

IN THE MATTER OF
JOHN DEMARY, P. D.

Respondent

License No.: 18473

* BEFORE THE
* STATE BOARD
* OF PHARMACY
* Case No. 18-176

* * * * *

FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board"), and subject to Md. Code Ann., Health Occ. §§ 12-101, *et seq.*, (2014 Repl. Vol. and 2017 Supp.) (the "Act"), on July 18, 2018, the Board issued Charges against the pharmacist license of **JOHN DEMARY, P. D.**, (the "Respondent"), **License No. 18473.**

On October 24, 2018, a Case Resolution Conference was held with the Respondent, who was not represented by Counsel and knowingly waived his right to same, 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 Charges were issued pursuant to the following provisions of the Act:

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:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- (21) Is professionally, physically, or mentally incompetent;
- (24) Is disciplined by a licensing or disciplinary authority of any state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes;
- (25) Violates any rule or regulation adopted by the Board;

The Board further charged the Respondent with violating its Pharmacist, Pharmacy Intern and Pharmacy Technician Code of Conduct, COMAR § 10.34.10:

B. A pharmacist may not:

- (1) Engage in conduct which departs from the standard of care ordinarily exercised by a pharmacist;
- (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 issued a Maryland pharmacist license on August 3, 2007. The Respondent's license expires on August 31, 2019.

2. The Board initiated an investigation in February 2018, regarding the Respondent's failure to disclose alcohol related arrests and convictions on his 2013 and 2017 license renewal applications and his continuing difficulties with alcohol addiction.

A. Allegations Relating to 2013 Renewal Application

3. The Respondent applied for a license renewal on July 10, 2013. On the 2013 Renewal Application, the Respondent answered “NO” to the following questions in the Personal Attestation Section:

Have you committed an offense involving alcohol or controlled substances to which you pled guilty, nolo contendere, or for which you were convicted or received probation before judgment?

Do you have a physical or mental condition that may impair your ability to perform the duties of a pharmacist?

Has your ability to perform the duties of a pharmacist been affected by the use of any type of drug or alcohol?

4. On September 20, 2012, in Garrett County, Maryland, the Respondent was cited for the following:

Driving Vehicle While Under the Influence of Alcohol;

Driving Under the Influence of Alcohol *Per Se*¹; and

Driving While Impaired by Alcohol.

5. The Respondent pled guilty to Driving Under the Influence of Alcohol *Per Se* on March 12, 2013, and was given Probation Before Judgment², until March 12, 2015. The

¹ "Per se" laws in DUI or DWI cases generally establish that once an individual is shown to have a blood-alcohol concentration (BAC) at or above .08 percent, that person will be considered intoxicated by law.

² Maryland Criminal Procedure § 6-220 defines Probation Before Judgment as follows: Maryland Probation Before Judgment, also known as “PBJ” in Maryland, is a disposition or outcome a person can receive in a criminal or traffic case in Maryland, which means the guilty verdict is set aside if one completes certain conditions set by the judge.

other counts were nolle prossed.³

6. The Respondent failed to reveal his DUI arrest and conviction on the 2013 Renewal Application. He falsely answered the above questions and obtained a renewal license by fraud or deceit.

B. Allegations Relating to 2017 Renewal Application

7. The Respondent filed a renewal application on June 30, 2017.

8. On the June 30, 2017, renewal license application, the Respondent answered "NO" to the following questions.

Excluding minor traffic violations, are you currently under arrest or released on bond, or are there any current or pending charges against you in any court of law?

Do you have a physical or mental illness that currently impairs your ability to practice your pharmacy profession?

Has your ability to perform the duties of a pharmacist been affected by the use of any type of drug or alcohol?

9. On September 11, 2016, the Respondent was cited for another traffic violation, in Frederick County, Maryland, as follows:

Driving Vehicle While Under the Influence of Alcohol;

Driving While impaired by Alcohol;

Reckless Driving Vehicle in Wanton and Willful Disregard for Safety of Persons and Property; and

³ *Nolle prosequi* is a legal term of art and a Latin legal phrase meaning "be unwilling to pursue", a phrase amounting to "do not prosecute". It is a phrase used in many common law criminal prosecution contexts to describe a prosecutor's decision to voluntarily discontinue criminal charges either before trial or before a verdict is rendered. It contrasts with an involuntary dismissal

Negligent Driving Vehicle in Careless and Imprudent Manner Endangering Property, Life and Person.

10. On September 11, 2016, the Respondent's license was suspended because he refused to take the "chemical" test (breathalyzer⁴). On September 11, 2016, a temporary license was issued, and an Interlock restriction was placed on all vehicles operated.

11. On March 12, 2017, an Interlock non-compliance suspension notice was mailed. On March 15, 2017, a hearing was requested, holding the summary suspension/revocation in abeyance. On July 7, 2017, the Respondent failed to appear for the hearing and his driver's license was suspended, deeming the Interlock program unsuccessful.

12. A bench warrant was issued by the District Court of Maryland for Frederick County and the Respondent was arrested. A trial was held on March 7, 2018. The Respondent pled guilty to Count 1 and was sentenced to one year in jail, all suspended but 37 days, to be served on 10 weekends in the Frederick County jail. The other Counts were *nolle prossed*.

13. The Court fined the Respondent \$1000, suspending \$750 of it, and requiring the Respondent to pay the remainder through the Department of Parole; placed the Respondent on supervised probation until March 7, 2021; ordered him to attend and successfully complete an alcohol treatment program; ordered him to totally abstain from alcohol; and, ordered him to refrain from driving after consuming alcohol.

14. The Respondent failed to report his arrest and/or conviction on his 2017 Renewal Application.

15. Based upon the above facts, the Respondent falsely or deceptively obtained a renewal license.

C. Competency Allegations

16. The Board alleges that its investigation indicated that the Respondent has an alcohol addiction problem, which interferes with his ability to perform the duties of a pharmacist.

17. The Respondent has an extensive history of DUI-related arrests.

18. The Respondent was arrested for a DUI on November 17, 2000, in West Virginia, and on March 9, 2001, pled guilty to that offense and was sentenced to 24 hours in jail and assessed a \$250 fine and \$137 in costs.

19. As discussed herein, the Respondent was arrested twice in a three-year period for driving under the influence.

20. On February 2, 2018, the Respondent received another traffic citation in Allegany County, Maryland and was charged with the following:

Person Driving Motor Vehicle on Highway or Public Use Property on Suspended License and Privilege

Driving, attempting to Drive Vehicle not equipped with an Ignition Interlock, as required by Program.⁵

⁴A breathalyzer is a device for estimating blood alcohol content (BAC) from a breath sample.

⁵ An ignition interlock is a device which prevents a vehicle from starting if the driver has been drinking alcohol.

21. The case was heard on March 26, 2018. The Respondent pled guilty to both counts, received PBJ, one-year unsupervised probation, and paid a \$100 fine. The Respondent's motor vehicle driver's license was suspended because he failed to submit to a breathalyzer examination and/or refused to use an interlock device.

22. The Respondent has been unable to maintain sobriety or refrain from driving while under the influence, despite extensive court intervention and monitoring.

23. On January 24, 2017, the Respondent was ordered to participate in an Alternative Drug and Alcohol Counseling Program. The Respondent's program counselor ("Counselor") recommended that, due to his "continued alcohol use that he enter into the program's 'Intensive Outpatient Program, consisting of group treatment attendance for a total of nine hours a week to begin December 11, 2017.'" The Respondent was unsuccessful in this program and repeatedly tested positive for alcohol.

24. By letter dated February 6, 2018, the Respondent's Counselor recommended that the Respondent enter Intensive Outpatient Counseling or Residential Treatment to assist him in obtaining sobriety. The Counselor stated that since the Respondent began counseling on December 11, 2017, even with regular attendance, "he has been unable to work through his denial."

25. On February 6, 2018, the Respondent called the Board to self-report that he has "a problem with alcohol and was recently arrested on a DUI and was awaiting his court

date.” He further stated that he was working as a pharmacist at a pharmacy in Cumberland, Allegany County, Maryland. The Respondent states that he only drinks alcohol at night and never when he is working as a pharmacist.

26. Based upon that report, the Board referred the Respondent to a therapist for an evaluation. By a report dated February 23, 2018, the Evaluator prepared a report and recommended that the Respondent follow through on certain treatment recommendations.⁶

27. On March 16, 2018, the Evaluator contacted the Board via fax and informed the Board that that the Respondent was sentenced to 7 days and 10 weekends in jail for a probation violation on a DUI charge resulting from the aforesaid March 7, 2018 trial in Frederick County.

28. The Respondent’s Counselor stated that, as late as May 30, 2018, the Respondent appeared at a Probation Violation hearing and admitted to a probation violation stemming from his DUI arrest in March 2018. Fifteen days were added to his sentence, 5 extra weekends. The Judge informed the Respondent, that if he returns to court on another violation he could face more jail time, including being ordered to serve the remainder of his original sentence.

29. On May 29, 2018, the Counselor received the Respondent’s urinalysis test results for May 22, 2018, which were positive for alcohol. As of May 23, 2018, the

⁶ To maintain confidentiality, the specific findings of the evaluation will not be referenced in this document.

Counselor reported that the Respondent has had a year to get sober and hasn't and opined that two weeks in rehab would not help.

30. The Counselor's report of June 8, 2018 stated that the Respondent reported that he got "fired for being sick." He had also stopped going to the Intensive Outpatient Treatment.

Summary

31. As set forth above, by falsely answering questions on his 2013 and 2017 renewal applications, the Respondent obtained his license by fraud or deceit, in violation of Health Occ. § 12-313 (b) (1).

32. As set forth above, by failing to maintain sobriety, being convicted of multiple DUI-related charges and being sanctioned for same, including having to attend intensive outpatient treatment and submit to urinalysis, which consistently showed positive results for the presence of alcohol, the Respondent violated § 12-313 (b) (21) (Is professionally, physically, or mentally incompetent.).

33. As set forth above, the Respondent's conviction, sentencing, and probation for two DUIs constitutes discipline imposed by a court is in violation of § 12-313(b) (24) (Is disciplined by a ... a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes.)

34. As set forth above, the Respondent's conviction for DUI; failure to maintain

sobriety; driving on a suspended license; illegally driving without an interlock device; incarceration for failing to obey the conditions of probation; and being fired from his job for drinking alcohol demonstrates unprofessional conduct and behavior which departs from the standard of conduct of a pharmacist, in violation of § 12-313 (b) (25) and COMAR § 10.34.10 B. (1) and (3).

Respondent's Rehab Efforts Since the Above

35. The Respondent claimed that, since the above reports, he completed IOP in West Virginia and all recent UAs were negative.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated §§12-213 (b) (1), (21), (24) and (25) of the Act, and COMAR § 10.34.10 B. (1) and (3).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 21st day of February 2019, by a majority of a quorum of the Board,

ORDERED that the Respondent's license be SUSPENDED for one year, from August 2, 2018 to August 2, 2019:

ORDERED that the Respondent shall immediately enter into a contract with the Board's Rehabilitative Services Committee, to include random monthly urine screens and AA meetings at least four times a week. At the end of that Suspension, the Responded may petition the Board to lift the Suspension. If the Respondent has been compliant with the terms and conditions of the Rehabilitative Services Contract, his license shall be placed on Probation for a time and with conditions to be determined at that time by the Board. During the Suspension and any Probation thereafter, the Respondent shall also remain compliant with the terms of his court-mandated conditions of Probation.

ORDERED that the Respondent shall bear the costs of compliance with the Order;


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

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, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the

Order shall be on the Respondent to demonstrate compliance with the Order or conditions;
and be it

ORDERED, that for purposes of public disclosure, as permitted by Md. Code Ann.,
General Provisions §§ 4-101, *et seq.* (Vol. 2014 and 2019 Supp.), 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.


Kevin Morgan, Pharm.D. President
State Board of Pharmacy

CONSENT OF JOHN DEMARY, P. D.

I, **JOHN DEMARY, P. D.**, acknowledge that I am not represented by counsel and have knowingly waived my right to counsel. 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, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

2/13/19

Date

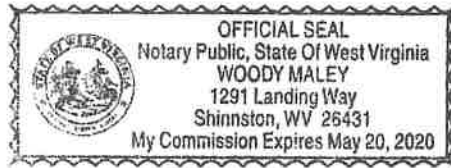
John DeMary P.D.
John DeMary, P. D.

STATE OF W.Va :

CITY/COUNTY OF Harrison :

I HEREBY CERTIFY that on this 13 day of Feb 2019, before me, Woody Maley, a Notary Public of the foregoing State and (City/County),
(Print Name)
Personally appeared **JOHN DEMARY, P. D.**, License No. 18473, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.



Woody Maley
Notary Public

My Commission Expires: May 20 2020