

W/L 4/94

IN THE MATTER OF * BEFORE THE
 WASYL TYMIUK * STATE BOARD OF
 Respondent * PHARMACY
 License No. 7828 *
 * * * * *

ORDER

On January 5, 1994, the Maryland State Board of Pharmacy (the "Board") accepted a Consent Order from Wasyl Tymiuk, P.D., License No. 7828 (the "Respondent"). State's Exhibit No. 1 (copy attached). The Consent Order was entered into by the Board and the Respondent as settlement of charges brought by the Board against the Respondent. The Board had charged the Respondent with violating the Health Occupations Article, Sections 12-313(b)(1), 12-313(b)(4)(i), and 12-313(b)(20).

Thereafter, based upon information received by the Board, the Board charged Respondent with violation of certain conditions of probation contained in the Consent Order. Respondent was given notice of the charge by correspondence dated August 25, 1995. An evidentiary hearing was held on September 13, 1995 on the allegation of the Respondent's violation of probation.

FINDINGS OF FACT

1. At all times relevant to this Order, Respondent was and is currently licensed to practice pharmacy in the State of Maryland.
2. On January 5, 1994, the Board accepted a Consent Order from the Respondent in which he admitted to violating Sections 12-313(b)(4)(i) (providing professional services while under the

influence of alcohol) and 12-313(b)(20) (professional, physical, and/or mental incompetence) of the Health Occupations Article, Annotated Code of Maryland. State's Exhibit No. 1.

3. In the Consent Order, the Respondent agreed to a suspension of his license, which suspension was immediately stayed. The Respondent also agreed to be placed on probation under certain conditions set forth in the Consent Order. State's Exhibit No. 1.

4. Based upon its monitoring of Respondent during the probationary period, the Board charged the Respondent with violating the following conditions of probation as set forth in the Consent Order:

A. Condition number 1 provides as follows:

Respondent shall complete a total of 150 continuing education credits prior to submitting his renewal application. Respondent shall complete a minimum of 10 credits per month and submit the supporting certificate of completion to the Board by the 15th day of the following month. If the certificate is not yet available, the Respondent will notify the Board of that fact.

B. Condition number 4 provides as follows:

Respondent shall enter into a contract for a period of at least two years with the Pharmacy Rehabilitation Committee which includes the following conditions:

(a) Respondent shall submit to random observed urine tests at least once per week.

(b) Respondent shall attend at least two meetings of Alcoholic or Narcotics Anonymous per week.

(c) Respondent shall attend group therapy or individual therapy or both as recommended by the Pharmacist's Rehabilitation Committee or Dr. Charles Witfield until he is discharged from treatment by the therapist(s). If such discharge occurs, Respondent shall arrange for prompt submission by the therapist of a written discharge report to the Board and the Rehabilitation Committee.

(d) Respondent agrees that his contract with the Rehabilitation Committee will be extended as necessary so that the conditions listed above will be in effect as long as the Respondent is on probation with the Board.

C. Condition number 5 provides as follows:

If, in violation of paragraph 4, Respondent fails to continue with his therapist without having been discharged or ordered by the Board to change or cease therapy, Respondent shall notify the Board and the Committee in writing and have his therapist notify both entities in writing.

D. Condition number 8 provides as follows:

Respondent shall submit quarterly reports and shall arrange for his therapist, his employer, and the Rehabilitation Committee to submit written quarterly reports to the Board that report on Respondent's progress and compliance with this Order. His therapist shall advise the Board of the results of all the urine screening by incorporating the results into his quarterly reports. The reports shall be due on June 1, September 1, December 1, and March 1 of each year until the Respondent has been terminated from probation. Respondent shall include in his quarterly report the dates and places of AA or NA meetings attended and a description of the progress he has made with AA or NA programs. Respondent shall attach a copy of proof of this attendance at said meetings in his quarterly reports.

E. Page 7, lines 6-8 provide as follows:

Ordered, that in the event Respondent moves, he shall promptly notify the Board in writing of the change of address and of any change in his home and work telephone number.

5. By his own admission, the Respondent has failed to submit proof of compliance with Condition number 1 of the Consent Order. Transcript, pp. 25, 55.

6. The Respondent's quarterly report which was received by the Board from the Pharmacist's Rehabilitation Committee (the "Committee") on December 8, 1994, for the quarter September 1, 1994 to December 1, 1994, stated that the Respondent's treatment

progress was "fair" and that he missed four group therapy sessions in October and November. State's Exhibit No. 2; Transcript, pp. 16-17.

7. The quarterly report which the Committee submitted for the quarter December 1, 1994 to March 1, 1995, stated that Respondent dropped out of group therapy in early December and that the Committee had not heard from him in several months. State's Exhibit No. 3; Transcript, p. 19.

8. The quarterly report which the Board received on May 31, 1995 from the Committee for the quarter March 1, 1995 to June 1, 1995, stated that Respondent had left the group and that urine samples had not been taken. State's Exhibit No. 4; Transcript, pp. 20-21.

9. Through his attorney, William R. Evans, Respondent notified the board of his hospitalization at a psychiatric clinic (see State's Exhibit No. 5), but failed to notify the Board of his date of discharge as requested by Board correspondence of January 31, 1995 (see State's Exhibit No. 6). Transcript, pp. 27-28.

10. Since December 1, 1994, by his own admission the Respondent has failed to submit quarterly reports to the Board, which reports were required by the Consent Order to include information regarding his attendance at Alcoholics Anonymous meetings or Narcotics Anonymous meetings. State's Exhibit No. 9; Transcript, pp. 26-27, 55.

11. On March 23, 1995, the Board requested that the Respondent attend an informal meeting with Board representatives

to discuss his lack of compliance with the terms of his probation. State's Exhibit No. 8; Transcript, pp. 31-32.

12. The Respondent failed to notify the Board of his change of address. Transcript, pp. 28-30, 59, 66.

13. On April 21, 1995, the Board notified the Respondent that it voted to lift the stay of his suspension and indefinitely suspend his pharmacist's license for his failure to comply with the conditions of probation listed in the Consent Order and ordered him to submit his wall certificate, display license and pocket license. The Respondent failed to submit these documents to the Board as requested. State's Exhibits Nos. 9-11, Transcript, pp. 32-35.

14. The Respondent was arrested in November or December of 1994 for battery, reckless endangerment, and resisting arrest. On February 28, 1995, Erik Roskes, M.D., Fellow in Forensic Psychiatry, and Thomas J. Oglesby, M.D., Chief Medical Officer for the Clifton T. Perkins Hospital Center prepared a psychiatric report (the "Report") for the District Court of Maryland regarding the Respondent's mental condition. State's Exhibit No. 12.

15. The Report noted that despite the Respondent's long history of alcohol abuse and prescription drug dependence, the Respondent's lack of insight into these problems is the major factor in his seeking treatment for them. The Report further noted that the Respondent only sought treatment for drug problems upon the Board's recommendation. The Report conclude that the Respondent has a "tendency to deny and minimize problematic aspects of his life," including his drug and alcohol abuse problems, his

psychiatric problems, and his occupational problems. The Report recommended that the Respondent should be placed on probation and "be closely monitored as his life appears to have been making a turn for the worse in the last several years." State's Exhibit No. 12.

16. Following his discharge from the psychiatric clinic on February 17, 1995, the Respondent has been living in a group home and has subsequently been in therapy with Bayview Hospital. Transcript, pp. 56-60.

CONCLUSIONS OF LAW

The Consent Order states that "in the event the Maryland Board of Pharmacy receives an unsatisfactory report which it believes in good faith to be accurate, or in the event that the Maryland Board of Pharmacy finds for any reason in good faith that Respondent has violated any conditions of probation or provision of Title 12 of the Health Occupations Article or regulations thereunder, the Board may take immediate action, including, but not limited to, revocation or suspension of the Respondent's license to practice pharmacy prior to giving the Respondent an opportunity for a hearing." Consent Order, p. 6.

By his own admission, the Respondent has failed to submit proof of compliance with Condition number 1 of the Consent Order, which condition requires him to complete 150 continuing education credits prior to renewal at a rate of at least ten credits per month with a supporting certificate of completion submitted to the Board by the 15th of each month. Transcript, pp. 25, 55. The

Respondent has therefore violated Condition number 1 of the Consent Order.

By his own admission, since December 1, 1994 the Respondent has failed to submit quarterly reports to the Board regarding his progress and compliance with the Consent Order, which reports were required by the Consent Order to include information regarding the Respondent's attendance at Alcoholics Anonymous meetings or Narcotics Anonymous meetings. The Respondent has therefore violated conditions 4(b) and 8 of the Consent Order. State's Exhibit No. 9; Transcript, pp. 26-27, 55.

The Respondent's quarterly report submitted by the Pharmacist's Rehabilitation Committee (the "Committee") on December 8, 1994, for the quarter September 1, 1994 to December 1, 1994, stated that the Respondent's treatment progress was "fair" and that he missed four group therapy sessions in October and November. The Respondent's unauthorized absences from treatment violates conditions 4(c) of the Consent Order. State's Exhibit No. 2; Transcript, pp. 16-17.

The quarterly report which the Committee submitted for the quarter December 1, 1994 to March 1, 1995, stated that Respondent dropped out of group therapy in early December and that the Committee had not heard from him in several months. The Respondent's unauthorized withdrawal from treatment violated conditions 4(a)(c) of the Consent Order. State's Exhibit No. 3; Transcript, p. 19.

The quarterly report which the Board received on May 31, 1995 from the Committee for the quarter March 1, 1995 to June 1, 1995, stated that Respondent had left group therapy and that urine samples had not been taken. The Respondent's unauthorized withdrawal from group therapy and his failure to submit to random urine samples violated conditions 4(a)(c) and 8 of the Consent Order. State's Exhibit No. 4; Transcript, pp. 20-21.

Through his attorney, William R. Evans, Respondent notified the board of his hospitalization at a psychiatric clinic (see State's Exhibit No. 5), but failed to notify the Board of his date of discharge as requested by Board correspondence of January 31, 1995 (see State's Exhibit No. 6). Transcript, p. 28. Respondent also failed to notify the Board of his change of address in violation of the Consent Order's requirement that he so notify the Board. Transcript, p. 28-30, 59, 66; Consent Order, p. 7.

The evidence presented at the hearing demonstrates that the Respondent violated conditions of probation contained in the Consent Order, which violations provide ample support for the Board's decision to immediately suspend the Respondent's license in accordance with the Consent Order.

The Respondent argues that his personal, emotional and financial problems prevented him from complying with the Consent Order's conditions of probation. If anything, the Respondent's argument supports the Board's action of indefinitely suspending his license until he can demonstrate that he can again comply with those conditions of probation. On January 5, 1994, the Board

accepted a Consent Order from the Respondent in which he admitted to violating Sections 12-313(4)(i) (providing professional services while under the influence of alcohol) and 12-313(20) (professional, physical, and/or mental incompetence) of the Health Occupations Article, Annotated Code of Maryland. State's Exhibit No. 1. The Respondent was then arrested in November or December of 1994 for battery, reckless endangerment, and resisting arrest. On February 28, 1995, Erik Roskes, M.D., Fellow in Forensic Psychiatry, and Thomas J. Oglesby, M.D., Chief Medical Officer for the Clifton T. Perkins Hospital Center prepared a Report for the District Court of Maryland regarding the Respondent's mental condition. State's Exhibit No. 12.

The Report noted that despite the Respondent's long history of alcohol abuse and prescription drug dependence, the Respondent's lack of insight into these problems is the major factor in his seeking treatment for them. The Report further noted that the Respondent only sought treatment for drug problems upon the Board's recommendation. The Report concluded that the Respondent should be placed on probation by the District Court and "be closely monitored as his life appears to have been making a turn for the worse in the last several years." State's Exhibit No. 12. Following his discharge from the psychiatric clinic on February 17, 1995, the Respondent has been living in a group home and has subsequently been in therapy with Bayview Hospital. Transcript, pp. 56-60.

Given the Respondent's recent violent behavior, his failure to comply with the conditions of probation contained in the consent

order, his failure to return his wall certificate, display license and pocket license as requested by the Board, and his "tendency to deny and minimize problematic aspects of his life," including his drug and alcohol abuse problems, his psychiatric problems, and his occupational problems, (see Report, p. 1), the suspension of the Respondent's license is essential to protect the public health until the Respondent can demonstrate that he is capable of complying with the Board's conditions of probation that were designed to both safeguard the public health and facilitate the Respondent's treatment.

ORDER

It is this 28th day of December, 1995, by the Board of Pharmacy

ORDERED, that pursuant to Md. Code Ann., Health Occ., §12-313 (1994 Repl. Vol.) the STAY OF SUSPENSION of Respondent's license to practice pharmacy in the State of Maryland continues to be LIFTED and Respondent's license is hereby indefinitely SUSPENDED; and be it further

ORDERED, that on presentation of this Order, Respondent shall immediately surrender to the Board the following items:

1. his wall certificate;
2. his display license;
3. his pocket license; and be it further

ORDERED, that the Respondent may not petition the Board for reinstatement of his license for at least one year from the date of this Order; and be it further

ORDERED, that the Respondent may not petition the Board for reinstatement of his license until the Respondent completes the following conditions:

1. The Respondent must comply with the conditions of probation in the attached Consent Order that are numbered 1, 4, 5, 6, 7 and 8 and remain applicable, which conditions of probation are incorporated herein by reference;

2. The Respondent must follow through with any change in his therapy program determined to be necessary by the Board, based upon the recommendation of the Respondent's therapists or the Pharmacy Rehabilitation Committee;

3. The Respondent must submit to an examination by a psychiatrist approved by the Board and the psychiatrist must issue a report to the Board in which the psychiatrist concludes to a reasonable degree of medical certainty that the Respondent's is mentally and emotionally capable of practicing pharmacy without endangering the public; and be it further

ORDERED, that the conditions of this Order are effective as of the date of this Order; and be it further

ORDERED, that the Board may place conditions on the reinstatement of the Respondent's license as the Board deems appropriate, including additional training, educational or examination requirements, practice restrictions, urine screenings for substance abuse, further therapy, or other conditions on his practice of pharmacy; and be it further

ORDERED, that in the event the Respondent moves, he shall promptly notify the Board in writing of the change of address and of any change in his home and work telephone number; and be it further

ORDERED, that a copy of this ORDER shall be filed with the Maryland State Board of Pharmacy; and be it further

ORDERED, that this is a FINAL ORDER and as such is considered a public record pursuant to Md. Code Ann., State Gov't, §10-611 et seq. (1993 Repl. Vol.).

12/28/95
Date

George C. Voxakis
George Voxakis, P.D.
President
State Board of Pharmacy

NOTICE OF APPEAL RIGHTS

Pursuant to the provisions of Md. Code Ann., Health Occ., §12-316, the Respondent may appeal this Final Order in accordance with the provisions of Md. Code Ann., State Gov't, §10-222 and Maryland Rules 7-201 through 7-210.