

IN THE MATTER OF
MARLON D. TYNER, P.D.

BEFORE THE MARYLAND
BOARD OF PHARMACY

RECEIVED

ORDER

APR 28 1993

FINDING OF VIOLATION OF PROBATION

Findings of Fact

Office of
The Attorney General
Dep. of Health and General Hygiene

Based upon the evidence heard at a hearing held on March 17, 1993 before a quorum of the Board, a two-thirds majority of the Board finds that:

1. The Respondent, a pharmacist licensed to practice pharmacy in Maryland, signed an Amended Consent Order (incorporated in this Order and attached as Exhibit A) that was executed by the Board on March 18, 1992.

2. The Amended Consent Order specified that the suspension, stay of suspension and probation previously ordered by the Board be continued and set forth particular conditions of probation.

3. Under the terms of the probation set forth by the Amended Consent Order, the Respondent was responsible for ensuring that his employer submit quarterly evaluations concerning the Respondent's work performance.

4. The Respondent's employer failed to submit quarterly reports on June 1, September 1, and December 1, 1992 as required by the Amended Consent Order.

Finding of Law


Based on the foregoing Findings of Fact, the Board finds that the Respondent has violated his probation under the Amended Consent Order.

ORDER st

It is hereby ORDERED on this 21 day of April, 1993,
that the Respondent be continued on probation under the terms set
forth in the Exhibit A (Amended Consent Order); and be it further

ORDERED that on or after 21st day of April 199^{4 SSC}3, the Board
shall entertain a petition for termination of Respondent's
probationary status and full reinstatement of his license to
practice pharmacy without any conditions or restrictions as to the
scope of his practice. If the Board determines that the
termination of probation and complete reinstatement would be
inappropriate at the time, the Board may modify one or more of the
conditions upon which Respondent was placed on probation. However,
if Respondent fails to make any such petition, then his
probationary status shall continue indefinitely, subject to the
conditions set forth in this Order.

4/21/93
Dated



Steven Cohen, P.D.
Chairman
Board of Pharmacy

NOTICE OF RIGHT TO APPEAL

This Order is a final decision of the Board of Pharmacy and
may be appealed pursuant to Health Occupations Article, §12-316.

RECEIVED

IN THE MATTER OF
MARLON D. TYNER, P.D.

* BEFORE THE MARYLAND
* BOARD OF PHARMACY

MAR 27 1992

* * * * *

Office of
* The Attorney General
Department of Health and Mental Hygiene

AMENDED CONSENT ORDER

This Amended Consent Order is entered into by and between the Maryland State Board of Pharmacy and Marlon D. Tyner, P.D.

INTRODUCTION

Based on information coming to its attention, the Maryland Board of Pharmacy (the "Board") determined to charge Marlon D. Tyner, P.D. (the "Respondent") a person licensed to practice pharmacy in the State of Maryland, with violation of Section 12-311(b)(24) of the Health Occupations Article, Maryland Annotated Code (the "Act"), which provides that subject to the hearing provisions of §12-312 of the Act, the Board may reprimand a licensee, place a licensee on probation, suspend or revoke the license of any licensee, or under §12-311.1 of the Act, may impose a monetary penalty on the licensee if the licensee:

Violates any rule or regulation adopted by the Board (§12-311(b)(24)).

Respondent was charged with violating 10.34.14.01 through 10.34.14.04 of the Code of Maryland Regulations (COMAR).

COMAR 10.34.14.01 provides:

A. At least 14 days in advance of closing a licensed pharmacy, the pharmacy permit holder shall notify the Board of Pharmacy (the Board) in writing of the day on which the pharmacy will be closed. This notification shall be sent certified mail, return receipt requested, or hand delivered to the Board office.

B. Not later than 10 days after the licensed pharmacy is closed, the pharmacy permit holder shall so notify the Board in writing. This notification shall be sent by certified mail, return receipt requested or hand delivered to the Board's office.

COMAR 10.34.14.02 sets out the information to be included in the notification of closing.

COMAR 10.34.14.03 and 10.34.14.04 set out requirements for disposal of prescription drugs when a pharmacy is closed.

Appropriate notice of the charges and the grounds upon which they were based were sent to Respondent on September 26, 1989.

Following two prehearing conferences held on the matter, Respondent agreed to enter into a Consent Order based on the Findings of Fact and Conclusions of Law set out below. That Consent Order was issued by the Board on January 17, 1990.

Under the Consent Order of January 17, 1990, Respondent's license was suspended, the suspension was immediately stayed, and Respondent was placed on probation subject to conditions set out in the Order. Those conditions included, among others, the requirements that Respondent send quarterly reports to the Board and that he arrange for his employer to send quarterly reports to the Board on the dates set out in the Order.

Based on Respondent's failure to comply fully with those requirements, as is more fully set out below in the Additional Statement of Facts, the Board charged Respondent with violation of the Consent Order. Appropriate notice of the Violation of Probation charge and the grounds upon which it was

based was sent to Respondent on November 5, 1991. A prehearing conference was held on the Violation of Probation charge on December 18, 1991. Present at the prehearing conference were Respondent, who waived his right to counsel; Ralph Small, P.D., William Adams, and Theodore Litwin, members of the Board; Roslyn Scheer, Executive Director of the Board, and Judith K. Sykes, Assistant Attorney General, Administrative Prosecutor. At the prehearing conference, Respondent agreed to enter into the following Findings of Fact, Conclusions of Law and Amended Consent Order.

FINDINGS OF FACT

1. At all times relevant to these charges, Respondent was and is licensed to practice pharmacy in the State of Maryland.

2. In an application which was received by the Board on August 22, 1988, Respondent applied for a permit to operate a community pharmacy in Maryland to be known as the Uplift Pharmacy. It was to be located at 601 60th Place, Suite A-1, Fairmont Heights, Maryland 20743.

3. The application specified that the pharmacy was to be owned by a partnership. Respondent was listed as a partner along with one Sylvia Syphax and George B. Abrams, CPA.

4. The only person designated on the application as a pharmacist was Respondent. According to the application, Respondent was to be employed full time.

5. The application specified that the pharmacy would be open Monday through Friday from 9 a.m. to 7 p.m. and Saturday from 10 a.m. to 6 p.m.

6. On September 8, 1988, in response to the application, the Board granted Pharmacy Permit No. 1464.

7. In response to a renewal application signed by Respondent and received by the Board on January 24, 1989, the permit was renewed by the Board and a new permit issued with the expiration date of December 31, 1989.

8. On the renewal application, Respondent was again designated both as a partner and as the full time pharmacist. According to the renewal application, the pharmacy would be open Monday through Friday from 9:00 a.m. to 7:00 p.m. and on Saturday from 10:00 a.m. to 5:00 p.m.

9. At the end of the application, Respondent certified that if the permit was granted, he agreed "to abide by the laws surrounding the practice of pharmacy in Maryland, all civil and criminal laws as well as all the rules and regulations promulgated by the Maryland Board of Pharmacy."

10. Respondent served as the pharmacist at the Uplift Pharmacy until February 3, 1989 after which date he failed to report to work.

11. Respondent did not give his partners any advance notification of his intention to leave the pharmacy.

12. As a result of the absence of Respondent, who was its pharmacist, Uplift Pharmacy was closed on February 4, 1989 and remained closed thereafter until May 15, 1989.

13. The Respondent failed to notify the Board 14 days in advance of the closure as is required by COMAR 10.34.14.01A.

14. Respondent failed to provide written notification to the Board after the pharmacy's closure which is required by COMAR 10.34.14.01B and COMAR 10.34.14.02.

15. Respondent failed to carry out the requirements set out in COMAR 10.34.14.03 and .04 for disposal of prescription drugs when a pharmacy is closed.

ADDITIONAL FINDINGS OF FACT

1. Pursuant to a Consent Order of January 17, 1990, Respondent's license was suspended, the suspension was immediately stayed, and Respondent was placed on probation subject to a number of conditions which were set out in the Consent Order. Those conditions included, among others, the requirements that Respondent send quarterly reports to the Board (paragraph 5 of the Consent Order) and that he arrange for his employer to send quarterly reports to the Board on the dates set out in the Order (paragraph 7 of the Consent Order).

2. Respondent failed to arrange for his employer to send to the Board reports which were due on March 1, 1991 and September, 1991.

3. Respondent failed to send to the Board personal reports which were due on March 1, 1990, December 1, 1990, June 1, 1990 and September 1, 1991.

4. In failing to send the above-mentioned reports, Respondent violated the requirements of paragraphs 5 and 7 of the Consent Order of January 17, 1990.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as a matter of law that Respondent is subject to discipline under §12-311(b)(24) of the Health Occupations Article of the Annotated Code of Maryland based on his violations of §§10.34.14.01 through 10.34.14.04 of the Code of Maryland Regulations, and that he violated conditions of his probation set out in paragraphs 5 and 7 of the Consent Order of January 17, 1990.

ORDER

Based upon the foregoing Findings of Fact, Additional Findings of Fact, and Conclusions of Law, it is this 5th day of ~~February~~ MARCH, 1992, by unanimous vote of those members of the Board considering this case:

ORDERED that the SUSPENSION, IMMEDIATE STAY OF SUSPENSION and PROBATION ordered by this Board on January 17, 1990 remain in effect, and be it further

ORDERED that Respondent's probation is, as of the date of this Order, subject to the following conditions:

1. Respondent will not acquire or maintain an ownership interest in a pharmacy during the probationary period.

2. For a period of one year from the date of this Order, Respondent may practice pharmacy only in a setting where (a) he is not responsible for the supervision of one or more licensed pharmacists, and (b) there is at least one other licensed pharmacist employed in the facility. Respondent may practice as the only pharmacist on a particular shift so long as he is not the only pharmacist employed in the facility.

3. Within thirty (30) days of the date he begins any employment as a pharmacist, Respondent shall provide to the Board the name, address and telephone number of his employer and describe his new position.

4. Within thirty (30) days from the date Respondent accepts any employment as a pharmacist, Respondent shall submit written proof to the Board that he has given a copy of this Order to his employer and that his employer has agreed to comply with all conditions of this Order applicable to the employee.

5. Respondent shall arrange for his supervisor and the employer or supervisor at any other place where he may be employed as a pharmacist during the period of his probation, to submit to the Board written quarterly reports evaluating his job performance and describing the nature and duties of his position. The first report is due on March 1, 1992. Subsequent reports are due on June 1, September 1, December 1 of 1992 and quarterly thereafter unless or until the probation has been terminated.

The March 1, 1992 report from Respondent's supervisor shall also provide information about the relocation of the pharmacy where Respondent is employed indicating who had what responsibilities for the move and in particular describing the role played by Respondent in the move.

6. In the event that Respondent changes jobs as a pharmacist, or decides not to practice pharmacy, Respondent shall immediately notify the Board, in writing, identifying his new employer by name, address, and telephone.

7. Respondent shall send written quarterly reports to the Board describing what he is doing, the progress he feels he is making, what, if any, problems he presently faces and how he is coping with those problems. Said reports shall be forwarded to Roslyn Scheer, Executive Director of the Board. The first report is due on March 1, 1992. Subsequent reports are due on June 1, September 1, and December 1, 1992 and quarterly thereafter unless and until the probationary period has been terminated.

8. Respondent's report to the Board of March 1, 1992 shall include the following in addition to that which is required in paragraph 7.

a) A report on the relocation of the pharmacy where Respondent is employed, indicating who had what responsibilities for the move and describing the role played by Respondent in the move.

b) A full report, including documentation, as to all courses completed by Respondent in compliance with the requirement of paragraph 8 of the Consent Order of January 17, 1990, which provided:

In each of the two years following the date of this Order, Respondent shall complete fifteen hours of continuing education in subjects which are management oriented. These thirty (30) hours of continuing education are in addition to those which he is required to complete for purposes of license renewal.

If the report does not include documentation as to all of the required hours, Respondent shall set forth his plans for completing the requirement.

9. Respondent is required, as a condition of this Amended Consent Order, to present documentation to the Board on or before January 1, 1993, that he has completed the 30 hours of management oriented continuing education required in paragraph 8 of the original Order. Documentation of that fact in the Report of March 1, 1992 would satisfy this requirement.

10. Respondent shall notify the Board in writing, of his current address. In the event that Respondent moves, he shall promptly notify the Board in writing of the change of address and any change in his telephone number.

11. Respondent shall refrain from engaging in the conduct which led to his suspension.

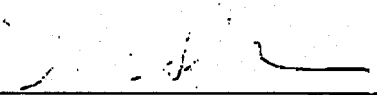
12. Respondent shall practice in accordance with the Maryland Pharmacy Act and in a competent manner; and be it further

ORDERED, that in the event that 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 Pharmacy Board finds for any reason in good faith that the Respondent violated any provision of Title 12 of the Health Occupations Article or regulations thereunder, or has violated a condition of probation in this Amended Consent Order, 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 hearing. However, the Respondent shall have a right to a hearing, in accordance with the Administrative Procedure Act, State Government Article, Section 10-201, et seq., within thirty (30) days after Respondent notifies the Board, in writing, of his desire for such a hearing regarding the Board's action. The Board may, in its discretion, after notification to the Respondent, a hearing and determination of violation, withdraw the stay of suspension of Respondent's license or impose any other disciplinary action it deems appropriate; and be it further

ORDERED that if Respondent violates any of the foregoing conditions of probation, the Board, after notification, a hearing, and determination of violation, may impose any lawful disciplinary sanctions it deems appropriate, and be it further

ORDERED that on or after JULY 14, 1993, the Board shall entertain a petition for termination of Respondent's probationary status and full reinstatement of his license to

practice pharmacy without any conditions or restrictions as to the scope of his practice. If the Board determines that the termination of probation and complete reinstatement would be inappropriate at the time, the Board may modify one or more of the conditions upon which Respondent was placed on probation. However, if Respondent fails to make any such petition, then his probationary status shall continue indefinitely, subject to the conditions set forth in this Order.



Steven Cohen, P.D.
President
Maryland Board of Pharmacy

CONSENT

I, Marlon D. Tyner, P.D., by affixing my signature hereto acknowledge:

1. That I have been advised to seek advice of counsel prior to signing this document; that I have decided not to seek advice of counsel prior to signing this document;
2. That I am aware that without my consent, no legal action can be taken against me, except pursuant to the Maryland Administrative Procedure Act, State Government Article, Section 10-201, et seq., Annotated Code of Maryland.
3. That I have the following rights, among others: to have a formal evidentiary hearing before the Board, to reasonable notice of said hearing, to representation by counsel, and to subpoena and cross-examine witnesses against me;

IN THE MATTER OF
MARLON D. TYNER, P.D.

* BEFORE THE MARYLAND
* BOARD OF PHARMACY

* * * * *

CONSENT ORDER

This Consent Order is entered into by and between the Maryland State Board of Pharmacy and Marlon D. Tyner, P.D.

INTRODUCTION

Based on information coming to its attention, the Maryland Board of Pharmacy (the "Board") determined to charge Marlon D. Tyner, P.D. (the "Respondent") a person licensed to practice pharmacy in the State of Maryland, with violation of Section 12-311(b)(24) of the Health Occupations Article, Maryland Annotated Code (the "Act"), which provides that subject to the hearing provisions of §12-312 of the Act, the Board may reprimand a licensee, place a licensee on probation, suspend or revoke the license of any licensee, or under §12-311.1 of the Act, may impose a monetary penalty on the licensee if the licensee:

Violates any rule or regulation adopted by the Board (§12-311(b)(24)).

Respondent was charged with violating 10.34.14.01 through 10.34.14.04 of the Code of Maryland Regulations (COMAR).

COMAR 10.34.14.01 provides:

A. At least 14 days in advance of closing a licensed pharmacy, the pharmacy permit holder shall notify the Board of Pharmacy (the Board) in writing of the day on which the pharmacy will be closed. This notification shall be sent certified mail, return receipt requested, or hand delivered to the Board office.

B. Not later than 10 days after the licensed pharmacy is closed, the pharmacy permit

holder shall so notify the Board in writing. This notification shall be sent by certified mail, return receipt requested or hand delivered to the Board's office.

COMAR 10.34.14.02 sets out the information to be included in the notification of closing.

COMAR 10.34.14.03 and 10.34.14.04 set out requirements for disposal of prescription drugs when a pharmacy is closed.

Appropriate notice of the charges and the grounds upon which they were based were sent to Respondent on September 26, 1989.

Two prehearing conferences were held on this matter. The first was held on December 6, 1989. The second was held on January 10, 1990. Present at both hearings were Respondent, who waived his right to counsel; Steven Cohen, P.D., Chairman of the Board; Roslyn Scheer, Executive Director of the Board; and Judith K. Sykes, Assistant Attorney General, Administrative Prosecutor. At the second prehearing conference, Respondent agreed to enter into the following Findings of Fact, Conclusions of Law and Consent Order.

FINDINGS OF FACT

The Board bases these charges against Respondent on the following:

1. At all times relevant to these charges, Respondent was and is licensed to practice pharmacy in the State of Maryland.
2. In an application which was received by the Board on August 22, 1988, Respondent applied for a permit to operate a

community pharmacy in Maryland to be known as the Uplift Pharmacy. It was to be located at 601 60th Place, Suite A-1, Fairmont Heights, Maryland 20743. -

3. The application specified that the pharmacy was to be owned by a partnership. Respondent was listed as a partner along with one Sylvia Syphax and George B. Abrams, CPA.

4. The only person designated on the application as a pharmacist was Respondent. According to the application, Respondent was to be employed full time.

5. The application specified that the pharmacy would be open Monday through Friday from 9 a.m. to 7 p.m. and Saturday from 10 a.m. to 6 p.m.

6. On September 8, 1988, in response to the application, the Board granted Pharmacy Permit No. 1464.

7. In response to a renewal application signed by Respondent and received by the Board on January 24, 1989, the permit was renewed by the Board and a new permit issued with the expiration date of December 31, 1989.

8. On the renewal application, Respondent was again designated both as a partner and as the full time pharmacist. According to the renewal application, the pharmacy would be open Monday through Friday from 9:00 a.m. to 7:00 p.m. and on Saturday from 10:00 a.m. to 5:00 p.m.

9. At the end of the application, Respondent certified that if the permit was granted, he agreed "to abide by the laws surrounding the practice of pharmacy in Maryland, all civil and

criminal laws as well as all the rules and regulations promulgated by the Maryland Board of Pharmacy."

10. Respondent served as the pharmacist at the Uplift Pharmacy until February 3, 1989 after which date he failed to report to work.

11. Respondent did not give his partners any advance notification of his intention to leave the pharmacy.

12. As a result of the absence of Respondent, who was its pharmacist, Uplift Pharmacy was closed on February 4, 1989 and remained closed thereafter until May 15, 1989.

13. The Respondent failed to notify the Board 14 days in advance of the closure as is required by COMAR 10.34.14.01A.

14. Respondent failed to provide written notification to the Board after the pharmacy's closure which is required by COMAR 10.34.14.01B and COMAR 10.34.14.02.

15. Respondent failed to carry out the requirements set out in COMAR 10.34.14.03 and .04 for disposal of prescription drugs when a pharmacy is closed.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as a matter of law that Respondent is subject to discipline under §12-311(b)(24) of the Health Occupations Article of the Annotated Code of Maryland based on his violations of §§10.34.14.01 through 10.34.14.04 of the Code of Maryland Regulations.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 17th day of January, 1990, by unanimous vote of those members of the Board considering this case:

ORDERED that Respondent's license to practice pharmacy is hereby **SUSPENDED** and be it further

ORDERED that said suspension is **IMMEDIATELY STAYED** and Respondent is place on **PROBATION** subject to the following conditions:

1. Respondent will not acquire or maintain an ownership interest in a pharmacy during the probationary period.
2. For a period of one year from the date of this Order, Respondent may practice pharmacy only in a setting where (a) he is not responsible for the supervision of one or more licensed pharmacists, and (b) there is at least one other licensed pharmacist employed in the facility. Respondent may practice as the only pharmacist on a particular shift so long as he is not the only pharmacist employed in the facility.
3. Within thirty (30) days of the date he begins any employment as a pharmacist, Respondent shall provide to the Board the name, address and telephone number of his employer and describe his new position.
4. Within thirty (30) days from the date Respondent accepts employment as a pharmacist, Respondent shall submit written proof to the Board that he has given a copy of this Order

to his employer and that his employer has agreed to comply with all conditions of this Order applicable to the employee.

5. Respondent shall arrange for his supervisor and the employer or supervisor at any other place where he may be employed as a pharmacist during the period of his probation, to submit to the Board written quarterly reports evaluating his job performance and describing the nature and duties of his position. The first report is due on March 1, 1990. Subsequent reports are due on June 1, September 1, December 1 of 1990 and quarterly thereafter unless or until the probation has been terminated.

6. In the event that Respondent changes jobs as a pharmacist, or decides not to practice pharmacy, Respondent shall immediately notify the Board, in writing, identifying his new employer by name, address, and telephone.

7. Respondent shall send written quarterly reports to the Board describing what he is doing, the progress he feels he is making, what, if any, problems he presently faces and how he is coping with those problems. Said reports shall be forwarded to Roslyn Scheer, Executive Director of the Board. The first report is due on March 1, 1990. Subsequent reports are due on June 1, September 1, and December 1, 1990 and quarterly thereafter unless and until the probationary period has been terminated.

8. In each of the two years following the date of this Order, Respondent shall complete fifteen hours of continuing education in subjects which are management oriented. These thirty (30) hours of continuing education are in addition to

those which he is required to complete for purposes of license renewal.


9. Respondent shall notify the Board in writing, of his current address. In the event that Respondent moves, he shall promptly notify the Board in writing of the change of address and any change in his telephone number.

10. Respondent shall refrain from engaging in the conduct which led to his conviction.

11. Respondent shall practice in accordance with the Maryland Pharmacy Act and in a competent manner; and be it further

ORDERED that if Respondent violates any of the foregoing conditions of probation, the Board, after notification, a hearing, and determination of violation, may impose any lawful disciplinary sanctions it deems appropriate, and be it further

ORDERED that on or after Jan 17, 1992, the Board shall entertain a petition for termination of Respondent's probationary status and full reinstatement of his license to practice pharmacy without any conditions or restrictions as to the scope of his practice. If the Board determines that the termination of probation and complete reinstatement would be inappropriate at the time, the Board may modify one or more of the conditions upon which Respondent was placed on probation. However, if Respondent fails to make any such petition, then his probationary status shall continue indefinitely, subject to the conditions set forth in this Order.



Steven Cohen, P.D.
President
Maryland Board of Pharmacy

CONSENT

I, Marlon D. Tyner, P.D., by affixing my signature hereto acknowledge:

1. That I have been advised to seek advice of counsel prior to signing this document; that I have decided not to seek advice of counsel prior to signing this document;

2. That I am aware that without my consent, no legal action can be taken against me, except pursuant to the Maryland Administrative Procedure Act, State Government Article, Section 10-201, et seq., Annotated Code of Maryland.

3. That I have the following rights, among others: to have a formal evidentiary hearing before the Board, to reasonable notice of said hearing, to representation by counsel, and to subpoena and cross-examine witnesses against me;

4. That I waive all such rights to a formal hearing;

5. That I admit to the truth of the foregoing Findings of Fact;

6. That I consent to the entry of the foregoing Order affecting my license to practice pharmacy in the State of Maryland;

7. That I acknowledge the validity of this Consent Order as if it were made following a formal hearing before the Board;

8. That I enter into this Consent Order of my own free will and under no duress or undue influence.

Marlon D. Tyner
Marlon D. Tyner, P.D.

STATE OF MARYLAND)
CITY/COUNTY of Carroll)

I HEREBY CERTIFY that on this 17th day of January,
1989, before me, a Notary Public of the State and County
aforesaid, personally appeared Marlon D. Tyner, P.D. and made oath
in due form of law that the foregoing Consent was his voluntary
act and deed.

AS WITNESS my hand and Notarial Seal.

Carol A. Primer (RUMPF)
Notary Public

My Commission Expires: 7-1-90