

**IN THE MATTER OF
LAWRENCE APPEL, P.D.
LICENSE NO. 08351**

*** BEFORE THE
* MARYLAND STATE
* BOARD OF PHARMACY**

RESPONDENT

*** * * * ***

AMENDED FINAL DECISION AND ORDER

On November 15, 2000, the Board of Pharmacy (the "Board"), issued a consent order in which Lawrence Appel, P.D., License No. 08351 (the "Respondent"), agreed to the Board's conclusion that he was professionally, physically, or mentally incompetent, subjecting him to Board discipline under the Maryland Pharmacy Act, Md. Code Ann., Health Occ. Art., § 12-313(b)(20). The Board's conclusion was based upon the Respondent's propensity for violence as verified by both a psychiatric evaluation and by employment records. Although the Board found that "the Respondent's misconduct posed an imminent threat to the health, safety and welfare of the public," the Board also found that "the Respondent may be able to practice pharmacy effectively once again should the Respondent participate in a therapy program specifically tailored to address the Respondent's various issues with respect to anger management, responsibility and interpersonal skills." (Consent Order, pp. 3, 4). Consequently, the Board allowed the Respondent to practice pharmacy while on probation provided, among other conditions, that he "enter into a therapy program...developed through the evaluation and recommendation of the Pharmacists Education and Assistance Committee ("PEAC") and *approved by the Board*. The program shall be specifically tailored to address the issues presented by the Respondent's violation." (Consent Order, p. 4). (Emphasis Added).

Based on allegations that the Respondent had begun a treatment program without the Board's approval and had terminated therapy without the Board's approval, on March 29, 2001, the Board charged the Respondent with violating his Consent Order. The Board then held a contested case hearing under authority of the Administrative Procedure Act, Md. Code Ann., State Gov't Art., § 10-201 *et seq.*, regarding those charges on May 30, 2001, before a quorum of the Board. Having considered both the testimonial and documentary evidence admitted at that hearing, the Board issued a Final Decision and Order containing its findings of fact, conclusions of law, and order, on July 27, 2001. The Respondent filed a petition for judicial review with the Circuit Court for Baltimore County. In settlement of that petition, the Board agreed to issue this Amended Final Decision and Order.

SUMMARY OF EVIDENCE

A. Exhibits.

The following documents were admitted into evidence.

State's Exhibit No. 1A.....Violation of Consent Order letter, dated March 29, 2001

B.....Violation of Consent Order

State's Exhibit No. 2.....Consent Order of November 15, 2000

State's Exhibit No. 3.....November 21, 2000 letter from T. Tommasello to Michelle Andoll

State's Exhibit No. 4.....December 19, 2000 letter from LaVerne Naesea to Respondent

State's Exhibit No. 6.....January 9, 2001 letter fax cover sheet from "M.A." to Roberta Gill

State's Exhibit No. 7.....January 10, 2001 letter from P. Tommasello to Michelle Andoll

- State's Exhibit No. 8.....January 31, 2001 letter from Andoll to Respondent
- State's Exhibit No. 9.....February 7, 2001 letter from P. Tommasello to Andoll
- State's Exhibit No. 10.....March 20, 2001 letter from P. Tommasello to Andoll
- State's Exhibit No. 11.....March 23, 2001 fax letter from P. Tommasello to Andoll
- State's Exhibit No. 12A.....March 23, 2001 subpoena to David McDuff, M.D.
- B.....McDuff evaluation, date December 23, 2000
- C.....McDuff report on PEAC form, dated December 2000 & January 2001
- D.....McDuff report on PEAC form, dated February 2001 & March 2001
- State's Exhibit No. 13.....Pharmacists' Education and Assistance Committee Contract, signed on November 21, 2000
- Respondent's Exhibit No. 1.....May 23, 2001 letter from Health-way Pharmacy owner Salim Yusofov
- Respondent's Exhibit No. 2.....April 4, 2001 letter from P. Tommasello to Andoll
- Respondent's Exhibit No. 3.....May 23 letter from Deitra Gale to Respondent
- Respondent's Exhibit No. 4.....May 10, 2001 "Initial Report" by Victor Fitterman, LCSW-C, sent to Andoll
- Respondent's Exhibit No. 5.....March 19, 2001 letter from Gale to Respondent
- Respondent's Exhibit No. 6.....Envelope addressed to McDuff from Respondent postmarked February 10, 2001.

B. Summary of Pertinent Witness Testimony

Michelle Andoll, Pharmacist Compliance Officer for the Board, testified that the Respondent entered into therapy with a PEAC-approved therapist, David McDuff, M.D.,

but failed to failed to provide the Board with a treatment plan for its approval as required by the Consent Order. (Hearing transcript (“T”), 29; 34-36; 47; 54). She also testified that the Respondent never entered into a treatment program that had been approved by the Board. (T. 40; 54). She further testified that she received a treatment plan from the Respondent’s new therapist, Victor Fitterman, LCSW-C, but that his treatment plan had not been approved by either PEAC or the Board. (T. 65; 86).

Tony Tommasello, president of PEAC, testified that the Respondent entered into a contract with PEAC. (State’s Exhibit No. 13). PEAC referred the Respondent to Dr. David McDuff, a psychiatrist. (T. 89). Mr. Tommasello was not certain whether PEAC was supposed to submit Dr. McDuff’s treatment plan to the Board. (T. 108). On March 20, 2001, Patricia Tommasello, coordinator for PEAC, wrote a letter to Michelle Andoll, notifying her that the Respondent had terminated therapy “[d]ue to his failure to establish a trusting relationship with his therapist, David McDuff.” (T. 94-95; State’s Exhibit No. 10). PEAC referred the Respondent to Paul Giannandrea, M.D., who in turn recommended that he be treated by Victor Fitterman. (T. 95).

The Respondent testified that Dr. McDuff refused to send his treatment plan to the Board, but insisted that all information would instead be sent to PEAC. (T. 131). The Respondent stated that Dr. McDuff had recommended urine screens, which the Respondent believed to be unnecessary. (T. 133-34). The Respondent said he found it difficult to form a trusting therapeutic relationship with Dr. McDuff because Dr. McDuff had not personally conveyed this recommendation to the Respondent and because Dr. McDuff had accused him of not sending a payment for therapy. According to the Respondent, Dr. McDuff then decided to terminate therapy. (T. 137-38). The

Respondent subsequently asked PEAC to recommend a new therapist and PEAC recommended Dr. Giannandrea, who in turn recommended Victor Fitterman. The Respondent is currently in therapy with Mr. Fitterman. (T. 140).

FINDINGS OF FACT

Having considered the testimonial and documentary evidence admitted at the hearing, the Board makes the following findings of fact.

1. At all times relevant to the charges, the Respondent was licensed to practice pharmacy and was subject to probation under the Board's Consent Order issued on November 15, 2000.
2. The Consent Order's probationary conditions included the Respondent's participation in a treatment program approved by the Board. The Respondent has never entered into a treatment program approved by the Board. (T. 40; 54).
3. For the period between March 3, 2001 and April 4, 2001, the Respondent was not in a treatment program at all, and yet was practicing pharmacy. (State's Exhibit No. 10; Respondent's Exhibit No. 1).
4. On April 4, 2001, the Respondent initiated a treatment program without first obtaining the Board's approval. (T. 65; Respondent's Exhibit No. 1).

OPINION

By issuing the Consent Order, the Board had offered the Respondent the opportunity to practice pharmacy instead of summarily suspending his license. However, this opportunity was given because the Consent Order allowed the Board to approve and monitor the Respondent's treatment in order to protect the public. Under the Consent

Order, the Board was to be provided with a copy of the treatment plan for its approval. The Respondent cannot simply start whatever treatment he wishes on his own terms. Rather, the Consent Order required Board approval of the treatment plan. The Consent Order also required as a condition of licensure that the Respondent remain in a treatment program approved by the Board. Because the Board believes that communication problems contributed in part to the Respondent's violation of the Consent Order, the Board will not revoke his license. Rather, the Board will give him a chance to comply with the probationary terms the Board has set forth herein.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board concludes that the Respondent violated the Consent Order when he failed to obtain the Board's approval of his treatment program with Dr. McDuff and then initiated a new treatment program with Mr. Fitterman without first obtaining the Board's approval.

ORDER

Based on the foregoing findings of fact and conclusions of law, by a unanimous vote of a quorum of the Board, it is hereby

ORDERED that the Respondent's license be indefinitely SUSPENDED, which suspension shall be immediately STAYED, and the Respondent's license shall be placed on PROBATION indefinitely, subject to the following conditions set forth below.

1. The Respondent shall provide a copy of this Final Order to his therapist, and shall direct the therapist to provide the Board with his current treatment plan within 30 days following the date of this Final Order. The treatment plan shall be subject to the Board's approval to insure that the specific problems that led to his original discipline by

the Board are being adequately addressed in therapy. The Respondent must remain in therapy approved by the Board in accordance with the probationary conditions stated herein in order to continue practicing pharmacy.

2. If the Board requires modifications to the treatment plan as a condition of its approval the Respondent shall insure that the therapist submits a modified treatment plan to the Board within 30 days following the Board's letter so notifying the therapist and the Respondent.

3. Once the treatment plan is approved by the Board, the Respondent shall insure that the therapist provides the Board with detailed reports every two months regarding the topics and methods of therapy, and Respondent's progress in therapy. The Respondent shall also obtain a copy of this report. If the Respondent is not able to get a copy of the report from the therapist, the Respondent shall notify the Board within five days after the due date of the report.

4. The Respondent shall consent to release all treatment information to the Board, including discharge summaries.

5. The Respondent shall insure that the employer provides the Board with quarterly reports regarding his interpersonal skills in the workplace.

6. The Respondent's pharmacy practice shall be supervised by a licensed pharmacist, which supervising pharmacist shall submit quarterly reports to the Board every three months. Respondent shall also obtain a copy of this report. If the Respondent is not able to get a copy of the report from the therapist, the Respondent shall notify the Board within five days after the due date of the report.

7. The Respondent shall take and pass one random urine screen prior to October 31, 2001.¹

8. The Respondent may not practice pharmacy unless he notifies the Board within five working days following any termination of his therapist. The Respondent's change of therapist must take place within 5 days of termination of his previous therapist, and his new therapist must be approved by the Board. The Board's approved treatment plan shall continue under the new therapist unless changes to the treatment plan are given prior approval by the Board. No more than three changes of therapists per year shall be approved by the Board. And be it further

ORDERED that the Respondent may petition the Board, with favorable reports from the therapist and the employer, for modification of the probationary conditions or full release from probation after one year. And be it further

ORDERED that the Board may require additional examinations of the Respondent prior to any release from or modification of probation. And be it further

ORDERED that due to the resulting imminent danger to the public health, welfare and safety, if the Respondent violates any of the foregoing conditions of probation regarding his therapy, the Board shall immediately lift the stay of his suspension, and provide him with an opportunity for a hearing following the imposition of the suspension. And be it further

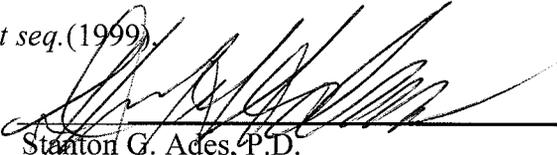
ORDERED that if the Respondent fails to provide timely reports to the Board as required by the foregoing conditions of probation, the Board may, after determination of violation, and an opportunity for a hearing, lift the stay of the suspension and impose any

¹ The Respondent has satisfied this condition of probation.

other disciplinary action it deems appropriate, including revocation, said violation of probation being proved by a preponderance of the evidence. And be it further

ORDERED that this is a final order and as such is a public document pursuant to Md. Code Ann., State Gov't Art., § 10-611 *et seq.* (1999)

11/30/01
Date


Stanton G. Ades, P.D.
President, Maryland Board of Pharmacy

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. §12-316, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't §10-201 *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.

