

IN THE MATTER OF

* BEFORE THE MARYLAND

PHILIP M. PERRY, R.Ph.

* BOARD OF PHARMACY

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FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

Upon certain information coming to its attention, the Maryland Board of Pharmacy (the "Board") determined to charge Philip M. Perry, R.Ph. (the "Respondent"), a person licensed to practice pharmacy in the State of Maryland, with violation of Article 43, §266A(c)(1)(iii), (vii), (xii) and (xv) (recodified in the Health Occupations Article of the Annotated Code of Maryland, §12-311(b)(1), (2), (4), (6), (7), (8), (9), (14)).

The particular charges are:

- (iii) Fraudulent or deceitful procurement or use of a pharmacist's certificate of renewal;
- (vii) Dispensing or sale of any drug for which a prescription is required without first having received from an authorized prescriber a written or oral prescription for the drug;
- (xii) Addiction to controlled dangerous substances, habitual drunkenness, or rendering of professional services when intoxicated or under the influence of drugs with abuse potential;
- (xiv) Wilful making or filing of any false report or record in his practice as a pharmacist; and
- (xv) Wilful omission to file or record, wilful impediment or obstruction or a filing or recording, or inducement of another person to omit to file or record any report required by law.

Appropriate notice of the charges and the grounds upon which they were based were sent to the Respondent in a letter dated June 9, 1981. A hearing was held on September 16, 1981 at 1:20 p.m. The following members of the Board were present at the

Paul Freiman, B.S.; Bernard B. Lachman, B.S.; Anthony G. Padussis, B.S.; Ralph T. Quarles, B.S.; Robert E. Snyder, B.S.; and Phyllis K. Trump, B.F.A.. Mr. Lachman presided at the hearing as President of the Board. A quorum of the Board was present.

The Respondent was represented by John C. Nason, Esquire, his attorney. Thomas J. Kwiatkowski, Jr., Assistant Attorney General, presented the case on behalf of the Board. Ronald S. Gass, Assistant Attorney General was present to advise the Board on procedural matters and rules of evidence.

Following introductions and a statement by Mr. Lachman regarding the purpose of the hearing, Mr. Kwiatkowski presented his case. After an opening statement, Mr. Kwiatkowski introduced the following documentary evidence:

State's Exhibit #1: Agreed Statement of Facts dated September 16, 1981 signed by Mr. Kwiatkowski, the Respondent, and Mr. Nason.

State's Exhibit #2A: Control Drug Audit Chart dated September 4, 1980 for Store #743.

State's Exhibit #2B: Control Drug Audit Chart dated September 7, 1980 for Store #743.

State's Exhibit #3: Transcript of tape recorded conversation between Agent Kline G. Kemp, Jr., Delaware Office of Narcotics and Dangerous Drugs and the Respondent recorded on September 10, 1980 at the Nanticoke Hospital.

State's Exhibit #4: Statement made by the Respondent to Agent Kline G. Kemp, Jr., Delaware Office of Narcotics and Dangerous Drugs dated September 10, 1980 at 1:25 p.m. at Nanticoke Hospital and signed by the Respondent, Agent Kemp and Detective Robert J. Lee.

After these exhibits were received into evidence, Mr. Kwiatkowski rested the case on behalf of the Board.

After his opening statement, Mr. Nason called David Warren Shave, M.D., a psychiatrist, to testify on behalf of the Respondent. Next, Mr. Nason introduced the following documentary

Respondent's Exhibit #1: Letter to To Whom It May Concern From Karl Wagner, R.Ph., Arcade Pharmacy, Race & Muir Streets, Cambridge, Maryland 21613, dated August 28, 1981.

Respondent's Exhibit #2: Letter to To Whom It May Concern From Thomas J. Hayman, Medical Center Pharmacy, Inc., South Salisbury Boulevard, Salisbury, Maryland 21801, dated August 25, 1981.

Respondent's Exhibit #3: Letter to To Whom It May Concern from Neil Esterson, Route 1, Box 257 H, Seaford, Delaware 19973, dated July 25, 1981.

Respondent's Exhibit #4: Letter to John C. Nason from Alfred Spies, 608 Douglas Road, Salisbury, Maryland 21801, dated July 23, 1981.

Respondent's Exhibit #5: Letter to Bernard Lachman, R.Ph. from I. Earl Kerpelman, 1030 Riverside Drive, Salisbury, Maryland, dated July 7, 1981.

Respondent's Exhibit #6: Letter to Mr. Nason from John D. (Dave) Shearer, R.Ph., dated August 21, 1981.

Respondent's Exhibit #7: Letter to Maryland Board of Pharmacy from Earl M. Towers, R.Ph., Towers Pharmacy, South Fifth Avenue, Route 3, Box 5E, Denton, Maryland 21629, dated August 20, 1981.

Respondent's Exhibit #8: Letter to Mr. Nason from Philip D. Lindeman, dated August 30, 1981.

Respondent's Exhibit #9: Letter to Maryland Board of Pharmacy from Charles W. Bennett, Jr., R.Ph., President, The Bennett Drug Company, 809 Camden Avenue, Salisbury, Maryland 21801, dated September 2, 1981.

Respondent's Exhibit #10: Letter to John C. Nason from Orville L. Nichols, Jr., dated September 14, 1981.

Respondent's Exhibit #11: Letter from Ron Dailey, 503 Washington Street, Salisbury, Maryland 21801, dated August 25, 1981.

Respondent's Exhibit #12: Undated letter to To Whom It May Concern from William N. Hastings, Jr., The Bill Hastings Insurance Agency, 309 South Camden Avenue, Fruitland, Maryland 21826.

Respondent's Exhibit #13: Letter to Maryland Board of Pharmacy from Dean Jenkins, Esquire, Ayres, Jenkins & Gordy, 4100 Costal Highway, Ocean City, Maryland 21842, dated July 22, 1981.

Respondent's Exhibit #14: Letter to To Whom It May Concern from William E. Shockley, Sheriff, Sheriff's Office, Wicomico County, Salisbury, Maryland 21801, dated August 19, 1981.

Respondent's Exhibit #15: Armed Forces of the United States Report of Transfer or Discharge, DD Form 214, in the name of the Respondent.

Respondent's Exhibit #16: Undated transcript for the Respondent from the University of Puget Sound, Tacoma, Washington.

Following the introduction of these documents, the Respondent took the stand and testified on his own behalf. After closing arguments by Mr. Kwiatkowski and Mr. Nason, the hearing was adjourned at 3:45 p.m.

FINDINGS OF FACT

The Board finds:

1. That the Respondent is a person licensed by the Maryland Board of Pharmacy to practice pharmacy in Maryland.
2. That the Respondent was employed as a pharmacist by the Jack Eckerd Drug Company in Salisbury, Maryland at Drug Store #743 ("Store #743") at all times relevant to this case.
3. That in his practice at Store #743, the Respondent had access to and control over various controlled dangerous substances.
4. That on September 3, 1980, Respondent was hospitalized at Nanticoke Hospital for an apparent drug overdose.
5. That controlled drug audits were conducted at Store #743 on September 4 and 7, 1980.
6. That these controlled drug audits of Store #743 revealed unaccounted for shortages in various supplies of

7. That during the periods covered by the aforementioned drug audits of Store #743, the Respondent was the pharmacist on duty at that store.
8. That on September 10, 1980, while Respondent was still hospitalized, he knowingly and voluntarily made oral statements to Agent Kline G. Kemp, Jr. of the Delaware Office of Narcotics and Dangerous Drugs.
9. That Respondent's oral statements were accurately recorded and transcribed by Agent Kemp and appear in State's Exhibit #3.
10. That on September 10, 1980, Respondent knowingly and voluntarily gave Agent Kemp a signed written statement while he was still a patient at the Nanticoke Hospital, and this statement appears in State's Exhibit #4.
11. That in the oral and written statements dated September 10, 1980, the Respondent admitted taking prescription drugs, including controlled dangerous substances, from Store #743 without first receiving a written or oral prescription from an authorized prescriber.
12. That in the oral and written statements dated September 10, 1980, the Respondent admitted that he falsified records of Store #743 required by law so that shortages of the prescription drugs he took would not be discovered by the authorities.
13. That the Respondent took and used the prescription drugs he took from Store #743 for his personal use and did not sell or give them away to anyone else.
14. That the Respondent received psychiatric treatment from David Warren Shave, M.D. between September 12, 1980 and August 12, 1981.

15. That the Respondent had his license to practice pharmacy in the State of Delaware suspended for a period of one (1) year commencing November 13, 1980 by the Delaware State Board of Pharmacy.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board unanimously concludes:

1. That the Respondent dispensed controlled dangerous substances requiring a prescription without first having received from an authorized prescriber a written or oral prescription for the drug;
2. That the Respondent willfully made and filed false reports or records in his practice as a pharmacist;
3. That Respondent willfully omitted to file or record and willfully obstructed the filing or recording of reports required by law;
4. That the Respondent did not fraudulently or deceitfully procure or use a pharmacist's certificate of renewal; and
5. That the Respondent was not addicted to controlled dangerous substances nor did he render professional services while under the influence of drugs with abuse potential.

Accordingly, the Board, by unanimous vote, hereby adjudicates the Respondent GUILTY of violating Article 43, §266A(c)(1)(vii), (xiv) and (xv) of the Annotated Code of Maryland and NOT GUILTY of violating Article 43, §266A(c)(1)(iii) and (xii) of the Annotated Code of Maryland.

ORDER

Upon the foregoing Findings of Fact and Conclusions of Law, it is this 21 day of October, 1981, by a unanimous vote of the members of the Board.

ORDERED that the Respondent's license to practice pharmacy in Maryland is hereby SUSPENDED for a period of one (1) year from the date of this Order; and be it further

ORDERED that the foregoing suspension shall be immediately STAYED with the Respondent placed on PROBATION for a period of one (1) year from the date of this Order subject to the following conditions:

1. That the Respondent shall notify any and all of his employers of the Board's action in this case during his probationary period; and
2. That the Respondent shall immediately notify the Board of his current address and any change of address during his probationary period; and
3. That the Respondent shall immediately notify the Board of any and all of his places of employment as a pharmacist during his probationary period; and
4. That the Respondent shall report by telephone or in writing on a monthly basis to a person designated by the Board during his probationary period concerning his activities as a pharmacist; and
5. That the Respondent shall undergo a psychiatric evaluation with a psychiatrist satisfactory to the Board six (6) months from the date of this Order and again at the end of twelve (12) months from the date of this Order; and
6. That after each psychiatric evaluation, the Board shall receive a written report from the psychiatrist indicating that the Respondent continues to make satisfactory progress toward dealing with the problems that led to his abuse of prescription drugs; and
7. That the Respondent shall practice in accordance with the laws governing the practice of pharmacy in Maryland; and

ORDERED that if the Respondent violates any of the terms of his probation or fails to practice in accordance with the laws governing the practice of pharmacy in Maryland, the Board, after notification, a hearing and determination of violation may withdraw the stay of his suspension or may impose any other disciplinary sanction it deems appropriate.

Paul F. Freiman

Paul Freiman, Secretary
Maryland Board of Pharmacy

IN THE MATTER OF

* BEFORE THE

PHILIP M. PERRY, R.Ph.

* MARYLAND STATE BOARD

* OF PHARMACY

* * * * *

AGREED STATEMENT OF FACTS

Thomas J. Kwiatkowski, Jr., Esquire, Assistant Attorney General for the State of Maryland, and Philip M. Perry, R.Ph., Respondent, by his attorney, John C. Nason, Esquire, do hereby agree and stipulate to the following Statement of Facts, pertinent to the proceedings hereinabove:

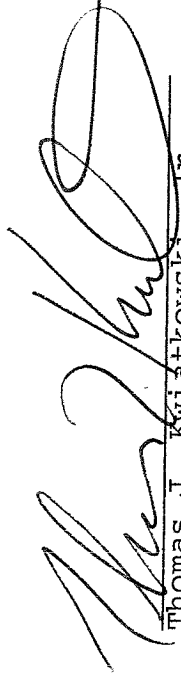
1. That at all times relevant to the above proceedings, Respondent was a pharmacist licensed by the Maryland State Board of Pharmacy.
2. That at all relevant times Respondent was employed as a pharmacist by the Jack Eckerd Drug Company at its Salisbury, Maryland drug store (#743) where Respondent had access to and control over various Controlled Dangerous Substances.
3. That on September 3, 1980, Respondent was hospitalized at Nanticoke Hospital for an apparent drug overdose at his home in Seaford, Delaware.
4. That drug supply audits were conducted for the aforesaid Store #743 on September 4 and 7, 1980 by Frank Gattuso, Area Pharmacy Manager for the Jack Eckerd Drug Company, which audits revealed unaccounted shortages in various supplies of Controlled Dangerous Substances. The results of said drug audits were reflected in two Control Drug Audit Charts prepared by Frank Gattuso. Accurate, genuine, and authentic copies of those Control Drug Audit Charts are incorporated herein.

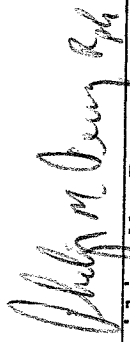
5. That during the periods covered by the aforesaid drug audits of Store #743 on September 4 and 7, 1980, Respondent was the pharmacist on duty at said store.


6. That on September 10, 1980, Respondent made knowing and voluntary oral statements at Nanticoke Hospital to Agent Kline G. Kemp, Jr., of the Delaware Office of Narcotics and Dangerous Drugs, which statements were accurately recorded and transcribed by Agent Kemp. A true, genuine, and accurate copy of the transcript of the oral statements is incorporated herein.

7. That on September 10, 1980, Respondent also gave to the aforesaid Agent Kemp at Nanticoke Hospital a knowing and voluntary signed written statement. A true, genuine, and authentic copy of this signed written statement is incorporated herein.

The above recitations are hereby agreed and stipulated to this 16th day of September, 1981.


Thomas J. Kwiatkowski, Jr.
Assistant Attorney General


Philip M. Perry, R.Ph.
Respondent


John C. Nason, Esquire
Attorney for Espondent

IN THE MATTER OF * BEFORE THE MARYLAND
PHILIP M. PERRY, R.Ph. * BOARD OF PHARMACY

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(xii) Addiction to controlled dangerous substances, habitual drunkenness, or rendering of professional services when intoxicated or under the influence of drugs with abuse potential;

(xiv) Wilful making or filing of any false report or record in his practice as a pharmacist; and

(xv) Wilful omission to file or record, wilful impediment or obstruction or a filing or recording, or inducement of another person to omit to file or record any report required by law.

Appropriate notice of the charges and the grounds upon which they were based were sent to the Respondent in a letter dated June 9, 1981. A hearing was held on September 16, 1981 at 1:20 p.m. The following members of the Board were present at the hearing: Estelle G. Cohen, B.S., M.A.; Leonard J. DeMino, B.S.;

Paul Freiman, B.S.; Bernard B. Lachman, B.S.; Anthony G. Padussis, B.S.; Ralph T. Quarles, B.S.; Robert E. Snyder, B.S.; and Phyllis K. Trump, B.F.A. Mr. Lachman presided at the hearing as President of the Board. A quorum of the Board was present.

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2. That the Respondent was employed as a pharmacist by the Jack Eckerd Drug Company in Salisbury, Maryland at Drug Store #743 ("Store #743") at all times relevant to this case.
3. That in his practice at Store #743, the Respondent had access to and control over various controlled dangerous substances.
4. That on September 3, 1980, Respondent was hospitalized at Nanticoke Hospital for an apparent drug overdose.
5. That controlled drug audits were conducted at Store #743 on September 4 and 7, 1980.
6. That these controlled drug audits of Store #743 revealed unaccounted for shortages in various supplies of controlled dangerous substances.

7. That during the periods covered by the aforementioned drug audits of Store #743, the Respondent was the pharmacist on duty at that store.
8. That on September 10, 1980, while Respondent was still hospitalized, he knowingly and voluntarily made oral statements to Agent Kline G. Kemp, Jr. of the Delaware Office of Narcotics and Dangerous Drugs.
9. That Respondent's oral statements were accurately recorded and transcribed by Agent Kemp and appear in State's Exhibit #3.
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13. That the Respondent took and used the prescription drugs he took from Store #743 for his personal use and did not sell or give them away to anyone else.
14. That the Respondent received psychiatric treatment from David Warren Shave, M.D. between September 12, 1980 and August 12, 1981.

15. That the Respondent had his license to practice pharmacy in the State of Delaware suspended for a period of one (1) year commencing November 13, 1980 by the Delaware State Board of Pharmacy.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board unanimously concludes:

1. That the Respondent dispensed controlled dangerous substances requiring a prescription without first having received from an authorized prescriber a written or oral prescription for the drug;
2. That the Respondent willfully made and filed false reports or records in his practice as a pharmacist;
3. That Respondent willfully omitted to file or record and willfully obstructed the filing or recording of reports required by law;
4. That the Respondent did not fraudulently or deceitfully procure or use a pharmacist's certificate of renewal; and
5. That the Respondent was not addicted to controlled dangerous substances nor did he render professional services while under the influence of drugs with abuse potential.

Accordingly, the Board, by unanimous vote, hereby adjudicates the Respondent GUILTY of violating Article 43, §266A(c)(1)(vii), (xiv) and (xv) of the Annotated Code of Maryland and NOT GUILTY of violating Article 43, §266A(c)(1)(iii) and (xii) of the Annotated Code of Maryland.

ORDER

Upon the foregoing Findings of Fact and Conclusions of Law, it is this 21 day of October, 1981, by a unanimous vote of the members of the Board,

ORDERED that the Respondent's license to practice pharmacy in Maryland is hereby SUSPENDED for a period of one (1) year from the date of this Order; and be it further

ORDERED that the foregoing suspension shall be immediately STAYED with the Respondent placed on PROBATION for a period of one (1) year from the date of this Order subject to the following conditions:

1. That the Respondent shall notify any and all of his employers of the Board's action in this case during his probationary period; and
2. That the Respondent shall immediately notify the Board of his current address and any change of address during his probationary period; and
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4. That the Respondent shall report by telephone or in writing on a monthly basis to a person designated by the Board during his probationary period concerning his activities as a pharmacist; and
5. That the Respondent shall undergo a psychiatric evaluation with a psychiatrist satisfactory to the Board six (6) months from the date of this Order and again at the end of twelve (12) months from the date of this Order; and
6. That after each psychiatric evaluation, the Board shall receive a written report from the psychiatrist indicating that the Respondent continues to make satisfactory progress toward dealing with the problems that led to his abuse of prescription drugs; and
7. That the Respondent shall practice in accordance with the laws governing the practice of pharmacy in Maryland; and be it further

ORDERED that if the Respondent violates any of the terms of his probation or fails to practice in accordance with the laws governing the practice of pharmacy in Maryland, the Board, after notification, a hearing and determination of violation may withdraw the stay of his suspension or may impose any other disciplinary sanction it deems appropriate.

Paul A. Freiman

Paul Freiman, Secretary
Maryland Board of Pharmacy