

IN THE MATTER OF
BRIAN RICCI, PHARM. D.

License Number: 23811

Respondent

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BEFORE THE
STATE BOARD
OF PHARMACY
Case Number: 18-274

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FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board"), and subject to Code Md. Ann., Health Occ.(Health Occ.) §§ 12-101, *et seq.* (2014 Repl. Vol. and 2019 Supp.) (the "Act"), on September 18, 2019, the Board issued Charges against the pharmacist license of **BRIAN RICCI, Pharm. D.** (the "Respondent"). On October 9, 2019, a Case Resolution Conference was held with the Respondent, who was represented by Counsel, members of the Board, along with Board Counsel, and the Administrative Prosecutor, in order to determine whether the matter could be resolved, which included the issue of the outstanding Order of Summary Suspension, which Order was issued on August 16, 2018. As a result, the following settlement was reached.

Specifically, the Board charged the Respondent with violation of the following provisions of the Act:

§ 12-313 (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:

(2) Fraudulently or deceptively uses a license;

...

(21) Is professionally...incompetent;

- (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;
- ...
- (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 a violation of its Pharmacist and Pharmacy Technician Code of Conduct, Code of Maryland Regulations ("COMAR")

10.34.10:

01. Patient Safety and Welfare.

B. A pharmacist may not:

...

(3) Engage in unprofessional conduct.

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent was licensed to practice pharmacy in the State of Maryland. The Respondent was first licensed on November 25, 2015. The Respondent's license expired on August 31, 2019.

2. At all times relevant hereto, the Respondent was employed as a pharmacist at a pharmacy (the "Pharmacy") within a national chain at Westminster, Carroll County, Maryland.¹

3. On April 16, 2018, the Board received a Drug Enforcement Administration (DEA) "Report of Theft or Loss of Controlled Substances" form, which reported that there had been a diversion of drugs by a pharmacist using fake scripts; that this matter had been

reported to the Carroll County Sherriff's Department; and, criminal charges were filed against the Respondent.

4. Attached to the DEA form was a list of drugs that were reportedly diverted by the Respondent, including:

Alprazolam Hydrochloride ² , 1 mg	378 tablets
Diazepam ³ , 5mg	113 tablets
Clonazepam ⁴ , 1 mg	104 tablets
Methylphenidate ER ⁵ , 20 mg	130 tablets
Methylphenidate ER, 50 mg	60 tablets
Oxycodone-Acetaminophen ⁶ , 5-325 mg	53 tablets
Oxycodone-Acetaminophen, 7.5-325 mg	31 tablets
Lorazepam ⁷ , 2 mg	294 tablets
Methylphenidate Chewable, 5 mg	120 tablets
Methylphenidate CD ⁸ , 50 mg	118 tablets

¹ The names of facilities and/or individuals are confidential.

² Alprazolam is a benzodiazepine used to treat anxiety and panic attacks. Hydrochloride is a salt used to better absorb the medication. It is a Schedule IV Controlled Dangerous Substance ("CDS").

³ Diazepam is a benzodiazepine that affects chemicals in the brain that may be unbalanced in people with anxiety. Diazepam is used to treat anxiety disorders, alcohol withdrawal symptoms, or muscle spasms. Diazepam is sometimes used with other medications to treat seizures. It is a Schedule IV Controlled Dangerous Substance ("CDS").

⁴ Clonazepam is a benzodiazepine. It affects chemicals in the brain that may be unbalanced. Clonazepam is also a seizure medicine, and an anti-epileptic drug. It is a Schedule IV CDS.

⁵ Methylphenidate is a central nervous system stimulant. It affects chemicals in the brain and nerves that contribute to hyperactivity and impulse control. It is used to treat attention deficit disorder (ADD), attention deficit hyperactivity disorder (ADHD), and narcolepsy. ER= Extended Release. It is a Schedule II CDS.

⁶ Oxycodone is an opioid pain medication, sometimes called a narcotic. Acetaminophen is a less potent pain reliever that increases the effects of oxycodone. In this combination, there are 5 mg of Oxycodone and 325 mg of Acetaminophen. It is a Schedule II CDS.

⁷ Lorazepam belongs to a group of drugs called benzodiazepines. It affects chemicals in the brain that may be unbalanced in people with anxiety. Lorazepam is used to treat anxiety disorders. It is a Schedule IV CDS

⁸ CD means "Controlled Delivery or Controlled Release".

Methylphenidate ER, 54 mg	104 tablets
Morphine Sulfate ⁹ ER, 30 mg	70 tablets
Dextroamphetamine-Amphetamine ¹⁰ , 30 mg	180 tablets
Dextroamphetamine-Amphetamine ER, 30 mg	60 tablets
Mixed Amphetamine Salts ¹¹ , 15 mg	30 tablets
Dextroamphetamine-Amphetamine, 20 mg	60 tablets
Mixed Amphetamine Salts, 7.5 mg	30 tablets
Vyvanse ¹² , 50 mg	60 tablets
Vyvanse, 70 mg	30 tablets
Acetaminophen-Codeine #4 ¹³ , 300-60 mg	30 tablets

5. The Respondent admits to stealing the Amphetamine salts, the Vyvanse and the Acetaminophen-Codeine #4 listed on the above report.

⁹ Morphine Sulfate Tablets are indicated for the management of acute and chronic pain severe enough to require an opioid analgesic and for which alternative treatments are inadequate.

¹⁰ Amphetamine and Dextroamphetamine are central nervous system stimulants that affect chemicals in the brain and nerves that contribute to hyperactivity and impulse control. Amphetamine and Dextroamphetamine is a combination medicine used to treat narcolepsy and attention deficit hyperactivity disorder (ADHD).

¹¹ Adderall, Adderall XR, and Mydayis are combination drugs containing four salts of the two enantiomers of amphetamine, a central nervous system stimulant of the phenethylamine class. Adderall is used in the treatment of attention deficit hyperactivity disorder and narcolepsy. It is also used as an athletic performance enhancer and cognitive enhancer, and recreationally as an aphrodisiac and euphoriant. It is a Schedule II CDS.

¹² Vyvanse (lisdexamfetamine) is used to treat attention deficit hyperactivity disorder (ADHD) and binge-eating disorder. It is a Schedule II CDS.

¹³ This combination product contains two medications: acetaminophen and codeine. Acetaminophen or Tylenol belongs to the group of medications called *analgesics* (pain relievers) and *antipyretics* (fever reducers). Codeine belongs to the family of medications known as *opioid analgesics* (narcotic pain relievers). This medication is used to relieve moderate to severe pain. Codeine works by acting on the central nervous system to block pain signals, increasing the ability to tolerate pain. Acetaminophen works by raising one's pain threshold. In this combination, the Tylenol is 300 mg and the Codeine is 60 mg. It is a Schedule III CDS.

6. The internal investigation disclosed that the loss occurred because the Respondent purchased drugs using scripts under his name as well as under anonymous profiles. The Respondent admitted to taking multiple drugs and creating patient profiles to prevent suspicion. The Respondent also created fake scripts, including some for his fiancée, in order to obtain the above drugs.

7. As a result of the thefts, the Respondent was terminated from employment with the Pharmacy on April 12, 2018.

8. Based upon the thefts, the Respondent was charged in the District Court of Maryland for Carroll County with twenty-nine criminal misdemeanor counts, including 10 counts of Unauthorized CDS-Distribution/Manufacture/Distribution Not Authorized by Registration; 10 counts of Prescription Obtain by Fraud; and, 9 counts of Prescription Obtained by Altering Order.

9. Based on the above, on August 16, 2018, the Board summarily suspended the Respondent's license.

10. On November 5, 2018, in the Circuit Court for Carroll County, Maryland, the Respondent pled "not guilty with agreed statement of facts" to one count of Prescription Obtained by Altering Order and was given Probation Before Judgment.¹⁴ The rest of the Counts were Nolle Prossed.¹⁵ The Respondent was placed on three (3) years of supervised probation and required to complete treatment and aftercare; attend two

¹⁴ Probation Before Judgment, or PBJ, means that an individual is given probation before the judgment is entered, even though he/she may have been found guilty, usually based upon the condition that the person comply with some type of conditions(s) set by the Judge. This is based upon Md. Crim'l Proc. § 6-220.

¹⁵ *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.

Narcotics Anonymous ("NA") self-help group meetings per week for one year; and abstain from alcohol, illegal substances and abusive use of any prescription drug during his probation.

11. As set forth above, the Respondent violated Health Occ. §§12-313(b) (2), (21), (22),(24) and (25) of the Act, and COMAR 10.34.01.10.01(B) (3).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's actions violated §§12-213 (b) (2), (21), (24) and (25) of the Act and COMAR 10.34.10.10 (B) (3).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 17th day of March 2020, by a majority of a quorum of the Board,

ORDERED that

1. The Respondent's license remains SUSPENDED while he is on Court-ordered Probation, during which time he shall send current probationary reports, including treatment/counseling reports and NA/AA meeting reports to the Board on a quarterly basis;
2. Upon termination of his criminal probation, the Respondent shall notify the Board, at which time, he shall be evaluated, at Board expense, by

It contrasts with an involuntary dismissal.

a Board-approved substance abuse evaluator (who shall have access to all probationary reports provided to the Board to determine if he is competent to return to pharmacy practice);

3. If the Evaluator determines that the Respondent is safe/competent to return to practice, he shall be placed on PROBATION for Three (3) Years, with terms and conditions to be determined by the Board at that time, which may incorporate any recommendations made by the Evaluator.

ORDERED that the Respondent shall bear the costs of compliance with the Order; and be it further

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

ORDERED that, once returned to practice, the Respondent shall practice in accordance with the laws and regulations governing the practice pharmacy in Maryland; and be it further


ORDERED that the Respondent may petition for termination of Probation after three (3) years of Probation provided that he has fully complied with the terms of the Order and of Probation and there are no outstanding complaints against him. The Board will not grant early termination of Probation; 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 or of Probation,

after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation.

The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order or of Probation shall be on the Respondent to demonstrate compliance with the Order or conditions; and be it further

ORDERED that, for purposes of public disclosure, as permitted by Md. Code Ann., General Provisions §§ 4-101, *et seq.* (2014 Repl. Vol. 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 M. Morgan, Pharm.D., President
State Board of Pharmacy


CONSENT OF BRIAN RICCI , PHARM. D.

I, Brian Ricci, Pharm.D., acknowledge that I am represented by counsel, Cory Silkman, Attorney, and have consulted with counsel before entering into this Consent Order. 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, after having an opportunity to consult with counsel, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

3/5/2020
Date

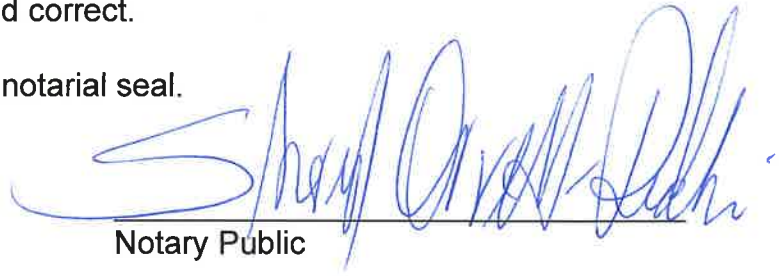


Brian Ricci, Pharm. D.

STATE OF Maryland :
CITY/COUNTY OF Carroll :

I HEREBY CERTIFY that on this 5th day of March 2020, before me, Sheryl Orrett-Redhi a Notary Public of the foregoing State and (City/County),
(Print Name)
personally appeared Brian Ricci, Pharm. D., License No. 23811, 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.


Notary Public

My Commission Expires: 04-13-2021

SHERYL ORRETT-REDHI
NOTARY PUBLIC STATE OF MARYLAND
MY COMMISSION EXPIRES: 04-13-2021