

IN THE MATTER OF	*	BEFORE THE
HARVEY RAPKIN, P.D.	*	STATE BOARD
LICENSE NUMBER 06091	*	OF PHARMACY
RESPONDENT	*	Case Number: 08-106

* * * * *

**FINAL ORDER OF REVOCATION
OF THE RESPONDENT'S PHAMACIST'S LICENSE**

On November 25, 2008, the Maryland Board of Pharmacy (the "Board"), notified Harvey Rapkin, the Respondent, of its Intent to Revoke his pharmacist's license. The Notice also informed the Respondent that, unless he requested a hearing in writing within 30 days of receipt of said Notice, the Board would sign the Final Order herein, which was enclosed. More than 30 days has elapsed and the Respondent failed to timely request a hearing. Therefore, this **revocation is final as of February 6, 2009.**

Pursuant to Md. State Govt. Code Ann. § 10-201, et seq., (2004 Repl. Vol., and 2007 Supp.) of the Administrative Procedure Act ("APA"), and the Maryland Pharmacy Act, codified at Md. Health Occ. Code Ann. § 12-101, et seq., ("the Act") (2005 Repl. Vol. and 2007 Supp.), the Board hereby notifies Harvey Rapkin, P.D. ("the Respondent"), of the Board's intent to REVOKE the Respondent's license to practice pharmacy.

The pertinent provisions of the APA state:

§ 10-226 (c)

- (1) Except as provided in paragraph (2) of this subsection, a unit may not revoke or suspend a license unless the unit first gives the licensee:
 - (i) written notice of the facts that warrant suspension revocation: and
 - (ii) an opportunity to be heard.

Specifically, the Board intends to revoke the Respondent's license to practice pharmacy based upon the following provisions of § 12-313:

(a) In this section, "convicted" includes a determination of guilt, a guilty plea, or a plea of nolo contendere followed by a sentence.

(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, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

- (22) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside [;].

FACTS THAT WARRANT THE REVOCAION OF THE RESPONDENT'S LICENSE

The Board intends to revoke the Respondent's license to practice pharmacy for the foregoing facts which the Board has reason to believe are true:

1. At all times relevant hereto, the Respondent was licensed to practice pharmacy. The Respondent was first licensed on December 31, 1960. The Respondent's license will expire on March 31, 2009.

2. At all times relevant hereto, the Respondent worked at Baltimore Behavioral Health (BHH), which is a mental health clinic that provides therapy and medication to hundreds of outpatients. The Respondent's job was to order the medications from an outside pharmacy as directed by a physician at BBH. The Respondent was to obtain the pills and distribute the medications to the BBH outpatients. Most of these patients had standing monthly prescription orders to be filled every month for 12 months.

3. BBH's policy was to only give the medication to the patients if the patients came in for therapy. Because many of the patients were drug abusers, BBH had a policy not to simply give the patients an entire month's supply of meds at one time.

4. The Respondent noticed that many of the patients for whom he had secured medications did not show up to receive their medicine. Nevertheless, rather than discontinuing the prescriptions, the Respondent continued to order and obtain the pills for these patients month after month, pursuant to the standing order of BBH's physicians.

5. At some point, the Respondent decided that he could make some money from the unused medications. Rather than returning the medications to the pharmacy that filled them for a credit to the Medicaid program, the Respondent took possession of the unused medications and sold them to his friend, Norton Grossblatt, a pharmacist who owned and operated Purdum Pharmacy in Baltimore County. For example, Mr. Grossblatt paid his legitimate distributor, McKesson, about \$230 for 30 Zyprexa pills.¹ Mr. Grossblatt would be paid about \$260 by Medicaid for filling the prescription, netting about \$30 profit for each prescription filled.

6. The Respondent's scheme was to sell the unused medication that had already been paid for by Medicaid to Mr. Grossblatt for one-half of McKesson's price, resulting in the Respondent's making a \$115 profit for one Zyprexa prescription. The Respondent would send Mr. Grossblatt a list of prescriptions to be "filled" for sometimes as many as 60 people at a time. The Respondent would take the unused leftover medications from BBH to Mr. Grossblatt, who then used the pills to fill the next month's prescription for the same patient. When Mr. Grossblatt processed the prescription and printed out a new label for the prescription, Medicaid was automatically billed for the full amount, e.g., \$260, creating a profit for Mr. Grossblatt of \$145.

¹Zyprexa is used for the treatment of bipolar disorder.

7. A month later, when the patient again failed to show up, the Respondent and Mr. Grossblatt repeated the process. This scheme created a significant difference between the number of pills that the pharmacy was actually buying from McKesson versus the number of pills for which Mr. Grossblatt was billing Medicaid and other payors.

8. Over a three year period, both the Respondent and Mr. Grossblatt profited nearly \$200,000 each for this scheme.

9. Under the Medicaid Fraud statutes, the Respondent was not permitted to take for his own uses medications paid for by Medicaid that are intended for someone else. Thus, the Respondent's actions constituted Medicaid Fraud by Conversion.

10. On March 20, 2008, the Respondent pled guilty to Felony Medicaid Fraud in the Circuit Court of Baltimore City. On October 23, 2008, the Respondent was sentenced to five years incarceration, with four years suspended, to be followed by three years of unsupervised probation.

11. As set forth above, by being convicted of a felony and a crime of moral turpitude, the Respondent has violated the Act, and his license to practice pharmacy should be revoked.

CONCLUSIONS OF LAW

Based upon the foregoing Facts, the Board concludes that the Respondent violated its Act and that the revocation is warranted, pursuant to § 12-313 (a) and (b) (22) and § 10-226 (c) (1) of the APA.

NOTICE OF RIGHT OF APPEAL

In accordance with Md. Health Occ. Code Ann. § 12-315 (2005 Repl. Vol.) and the Administrative Procedure Act, Md. State Govt. Code Ann. § 10-201, *et seq.*, (2004 Repl. Vol.) you have a right to a direct judicial appeal of this decision. A petition for appeal of the Final Board Order shall be filed within thirty days from your receipt of this Final Order and shall be made in accordance with the aforecited authority.

February 6, 2009
Date

LaVerne G. Naesea
LaVerne G. Naesea, Executive Director