

IN THE MATTER OF
RICHARD BENCHOFF, P.D.
LICENSE NO. 10514

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHARMACY

Respondent

*

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FINAL DECISION AND ORDER

Background

This case arose out of complaint filed with the Board of Pharmacy (the “Board”) that Richard Benchoff, P.D. (the “Respondent”) was falsifying prescriptions for large amounts of controlled dangerous substances for his own personal use at the pharmacy in which the Respondent practiced. At the time, the Respondent was on probation with the Board stemming from prior incidents of alcohol abuse. On October 3, 2006, the Respondent was admitted for detoxification at Washington County Hospital. Subsequently, the Respondent submitted to a Board-ordered substance abuse evaluation.

On February 7, 2008, the Board issued a Notice of Intent to Revoke the Respondent’s license to practice pharmacy. The Respondent submitted a timely request for a hearing. The Board held an evidentiary hearing on May 28, 2008, before a quorum of the Board in accordance with the Administrative Procedure Act, Md. Code Ann., State Gov’t §10-201 *et seq.*, and COMAR 10.34.01. On that same date, May 28, 2008, 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. 1 - Jan. 20, 1999 Consent Order of Reinstatement
- State's Exhibit No. 2 - April 16, 1999 letter from Board to Respondent
- State's Exhibit No. 3 - April 21, 1999 Order of Summary Suspension of Pharmacist's License
- State's Exhibit No. 4 - Nov. 14, 1999 PEAC Contract
- State's Exhibit No. 5 - Aug. 2, 2000 Consent Order
- State's Exhibit No. 6 - July 16, 2003 Consent Order of Reinstatement
- State's Exhibit No. 7 - Oct. 3, 2006 notice of complaint received at Board
- State's Exhibit No. 8 - April 16, 2007 letter from Board to Respondent
- State's Exhibit No. 9 - May 14, 2007 letter from Board to Respondent
- State's Exhibit No. 10 - May 29, 2007 Report of psychological evaluation
- State's Exhibit No. 11 - Nov. 29, 2006 Application for Statement of Charges in the District Court of Maryland for Washington County
- State's Exhibit No. 12 - Dec. 6, 2006 Statement of Charges – *State of Maryland v. Richard C. Benchoff, II*
- State's Exhibit No. 13 - July 9, 2007 trial (transcript)
- State's Exhibit No. 14 - July 9, 2007 Probation/Supervision Order
- State's Exhibit No. 15 - Nov. 19, 2007 e-mail from PEAC to Board
- State's Exhibit No. 16 - Feb. 7, 2008 Notice of Intent to Revoke Pharmacist License with attached unexecuted Order of Revocation

- Respondent's Exhibit A - Correspondence from Respondent, dated May 28, 2008
- Respondent's Exhibit B - Correspondence from The Wells House, Inc., dated

May 28, 2008 (partially redacted)

- Respondent's Exhibit C - Correspondence from Washington County Hospital, dated May 27, 2008
- Respondent's Exhibit D - Article entitled "ADHD, Alcoholism and Other Addictions" by Wendy Richardson, MA, LM FCC
- Respondent's Exhibit E - Article entitled "Impact of ADHD and Its Treatment on Substance Abuse in Adults" by Timothy E. Wilens, M.D.
- Respondent's Exhibit F - Article entitled "Addiction and ADHD Adults" by Carl Sherman, Ph.D.

B. Witness Testimony.

State's Witnesses:

Colin Eversley, Investigator, Maryland Board of Pharmacy

Respondent's Witnesses:

Respondent

FINDINGS OF FACT

Based upon the testimony and documentary evidence presented at the evidentiary hearing, the Board finds that the following facts are true:

1. The Respondent was initially licensed to practice pharmacy in the State of Maryland on July 31, 1985, being issued license number 10514.
 - I. **January 1999 Consent Order of Reinstatement**
2. On January 26, 1999, the Respondent entered into a "Consent Order of Reinstatement"¹

¹ The 1999 Consent Order states that, "[t]he Board previously conditioned the [Respondent]'s reinstatement upon his successful completion of the Board's reinstatement examination and upon the recommendations of a mental health evaluator. On November 13, 1998 the evaluator "made specific recommendations regarding under what

("1999 Consent Order") in which his license was reinstated subject to probationary conditions including, but not limited to, the following:

- a. The Respondent was required to enter into a contract with the Pharmacy Education and Assistance Committee ("PEAC") and consent to PEAC's release of information to the Board;
 - b. The Respondent was required to contact PEAC or a PEAC-designated monitor 3 times per work week to determine whether he should submit a urine specimen. At least 1 specimen per week was to be requested by the PEAC representative, which was to be submitted for drug analysis;
 - c. The Respondent was required to actively participate in weekly group therapy that focused upon relapse, recovery and drug rehabilitation until released from further treatment by a Board-approved psychiatrist;
 - d. The Respondent was required to meet with a PEAC representative at least once per month to address and coordinate his recovery effort; and
 - e. The Respondent was required to meet with a Board-approved psychiatrist at least once a month to provide an ongoing assessment to the Respondent and PEAC. The Respondent was required to abide with all treatment recommendations of the Board-approved psychiatrist and consented to release of all information to the Board deemed relevant by the Board-approved psychiatrist.
3. In the 1999 Consent Order, the Respondent agreed that if he failed to abide by the Consent Order's probationary terms and/or otherwise appeared to be a danger to himself

conditions the Respondent could return to the practice of pharmacy given his history of alcohol abuse." *1999 Consent Order at fn 1.* The 1999 Consent Order further stated that at the time the Respondent entered into it, the Board had "prematurely issued" a license to him but had made clear that licensure would be "made conditional upon the recommendations of the mental health evaluator." *Consent Order at fn. 2.*

or to others, the Board may, without prior notice and without an opportunity to be heard, summarily suspend the Respondent's license to practice pharmacy.

II. April 1999 Order of Summary Suspension

4. Effective April 21, 1999, the Board summarily suspended the Respondent's license because he had failed to abide by the probationary conditions set forth in the January 1999 Consent Order. Specifically, according to PEAC's quarterly report from December 1998 through March 1999, the Respondent failed to maintain contact with PEAC, to inform PEAC of his place of employment and to provide PEAC with progress reports from the Respondent's therapist. The PEAC representative further reported to the Board that because of the Respondent's failure to maintain contact, PEAC had issued to him a certified letter regarding his status. In response to the letter, the Respondent advised that, in July 1998, he "received a DWI" and entered rehabilitation with the Veteran's Administration from September through December 1998. The Respondent claimed that he had submitted to urine screens; however, PEAC had not received any documentation of such screens.
5. By letter dated April 16, 1999, the Board informed the Respondent of his legal obligation to notify the Board of his change of employment and that he and/or his PEAC representative was required to provide the Board with an updated report by the April 21, 1999 Board meeting.
6. The Respondent failed to comply with the Board's letter.
7. On April 21, 1999, as a result of the Respondent's failure to comply, the Board concluded as a matter of law that "the imminent danger created by his continued abuse of alcohol...renders him professionally, physically and morally incompetent under the Act,

H.O. § 12-313(20)” and that summary suspension was required to protect the public health and safety pursuant to Md. State Gov’t Code Ann. § 10-226(c).

III. August 2000 Consent Order

8. On August 16, 2000, the Respondent entered into a Consent Order (“2000 Consent Order”) with the Board to resolve charges that the Respondent had practiced pharmacy in the State of Maryland without a license, in violation of H.O. § 12-701. Specifically, the Respondent, who at the time of the violation was working at a pharmacy as an unlicensed pharmacy technician, had transferred a prescription from another pharmacy to the pharmacy at which the Respondent was then employed. The Board’s regulations do not authorize a pharmacy technician to transfer or receive a prescription. COMAR 10.34.04.03.

9. Under the terms of the 2000 Consent Order, the Respondent was required to pay to the Board a civil fine of \$100.00.

IV. July 2003 Consent Order of Reinstatement

10. On March 10, 2003, the Respondent submitted to the Board a Petition for Reinstatement of his pharmacy license.

11. Effective July 16, 2003, the Respondent entered into Consent Order of Reinstatement (“2003 Consent Order”) pursuant to which his pharmacy license was reinstated subject to certain probationary conditions.

12. In the 2003 Consent Order, the Board stated that the Respondent had a “protracted history with the Board that dates back to 1994. [The Respondent] suffers from an alcohol addiction that has caused him to enter into contracts with [PEAC] on four separate occasions. [The Respondent] has also been the subject of three prior Board Orders, two

of which focused on his alcohol problem.”

13. The 2003 Consent Order further stated that the Respondent had entered a PEAC contract in November 1999 and had requested reinstatement of his license in December 2000. The Board denied the Respondent’s petition, ordering that he must first successfully complete his 3 year PEAC contract before the Board would consider any possible reinstatement of his license.
14. In November 2002, the Respondent successfully completed his PEAC contract. The 2003 Consent Order noted that “[the Respondent] is currently working as a program director of the Wells House, a state-licensed drug and alcohol continuing care facility,” and that he was an active member of Hagerstown Alcohol Anonymous groups and was continuing treatment with a psychiatrist.
15. Pursuant to the 2003 Consent Order, the Board reinstated the Respondent’s pharmacy license subject to, *inter alia*, his successful completion of the Board’s Law Test and Reinstatement Examination and upon reinstatement that he be placed on probation for at least 3 years, subject to several probationary conditions including but not limited to the following:
 - a. The Respondent was required to continue with treatment with a psychiatrist and to ensure that the psychiatrist submitted progress reports to the Board every 6 months;
 - b. The Respondent was required to ensure that the Board received quarterly employer reports from the Wells House while he was employed there;
 - c. If the Respondent commenced work as a pharmacist, he was required to ensure that the pharmacy employer submitted quarterly employer reports to the Board;

- d. The Respondent was required to notify the Board of any change in employment, whether or not the employment is pharmacy-related; and
- e. If the Respondent's employment at Wells House terminated for any reason, the Board reserved the right to amend the 2003 Consent Order to require a PEAC contract or other mechanism of monitoring.

V. Events Subsequent to the Respondent's Reinstatement

- 16. On January 5, 2004, the Respondent commenced employment as a pharmacist at a CVS pharmacy in Washington County, Maryland.
- 17. On October 3, 2006, the Respondent's employer, Pharmacist A, reported to the Board that the Respondent had been admitted to a drug detoxification facility on that date.
- 18. Pharmacist A further reported that the Respondent had been stealing drugs from the pharmacy for his personal use.
- 19. On October 6, 2006, the Respondent was terminated from his employment at the CVS pharmacy.
- 20. On or about October 16, 2006, the Board voted to order the Respondent to undergo a psychological evaluation. The results of the evaluation, which was conducted in May 2007, are summarized in Section VII, below.

VI. 2006 Criminal Charges

- 21. On or about November 29, 2006, as a result of an investigation by the Washington County Police, an Application for Criminal Charges was issued in which the Respondent was named as the Defendant to be charged with over 100 counts of violations of the Maryland Criminal Law Article including violations of Title 5 – Controlled Dangerous Substances ("CDS"), Prescriptions and Other Substances, Title 7 – Theft and Related

Crimes and Title 8 – Fraud and Related Crimes.

22. In summary, the Application of Criminal Charges alleged, *inter alia*, that from April 20, 2005 through September 11, 2006, the Respondent, while employed as a pharmacist at CVS, had forged numerous prescriptions for narcotics (typically Hydrocodone, a Schedule II CDS) using the name of a physician as the ordering physician for himself and 2 other individuals as recipients of the medications in order to convert them for his personal use. The Respondent was further alleged to have paid the “patients” co-payments and submitted the remainder of the cost of the prescriptions to Blue Cross/Blue Shield, the “patients” insurer, for payment. The total cost of the medications was \$2,101.51, of which Blue Cross/Blue Shield paid \$1,589.03.
23. On or about December 6, 2006, the District Court of Maryland for Washington County issued a 101-count Statement of Charges (Case No.: 000V00052857).

VII. 2007 Board-ordered Evaluation

24. By letter dated April 16, 2007, the Board notified the Respondent that it had received information that he may have been practicing pharmacy under an impairment due to substance abuse issues. The Board ordered the Respondent to undergo an evaluation by a Board-appointed psychologist, Ralph Raphael, Ph.D. The Board informed the Respondent that he was to contact Dr. Raphael within 10 days to arrange an appointment.
25. By letter dated May 14, 2007, the Board notified the Respondent that it was aware that he had cancelled his appointment with Dr. Raphael and instructed him to reschedule it no later than June 1, 2007.
26. On May 21, 2007, the Respondent presented to Dr. Raphael for evaluation.
27. On May 29, 2007, Dr. Raphael issued to the Board a report of his evaluation. Dr.

Raphael reported, *inter alia*, that the Respondent admitted that he was fired from the CVS pharmacy because of prescription drug theft and forgery and that he was obtaining Vicoprophen for his personal use. The Respondent stated that at the time he was fired, he had just completed a 1-week inpatient substance abuse treatment program and that he had been abstinent from opiates and other mood-altering drugs since September 30, 2006.

28. The Respondent reported that since 1987, he has had a total of 7 inpatient treatments and over 20 detoxifications for alcohol dependence.
29. The Respondent advised Dr. Raphael that he suffers from chronic back pain secondary to a ruptured disc and degenerative joint disease of the spine, the symptoms of which are exacerbated by standing all day when working as a pharmacist. The Respondent stated that in February 2005, his fiancé suggested that he try his mother's Vicoprophen to treat his back pain. He began taking 1 Vicoprophen a day for about a month and gradually increased to taking 2 a day. During 2006, his use increased to 4 to 6 Vicoprophen a day.
30. The Respondent advised Dr. Raphael that he considers his use of Vicoprophen to be different from his alcohol use as he was not seeking, nor did he obtain, a sense of euphoria from the Vicoprophen.
31. A PEAC representative advised Dr. Raphael that the Respondent had been participating in a weekly random urine screening program, although at times he has been inconsistent in maintaining contact with PEAC. The PEAC representative confirmed that the urine specimens produced by the Respondent were negative for the presence of drugs and alcohol.
32. Dr. Raphael reported to the Board that the Respondent does not demonstrate significant insight into his addiction and continues to engage in self-sabotaging conduct (citing his

inconsistent contact with PEAC).

33. Dr. Raphael's recommendations to the Board included, *inter alia*:
- a. The Respondent should abstain from alcohol and all mood-altering drugs and his abstinence should be monitored through weekly urine screenings;
 - b. The Respondent should continue to meet with his psychiatrist and comply with medication recommendations. He should obtain more intensive psychotherapy with a focus on his self-sabotaging conduct, low self-esteem and depressive symptoms;
 - c. In addition to the Respondent's continued participation in the 12-step program, he should continue substance abuse counseling with a focus on relapse prevention, specifically group psychotherapy; and
 - d. The Respondent should continue to comply with the requirements laid out in his PEAC contract.
33. Dr. Raphael concluded that after a period of compliance with all of the requirements of his Board Orders and substance abuse rehabilitation contract, the Respondent should be re-evaluated for the possibility of return to the practice of pharmacy with restrictions such as limited hours and working in a setting without narcotics.

VIII. 2007 Criminal Conviction

34. On July 9, 2007, the Honorable Fred C. Wright, III, Chief Judge, Circuit Court for Washington County, convened a hearing in the Respondent's criminal case. The Respondent entered a guilty plea to 3 counts: obtaining a CDS by making and uttering a forged and false prescription on July 6, 2006, in violation of CR § 5-601(2)(vi) (Count 66); obtaining by fraud a CDS on or about July 3, 2006, in violation of CR § 5-601(a)(2)

(Count 73); and obtaining a CDS by falsely or fraudulently forging a prescription on or about September 2, 2006, in violation of CR § 5-601(2)(vi) (Count 78). In exchange for the Respondent's offer of a guilty plea on these counts, the State entered the remaining counts as *nolle prosequi*.

35. After accepting the Respondent's plea, the Court granted him probation before judgment. The Court placed the Respondent on probation for 4 years and ordered him to make full restitution of the cost of the medications he had fraudulently obtained.

IX. Findings of Fact Specific to the Respondent's Violation of the 2003 Consent Order

36. The Respondent had not petitioned the Board for termination of the probation imposed pursuant to the 2003 Consent Order, and thus remained on probation at the time of the incidents described herein.

37. The Board never received from the Respondent quarterly employer reports or biannual progress reports from his psychiatrist as required pursuant to the terms of the 2003 Consent Order.

OPINION

The Respondent has a protracted disciplinary history before the Board based on his continuing battle against addiction. Understanding that recovery is a difficult and imperfect process, the Board has conceded on numerous occasions to reinstate the Respondent's license based on the Respondent's heartfelt assertions that he was fully recovered and safe to practice pharmacy. That the Respondent finds himself before the Board again is evidence that the Respondent either cannot or will not take heed of the myriad opportunities given to him by the Board. Unlike the Respondent's prior offenses involving alcohol abuse, in his most recent

relapse, the Respondent falsified prescriptions using the names of his physician, friends and co-workers to perpetuate the scheme. To add insult to injury, he then submitted insurance claims on those individuals' policies to cover the controlled substances he was diverting.

The Respondent was practicing pharmacy while actively feeding his addiction with the very drugs he was responsible for dispensing in a safe and competent manner. To say that the Respondent's conduct posed a great risk to the health and safety of the public is obvious. Pharmacists are responsible for making critical decisions regarding the medication regimen of patients on a minute-by-minute basis. Retail pharmacies are an especially fast-paced and hectic environment. A pharmacist who is impaired by an addiction to controlled substances is simply not competent to practice pharmacy because of the inherent risk of making medication errors that could cause serious injury or death to a patient. In addition, because of the Respondent's extensive and prolonged issues with addiction, the Board does not feel that he is capable of handling and dispensing drugs in a manner that is consistent with safe and ethical pharmacy practice.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated H.O. § 12-313(b)(2), (7), (15), (22) and (25) and Code Md. Regs. tit. 10, § 34.10.01 B.

SANCTIONS

The Board believes that the Respondent, through his actions, has forfeited his right to practice pharmacy at the present time. The Respondent has proven, despite the numerous opportunities afforded him by the Board, that he is unable to practice pharmacy in a safe and

competent manner. While the Board commends the Respondent for his most recent rehabilitative efforts, it believes that the public's health and safety would be compromised if the Respondent is permitted to maintain his pharmacist's license. In addition, the Board finds that this sanction is warranted in light of the Respondent's continued failure to adhere to the terms of the Board's Order.

ORDER


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

ORDERED that the Respondent's license to practice pharmacy be REVOKED for a minimum of FIVE (5) YEARS; and be it further,

ORDERED that the Respondent shall return his pharmacist's license to the Board within ten (10) days of the date of this Order; and be it further,

ORDERED that this is a final order of the Maryland Board of Pharmacy and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't Art., §§10-611, *et seq.*

8/12/2008
Date


LaVerne Naesea, Executive Director, for
Donald Taylor, P.D.
President, Board of Pharmacy

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. Art., §12-316, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Act, Md. Code Ann., State Gov't Art., §§10-201, *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.