

IN THE MATTER OF	*	BEFORE THE
DAVID LEE, PHARM.D.	*	STATE BOARD
License No.: 18121	*	OF
Respondent	*	PHARMACY
	*	Case No. 09-072

* * * * *

ORDER FOR SUMMARY SUSPENSION

Pursuant to Md. State Govt. Code Ann. §10-226 (c) (2004 Repl. Vol. and 2008 Supp.), the State Board of Pharmacy (the "Board") hereby suspends the license to practice pharmacy in Maryland issued to David Lee, Pharm. D., (the "Respondent"), under the Maryland Pharmacy Act (the "Act"), Md. Health Occ. Code Ann. § 12-101, et seq., (2005 Repl. Vol.). This Order is based on the following investigative findings, which the Board has reason to believe are true:

BACKGROUND

1. At all times relevant hereto, the Respondent was licensed to practice pharmacy in Maryland. The Respondent was first licensed on September 19, 2006. The Respondent's license expires on July 31, 2010.
2. In March 2008, the Respondent was terminated from Medstar Systems during his first month as a dispensing pharmacist for taking narcotics and benzodiazepines drugs from the inventory for his personal use, to the extent that he was impaired.
3. Upon termination, the Respondent entered into a three-year contract with the Pharmacists' Education and Advocacy Council (PEAC) on March 20, 2008.

4. PEAC referred the Respondent to the Resource Group (Counseling and Education Center), which diagnosed him with opioid and benzodiazepine abuse, and recommended the following: abstinence from all non-prescription use of psychoactive drugs; ongoing monitoring by random urinalysis for drugs; through (*sic*) psychiatric evaluation; to see an experienced drug abuse clinician to continue the evaluation process.

5. Accordingly, a referral was made to a medical doctor who confirmed the opioid and benzodiazepine abuse, and added an additional diagnosis of adjustment disorder with anxiety and depression, chronic, mild. The physician recommended the following: that the Respondent return to work, even in a dispensing role, but consider a low stress, part-time situation, perhaps through a pharmacy placement company; continue in therapy at the Resource Group; no psychiatric medications indicated, but therapy should be weekly for the first 1-2 months until it is clear that he is doing well; continue random weekly urine testing for at least 12 weeks, and, continue monthly motivational sessions with him.

6. By letter dated September 10, 2008, PEAC notified the Respondent that it was notified that the Respondent had only attended therapy once in March, weekly in April, only once in May, and none in June. In addition, he underwent no urine testing. PEAC further noted that on July 11th, he began treatment with another physician and provided urine testing on July 11th and 16th, and informed that physician that he was returning to the Resource Group. However, the evaluating/treating physician indicated that the Respondent had not, in fact, returned for treatment at the Resource Group since May 5, 2008, and, as of July 16th, there has been no documentation of weekly

urine testing provided to PEAC, as specified in his contract. Further, PEAC indicated that the Respondent had not been in weekly contact with this sponsor for several months, occurring only three times since he started his PEAC contract. PEAC further informed the Respondent that he had not provided the address and supervisor's name at the Walmart where he reported being employed, stating that disclosure to his employer was mandatory. PEAC stated that it expected immediate compliance with therapy attendance, urine testing and weekly contact with his monitor and, that failure to meet these requirements within one week of receipt of the letter, will result in action to the Board of Pharmacy.

BASIS FOR CURRENT ACTION

7. By email dated 2/16/09, the Respondent reported that two of his recent urines have been positive and that his therapist is aware of the situation—based on a three-month old prescription for Valium that his doctor had prescribed for minor panic and anxiety episodes when traveling/flying. The Respondent stated that he had also advised his monitor. The Respondent further advised that he had the original prescription bottle.

8. On 2/20/09, the Respondent was terminated from the Walgreens #05409 on Eastern Avenue in Baltimore City as a result of the following:

A. On 2/18/09, someone reported that the Respondent was observed removing a bottle of pills, emptying the pills into his hand, placing the pills in his smock pocket, and throwing the empty bottle in the trash;

- B. Based upon the above information, the Walgreens investigator conducted an audit and determined that the inventory was negative for 300 Alprazolam. Triazolam was also short;
- C. On 2/19/09, an employee confirmed that the Respondent had filled a prescription for Valium himself;
- D. Based upon the above incidents, the Investigator interviewed the Respondent on 2/20/09, wherein the Respondent admitted to taking Triazolam on occasions while on duty and that he was on a program through the State. The Respondent further admitted to filling a prescription for Diazepam for himself that was prescribed by his doctor and that he changed the amount from 30 to 60. The estimated amount of the pills that the Respondent admitted taking was \$13.66. The Respondent prepared a written statement describing his action and made a voluntary restitution of the \$13.66;
- E. The report concluded that Baltimore City police would be contacted about pursuing criminal prosecution, even though the amount taken would be a misdemeanor.

9. By email dated 2/23/09, Walgreens notified PEAC that it had terminated the Respondent for controlled substance issues and that the Respondent had admitted to theft of Triazolam and Alprazolam.

10. By email dated 2/24/09, PEAC notified the Respondent that it had received the email from Walgreens informing it of his termination of employment due to theft of Triazolam and advised him to meet with his sponsor immediately to hand over

his wallet and wall license to insure public safety. He was further instructed to cease the practice of pharmacy as stated in his PEAC contract. It urged the Respondent to make an urgent appointment to see his therapist to discuss this incident.

11. By letter dated 2/26/09, PEAC advised the Board that the Respondent had violated his PEAC contract for the above reasons. It further reported that, prior to this incident, his immediate supervisor reported on the January PEAC Monthly Employer Evaluation form her concern that the Respondent experienced light-headedness/dizziness spells on January 6, 2009; when PEAC discussed this condition with the Respondent, he stated he experienced anxiety and panic attacks, especially before and during flying recently to California. When the Respondent was asked to send the prescription bottle or copy of the prescription to PEAC, he failed to do so. PEAC further reported that PEAC and the Respondent's monitor met with the Respondent on 12/29/09 (*sic*) to discuss the Respondent's non-compliance with contacting his monitor on a weekly basis and not being consistent with the therapy attendance in the past. PEAC further informed the Board of its direction to the Respondent to turn over to his monitor his license, which the Respondent mailed to PEAC.

12. By letter dated 3/24/09, PEAC wrote to the Respondent that he was instructed to meet with his PEAC mentor to surrender his pharmacy licenses and confirmed that, on March 6, 2009, PEAC had received his license by mail. PEAC further advised that it had received his 3/20/09 letter to his therapist that he was withdrawing from the PEAC program, indicating that he was discontinuing therapy with him and would no longer be practicing pharmacy for the period determined by the Board of

Pharmacy. PEAC noted that his positive urine test results in February indicates his need for rehabilitative services and that it would like to continue assisting him in his recovery and providing ongoing advocacy and support on his behalf. PEAC asked the Respondent to reconsider whether he wanted to continue his treatment and informed him that it had sent his license to the Board.

FINDINGS OF FACT

1. As set forth above, the Respondent is a threat to the public health, welfare or safety.

2. The above actions also constitute violations of the Act. Specifically, the Respondent violated the following provisions of § 12-313 of the Act:

(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;

(5) Provides professional services while:

or

(ii) Using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication;

(7) Willfully makes or files a false report or record as part of practicing pharmacy;

(15) Dispenses any drug, device, or diagnostic for which a prescription is required without a written, oral, or electronically transmitted prescription from an authorized prescriber;

(21) Is professionally, physically, or mentally incompetent;

(25) Violates any rule or regulation adopted by the Board [;].

The Board also charges the Respondent with a violation of the Pharmacist and Pharmacy Technician's Code of Conduct, 10.34.10. (November 12, 2001):

.01 Patient Safety and Welfare.

A. A pharmacist shall:

(1) Abide by all federal and State laws relating to the practice of pharmacy and the dispensing, distribution, storage, and labeling of drugs and devices, including but not limited to:

(a) United States Code, Title 21,

(b) Health-General Article, Titles 21 and 22, Annotated Code of Maryland,

(c) Health Occupations Article, Title 12, Annotated Code of Maryland,

(d) Criminal Law Article, Title 5, Annotated Code of Maryland, and

(e) COMAR 10.19.03;

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.

.09 Sanctions.

A. The Board may take action to reprimand a licensee, place the licensee on probation, or suspend or revoke the licensee's license if the licensee commits a violation of this chapter.

C. The Board may impose a monetary penalty as authorized under Health Occupations Article, §§12-314, 12-410, and 12-6B-10, Annotated Code of Maryland.

CONCLUSIONS OF LAW

Based on the foregoing, the Board finds that the public health, safety or welfare imperatively requires emergency action, pursuant to Md. St. Gov't. Code Ann. §10-226(c)

(2) (2004 Repl. Vol.).


ORDER

Based on the foregoing, it is therefore this 5th day of June, 2009, by a majority vote of a quorum of the State Board of Pharmacy, by authority granted by the Board by Md. St. Govt. Code Ann. §10-226(c) (2) (2004 Repl. Vol.), the license held by the Respondent to practice pharmacy in Maryland, License No. 18121, is hereby **SUMMARILY SUSPENDED**; and be it further

ORDERED, that upon the Board's receipt of a written request from the Respondent, a Show Cause Hearing shall be scheduled within a reasonable time of said request, at which the Respondent will be given an opportunity to be heard as to whether the Summary Suspension should be continued, regarding the Respondent's fitness to practice pharmacy and the danger to the public; and be it further

ORDERED, that the Respondent shall immediately turn over to the Board his wall certificate and wallet-sized license to practice pharmacy issued by the Board; and be it further

ORDERED, that this document constitutes a final Order of the Board and is therefore a public document for purposes of public disclosure, as required by Md. State Gov't Code Ann. §10-617(h) (2004 Repl. Vol.).

for 

Don Taylor, P.D., President
Board of Pharmacy

NOTICE OF HEARING

A Show Cause hearing to determine whether the Summary Suspension shall be continued will be held before the Board at 4201 Patterson Avenue, Baltimore, 21215 following a written request by the Respondent for same.