

IN THE MATTER OF
ARTHUR WEINSTEIN, P.D.
LICENSE NO.: 13016

*
*
*
*

BEFORE THE
STATE BOARD
OF PHARMACY
CASE NUMBER: 05-153

Respondent

* * * * *

FINAL DECISION AND ORDER

Background

On August 15, 2001, the Respondent entered into a Consent Order with the Board of Pharmacy (the "Board") in response to charges that he violated certain provisions of the Maryland Pharmacy Act, codified at *Md. Code Ann.*, Health Occ. § 12-101 *et seq.* ("the Act"). Specifically, on February 20, 2000, Mr. Weinstein pleaded guilty to felony mail fraud in the Northern District of Texas. According to the terms of the Consent Order, the Respondent's license was suspended for one (1) year with all but three (3) months stayed. Further, the Respondent was placed on two (2) years of probation, during which he was required to take three (3) Continuing Education Units ("CEUs") in ethics and three (3) CEUs in pharmacy law by a certain date, in addition to any CEUs required for licensure renewal. The Consent Order also required the Respondent to take and pass, with a grade of 75% or higher, the Maryland Pharmacy Jurisprudence Examination ("MPJE") and pay a fine of \$2,000 to the Board.

On August 27, 2004, the Board was informed that the Respondent was indicted for defrauding the Maryland Medicaid Program by billing for prescriptions that were never dispensed and for excess quantities that were not prescribed. The Respondent was charged with one (1) count of Medicaid fraud and one (1) count of felony theft. On January 4, 2005, the

Respondent pleaded guilty to felony Medicaid Fraud, and was ordered to pay \$320,000 in restitution to the Department of Health and Mental Hygiene, a fine of \$80,000, and \$20,000 for investigative costs to the Office of the Attorney General. The Respondent was also sentenced to three (3) years in jail, with all but one (1) year suspended and to be served in home detention and three (3) years of probation.

As a result of the Respondent's felony conviction, as well as his failure to comply with certain aspects of his 2001 Consent Order, the Board issued an unexecuted Order of Revocation, which alleged violations of §§ 12-313(b)(21) and (24) of the Act, as well as the Code of Conduct, Code Md. Regs. tit. 10 § 34.10.01. On January 25, 2006, the Board held a contested case hearing under the Administrative Procedure Act, *Md. Code Ann.*, State Gov't § 10-201 *et seq.*, before a quorum of the Board. Following the conclusion of the hearing, the same quorum of the Board convened to deliberate and voted to uphold the charges against the Respondent and to impose the sanctions contained in this Final Decision and Order.

SUMMARY OF THE EVIDENCE

A. Documents

The following documents were admitted into evidence.

- | | | |
|---------------------|------|---|
| State's Exhibit No. | 1A - | Computer Printout Info for Respondent |
| | 1B - | Computer Printout Info for Respondent-Pharmacy |
| State's Exhibit No. | 2A - | 8/15/01 Board Order for Respondent-Pharmacy |
| | 2B - | 8/15/01 Board Order for Respondent |
| | 2C - | MPJE test results |
| | 2D - | CEU Record, dated 5/5/04 |
| State's Exhibit No. | 3 - | Medicaid Fraud Unit documents |
| State's Exhibit No. | 4 - | Respondent-Pharmacy renewal documents and License |
| State's Exhibit No. | 5A - | Respondent's renewal documents, 5/05, and license |
| | 5B - | New York Order |

State's Exhibit No. 6A - Press Releases
6B - Court-related documents

State's Exhibit No. 7 - Chandra Mouli's investigative report

B. Summary of Pertinent Witness Testimony

Chandra Mouli, the Board's Compliance Officer, testified that he is responsible for investigating complaints and preparing investigation summaries for the Board. (T. 10). Mr. Mouli testified that his investigation into this matter revealed that the Respondent completed the required CEU courses required by his 2001 Consent Order on April 5, 2003 and April 6, 2003, although the deadline was August 15, 2002. (T.15). Mr. Mouli also testified that the Respondent did take and pass the MPJE, but it was not done within one (1) year of the Consent Order, as required. (T.16). Mr. Mouli further testified that the Board possesses no documentation that the Respondent paid the \$2000 fine required under the Consent Order. When a check is received by the Board, it is documented in the Board's tracking mechanism. (T. 27, 29). Mr. Mouli testified that he could not find any indication that a check was submitted by the Respondent and received by the Board. (T. 27). Mr. Mouli further testified that it is the Respondent, not the Board, who has the responsibility for complying with all of the conditions set forth in the Consent Order. (T. 34).

Regarding the Respondent's felony conviction for Medicaid fraud, Mr. Mouli testified that on August 27, 2004, DHMH sent the Board a Daily News Clipping indicating that the owner of the Medical Pharmacy of Chevy Chase, the Respondent, was indicted on charges of defrauding the state's Medicaid program. (T. 23). The Board also received a document, dated January 5, 2005, from the Office of the Attorney General

stating that the Respondent pleaded guilty to Medicaid fraud and detailing the terms of the Respondent's sentence. (T. 23).

The Respondent testified that he has practiced pharmacy for approximately 40 years. The Respondent stated that he and Medical Pharmacy of Chevy Chase provided pharmaceutical services to intermediate care facilities for mentally retarded ("ICFMR's"). The Respondent testified that the individual residents of these facilities were on numerous medications, some receiving 15-20 drugs per month. (T. 38) The Respondent explained that he billed Medicaid for drugs that were not dispensed because the prescribed drugs were not on Medicaid's formulary. Furthermore, the Respondent dispensed, and billed, quantities in excess of what was prescribed to accommodate different settings of the residents. (T. 38-40) In order for the Respondent to have billed correctly for the excess quantities and the non-formulary drugs, he would have had to "go through all these prior authorizations for all these people once a month and still run a business at the same time." (T. 41) The Respondent further testified that although neither he, nor his attorney could provide documentation, he felt confident that he paid the \$2000. (T. 36, 47, 48).

FINDINGS OF FACT

1. At all times relevant, the Respondent was licensed to practice pharmacy in the State of Maryland. The Respondent was first licensed in Maryland on February 17, 1993. (State's Ex. 1A)
2. The Respondent is the owner and sole dispensing pharmacist at Medical Pharmacy of Chevy Chase in Montgomery County, Maryland.

3. The Respondent entered into a Consent Order with the Board, dated August 15, 2001. (State's Ex. 2B) Pursuant to the Consent Order, the Respondent's license was suspended for one (1) year, with all but three (3) months stayed. During that time, the Respondent was ordered to refrain from working in an unlicensed capacity as a pharmacy technician. Upon the cessation of the suspension, the Respondent was placed on two (2) years of probation, subject to the following conditions:

- a. During the first year of Probation, the Respondent shall take three (3) CEUs in ethics, pre-approved by the Board, and three (3) CEUs in pharmacy law, in addition to any CEUs required for renewal purposes, documenting same to the Board.
- b. During the first year of Probation, the Respondent shall take and pass the MPJE and document the passage of same to the Board.
- c. The Respondent shall pay a fine to the Board of \$2000.
- d. The Respondent shall practice in accordance with all laws and regulations governing the practice of pharmacy in Maryland.

4. The Respondent violated the Consent Order by failing to take or document said CEU courses within the required time period; by failing to take the MPJE within the required time period; by failing to pay the \$2000 fine owed to the Board; and by being convicted of a second felony, as discussed in greater detail below.

5. On January 4, 2005, the Respondent entered into a Plea Agreement on charges that he defrauded the Medicaid Program (State's Ex. 6B), based upon the following facts:

- a. From January 1999 through March 2002, the Respondent billed Medicaid for several thousand prescriptions which had never been prescribed by a doctor and

never delivered to patients or falsely increased the quantity of pills for a legitimate prescription and then billed Medicaid for the increased quantity.

- b. The Respondent served four (4) institutions that housed developmentally disabled residents. (State's Ex. 6A)

6. On January 4, 2005, the Respondent was found guilty of one (1) count of Medicaid fraud, pursuant to the plea agreement, by the Honorable Paul Smith in the Circuit Court for Baltimore City. (State's Ex. 6B) The terms of the sentence are as follows:

- a. The Respondent was sentenced to three (3) years in jail, with all but twelve (12) months suspended, to be served on home detention;
- b. Thereafter, the Respondent is to serve three (3) years of probation;
- c. The Respondent is to reimburse Medicaid the \$320,000 he defrauded, plus pay an \$80,000 fine, and pay \$20,000 investigative costs to the Office of the Attorney General, which prosecuted the case.

CONCLUSION

Based upon the foregoing summary of the evidence and findings of fact, the Board concludes that the Respondent is in violation of Health Occupations Article § 12-313(b)(21) and (24) and the Code of Conduct, Code Md. Regs. tit. 10 § 34.10.01.

SANCTIONS

The Respondent admits that he did not fully comply with the mandates of the Consent Order that he entered into with the Board in 2001. The most egregious example

of the Respondent's noncompliance is his subsequent 2005 conviction for Medicaid fraud, in the amount of \$320,000. Thus, between 2000 and 2005, the Respondent has twice been convicted of felonies involving fraud, and twice been charged by the Board. It is clear from the Respondent's criminal and disciplinary history that the Respondent is either unwilling or unable to practice pharmacy without engaging in fraudulent conduct. In fact, the Respondent actually blames the State Medicaid program for forcing him to engage in fraudulent billing. Such lack of appreciation of his own misdeeds is further evidence that the Respondent is incapable of utilizing the Board's disciplinary orders, and the courts' criminal sanctions, as tools from which to learn and better himself. The Respondent has also demonstrated that he is unwilling to fully comply with Board orders. Although the Respondent argues that he must practice pharmacy in order to have funds to repay the restitution owed to the Medicaid program, the Board believes that the Respondent's obligation to pay restitution is the product of his own willful misconduct and his informed decision to enter into a plea agreement. Furthermore, it goes against reason to subject the public to further fraudulent misconduct by the Respondent so that the Respondent may satisfy his criminal sentence to pay restitution. The Board believes that the Respondent, through his actions, has forfeited his right to practice pharmacy in Maryland.

ORDER

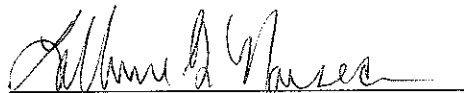
Based on the foregoing Findings of Fact and Conclusion, by a unanimous decision of a quorum of the Board it is hereby:

ORDERED that on this 26th day of April 2006, that the Respondent's license to practice as a pharmacist in the State of Maryland be and is hereby **REVOKED**; and be it further

ORDERED that the Respondent shall pay a fine of \$2,000.00 in satisfaction of the 2001 Consent Order or provide the Board with documentation that such fine has already been paid; and be it further,

ORDERED that the Respondent shall immediately return his wall certificate, wallet license, and renewal certificate to practice pharmacy to the Board of Pharmacy; and be it further,

ORDERED that this is a formal Order of the Maryland Board of Pharmacy, and as such is a public document pursuant to the Maryland Public Information Act, codified at State Gov't Code Ann. § 10-611, *et. seq.*, (2004 Repl. Vol.).



John Balch, P.D., President
Maryland Board of Pharmacy

NOTICE OF RIGHT TO APPEAL

Pursuant to *Md. Code Ann.*, Health Occ. § 12-316, you have a right to take a direct judicial appeal. A Petition for Judicial Review must be filed within thirty (30) days of your receipt of this executed Order, and shall petition for judicial review of a final decision under the Administrative Procedure Act, codified as State Gov't Code Ann. § 10-201, *et seq.* (2004 Repl. Vol.).