

IN THE MATTER OF * **BEFORE THE**
DEAN NGUYEN, PHARM TECH * **STATE BOARD**
Registration Number: T19245 * **OF PHARMACY**
Respondent * **CASE NO. 18-253**

* * * * *

**FINAL ORDER OF REVOCATION
OF PHARMACY TECHNICIAN'S REGISTRATION**

On August 24, 2018, the State Board of Pharmacy (the "Board"), notified **DEAN NGUYEN**, Pharmacy Technician (Pharm Tech), the Respondent, **Registration Number: T19245**, of its Intent to Revoke his Pharm Tech registration.

The Notice also informed the Respondent that, unless he requested a hearing in writing within 30 days of receipt of said Notice, the Board would sign the Final Order, which was enclosed. More than 30 days have elapsed and the Respondent failed to timely request a hearing. Therefore, this revocation is final.

The Board bases its action on the Respondent's violation of the following provisions of its Act, Md. Code Ann., Health Occupations ("Health Occ."), §§ 12-101 *et seq.* (2014 Repl. Vol. and 2017 Supp.):

Health Occ. § 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 [;].

With respect to Health Occ. § 12-6B-09 (27), the underlying grounds for Board action under § 12-313 include:

- (25) Violates any rule or regulation adopted by the Board [;].

The pertinent provision of the Board's regulations under Code Md. Regs. ("COMAR") § 10.34.10 Pharmacist, Pharmacy Intern, and Pharmacy Technician Code of Conduct, provides:

.01 Patient Safety and Welfare.

B. A pharmacist may not:

- (3) Engage in unprofessional conduct.

**FACTS THAT WARRANT
THE REVOCATION OF THE RESPONDENT'S REGISTRATION**

1. At all times relevant hereto, the Respondent was registered to practice as a Pharm Tech in the State of Maryland. The Respondent was first registered on February 22, 2017. The Respondent's registration expired on May 31, 2018.

2. At all times relevant hereto, the Respondent was employed as a Pharm Tech at a pharmacy (the "Pharmacy") within a regional grocery chain in Bel Air, Harford County, Maryland.¹

¹ The names of facilities and/or individuals are confidential.

3. On March 23, 2018, the Board received an email with attachments from the District Manager of the Pharmacy regarding a loss of controlled dangerous substances, CDS, due to theft.

4. One of the attachments was a narrative from the Pharmacy which indicated that, on March 7, 2018, the Pharmacy's Manager reported that a large quantity of Alprazolam² was missing. When the Pharmacy Manager spoke to the Asset Protection Manager, she informed him that over 500 tablets of Alprazolam were missing, and she had found empty bottles of Promethazine with codeine³ in the lab from the week ending March 3, 2018.

5. The Pharmacy Manager stated that she expected the loss was caused by the Respondent who had bought several pairs of tennis shoes that cost over a thousand dollars.

6. Because the video cameras were not helpful in the investigation, on March 8, 2018, the Asset Protection Manager relocated three cameras into key areas covering six bays of the pharmacy and changed the image recording rate.

7. On March 9, 2018, the Asset Protection Manager conducted surveillance on the Respondent's next shift from the Closed-Circuit TV in the computer room. At 4:58 PM, the Respondent was seen removing a pill from the pharmacy shelf and concealing it in his left

² Alprazolam is a benzodiazepine used to treat anxiety and panic attacks.

³ Promethazine with codeine: this combination medication is used to treat symptoms caused by the common cold, flu, allergies, or other breathing illnesses (e.g., sinusitis, bronchitis). Promethazine is an antihistamine that relieves watery eyes, itchy eyes/nose/throat, runny nose, and sneezing. Codeine is a narcotic cough suppressant (antitussive) that affects a certain part of the brain, reducing the urge to cough.

smock pocket. He then left the lab briefly. It was later determined that 60 tablets of Modafinil⁴ were missing from that location.

8. At approximately 5:45 PM, the Asset Protection Manager texted the Pharmacy Manager that she was to tell the Respondent that she was not feeling well and that she had to go to the restroom. At 5:49 PM, the Pharmacy Manager left the area and, as soon as she left the pharmacy area, the Respondent was literally dancing with his arms up in the air. The Respondent is then observed removing an empty brown-colored syrup bottle from the prep area and immediately going to the area where the Promethazine with Codeine Syrup was kept and pouring the syrup into the empty bottle, then concealing it in his left pants pocket. The Respondent is then observed at 5:51 PM removing a yellow empty pill bottle from the prep area and proceeding to the pharmacy shelf where he dumped several tablets from several bottles into the empty pill bottle which he concealed into his left smock pocket.

9. The Asset Protection Manager then proceeded to the pharmacy lab with the Pharmacy Manager at his side, entered the lab, displayed his badge, identified himself to the Respondent, read him his Miranda rights, and informed the Respondent that he had seen him conceal the drugs and asked him to retrieve the cough syrup from his black coat. After securing the cough syrup, the Asset Protection Manager asked the Respondent if he had anything else on his person, at which time, the Respondent removed the yellow pill bottle

⁴ Modafinil is a eugeroic (a type of drug which specifically improves wakefulness and alertness) used for treatment of narcolepsy, shift work sleep disorder, and excessive daytime sleepiness associated with obstructive sleep apnea.

from his pocket stating, “just this”. When asked what those pills were, the Respondent replied that they were “Xanax.”⁵.

10. The Asset Protection Manager asked the Respondent whether he used them or sold them, to which the Respondent informed him that he “sold them for money.”

11. A total of 226 tablets were recovered along with 120 ml of Promethazine with Codeine Cough Syrup from the Respondent.

12. The Asset Protection Manager escorted the Respondent to the Store Manager’s office. Once there, the Respondent’s cell phone was on the counter in plain view when a text came in at 6:03PM stating: “Let me get 12 Kpin⁶. I’ll give you 60”. The Asset Protection Manager took a picture of the phone text message and number.

13. The Asset Protection Manager notified the Maryland State Police and a Trooper responded to the store who took the Respondent’s cell phone into evidence. The Respondent’s back pack, which he left under the pharmacy counter, was searched and several clear, dime baggies were found therein, consistent with distribution of drugs. A few of them had white and brown powdery substances therein. Also recovered were several loose pills and bottles of the following: Alprazolam, prescription diet pills, small cough syrup bottles of suspected Promethazine, Modafinil, and various tablets.

⁵ Xanax is the brand name for Alprazolam.

⁶ “Kpin is an abbreviation of Klonopin, which is Clonazepam, sold under the brand name Klonopin, among others, which is a medication used to prevent and treat seizures, panic disorder, and for the movement disorder known as akathisia. It is a tranquilizer of the benzodiazepine class.

14. The Respondent was arrested and subsequently charged in the District Court for Harford County, with multiple felonies, including CDS possession with intent to distribute, as well as some misdemeanors.

15. The Respondent admitted stealing all of the pills from the Pharmacy and stated that he had been doing so since about November 2017 and selling them for profit to people he knew.

16. The Pharmacy submitted a Drug Enforcement Administration ((DEA) “Report of Theft or Loss of Controlled Substances”, as required, which showed the loss as follows:

Xanax, 0.25 mg	50 tablets
Zolpidem Tartrate, ⁷ 5 mg	11 tablets
Zolpidem Tartrate, 10 mg	10 tablets
Clonazepam, 1 mg	60 tablets
Clonazepam, 2 mg	20 tablets
Phentermine ⁸ , 15 mg	27 tablets
Alprazolam, 1 mg	287 tablets
Alprazolam, 2 mg	60 tablets
Clonazepam, 1 mg	21 tablets
Cheratussin AC Syrup ⁹	1157 ml
Promethazine-Codeine Syrup	478 ml

⁷ Zolpidem tartrate tablets are indicated for the short-term treatment of insomnia characterized by difficulties with sleep initiation.

⁸ Phentermine is an appetite suppressant used together with diet and exercise to treat obesity.

Alprazolam, 2 mg	36 tablets
Temazepam ¹⁰ , 15 mg	4 tablets
Clonazepam, 0.5 mg	5 tablets
Clonazepam, 2 mg	350 tablets
Clonazepam, 1 mg	52 tablets
Promethazine-Codeine Syrup	1066 ml
Modafinil, 100 mg	60 tablets
Modafinil, 200 mg	59 tablets
Alprazolam XR, ¹¹ 1 mg	15 mg
Lunesta ¹² , 3 mg	10 mg
Alprazolam, 1 mg	727 tablets
Temazepam, 15 mg	157 tablets

17. The case was later transferred to the Circuit Court for Harford County where the Respondent was served with a 12-Count Indictment including CDS Possession with Intent to Distribute. On July 11, 2018, the Respondent pled guilty to CDS possession with

⁹ Cheratussin AC/Generic Robitussin/AC/CODEINE; is a cough suppressant and expectorant which helps to stop or reduce coughing due to the common cold or inhaled irritants. It will not treat an infection.

¹⁰ Temazepam is a drug that is used for treating anxiety. It is in the benzodiazepine class of drugs, the same family that includes diazepam (Valium), alprazolam (Xanax), clonazepam (Klonopin), flurazepam (Dalmene), lorazepam (Ativan), and others. Temazepam and other benzodiazepines act by enhancing the effects of gamma-aminobutyric acid (GABA) in the brain. GABA is a neurotransmitter (a chemical messenger that nerve cells use to communicate with each other) that inhibits many of the activities of the brain. It is believed that excessive activity in the brain may lead to anxiety or other psychiatric disorders and that Temazepam reduces the activity. Temazepam increases total sleep time.

¹¹ XR = Extended relief and should be taken daily for panic disorder.

¹² Lunesta is a sedative used to treat insomnia.

intent to distribute and received a Probation Before Judgment¹³. All the other counts were *nolle prosequi*¹⁴.

18. The Respondent was terminated from his place of employment on March 10, 2018.

19. As set forth above, by stealing drugs from his pharmacy employer to sell on the street to make money, the Respondent is in violation of Health Occ. §12-6B-09 (3) (Fraudulently uses a pharmacy technician’s registration.)

20. Stealing drugs from one’s employer to sell is also a violation of Health Occ. §§12-6B-09 (27) (Participates in any activity that is grounds for Board action under § 12-313), namely, § 12-313 (b) (25) (Violates any rule or regulation adopted by the Board.)

¹³Probation Before Judgment (PBJ); Maryland Criminal Procedure § 6-220 defines probation before judgment as follows:

- (b) In general
 - (1) When a defendant pleads guilty or nolo contendere or is found guilty of a crime, a court may stay the entering of judgment, defer further proceedings, and place the defendant on probation subject to reasonable conditions if:
 - (i) the court finds that the best interests of the defendant and the public welfare would be served; and
 - (ii) the defendant gives written consent after determination of guilt or acceptance of a nolo contendere plea.
 - (2) Subject to paragraphs (3) and (4) of this subsection, the conditions may include an order that the defendant:
 - (i) pay a fine or monetary penalty to the State or make restitution; or
 - (ii) participate in a rehabilitation program, the parks program, or a voluntary hospital program.
 - (3) Before the court orders a fine, monetary penalty, or restitution, the defendant is entitled to notice and a hearing to determine the amount of the fine, monetary penalty, or restitution, what payment will be required, and how payment will be made.
 - (4) Any fine or monetary penalty imposed as a condition of probation shall be within the amount set by law for a violation resulting in conviction.
 - (5) As a condition of probation, the court may order a person to a term of custodial confinement or imprisonment.
- (c) Participation in treatment and education programs.

¹⁴ Nolle prosequi is legal term of art and a Latin legal phrase meaning "be unwilling to pursue", a phrase amounting to "do not prosecute". It is a phrase used in many common law criminal prosecution contexts to describe a prosecutor's decision to voluntarily discontinue criminal charges either before trial or before a verdict is rendered. It contrasts with an involuntary dismissal.

Specifically, the thefts and sales violated COMAR § 10.34.10 01 (Patient Safety and Welfare. B. A pharmacist may not: (3) Engage in unprofessional conduct.)

21. The Respondent’s conduct, as set forth above, constitutes a violation of Health Occ. §§ 12-6B-09 (3) and (27), Health Occ. § 12-313(25), and COMAR § 10.34.10.01 B (3).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes that the Respondent violated §12-6B-09 Health Occ. §12-6B-09 (3), and (27), Health Occ. § 12-313(25) and COMAR § 10.34.10.01 B (3).

ORDER

As set forth above, the Board hereby Orders, that the registration to practice as a Pharmacy Technician in Maryland held by **DEAN NGUYEN**, the Respondent, Registration Number T19245 be and is **REVOKED**, and that this Order is public, pursuant to Md. Code Ann., General Provisions §§ 4-101 *et seq.* (2014 Vol. and 2017 Supp.).

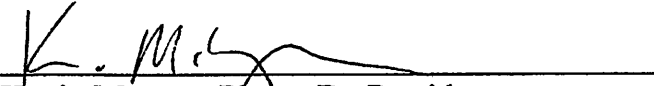
NOTICE OF RIGHT OF APPEAL

In accordance with §12-316 of the Act and Md. Code Ann., State Government. §§10-201, *et seq.* (2014 Repl. Vol. and 2017 Supp.), you have a right to a direct judicial appeal of this decision. A petition for appeal of the Final Board Order shall be filed within thirty days

from your receipt of this Final Order and shall be made in accordance with the aforesaid authority.

11/21/18

Date



Kevin Morgan, Pharm.D., President
State Board of Pharmacy