

IN THE MATTER OF
ORIN S. SMITH, P.D.

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHARMACY

* * * * *

CONSENT ORDER

BACKGROUND

Upon certain information having come to the Maryland Board of Pharmacy (the "Board"), the Board determined to charge Orin S. Smith, P.D., (the "Respondent") a person licensed to practice pharmacy in the State of Maryland with violation of §12-311(b)(4), (14), and (21) of the Health Occupations Article Maryland Annotated Code, which provide:

Subject to the hearing provisions of §12-312 of this subtitle, the Board, on the affirmative vote of a two-thirds majority vote 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:

* * *

(4) Provides professional services while:
. . .

(ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;

(14) Without first having received a written or oral prescription for the drug from an authorized prescriber, dispenses any drug for which a prescription is required;

* * *

(21) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude whether or not any appeal or other proceeding is pending to have the conviction or plea set aside[.]

Appropriate notice of the charge and the grounds upon which it was based were sent to Respondent in a letter dated July 20, 1987. A prehearing conference was held on November 25, 1987 and was attended by Respondent, his counsel, Michael R. Aronson, Esq.; Dr. John Davis; Stephen Cohen, P.D., designee of the Board; Roslyn Scheer, Executive Director of the Board; Judith K. Sykes, Assistant Attorney General, Administrative Prosecutor; and Harry Matz, Assistant Attorney General and Counsel to the Board.

At the prehearing conference, after preliminary statements were made by Ms. Sykes and Mr. Aronson, Respondent and Dr. John Davis of the Resource Group answered inquiries from Ms. Scheer and Dr. Cohen, and full discussion was held in which Mr. Smith and his attorney participated. Following the prehearing conference, Respondent, having consulted with counsel, agreed to enter into the following Findings of Fact, Conclusions of Law and Consent Order.

FINDINGS OF FACT

1. At all time pertinent to this matter, Respondent was a pharmacist licensed in the State of Maryland and is subject to the jurisdiction of the Board.

2. In December, 1986, Respondent admitted that in 1985 and 1986, while employed as a pharmacist at the Ferndale Pharmacy in Glen Burnie, Respondent stole approximately 13,000 tablets

containing Schedule II Drugs, including Dilaudid, Percocet, and Percodan; all of which he diverted to his own use. He stated that his average daily intake was twenty tablets.

3. On June 13, 1986, in the Circuit Court for Anne Arundel County, Respondent plead guilty to a charge of felony theft which was based on the above described theft of drugs from the Ferndale Pharmacy.

4. The Court granted probation before judgment and placed Respondent on supervised probation for three years.

5. On or about May 20, 1987 Respondent was discharged from his employment at the Liberty Medical Center, Inc. for failure to safeguard the pharmacy inventory during the shift in which he was in charge. Various narcotics were found to be missing, including quantities of expired and non-expired Dilaudid tablets, Morphine liquid and Morphine injectibles. Respondent was suspected of diverting these drugs to his own use.

6. In July, 1987, Respondent voluntarily entered into an inpatient program for drug and alcohol abuse which he completed in October 15, 1987.

7. Respondent has not practiced pharmacy since July 1, 1987.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as a matter of law that Respondent is subject to discipline under §§12-311(b)(4), (14), and (21) of the Health Occupations Article of the Annotated Code of Maryland.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 27TH day of January, 1988, by unanimous vote of those members of the Board considering this case:

ORDERED that Respondent's license to practice pharmacy is hereby **SUSPENDED**, and be it further

ORDERED that said suspension is **IMMEDIATELY STAYED** and Respondent is placed on **PROBATION** subject to the following conditions:

1. Respondent will not dispense any medication to the public. He may practice only in a setting where he has no access to controlled dangerous substances.

2. Respondent will not enter into any employment as a pharmacist unless he has obtained prior approval by the Board of the specific employment arrangement. Approval by the Board is contingent on receipt by the Board of written notification from the prospective employer that he has received a copy of this Consent Order and agrees to comply with all of the conditions in it applicable to employers.

3. Prior to July 1, 1989, Respondent shall complete a minimum of forty-five (45) hours of continuing education. Twenty-three (23) of these hours must be in courses addressing controlled substances management, inventory or abuse. Thirty (30) hours of continuing education, fifteen (15) of which are in courses addressing controlled substances management, inventory or

abuse, must have been completed a year from the date of this Order.

4. That Respondent continue at his own expense participating in the program at the Resource Group and comply with all recommendations made to him by his therapist there in the time suggested by his therapist, until such time and unless he is discharged from treatment by the respective therapist. If such discharge occurs, Respondent shall arrange prompt submission by the therapist of a written discharge report to the Maryland Board of Pharmacy and the Pharmacists Rehabilitation Committee of the Maryland Pharmaceutical Association.

5. If, in violation of paragraph 4, Respondent fails to continue with his therapist without having been discharged or ordered by the Board to change and cease therapy, Respondent shall immediately notify the Maryland Board of Pharmacy and the Pharmacist Rehabilitation Committee in writing and have his therapist notify such agencies of his status directly.

6. That Respondent shall immediately give a copy of this Consent Order to the leader of his group therapy program, Mary Caron, (hereinafter "his therapist") and arrange for his therapist to advise the Maryland Board of Pharmacy within thirty (30) days, in writing, of her respective receipt thereof.

7. That Respondent arrange for his therapist to submit written quarterly reports to the Maryland Board of Pharmacy and to the Pharmacists Rehabilitation Committee of the Maryland Pharmaceutical Association, reporting on Respondent's compliance

with this Order and progress, and specifically indicating what progress the Respondent has made in dealing with the problems that led to his possession and/or abuse of controlled dangerous substances. The first report shall be due on March 1, 1988. Thereafter, the reports shall be due quarterly, on June 1, September 1, and December 1 of the applicable year until such time as Respondent has been terminated from probation.

8. Respondent is responsible for arranging, through the Resource Center, for random observed urine screenings one time a week, in a manner acceptable to the Board. Respondent shall arrange for the results of all of said screenings be reported directly to his therapist. Respondent shall also arrange for immediate notification to the Board by the screener and his therapist at any time the tests indicate a likelihood that the Respondent has ingested a prohibited drug. His therapist shall advise the Board of the results of all of Respondent's urine screenings by incorporating the results into her quarterly reports to the Board.

9. Respondent shall participate in at least four meetings per week of Alcoholics Anonymous or Narcotics Anonymous program. Respondent shall report to the Board on a quarterly basis as to the dates and places of meetings attended and as to the progress he has made within the Alcoholism Anonymous or Narcotics Anonymous program. In such quarterly reports, Respondent shall attach a copy of proof of his attendance at those meetings. These reports are to commence on March 1,

1988. Subsequent reports will be due June 1, September 1, and December 1 of the applicable year.

10. Respondent shall arrange for any and all Pharmacy employers during the course of his Probation to submit to the Maryland Board of Pharmacy written quarterly reports evaluating his job performance and describing the nature of his duties and his position. The first report shall be due on March 1, 1988. Subsequent reports will be due June 1, September 1 and December 1 of the applicable year. If subsequent to the date of this Order, Respondent assumes a new position as a Pharmacist, the first report shall be due one month after that position is assumed.

11. In the event that Respondent's therapist(s) or the Pharmacists Rehabilitation Committee report to the Maryland Board of Pharmacy that the Respondent is incapable of practicing pharmacy safely, or that his previous problems are interfering with his ability to practice pharmacy, the Respondent shall, within twenty-four hours of being informed by the Pharmacy Board of that report, voluntarily discontinue the practice of pharmacy. The Respondent shall not resume the practice of pharmacy until the Pharmacy Board determines that the Respondent is capable of resuming the practice of pharmacy or gives him permission to resume the practice of pharmacy, with or without a report from that therapist or another therapist.

12. Commencing on March 1, 1988, and thereafter June 1, September 1, and December 1 of the applicable year. Respondent shall send written quarterly reports to the Maryland

Board of Pharmacy and to the Pharmacists Rehabilitation Committee of the Maryland Pharmaceutical Association describing the progress he feels that he is making, what problems he feels that he presently faces, and how he intends or is coping with these problems. The report as to the Alcoholics Anonymous or Narcotics Anonymous participation and progress required by this Order may be incorporated into and attached to this quarterly report of the Respondent.

13. Respondent shall notify the Board, in writing, of his current address. In the event that Respondent moves he shall promptly notify the Board in writing of the change of address and any change in his telephone number.

14. Respondent shall enter into a new contract with and/or renew his former contract with the Pharmacists Rehabilitation Committee of the Maryland Pharmaceutical Association to extend to July 1, 1989. Respondent shall comply with all terms of that contract. In the event that the Pharmacists Rehabilitation Committee terminates Respondent's contract prior to the expiration of his probation period, the Respondent shall arrange for the Pharmacists Rehabilitation Committee to immediately notify the Maryland Board of Pharmacy of such action.

15. The Respondent shall arrange for the Pharmacists Rehabilitation Committee to forward to the Maryland Board of Pharmacy quarterly reports, commencing on March 1, 1988. Subsequent reports will be due June 1, September 1, and December

1 of the applicable year. These reports shall advise the Board of the extent to which Respondent is making satisfactory progress in therapy and in dealing with his problems of abuse of controlled dangerous substances.

16. The Respondent shall refrain from engaging in the conduct which led to his suspension of the practice of pharmacy under the Maryland Pharmacy Act.

17. Respondent shall practice in accordance with the Maryland Pharmacy Act and in a competent manner.

18. The Respondent will agree to and follow through with any change in his program determined to be necessary by the Board, based upon the recommendations of his therapists or the Pharmacists Rehabilitation Committee: and be it further

ORDERED that the conditions of this Consent Order be, and the same are hereby effective, as of the date of this Order, and be it further

ORDERED that in the event the Maryland Board of Pharmacy receives an unsatisfactory report which it believes in good faith to be accurate, or in the event that the Maryland Board of Pharmacy finds for any reason in good faith that Respondent has violated any provision of Title 12 of the Health Occupations Article or regulations thereunder, the Board may take immediate action, including, but not limited to, revocation or suspension of the Respondent's license to practice Pharmacy prior to giving the Respondent an opportunity for a hearing. However, Respondent shall have a right to a hearing, in accordance with

the Administrative Procedure Act, State Government Article, Section 10-201 et seq., within thirty (30) days after Respondent notifies the Board in writing of his desire for such a hearing regarding the Board's action. The Board may, in its discretion, after notification to the Respondent, a hearing and determination of violation, withdraw the stay of suspension on Respondent's license or impose any other disciplinary action it deems appropriate; and be it further

ORDERED on or after July 1, 1989, the Board shall entertain a petition for termination of Respondent's probationary status and full reinstatement of his license to practice pharmacy without any conditions or restrictions as to the scope of the practice, provided that Respondent has completed his continuing education requirements. If the Board determines that the termination of probation and complete reinstatement would be inappropriate at the time, the Board may modify one or more of the conditions upon which Respondent was placed on probation. However, if Respondent fails to make any such petition then his probationary status shall continue indefinitely, subject to the conditions set forth in this Order.



Anthony Padussis, P.D.
President
Maryland Board of Pharmacy

CONSENT

I, Orin S. Smith, P.D., by affixing my signature hereto acknowledge:

1. That I have been advised to seek advice of counsel prior to signing this document; that I have in fact sought advice of counsel prior to signing this document;

2. That I am aware that without my consent, no legal action can be taken against me, except pursuant to the Maryland Administrative Procedure Act, State Government Article, Section 10-201 et seq., Annotated Code of Maryland.

3. That I have the following rights, among others: to have a formal evidentiary hearing before the Board, to reasonable notice of said hearing, to representation by counsel, and to subpoena and cross-examine witnesses against me;

4. That I waive all such rights to a formal hearing;

5. That I admit to the truth of the foregoing Findings of Fact;

6. That I consent to the entry of the foregoing Order affecting my license to practice pharmacy in the State of Maryland;

7. That I acknowledge the validity of this Consent Order as if it were made following a formal hearing before the Board;

8. That I enter into this Consent Order of my own free will and under no duress or undue influence.

Orin S. Smith, P.D.
Orin S. Smith, P.D.

STATE OF MARYLAND)

CITY/COUNTY OF Carroll)

I HEREBY CERTIFY that on this 12th day of January, 1988, before me, a Notary Public of the State and County aforesaid, personally appeared ORIN S. SMITH, P.D. and he made oath in due form of law that the foregoing Consent was his voluntary act and deed.

AS WITNESS my hand and Notarial Seal.

Carol A. Rumpff
Notary Public

My Commission Expires: July 1, 1990