

**IN THE MATTER OF
McKINLEY GUESS, P.D.
LICENSE NO. 10936**

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**BEFORE THE MARYLAND
STATE BOARD OF
PHARMACY**

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CONSENT ORDER

HISTORY

On February 28, 2012, McKinley Guess, P.D. (the "Respondent") self-reported to the Maryland Board of Pharmacy (the "Board") that he had tested positive on a random drug-screening performed by his pharmacy employer. The Board's investigation into this matter determined that the Respondent had been subject to rehabilitation contract with the Pharmacists Education and Advocacy Council ("PEAC") since January 28, 2011, and had relapsed.

In lieu of instituting formal proceedings against Mr. Guess in accordance with the Maryland Pharmacy Act, Md. Code Ann., Health Occ. § 12-313, and Board regulations, COMAR 10.34.01, a Pre-charge Case Resolution Conference ("CRC") was held with members of the Board, Board Counsel and Mr. Guess on July 11, 2012. Thereafter, the Board and Mr. Guess agreed to resolve this matter as set forth in this Consent Order.

FINDINGS OF FACT

1. At all times relevant hereto, Mr. Guess was a licensed pharmacist with the Board, Pharmacist License No. 10936.
2. Mr. Guess self-referred to PEAC, and on January 28, 2011, entered into a rehabilitation contract with PEAC which required, among other things, that Mr. Guess submit to random urine screenings. In December 2011, Mr. Guess tested positive for Tussionex as

- a result of self-medicating with an old prescription.
3. On February 28, 2012, the Board received a complaint from Mr. Guess regarding a positive result of a random urine screen performed by his pharmacy employer. Mr. Guess explained that the positive test result was due to his self-medicating with Percocet, Flexeril, and Tylenol #3 for a back injury. The Tylenol #3 had previously been prescribed for a family member, and the Percocet and Flexeril had been prescribed to Mr. Guess for a previous injury.
 4. Mr. Guess subsequently sought treatment from two physicians for his back injury, one of whom was at an urgent care clinic, for his back pain and was prescribed narcotics. Mr. Guess did not inform the physicians of his substance abuse history.
 5. Due to the positive urine test, Mr. Guess' pharmacy employer instructed him to self-report to the Board. In addition, Mr. Guess was also enrolled in the employer's Employee Assistance Program.
 6. Mr. Guess did not inform PEAC of his pharmacy employment, as mandated by the PEAC contract.
 7. Mr. Guess currently works in a hospital pharmacy with at least one technician. The pharmacy also keeps its controlled substances in a narcotics vault which is under the supervision of the hospital security department through video feed.
 8. The Board received a letter of reference from Mr. Guess' pharmacy employer which confirmed the restricted access to narcotics and indicated that Mr. Guess has been compliant with his EAP program and was an "exemplary employee and clinician".

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that Mr. Guess is subject to discipline pursuant to Md. Code Ann., Health Occ. §§ 12-313(b)(21) and (25), and COMAR 10.34.10.01B.

ORDER

It is this 30th day of August, 2012, by an affirmative vote of the Maryland Board of Pharmacy, hereby:

ORDERED that Mr. Guess' license be placed on immediate PROBATION for at least THREE (3) YEARS, during which:

1. Mr. Guess shall ensure that his pharmacist supervisor submit quarterly employer performance reports to the Board;
2. Mr. Guess shall immediately notify the Board in writing in the event that he changes pharmacy employers, or changes pharmacy positions within his current pharmacy employer. The Board may amend the probationary conditions herein to address any public safety issues relating to Mr. Guess' new pharmacy setting;
3. Mr. Guess shall attend weekly meetings of a 12-step aftercare or other group substance abuse program that is comprised of healthcare professionals;
4. Mr. Guess shall submit to random, Board-ordered urine screens twice a week for the first three (3) months of probation; and provided that the urine screenings are negative, thereafter, Mr. Guess shall submit to random, Board-ordered urines screens on a weekly basis; and be it further,

ORDERED that after one (1) year of probation, Mr. Guess may petition the Board for modification of the probationary terms herein, 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 after three (3) years of probation, Mr. Guess 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 all urine screens under this Order shall be:

1. Submitted by Mr. Guess within 24 hours of the Board staff instructing him to submit a urine sample;
2. Submitted at a CLIA-certified laboratory;
3. Observed; and
4. Negative for any controlled dangerous substance, narcotics, cocaine, alcohol, or other mood-altering substance, except as provided below; and be it further,

ORDERED that Mr. Guess shall abstain from the ingestion of controlled dangerous substances, narcotics, cocaine, alcohol, or other mood-altering substances, except that Mr. Guess may ingest prescribed controlled dangerous substances for legitimate medical reasons under the following conditions:

1. Mr. Guess 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 Mr. Guess' physician or other authorized medical practitioner; and
3. Mr. Guess 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 Mr. Guess from the prescriber to the Board; and be it further,

ORDERED that Mr. Guess' execution of this Order shall constitute a release of any and all medical records, substance abuse treatment records, and psychological/psychiatric records pertaining to Mr. Guess to the Board in complying with the terms and conditions set forth herein; and be it further,

ORDERED that Mr. Guess shall agree and consent to the release by the Board of any information or data produced in relation to this Order to any treatment provider; and be it further,

ORDERED that Mr. Guess shall at all times cooperate with the Board in the monitoring, supervision, and investigation of Mr. Guess' compliance with the terms and conditions of this Order; and be it further,

ORDERED that Mr. Guess' failure to fully cooperate with the Board shall be deemed a violation of the probationary terms and a violation of this Order; and be it further,

ORDERED that in the event the Board finds in good faith that Mr. Guess has violated any of the conditions of probation herein, relapsed, or in the event the Board finds in good faith that Mr. Guess has committed a violation of Title 12 of the Health Occupations Article or regulations adopted thereunder, the Board may immediately summarily suspend Mr. Guess' license prior to a hearing, provided that Mr. Guess is given the opportunity for a show cause hearing within a reasonable time of such action; and be it further,

ORDERED that Mr. Guess shall bear the expenses associated with this Order; and be it

further.

ORDERED that this is a formal order of the Maryland Board of Pharmacy and as such is a public document pursuant to the Maryland Annotated Code, State Government Article, Section 10-617(h).

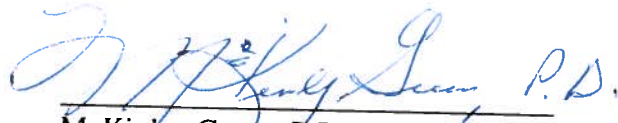
August 30, 2012
Date

LaVerne D. Naesea
LaVerne Naesea, Executive Director
For
Michael Souranis, P.D.
President, 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.

8/24/12
Date


McKinley Guess, P.D.

STATE OF MARYLAND
COUNTY/CITY OF Charles:

I hereby certify that on this 24th day of August, 2012, before me, a Notary Public of the State of Maryland and County/City aforesaid, personally appeared McKINLEY GUESS, and made an oath in due form that the foregoing Consent was his voluntary act and deed.


Notary Public
My commission expires: _____
MY COMMISSION EXPIRES 08/25/2012