

IN THE MATTER OF	*	BEFORE THE
DERRICK TRUBY, Sr., P.D.	*	STATE BOARD
License No. 12736	*	OF PHARMACY
Respondent	*	Board Case Number: 06-090

* * * * *

FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board"), and subject to Md. Health Occ. Ann. § 12-101, et seq., (2009 Repl. Vol.) (the "Act"), the Board issued Derrick Truby, P.D., (the "Respondent"), a Notice of Intent to Revoke his Pharmacist license for a violation of the Act. Specifically, the Board based its Intent on the following provision of §12-313 of the Act which states:

(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 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:

(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 [;].

The Respondent was given thirty days to request a hearing in writing from the date of the Notice. The Respondent timely requested a hearing in writing. On March 10, 2010, before a quorum of the Board, a hearing was convened. The

Respondent, represented by Tina DiFranco, Attorney, and the State, represented by Roberta Gill, Assistant Attorney General, Administrative Prosecutor, presented a Joint Proposal for settlement for the Board's consideration. Attorney DiFranco further presented character references and the Respondent allocuted and later responded to questions from the Board. The hearing was adjourned. Thereafter, Board Counsel, Linda Bethman, Assistant Attorney General, teleconferenced both attorneys and presented a counter-proposal from the Board. After several discussions regarding same, the parties and the Board agreed to the following:

FINDINGS OF FACT

1. At all times relevant, the Respondent was licensed by the Board to practice pharmacy in the State of Maryland. The Respondent was initially licensed on June 10, 1993. The Respondent's license expires on June 30, 2010.

2. At all times relevant hereto, the Respondent was the pharmacist of record for Park and Clay Pharmacy in Baltimore, Maryland. The pharmacy was owned by Lazaro Vega, a non-licensee. The pharmacy closed on April 26, 2006.

3. On October 22, 2007, the Respondent was interviewed by DEA agents and disclosed the following:

A. The Respondent stated that he was hired by Mr. Vega as Chief Pharmacist and paid about \$2000 per week. The Respondent stated that he was also a full-time pharmacist at Maryland General Hospital. The Park and Clay pharmacy opened in September 2005;

- B. Mr. Vega ordered all of the drugs. The pharmacy would get prescriptions to fill via the computer. The Respondent stated that his role was to make sure that the prescriptions were accurate by verifying the patient name, medication, strength and quantity;
- C. The Respondent stated that the internet prescriptions were filled for patients all over the United States and that that he never had any interaction with any of the physicians who wrote the prescriptions;
- D. The Respondent stated that, even though the pharmacy had just opened in September 2005, it closed around Thanksgiving of that year because the volume became overwhelming. When the pharmacy reopened in January 2006, there were not as many websites to fill for, but the volume of prescriptions remained the same;
- E. The Respondent stated that, when the pharmacy reopened in January, he no longer had to show up every day, but allowed his name to be the pharmacist of record so that the pharmacy could continue to operate. The Respondent also stated that, Mr. Vega continued to pay him a weekly salary despite his not being present when thousands of prescription orders were filled.

4. On September 25, 2008, the Respondent signed an agreement with the United States Attorney's Office, District of Maryland, Southern Division, to plead guilty to Count One of the Superseding Indictment pending against him

which charged him with conspiracy to distribute and possess with the intent to distribute Schedule IV controlled substances in violation of the law.¹

5. On April 30, 2009, Judge Messitte of the U.S. District Court sentenced the Respondent to five months of incarceration; 5 months of home detention with electronic monitoring; and, one year probation.

6. As set forth above, the Respondent pled guilty to a felony, in violation of the Act.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated § 12-313 (a) and (b) (22).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 19th day of May, 2010, by a majority of a quorum of the Board,

ORDERED that the Respondent's license to practice pharmacy is hereby **SUSPENDED** for **FOUR** years, with the following conditions:

- A. The Respondent shall take and pass a Board-pre-approved, college-level ethics course and document same to the Board;
- B. The Respondent shall abide by the conditions placed upon him by the Parole Office;
- C. The Respondent shall not practice as a Pharmacy

¹The prescriptions were mainly for Phentermine, a weight loss drug.

Technician during that time, nor own or operate a pharmacy;

- D. The Respondent shall keep up with his continuing education credits;
- E. The Respondent shall bear the costs of complying with the above;
- F. There shall be no early termination of the Suspension period.

ORDERED, that at the end of the Suspension period, the Respondent may petition the Board to terminate the Suspension and reinstate his license. If the Respondent has fully complied with the above conditions and pays the requisite fees, the Board shall reinstate the Respondent's license by immediately placing the Respondent on **PROBATION** for **FOUR** years, subject to the following conditions:

- A. The Respondent shall take and pass, within one year of reinstatement, the MPJE examination;
- B. If the Respondent works as a pharmacist, his supervisor shall be required to submit quarterly reports to the Board;
- C. During the probationary period, the Respondent shall not act as or be employed as a pharmacy manager;
- D. During the probationary period, the Respondent shall not work as a "floater" pharmacist or be employed by a staffing agency;

E. There shall be no early termination of Probation;

F. The Respondent is responsible for ensuring that reports are sent to the Board on time and for any costs associated with complying with this Order.

ORDERED that during the entire duration of this Order, the Respondent shall not be associated with or be engaged in internet pharmacy.

ORDERED that the Consent Order is effective as of March 10, 2010 and be it

ORDERED that, should the Board receive a report 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 lifting the 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/Suspension shall be on the Respondent to demonstrate compliance with the Order or conditions; and be it

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing the practice of pharmacy in Maryland; and be it further

ORDERED that, at the end of the Probationary period, the Respondent may petition the Board to be reinstated without any conditions or restrictions on his license, provided that he can demonstrate compliance with the conditions of this Order. If Respondent has fully complied with the conditions of this Order,

and pays the requisite fees, the Board shall reinstate the Respondent's license without any further restrictions. Should the Respondent fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary;

ORDERED that, for purposes of public disclosure, as permitted by Md. State Gov't. Code Ann. §10-617(h) (Repl. Vol. 2009), 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.



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

Rodney H. Taylor, Pharm.D.
Secretary

CONSENT OF DERRICK TRUBY, P.D.

I, Derrick Truby, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Tina DiFranco, and have been advised by her of the legal implication of signing this Consent Order;

2. I am aware that without my consent, my license to practice pharmacy in this State cannot be limited except pursuant to the provisions of § 12-313 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et seq., (2009 Repl. Vol.).

3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I hereby consent and admit to the foregoing

Findings of Fact, Conclusions of Law and Order. By doing so, I waive my right to a formal hearing as set forth in § 12-315 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in § 12-316 of the Act and §10-201, et seq., of the APA. I acknowledge that my failure to abide by the conditions set forth in this Order and, following proper procedures, I may suffer disciplinary action, possibly including revocation, against my license to practice pharmacy in the State of Maryland.

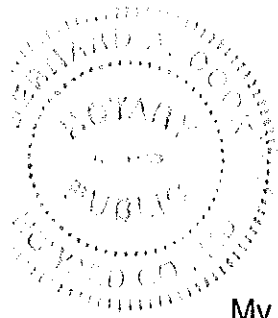
5/19/2010
Date

Derrick Truby, Sr.
Derrick Truby, Sr.

STATE OF Maryland :
CITY/COUNTY OF Howard :

I HEREBY CERTIFY that on this 19th day of May, 2010, before me, Derrick Truby, Sr., a Notary Public of the foregoing State and (City/County), personally appeared Derrick Truby, License No. 12736, 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.



[Signature]
Notary Public

My Commission Expires: 4/14/2014