ tablets without authorization and ingested the tablets later that day.

11. The Respondent explained that from that time forward, he regularly diverted Percocet tablets from the Omnicell cabinets, up to three times per week and 10 tablets at a time. The thefts continued until around January, 2013, when the Respondent's supervisor informed him that he had been observed on security video pilfering controlled dangerous substances.

12. At that time, he was suspended from his position and referred to an outpatient alcohol and drug treatment center. However, before an evaluation could be completed at the center, he received word that he had been terminated, and discontinued treatment.

13. According to email communications between a Board Investigator and a representative of Hospital A, the Respondent was terminated on or about January 7,

³ An Omnicell cabinet is a prescription medication dispensing and storage machine.

⁴ Percocet is an opiate pain medication and a Schedule II controlled dangerous substance (CDS).

2013, after he admitted to accessing and diverting oxycodone and oxyContin tablets from the Omnicell machines.

14. The Report concluded that the Respondent did not have a substance abuse disorder, and that he diverted the tablets in order to treat back pain that had not responded to over-the-counter pain medication.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's conduct, as described above, constitutes violations of the Act, as cited above, including:

- a) Fraudulently using a pharmacy technician's registration, in violation of Health Occ. § 12-6B-09(3);
- b) Violating of Health Occ. § 12-6B-09(27): participating in any activity that is grounds for Board action under § 12-313, to wit: dispensing a drug for which a prescription is required without a written, oral, or electronically transmitted prescription from an authorized prescriber, in violation of Health Occ. § 12-313(b)(15).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 20th day of December, 2013, by a majority of the Board considering this case:

ORDERED that the Respondent's Registration to practice as a Pharmacy Technician in the State of Maryland is **SUSPENDED** for a period of no less than six (6) months, and until he has satisfactorily complied with the following requirements:

- a. The Respondent shall submit to random, Board-ordered urine screens, on a monthly basis until he returns to work in a pharmacy, and on a weekly basis once he returns to work in a pharmacy; and
- b. The Respondent shall successfully complete a Board-approved

course of no less than four (4) hours on the subject of Ethics and Pharmacy Law; and it is further

ORDERED that after six (6) months of suspension, the Respondent may petition the Board to lift the suspension, provided that he has been fully compliant with the terms and does not have any pending complaints filed against him; and be it further

ORDERED that on the date of the termination of the above-mentioned suspension, the Respondent shall be placed on **PROBATION** for a period of at least one (1) year, and until he has satisfactorily complied with the following requirements:

- a. The Respondent shall submit to random, Board-ordered urine screens, on a monthly basis until he returns to work in a pharmacy, and on a weekly basis once he returns to work in a pharmacy; 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;
2. Submitted at a CLIA-certified laboratory; and
3. Negative for any controlled dangerous substance, narcotics, cocaine, or other mood-altering substance, except as provided below; and it is further

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 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; and

3. The Respondent must provide the Board, in writing, within seventy-two (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; and it is further

ORDERED that a violation of any of the requirements of this Consent Order shall constitute a violation of this Consent Order, and the Board, in its discretion, after notice and opportunity for a hearing, may impose additional sanctions authorized under the Maryland Pharmacy Act, including additional suspension, additional probation, a monetary fine or revocation of the Respondent's registration to practice as a pharmacy technician; and it is further

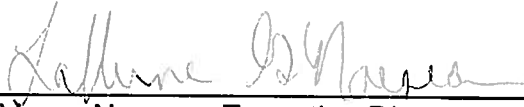
ORDERED that after one (1) year of probation, the Respondent may petition the Board to terminate probation, provided that he has been fully compliant with the terms of probation and does not have any pending complaints filed against him; and be it further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't. § 10-6117(h) (2009 Repl. Vol.).

Date

12/20/13



LaVerne Naesea, Executive Director
For
Lenna Israbian-Jamgochian, P.D.

President
Maryland State Board of Pharmacy

CONSENT

1. By signing this Consent, I hereby affirm the findings of fact contained herein and agree to be bound by the foregoing Consent Order and its conditions.
2. By this Consent, I submit to the foregoing Consent Order as a resolution of this matter. By signing this Consent, I waive any rights I may have had to contest the findings and determinations contained in this Consent Order.
3. I acknowledge that this is a formal order of the Board and as such is a public document.
4. I acknowledge the legal authority and the jurisdiction of the Board to enter and enforce this Consent Order.
5. I sign this Consent Order freely and voluntarily, after having had the opportunity to consult with counsel. I fully understand the language, meaning, and effect of this Consent Order.

11-25-13
Date

Dante Fowlkes
Dante Fowlkes, Pharm. Tech.
Registration No. T01701

NOTARY

STATE OF MD

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 25th day of November, 2013,
before me, a Notary Public of the foregoing State and City/County personally appeared

Dante Fowlkes, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notary seal.



Cynthia Ann Williams
Notary Public

My commission expires: 5/21/15