

IN THE MATTER OF
DWAYNE DRAKE
APPLICANT

* BEFORE THE
* STATE BOARD
* OF PHARMACY
* CASE NUMBER: PT-10-006

* * * * *

**FINAL ORDER OF DENIAL OF
PHARMACY TECHNICIAN REGISTRATION APPLICATION**

The State Board of Pharmacy (“the Board”) hereby notified **DWAYNE DRAKE**, (“the Applicant”), **D.O.B. 06/06/67**, of the Board’s intent to **DENY** his application for Pharmacy Technician Registration pursuant to the Maryland Pharmacy Act (“the Act”), Md. Health Occ. Code Ann. (“H.O.”) § 12-101 *et seq.* (2009 Repl. Vol.). The pertinent provisions provide:

§ 12-6B-02: Qualifications.

- (a) To qualify for registration an applicant shall be an individual who:
 - (1) Is currently certified by a national pharmacy technician certification program and complies with subsection (b)(6) of this section; or
 - (2) Meets the requirements of this section.

- (b) The applicant shall:
 - (1) Be of good moral character;

§ 12-6B-09: Grounds for reprimand or denial, probation, suspension, or revocation of registration.

Subject to the hearing provision of § 12-315 of this title, the Board may deny a pharmacy technician’s registration to any applicant, reprimand a registered pharmacy technician, place any pharmacy technician’s registration on probation, or suspend or revoke a pharmacy technician’s registration if the applicant or pharmacy technician registrant:

(22) Pled guilty or nolo contendere to, or has been found guilty of, a felony or a crime involving moral turpitude[.]

FINDINGS OF FACT

The Board issues this Final Order of Denial of the Applicant's Pharmacy Technician Registration Application based upon the following findings:

1. On or about June 23, 2008, the Board received the Applicant's Pharmacy Technician Registration Application (hereinafter the "Application").

2. On his Application, the Applicant answered "Yes" to question number 5:

"Have you pled guilty, nolo contendere, or been convicted of a felony or a crime involving moral turpitude, or received probation before judgment of any criminal act?"

3. The Board subsequently conducted an investigation, including but not limited to, a criminal background check of the Applicant, which revealed an extensive criminal history dating back to 1987.

4. Between February 25, 1987 and October 10, 1989, the Applicant was charged on six (6) separate occasions with unlawful possession of controlled dangerous substances. All six (6) of those cases resulted in a disposition of a stet, *nolle prosequi* or dismissal of the charges.

5. On or about September 13, 1992, the Applicant was charged in the District Court for Baltimore City, Case # 00411655B6, with one (1) count, possession with intent to manufacture and distribute a controlled dangerous substance in violation of Md. Ann. Code Art. 27 § 286 (a) and one (1) count, possession of a controlled dangerous substance/ not marijuana in violation of Md. Ann. Code Art. 27 § 287 (a). On or about November 12, 1992, the Assistant State's Attorney (hereinafter "the ASA") entered a

nolle prosequi as to the first count. With respect to the second count, the Applicant was convicted of possession of a controlled dangerous substance/not marijuana and sentenced to two (2) years incarceration, suspended; two years of probation, and a monetary fine in the amount of one thousand dollars (\$1,000.00).

6. On October 14, 1995, the Applicant was charged in the District Court for Baltimore City, Case # 1800034210, with one (1) count, possession with intent to distribute a controlled dangerous substance in violation of Md. Crim. Law Code Ann. § 5-602 (2) and one (1) count, possession of a controlled dangerous substance/not marijuana in violation of Md. Crim. Law Code Ann. 5-601 (a) (1). On March 11, 1996, the ASA entered a *nolle prosequi* as to the first count. With respect to the second count, the Applicant was convicted of possession of a controlled dangerous substance/not marijuana and sentenced to two (2) years incarceration, suspended, followed by a two (2) year period of probation.

7. On November 6, 1996, the Applicant was charged in the District Court for Baltimore City, Case # 0800153657, with one (1) count, possession of a controlled dangerous substance, not marijuana, in violation of Md. Ann. Code Art. 27§ 287 (a). On December 4, 1996, the Applicant was convicted and sentenced to one year incarceration, suspended, followed by a two (2) year period of probation.

8. On January 18, 1996, the Applicant was charged in the District Court for Baltimore City, Case # 6800089186, with one (1) count, possession of a controlled dangerous substance/not marijuana in violation of Md. Ann. Code Art. 27 § 287 (a) and one (1) count, possession with intent to distribute a controlled dangerous substance in violation of Md. Ann. Code Art 27 §286 (a). On February 14, 1996, the ASA entered a

nolle prosequi as to the first count. With respect to the second count, the Applicant was convicted of possession with intent to distribute a controlled dangerous substance and sentenced to four (4) years incarceration, suspended, followed by a two (2) year period of probation.

9. On November 6, 1996, the Applicant was charged in the District Court for Baltimore City, Case # 0800153657, with one (1) count, manufacture and possession, with intent to distribute a controlled dangerous substance in violation of Md. Code Ann. Art. 27 § 287 (a) (1); one (1) count, possession with intent to distribute a controlled dangerous substance in violation of Md. Art 27 §286 (a); and one (1) count, possession of a controlled dangerous substance/not marijuana in violation of Art 27 § 287 (a). On December 4, 1996, the ASA entered a *nolle prosequi* as to the first and second counts. With respect to the third count, the Applicant was convicted of possession of a controlled dangerous substance/not marijuana and was sentenced to one (1) year incarceration, suspended, followed by a two (2) year period of probation.

10. On December 9, 1996, the Applicant was charged with welfare fraud in violation of Md. Code Ann. Art 27 § 230A. On March 11, 1997, the Applicant was convicted and sentenced to four (4) months incarceration. Welfare fraud constitutes a crime of moral turpitude.

11. On December 17, 1999, the Applicant was charged in the District Court for Baltimore City, Case # 3800407893, with one (1) count, possession with intent to distribute a controlled dangerous substance in violation of Md. Code Ann. Art. 27 § 286 (a) and one (1) count, possession of a controlled dangerous substance/not marijuana, in violation of Md. Code Ann. Art 27 §287 (a). On January 14, 2000, the ASA entered a

nolle prosequi as to the first count. The Applicant requested a jury trial as to the second count and the case was referred to the Circuit Court for Baltimore City. The Applicant was convicted of possession of a controlled dangerous substance/not marijuana and sentenced to four (4) months incarceration.

12. On January 20, 2000, the Applicant was charged in the District Court for Baltimore City, *Case # 3801274584*, with one (1) count, manufacture and distribution of a controlled dangerous substance in violation of Md. Code Ann. Art. 27 § 286 (a) (1); one (1) count, possession with intent to distribute a controlled dangerous substance in violation of Md. Code Ann. Art 27 §286 (a); and one (1) count, possession of a controlled dangerous substance/not marijuana in violation of Md. Code Ann. Art 27 § 287 (a). The case was referred to the Circuit Court for Baltimore City, *Case # 200146017*. On or about July 31, 2000, the Applicant entered a plea of guilty to the charge of manufacture of a controlled dangerous substance and was sentenced to seven (7) years incarceration, five (5) years suspended, followed by a three (3) year period of supervised probation.

13. On June 23, 2008, the Applicant submitted his Application to the Board. At that time, he was employed by the University of Maryland Medical Center (hereinafter UMMC), where he served as a pharmacy technician in their Central Pharmacy, a position he had held since November 11, 2002.¹

14. On or about August 28, 2008, the Applicant was interviewed by security personnel at UMMC, concerning a theft of 344 pills of Viagra from the Compounding Room at the Central Pharmacy. The medication, valued at approximately \$3500.00,

¹ Prior to January 1, 2007, pharmacy technicians were not required to qualify for Registration under the Act.

was allegedly stolen on August 18, 2008. According to the UMMC's investigation, video surveillance revealed that the Applicant entered the Compounding Room at 7:54 p.m. on August 18, 2008, failed to turn on any lights, approached the drawer where the Viagra was kept and left the area carrying a clipboard and two bottles of medication

15. During the interview, the Applicant was asked questions regarding his whereabouts as well as his knowledge of the suspected thefts. He stated that "he did not know of any thefts inside the Central Pharmacy, and if any other people were being looked at." He refused to answer any further questions pertaining to the alleged theft or the recorded video surveillance

16. According to the UMMC personnel file, on September 5, 2008, the Applicant was formally terminated from employment with UMMC based upon his involvement in the theft.

17. On December 3, 2009, the Applicant was arrested and charged in the District Court for Baltimore County *Case # 6C00316203*, with second degree assault in violation of Md. Crim. Law Code Ann. § 3-203. The Applicant posted bond and was released pending trial, presently scheduled for February 1, 2010.

18. Despite the Applicant's verbal and written assurances to the contrary, he has continued to exhibit poor moral character. The Respondent's criminal history dates back more than twenty (20) years. Furthermore, as recently as December 2009, he was arrested and charged with a violent crime for which he will stand trial in February 2010.

19. The Findings of Fact support a conclusion that the Applicant lacks good moral character and , therefore, does not meet the qualifications for Registration as a Pharmacy Technician pursuant to H.O. § 12-6B-02 (b)(1).

20. The Findings of Fact further establish that the Applicant has pleaded guilty and has been convicted of a felony and a crime involving moral turpitude. These convictions and guilty plea constitute grounds for denial of Applicant's request for Registration, as set forth in H.O. § 12-6B-09 (22).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that the Applicant lacks good moral character and, therefore, fails to meet the qualifications for Registration as a pharmacy technician pursuant to H.O. § 12-6B-02 (b)(1). The Board further concludes that the Applicant's guilty plea and convictions to both a felony and a crime involving moral turpitude, constitutes a violation of H.O. § 12-6B-09 (22).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 24th day of May 2010, the Board, by a majority of the Board, hereby

ORDERED that the Applicant's Pharmacy Technician Registration Application is hereby **DENIED**; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. State Govt. Code Ann. § 10-617(h) (2009 Repl. Vol.), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law, and Order, and is reportable to any entity to whom the Board is obligated to report; and be it further **ORDERED** that this Order is a public document pursuant to Md. State Govt. Code Ann. §§ 10-601 *et seq.* (2009 Repl. Vol.).

5/24/2010
Date

for Kallum D. Naesea
Donald Taylor, President
State Board of Pharmacy

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Health Occ. Code Ann. §12-316 (2009 Repl. Vol.), you have a right to take a direct judicial appeal. A Petition for Judicial Review must be filed within thirty (30) days of your receipt of this Order and shall be made as provided for judicial review of a final decision in the Md. State Govt. Code Ann. §§ 10-201 *et seq.* (2009 Repl. Vol.), and Title 7, Chapter 200 of the Maryland Rules.