

IN THE MATTER OF  
DAVID CURRY, P.D.  
LICENSE NO. 07976

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

Respondent

\*

\* \* \* \* \*

**FINAL DECISION AND ORDER**

**Background**

This case arose out of disciplinary action taken against David Curry, P.D. (the “Respondent”) by the Nevada Board of Pharmacy based on its findings that the Respondent altered a CDS prescription (hydrocodone/APAP 7.5/500) written for his wife by increasing the quantity and adding two refills. The Nevada Board also found that other prior CDS prescriptions the Respondent dispensed for this wife were not valid.

Based upon the Nevada Board’s action, the Maryland Board of Pharmacy (the “Board”) issued a Summary Suspension of Respondent’s license to practice pharmacy on August 4, 2003. (State’s Ex. 3A). On August 26, 2003, the Board held a show cause hearing to allow the Respondent an opportunity to show cause why the Board should not continue the summary suspension of his license. After hearing arguments from the State and the Respondent, the Board voted to continue the summary suspension of the Respondent’s license pending a full evidentiary hearing on the matter. (State’s Ex. 3D).

On September 23, 2003, the Board also issued charges against the Respondent based on the same factual allegations contained in the Summary Suspension Order. Specifically, the Respondent was charged based on: (1) disciplinary action by another state licensing authority; (2) fraudulent or deceptive use of a license; (3) willfully making

or filing a false report; (4) dispensing any drug for which a prescription is required without a written, oral or electronic prescription from an authorized prescriber; (5) refilling a prescription for any drug without authorization; and (6) violating any rule or regulation adopted by the Board. The Board further charged the Respondent with violating the Code Md. Regs. tit. 10 § 34.10. (State's Ex. 4B)

The Board held a contested case hearing under the Administrative Procedure Act, Md. Code Ann., State Gov't §10-201 *et seq.*, before a quorum of the Board on November 19, 2003, to consider the merits of the Board's Summary Suspension Order and the Charges issued on September 23, 2003. On November 19, 2003, the same quorum of the Board convened to deliberate and voted to uphold the charges against the Respondent and to impose the sanctions contained in this Final Decision and Order.

**SUMMARY OF THE EVIDENCE**

**A. Documents.**

The following documents were admitted into evidence.

- State's Exhibit Number 1.....Computer Printout of Licensing Information
- State's Exhibit Number 2A..... Nevada Notice of Intended Action
  - B..... Nevada Statement to Respondent
  - C..... Respondent's Answer
  - D..... Nevada Board Minutes
  - E..... Nevada Order, dated 5/23/03
- State's Exhibit Number 3A..... Maryland Summary Suspension Order, dated 8/4/03
  - B..... Certificate of Service
  - C..... Request for Hearing, dated 8/7/03
  - D..... Order Continuing Summary Suspension, dated 8/27/03
- State's Exhibit Number 4A..... Letter of Procedure, dated 9/23/03

B.....	Charges
C.....	Summons
State's Exhibit Number 5A.....	Board Order, dated 4/27/83
B.....	Order for Emergency Suspension, dated 5/2/83
C.....	Board Order, dated 6/13/84
D.....	Reinstatement Order, dated 4/8/87
State's Exhibit Number 6.....	Putz C.V.

Respondent's Exhibit A - Correspondence from Barbara Zink Frederick,  
CRNP, dated 8/13/03

**B. Summary of Pertinent Witness Testimony.**

Catherine Putz, the Board's Compliance Officer, testified that she was responsible for investigating the Nevada Board's action against the Respondent. Ms. Putz received the Final Order, as well as other related documentation, regarding the Nevada Board's action. Specifically, the Nevada Board's Final Order states that the Respondent admitted to creating a false prescription for his wife for hydrocodone/APAP 7.5/500 #30, which he filled three times. (T. 21-22) Ms. Putz testified that she did not, however, have any personal knowledge regarding the matter before the Nevada Board. (T. 38)

Ms. Putz further testified that the Respondent was previously suspended and placed on probation by the Maryland Board in 1983-84 based on the Respondent's substance abuse addiction at that time and his arrest for drug diversion. The Respondent's license was reinstated by the Maryland Board in 1987. (T. 31-33)

Ms. Putz was also accepted as an expert in pharmacy practice and ethics. In Ms. Putz's expert opinion, altering a prescription to increase the quantity or to add refills is a violation of several provisions of the Maryland Pharmacy Act. (T. 36)

Barbara Frederick, CNP, testified on behalf of the Respondent. Ms. Frederick is a Certified Nurse Practitioner with the authority to write prescriptions. (T. 41) Ms. Frederick worked with the Respondent's wife in a physician's office from 1991-1997. (T. 50) Ms. Frederick testified that the Respondent's wife has been an ongoing patient of hers since 1991 with diagnoses of chronic back pain, depression, and anxiety. (T. 42) Ms. Frederick testified that she prescribed Alprazolam, Clonazepam, and Lortab for the Respondent's wife in December 2002. Ms. Frederick stated that the prescription was filled in a Maryland pharmacy and then the medication was shipped to Las Vegas. (T. 45-46) Later in her testimony, Ms. Frederick recalled telephoning a prescription for the Respondent's wife to a Las Vegas Rite Aid Pharmacy in which the Respondent worked. (T. 63-64). Ms. Frederick stated that all of the prescriptions she issues are documented in the patient's file, although she is not currently in custody of the Respondent's wife's file because she has recently changed employment. (T. 49)

Diane Curry, the Respondent's wife, testified for the Respondent. Mrs. Curry testified that she used to work with Barbara Frederick, CNP, at a physician's practice, and that she has been a patient of Ms. Frederick's since 1991. (T. 68, 74) Mrs. Curry testified that in December 2002, while visiting the Respondent in Las Vegas, she requested that Ms. Frederick issue her a prescription and that Ms. Frederick telephoned the prescription in to the Respondent. (T. 69) Mrs. Curry did not recall ever receiving a package of medication from a Maryland pharmacy while she was in Las Vegas. (T. 77) Mrs. Curry further testified that in January 2003, she sought treatment at an urgent care clinic for her back pain and was prescribed hydrocodone #20 by Dr. Russell. (T. 70, 76) Mrs. Curry then asked the Respondent to alter the prescription written by Dr. Russell so

that she could have more medication to last her until she found a physician in Las Vegas. (T. 72) Mrs. Curry stated that she could not return to the urgent care clinic for more medication because the urgent care clinic would not refill any medications. (T. 71) Mrs. Curry stated that she eventually found another physician, Dr. Kline, in Las Vegas in February 2003. (T. 76)

The Respondent testified on his own behalf. The Respondent admitted that he altered his wife's CDS prescription by increasing the quantity and adding two refills. (T. 95) The Respondent stated that he did this to help alleviate her pain. (T. 90) Although the Respondent testified that he was aware that altering a CDS prescription was illegal and unethical, he stated that he was unaware that he could lose his license for such misconduct or that the Maryland Board would discipline him based on his misconduct in Nevada. (T. 92, 94) The Respondent disputed some of the findings in the Nevada Board's Order by stating that he did pay for the medication and he did log his wife's prescription into the pharmacy's system. (T. 90-91) Furthermore, the Respondent testified that the prescriptions he filled from Barbara Frederick, CNP, were legitimately issued. (T. 95) With respect to the Respondent's prior discipline by the Maryland Board for substance abuse, the Respondent testified that he has been clean and sober since 1983. (T. 97)

#### **FINDINGS OF FACT**

Based upon the testimony and documentary evidence presented at the evidentiary hearing, the Board finds that the following facts are true:

1. The Respondent was at all relevant times licensed to practice pharmacy in the State of Maryland. The Respondent was originally licensed by the Board on July 22, 1974. The Respondent's license expires on November 30, 2004. (State's Ex. 1).
2. On May 23, 2003, the Respondent's license to practice pharmacy in Nevada was revoked by the Nevada Board of Pharmacy. The Nevada Board based its revocation on, among other things, its finding that the Respondent altered a prescription for hydrocodone, a Schedule II drug, by increasing the quantity and adding two refills. (State's Ex. 2E)
3. The Respondent's wife was a patient of Barbara Frederick, CNP. Ms. Frederick issued at least three prescriptions for the Respondent's wife while she was in Las Vegas. (Respondent's Ex. A)
4. The Respondent's wife sought treatment from an urgent care center from which she received a legitimate prescription from Dr. Russell for hydrocodone/APAP 7.5/500 #20 with no refills. The Respondent transferred his wife's prescription from another pharmacy by entering it as a new prescription, increasing the quantity, and adding two refills. The Respondent falsified the prescription in response to his wife's request and out of concern for the pain his wife was experiencing.

### **OPINION**

The Respondent has violated one of the most fundamental provisions of the Maryland Pharmacy Act, and that is that a pharmacist may not dispense a medication

without a prescription unless otherwise authorized. Health Occ. §12-313(b)(14)-(15). The same especially holds true when dealing with controlled dangerous substances which have higher addiction potential. Not only did the Respondent dispense a Schedule II drug without a prescription, he falsified a legitimate prescription in order to perpetrate his offense. Altering a prescription without the consent of the authorized prescriber is a serious matter in that it undermines the medical decision made by the authorized prescriber. Although the Respondent claims to have altered the prescription out of care and concern for his wife's condition, there are many other more appropriate ways that the Respondent could have addressed his wife's condition without breaking state and federal laws.

While practicing pharmacy, the Respondent is first and foremost a licensed pharmacist and must therefore abide by all of the laws governing the practice of pharmacy notwithstanding any outside pressures or influences. If the Respondent is not able to practice within legal parameters, the Respondent should not practice pharmacy at all.

### **CONCLUSION**

Based upon the foregoing summary of evidence, findings of fact, and opinion, the Board concludes that the Respondent is in violation of Health Occupations Article §§ 12-313(b)(2), (6), (14), (15), (23) and (24), and that the Respondent's actions posed an imminent threat to the public health, safety and welfare requiring emergency action under State Gov't Article § 10-226(c)(2).

## SANCTIONS

The Respondent argues that he was unaware that falsifying a prescription for a Schedule II CDS could cause a revocation of his license. Such ignorance is inexcusable from a seasoned pharmacist such as the Respondent. The Respondent admitted in testimony that he was aware that falsifying a prescription was both illegal and unethical, and yet he made the conscious decision to do it anyway. The Respondent has had serious issues before this Board in the past, albeit in 1983; and thus, it is surprising that he would choose to so blatantly break the law and risk his license again. The Nevada Board has held an evidentiary hearing on the underlying offense and found that the Respondent's license should be revoked. The Respondent did not appeal the Nevada Board's Order. The Respondent now turns to the Maryland Board and requests that the Maryland Board issue a sanction that is lighter than that of the Nevada Board. Although the Respondent has admitted evidence that disputes some of the Nevada Board's findings, the Respondent admitted to the primary violation, falsifying a CDS prescription. The Board will mirror the sanction of the Nevada Board but allow the Respondent an opportunity to seek reinstatement in May 2004.

## ORDER

Based on the foregoing Findings of Fact, Opinion, and Conclusion, by a unanimous decision of a quorum of the Board it is hereby:

**ORDERED** that the Summary Suspension Order, dated August 4, 2003, and the Order Continuing Summary Suspension, dated August 27, 2003, were properly issued by the Board; and be it further,

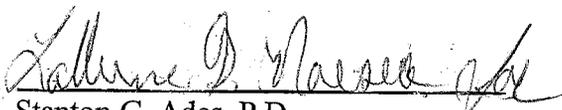
**ORDERED** that the Respondent's license to practice pharmacy continues to be SUSPENDED; and be it further,

**ORDERED** that the Respondent may petition to lift the suspension no earlier than May 23, 2004; and be it further,

**ORDERED** that in the event the Respondent's license is reinstated on or after May 23, 2004, the Board shall place the Respondent on immediate probation with terms and conditions to be determined by the Board; and be it further;

**ORDERED** that this is a final order of the State Board of Pharmacy and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't Art., §§10-611, *et seq.*

1/9/04  
Date

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

**NOTICE OF RIGHT TO APPEAL**

Pursuant to Md. Code Ann., Health Occ. Art., §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 Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Act, Md. Code Ann., State Gov't Art., §§10-201, *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.



STATE OF MARYLAND

**DHMH**

Department of Health and Mental Hygiene

*Robert L. Ehrlich, Governor – Michael S. Steele, Lt. Governor – Nelson J. Sabatini, Secretary*

*MARYLAND BOARD OF PHARMACY*

*4201 Patterson Avenue • Baltimore, Maryland 21215-2299*

*Stanton G. Ades, Board President – LaVerne G. Naesea, Executive Director*

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**ARTICLE# 7002 0860 0001 3774 1860**

January 9, 2004

David Curry  
8604 Willow Oak Road  
Baltimore, Maryland 21234

RE: Final Order

Dear Mr. Curry:

Please find enclosed a copy of your signed Final Order for your records. The effective date of the Order is January 9, 2004.

Should you have any questions regarding this Order, please contact Catherine S. Putz, at the Board office.

Sincerely,

LaVerne G. Naesea  
Executive Director

Enclosure

cc: Catherine S. Putz, Pharmacist Compliance Officer  
Timothy Paulus, Deputy Counsel  
Linda Bethman, Staff Attorney  
Jack Freedman, Division of Drug Control  
Dina Smoot, Office of Health Services  
Maxine Johnson, Manager of Provider Enrollment