

IN THE MATTER OF * BEFORE THE MARYLAND
KEVIN LYNCH, P.D. * STATE BOARD OF PHARMACY
FORMER LICENSE NO. 11900 * Case Number: 05-032

* * * * *
**FINAL ORDER ON PETITION FOR REINSTATEMENT OF LICENSE TO PRACTICE
PHARMACY**

I. INTRODUCTION

On April 16, 2009, a Reinstatement Hearing was held before a quorum of the Maryland State Board of Pharmacy ("Board") to consider whether to reinstate the revoked pharmacist's license of Kevin Lynch, P.D. ("Petitioner"). Following oral presentations by Petitioner and the Administrative Prosecutor, the Board voted unanimously to deny the reinstatement petition for the reasons stated herein. This Order constitutes the Board's final decision on the petition.

II. PROCEDURAL AND FACTUAL HISTORY

On April 19, 2005, the Board issued a Notice of Intent to Revoke Respondent's License to Practice Pharmacy for Petitioner's violation of Md. Health Occ. ("HO") Code Ann., § 12-313. This provision authorizes the Board to revoke a pharmacist's license if the pharmacist "[i]s convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude...." HO, § 12-313(22).¹

¹ "Convicted" includes a determination of guilty, a guilty plea, or a plea of nolo contendere followed by a sentence. HO, § 12-313(a).

The Board's Notice of Intent to Revoke was based on Petitioner's guilty plea and conviction for crimes of moral turpitude before United States District Court Judge Harvey Bartle, III for the following offenses²:

1. Two counts of Conspiracy to Distribute Schedule II Controlled Substances in violation of 21 U.S.C. § 846;
2. One count of Conspiracy to distribute Schedule III, IV, and V Controlled Substances in violation of 21 U.S.C. § 846;
3. One count of Illegal Distribution of Schedule II Controlled Substances in violation of 21 U.S.C. 841(a)(1);
4. One count of Dealing in Counterfeit U.S. Currency in violation of 18 U.S.C. § 473; and
5. One count of Conspiracy to Commit Theft of Identification in violation of 18 U.S.C. § 1028(f).

Petitioner was sentenced to a term of fifty four (54) months in prison, ordered to pay a fine of three thousand six hundred (\$3,600) dollars, and was placed on probation upon his release from prison.

Upon his receipt of the Notice of Intent to Revoke, Petitioner had originally requested a Hearing, which was scheduled for October 27, 2005. Petitioner withdrew his request on October 25, 2005. The Board issued a Final Order revoking Petitioner's license on November 2, 2005.

² These crimes were committed during Petitioner's practice of pharmacy at the Moore Street Pharmacy in Philadelphia, Pennsylvania. Petitioner was licensed in Pennsylvania on November 13, 1989.

On May 5, 2008 Petitioner submitted a petition for reinstatement of his pharmacist's license. The Board then posed several questions to Petitioner to determine his fitness to practice pharmacy and received his written response to these questions on June 26, 2008. The Attorney General's Office, Department of Health and Mental Hygiene, submitted a position opposing the reinstatement of Petitioner on April 9, 2009. A hearing was held on April 15, 2009 for the Board to consider the petition.

III. CONSIDERATION OF THE APPLICATION FOR REINSTATEMENT

Reinstatement following surrender is a discretionary act on the part of the Board. COMAR 10.34.01.15B. Thus, the burden is on Petitioner to demonstrate to the Board that he or she possesses the requisite qualities to be reinstated. To that end, in determining whether to reinstate a licensee, the Board considers the following four factors:³

1. The nature and circumstances of Petitioner 's original misconduct;
2. Petitioner 's subsequent conduct and reformation;
3. Petitioner 's present character; and
4. Petitioner's present qualifications and competence to practice.

In reaching its decision, the Board relied upon Petitioner's written responses to its questions regarding his fitness to practice and the oral argument he presented to the Board at his April 15, 2009 reinstatement hearing.

³ The Board notes that the Maryland Court of Appeals has considered these four factors in attorney discipline cases involving reinstatement. See *Matter of Reinstatement of Wyatt*, 342 Md. 117 (1996), citing *In re Braverman*, 271 Md. 196 (1974) and *Matter of Murray*, 316 Md. 303 (1989).

1. The nature and circumstances of Petitioner 's original misconduct

The crimes for which Petitioner pled guilty and for which both his Pennsylvania and Maryland pharmacist's licenses were revoked are clearly violations of the Maryland Pharmacy Act and are crimes of moral turpitude. Specifically, the Act provides that the Board may discipline a pharmacist if the pharmacist:

- (15) Dispenses any drug, device, or diagnostic for which a prescription is required without a ...prescription from an authorized prescriber;
- (22) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude....
- (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.

Md. Code Health Occ., § 12-313.

Petitioner pled guilty to conspiracy to distribute controlled substances, illegal distribution of controlled substances, counterfeiting, and theft, actions which Petitioner describes in his June 20, 2008 letter to the Board as "appalling." During his hearing, Petitioner admitted to having filled unauthorized prescriptions for his friends and being present when they took controlled substances from his pharmacy. These individuals then sold the drugs to others.

Petitioner's involvement in these crimes demonstrates he was more concerned with pleasing his friends than protecting the public, providing quality patient care, or maintaining the integrity of his profession. These actions reveal Petitioner's extreme lack of professional judgment and competence to practice pharmacy.

2. Petitioner's subsequent conduct and reformation

Petitioner has failed to provide the Board with sufficient evidence that he has reformed. While Petitioner has apologized for "any inconvenience" his actions may have had on the Board, his presentation at the April 15, 2009 hearing displayed a failure to take full responsibility for those actions. Instead, Petitioner blamed his attorney, his friends and his employees for his actions and their consequences.

In addition, while Petitioner maintains he underwent extensive therapy while in prison, he has provided no proof of this fact or evidence that the treatment has helped him change his behavior. More importantly, Petitioner was unable to clearly articulate his initial reasons for engaging in gross illegal activity, other than to cite his need to garner support from the very "friends" who placed him in this legal and ethical predicament.

Petitioner provided no convincing evidence that he will not commit the same or similar offenses again were the Board to reinstate his license; nor did he prepare a realistic re-entry plan into the profession.

Further, Petitioner's Pennsylvania license remains suspended for these acts. If Petitioner is yet unwilling or unable to regain the trust of the citizens of the state he has harmed, it is illogical for the Board to place him in a position of trust as a healthcare professional in Maryland.

3. Petitioner 's present character

Petitioner provides scant evidence of his current moral and ethical fiber. Again, as stated above, Petitioner continues to blame others for his behavior despite the fact that he pled guilty to the charges filed against him. Petitioner also insists he took the blame for everyone involved despite the administrative prosecutor's contrary assertions. Such statements lead the Board to believe Petitioner has failed to rehabilitate himself while in prison or thereafter.

4. Petitioner 's present qualifications and competence to practice

Petitioner states he has kept abreast of the developments in pharmacy by reading *Pharmacy Times* and that his wife mailed him continuing education materials while in prison.⁴ However, Petitioner has not practiced pharmacy since February 2003, and his criminal conduct and failure to acknowledge full accountability for his transgressions demonstrate that he lacks the moral or ethical character to competently practice pharmacy. Further, Petitioner states he is considering practicing in an area other than retail and mentioned home infusion or a hospital setting but has demonstrated no attempt to develop additional skills in either area.

IV. CONCLUSIONS AND FINDINGS

Based on the Board's review of Petitioner's petition, his statements before the Board, and the factors discussed above, the Board finds that Petitioner has not demonstrated sufficient grounds for reinstatement of his license. Petitioner has not satisfactorily shown that he accepts full responsibility for his criminal acts, and his

⁴ Petitioner did not present the Board with any evidence of having completed continuing education units over the past 4 years.

subsequent conduct reveals he has not yet come to terms with the seriousness of his conduct.

The Board remains unconvinced that Petitioner truly appreciates the dishonesty and lack of integrity that his conduct displayed. Moreover, the Board is not persuaded that reinstatement at this time would reflect honorably on the profession. Given the foregoing, the Board concludes that Petitioner has failed to demonstrate that he is fit to practice pharmacy at this time.

ORDER

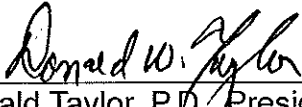
Accordingly, the Board hereby **ORDERS** that the Petition for Reinstatement of Kevin Lynch, former license number 11900, is **DENIED**; and it is further

ORDERED that the Board will not accept any further applications for reinstatement from Petitioner earlier than **THREE (3) YEARS** from the date of this Final Order;

ORDERED that upon any further petition for reinstatement, Petitioner shall demonstrate to the Board that he has met the standards set out above in this Order; and it is further;

ORDERED that this **FINAL ORDER ON PETITION FOR REINSTATEMENT OF LICENSE TO PRACTICE PHARMACY** is a **PUBLIC** document under Md. Code Ann., State Gov't, § 10-611 *et seq.* (2004).

So **ORDERED** this 20th day of May, 2009.



Donald Taylor, P.D. President
Maryland State Board of Pharmacy