

IN THE MATTER OF
JOEL SMITH, PHARM. D.
License No. 16811
Respondent

*** BEFORE THE**
*** STATE BOARD**
*** OF**
*** PHARMACY**
*** Case No. 16-024**

* * * * *

FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board"), and subject to Md. Health Occ. Ann. (H.O.) §§ 12-101, *et seq.* (2014 Repl. Vol. II) (the "Act"), on May 18, 2016, the Board issued a Notice of Intent to Revoke the pharmacist license of **JOEL SMITH, Pharm. D.** (the "Respondent"). On July 13, 2016, a Case Resolution Conference was held with the Respondent, who was represented by Counsel, members of the Board, along with Board Counsel, and the Administrative Prosecutor, in order to determine whether the matter could be resolved. As a result, the following settlement was reached.

The Notice was issued pursuant to Md. Code Ann. State Gov't ("S.G.") § 10-226 (c) (1) (2014 Repl. Vol. II), and the Act.

The relevant provisions alleged as follows:

S.G. § 10-226:

(c) (1) Except as provided in paragraph (2) of this subsection, a unit may not revoke or suspend a license unless the unit first gives the licensee:

- (i) written notice of the facts that warrant suspension or revocation;
and
- (ii) an opportunity to be heard.

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

(b) 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:

- (2) Fraudulently or deceptively uses a license;
- (21) Is professionally...incompetent;
- (25) Violates any rule or regulation adopted by the Board [;].

The Board further charged the Respondent with a violation of its Pharmacist and Pharmacy Technician Code of Conduct, Code Md. Regs. tit. 10.34.10 (2001):

§.01. Patient Safety and Welfare.

B. A pharmacist may not:

- (3) Engage in unprofessional conduct.

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent was licensed to practice pharmacy in Maryland. The Respondent was first licensed in Maryland on September 18, 2003. The Respondent's license expires on October 31, 2017.

2. At all times relevant hereto, the Respondent worked as a pharmacist within a National grocery chain pharmacy, Pharmacy A¹, located in Carroll County, Maryland.

3. On or about August 17, 2015, the Board received information that the Respondent had been suspended from employment with Pharmacy A for taking Controlled Dangerous Substances (CDS) for his personal use from November 2014 to August 2015.

¹To ensure confidentiality, the names of individuals or institutions involved in this case, other than the Respondent, are not disclosed in this document.

4. On or about October 29, 2015, Pharmacy A filed a “Drug Enforcement Administration (DEA) Report of Theft or Loss of Controlled Substances” listing the loss as follows, *inter alia*:

A. The purchase value of the loss to Pharmacy A was listed as \$1873;

B. The cause of the loss was “Employee Theft;”

C. The CDS stolen were listed as follows:

(1) Hydrocodone/APAP, 10-300 mg 135 tablets;

(2) Hydrocodone/APAP, 10-325² mg 60 tablets;

(3) Hydrocodone/APAP, 7.5/325³ mg 20 tablets;

(4) Oxycodone, 30 mg 288 tablets;

(5) Oxycodone, 15 mg 170 tablets;

(6) Oxycodone, 10 mg 440 tablets;

(7) Oxycodone/APAP, 10-325 mg 60 tablets;

(8) Endocet, 10-325 mg 36 tablets;

(9) Zubsolv, 5.7-1.4⁴ 30 tablets.

D. The total loss was 1239 pills.

5. Based on the above, on January 15, 2016, the Board summarily suspended the Respondent’s license. The Respondent did not request a hearing to show cause following the Board’s suspension of his license to practice pharmacy in the State of Maryland.

² This combination has 10 mg of Hydrocodone and 300 mg of aspirin.

³ This combination has 7.5 mg of Hydrocodone and 325 mg of aspirin.

⁴ This is a sub-lingual tablet used to treat drug dependence.

6. At the time of his suspension from employment with Pharmacy A on or about August 17, 2015, the Respondent admitted that following a serious motor vehicle accident and subsequent hospitalization, he had become dependent on and addicted to CDS.

7. The Respondent ceased practicing pharmacy on August 17, 2015 in order to seek treatment for his addiction.

8. On August 17, 2015, the Respondent entered into a five (5) year Monitoring/Treatment Agreement with the Pharmacists Education and Advocacy Council ("PEAC"), requiring among other terms and conditions, the following:

- a. Initial evaluation and assessment;
- b. Compliance with specific treatment plan and goals;
- c. Intervention by a primary care physician, addiction counselor/therapist and/or outpatient rehabilitation if warranted;
- d. Abstinence from all mood-altering drugs;
- e. Random and frequent, witnessed weekly urine screening, tapering to monthly at the discretion of PEAC; and
- f. All costs to be borne by the Respondent.

9. The Respondent has been fully compliant with all terms and conditions of his Monitoring/Treatment Agreement with PEAC from August 17, 2015 to the present.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's actions violated §§12-313 (b) (2), and (25) of the Act and COMAR 10.34.10.10 (B) (3). The Board concludes as a matter of law that there was no violation of § 12-313 (b) (21) Is professionally...incompetent, and therefore, that charge is dismissed

by the Board.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 19th day of August 2016, by a majority of a quorum of the Board,

ORDERED that the Respondent's license be **SUSPENDED** for **TWO (2) YEARS**, with **ONE (1) YEAR** active suspension, and **ONE (1) YEAR** stayed suspension. The active **SUSPENSION** period shall commence effective **August 17, 2015**, the date upon which the Respondent ceased practicing pharmacy, and shall terminate on **August 17, 2016**; and be it further

ORDERED effective **August 18, 2016**, the Respondent shall be placed on **THREE (3) YEARS PROBATION**, subject to the following conditions:

- A. The Respondent shall take, pass and document to the Board, the Multistate Pharmacy Jurisprudence Examination ("MPJE") no later than September 30, 2016;
- B. During the first year of Probation, the Respondent shall continue substance abuse disorder treatment to include AA/NA meetings at least twice weekly, aftercare support group meetings, and random Board-ordered urine screens on a monthly basis;
- C. All urine screens requested by the Board shall be:
 - 1. Submitted by Respondent within 24 hours of Board staff instructing Respondent to submit a urine sample;
 - 2. Submitted at a CLIA-certified laboratory;

3. Observed; and
 4. Negative for any controlled dangerous substance, narcotics, or other mood-altering substance.
- D. During the first year of Probation, the Respondent may only practice in a non-dispensing role;
- E. After completion of the first year of probation, the Respondent may petition the Board for modification of the probationary terms and conditions to allow the Respondent to practice in a dispensing role if the Respondent complies with the following conditions of this Order:
1. The Respondent must notify the Board in writing immediately and prior to commencing practice as a dispensing pharmacist;
 2. The Respondent must provide a copy of the Consent Order to his pharmacy employer;
 3. The Respondent must ensure that his pharmacy employer submit progress reports to the Board on a quarterly basis;
 4. The Respondent may not practice as a "floater";
 5. The Respondent may not practice more than forty (40) hours per week; and
 6. The Respondent shall continue substance abuse disorder treatment to include AA/NA meetings at least twice weekly, aftercare support group meetings and random Board-ordered urine screenings on a weekly basis; and be it further

ORDERED that the Respondent may petition for modification of the terms and conditions of probation after he has completed his first year of probation, provided that he has fully complied with the terms of the Order and has no outstanding complaints against him; and be it further

ORDERED that the Respondent may petition for termination of Probation after three (3) years of Probation provided that he has fully complied with the terms of the Order and

there are no outstanding complaints against him. The Board will not grant early termination of Probation; and be it further

ORDERED that the Respondent shall bear the costs of compliance with the Order; and be it further

ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it further

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing the practice pharmacy in Maryland; and be it further

ORDERED that, should the Board receive information that the Respondent has violated the Act or if the Respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation.

The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order or of Probation shall be on the Respondent to demonstrate compliance with the Order or conditions; and be it further

ORDERED, that for purposes of public disclosure, as permitted by Md. General Provisions. Code Ann. §§ 4-101, *et seq.* (Repl. Vol. 2014), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order, and that the Board may also disclose same to any national reporting data bank that it is mandated to report to.


Deena Speights-Napata, MA
Executive Director
State Board of Pharmacy

CONSENT OF JOEL SMITH, PHARM. D.

I, Joel Smith, Pharm.D. acknowledge that I am represented by counsel, Natasha Wesker, Attorney, and have consulted with counsel before entering into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed after any such hearing.

I sign this Consent Order, voluntarily and without reservation, after having an opportunity to consult with counsel, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

8/19/16
Date

Joel Smith
Joel Smith, Pharm. D.

STATE OF Maryland :

CITY/COUNTY OF Baltimore :

I HEREBY CERTIFY that on this 19th day of August 2016, before

me, Joel Smith, a Notary Public of the foregoing State and (City/County),
(Print Name)

Personally appeared Joel Smith, Pharm. D., License No. 16811, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

Heather McLaughlin
Notary Public

My Commission Expires: 12/20/2016