

IN THE MATTER OF	*	BEFORE THE
JOHN CHARLES NEWTON, P.D.	*	STATE BOARD
LICENSE NUMBER: 09835	*	OF PHARMACY
RESPONDENT	*	CASE NUMBER: 10-010

* * * * *

ORDER OF SUMMARY SUSPENSION

Pursuant to Md. State Govt. Code Ann. § 10-226 (c) (2) (2005 Repl. Vol. & 2008 Suppl.), the Maryland Pharmacy Act ("the Act"), Md. Health Occ. Code Ann. §§ 12-101 *et seq.*, (2005 Repl. Vol. and 2008 Suppl.), and Code Md. Regs. tit. 10, § 34.01.12, the State Board of Pharmacy (the "Board") hereby suspends the license of John Charles Newton, P.D. (the "Respondent"), D.O.B. 9/18/1955, license number: 09835, to practice pharmacy under the Act. This Order of Summary Suspension ("Order") is based on the following investigative findings that the Board has reason to believe are true:

INVESTIGATIVE FINDINGS

1. The Respondent was initially issued a license to practice pharmacy in Maryland on July 7, 1982.

BACKGROUND

2. On or about January 21, 1998, the Board accepted the irrevocable surrender of the Respondent's license to practice pharmacy (a copy of the Irrevocable Surrender of Pharmacist's License, dated January 21, 1998, is attached hereto and incorporated herein as Exhibit A)

3. Prior to accepting the Respondent's letter of surrender, the Board found that the Respondent had dispensed drugs without a prescription and he had a substance

abuse problem that threatened the public health.

4. On or about June 23, 1999, the Board and the Respondent entered into a Consent Order of Reinstatement ("1999 Reinstatement Order" a copy of the Reinstatement Order, dated June 23, 1999, is attached hereto and incorporated herein as Exhibit B.)

5. Under the terms of the 1999 Reinstatement Order, the Respondent was required to comply with probationary conditions.

6. On October 15, 1999, the pharmacy where the Respondent was employed was inspected by the Division of Drug Control (DDC), The Inspector of DDC was concerned that the Respondent was being supervised by a licensed pharmacist only 50% of the time and was not keeping a perpetual inventory of controlled dangerous substances (CDS), in violation of the terms of his Consent Order. Accordingly, on December 23, 1999 a conference call was held with the Respondent, his employer, and a Board member, wherein it was determined that the Respondent was substantially compliant with the supervisory condition of the Consent Order, but not with the requirement of a perpetual inventory.

7. Based upon that call, the Board voted to modify the Respondent's Consent Order, rather than charging him with a violation thereof. Specifically, the Board required that the Respondent be supervised 25% of the time and submit a copy of his work schedule and CDS perpetual inventory each month. The modification also extended his probation until August 7, 2000.

8. On or about September 3, 2000, the Respondent applied for termination of his probation and, on September 20, 2000, the Board voted to terminate the

Respondent's probationary status and remove all restrictions from his license.

9. On October 8, 2001, the Respondent voluntarily signed a five (5) year contract with the Pharmacist Education and Assistance Committee (PEAC). The Respondent agreed that failure to adhere to the terms of his contract would be grounds for PEAC to inform the Board of non-compliance and to send pertinent records to the Board.

10. On January 7, 2005, the Respondent was referred to Warwick Manor ("Warwick"), a rehabilitation facility, by PEAC. As a result of the evaluation conducted at Warwick, the Respondent was admitted as an inpatient on January 7 and discharged on January 17, 2005.

11. On January 12, 2005, PEAC referred the Respondent to the Board for violation of his 2001 PEAC contract, based on missed or watered-down urines, as more specifically set forth below:

- A. Missed urines:
 - (a) January 9, 2004
 - (b) February 11, 2004
 - (c) April 30, 2004
 - (d) June 16, 2004
 - (e) September 30, 2004
 - (f) October 7, 2004

B. Diluted urines:

(a) September 17, 2004, creatinine 14.7¹

(b) October 8, 2004, creatinine 15.5

(c) November 11, 2004, creatinine 17.3.

12. In addition, the Respondent failed to return the Monthly Employer Evaluation forms to PEAC. While the Respondent was employed at White Marlin Pharmacy in Ocean City, Maryland, employer reports were not received for November 2003 and December 2003.

13. On or about February 16, 2005, the Board voted to summarily suspend the Respondent's license for failing to abide by the terms of his 2001 PEAC contract.

14. In lieu of summarily suspending the Respondent's license, the Board, on October 25, 2005, charged the Respondent for failing to abide by the terms of his 2001 PEAC contract.

15. In or around March 23, 2006, the Respondent entered into a Consent Order with the Board. Under the terms and conditions of the Consent Order, the Respondent's license was suspended for thirty (3) days and he was placed on probation, for three (3) years.

16. On or about February 21, 2009, the Board voted to terminate the Respondent's probation.

¹ High levels of Creatinine indicate that the urine has been diluted in an attempt to water down substances, such as alcohol, in the blood.

17. On or about July 17, 2009, the Board was informed by the Respondent's employer, that he had been terminated on July 16, 2009 for dispensing medications to himself, without the proper authorization.

18. At the time of termination, the Respondent was employed as a pharmacist at Rite Aid, located in Pocomoke City, Maryland.

19. Prior to his termination, the pharmacy staff at Rite Aid reported to the pharmacy manager that the Respondent always appeared sleepy, drowsy, and unfocused.

20. An investigation conducted by the Rite Aid pharmacy district manager revealed that between April 2009 and June 2009, the Respondent dispensed large amounts of Vicodin and Norco for himself that were not authorized by the physician, whose name appeared of the prescription.

21. In or around July 17, 2009 the Applicant was charged by the Pocomoke City Police, with one (1) count of dispensing a prescription drug, in violation of Md. Crim. Law Code Ann. § 5-701(d)4(iv) and two (2) counts of Counterfeiting prescriptions, in violation of Md. Crim. Law Code Ann. § 8-610(b)(2) and (3).

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 or 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:

- (5) Provides professional services while:
 - (i) Under the influence of alcohol; or
 - (ii) Using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of the therapeutic amount or without valid medical indication
- (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

.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;
- (2) Practice pharmacy under circumstances or conditions which prevent the proper exercise of professional judgment; or
- (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) (2) (2004 Repl. Vol. & 2008 Suppl.).

ORDER

Based on the foregoing investigative findings and conclusions of law, it is on this 7th day of Oct., 2009, the majority of the Board hereby:

ORDERED that the license issued to John Charles Newton to practice pharmacy in the State of Maryland under license number: **09835** is hereby **SUMMARILY SUSPENDED**; and it is further

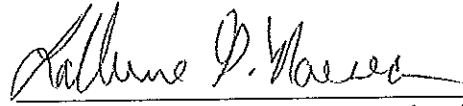
ORDERED that the Respondent is prohibited from practicing pharmacy in the State of Maryland; and it is it further

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) (2005 Repl. Vol. & 2008 Supp.), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law, and Order, and is

10/7/09
Date


LaVerne G. Naesea, Executive Director
Maryland State Board of Pharmacy

NOTICE OF HEARING

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