

IN THE MATTER OF

*

BEFORE THE

Augustine R. Durso, Jr., P.D.

*

STATE BOARD

License No.: 09953

*

OF PHARMACY

Respondent

*

Case Number 04-BP-253

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ORDER FOR SUMMARY SUSPENSION

Pursuant to Md. State Govt. Code Ann. § 10-226 (c)(1999 Repl. Vol. and 2004 Supp.), the State Board of Pharmacy (the "Board") hereby suspends the license to practice pharmacy in Maryland issued to Augustine R. Durso, Jr., P.D., (the "Respondent"), under the Maryland Pharmacy Act (the "Act"), Md. Health Occ. Code Ann. §§ 12-101, et seq. (2000 Repl. Vol. and 2004 Supp.). This Order is based on the following investigative findings, which the Board has reason to believe are true:

1. At all times relevant hereto, the Respondent was licensed to practice pharmacy in Maryland. The Respondent was first licensed on March 18, 1983. The Respondent's license expires on October 31, 2005.
2. The Board received and investigated a complaint filed by St. Agnes Health Care ("St. Agnes"), located at 900 Caton Avenue, Baltimore, Maryland 21229.
3. The Respondent was employed at St. Agnes as a pharmacist from April 9, 2001, until July 28, 2004.
4. The Respondent worked in the Cancer Center Pharmacy at St. Agnes.
5. In May 2004, the Pharmacy Operations Manager at St. Agnes was conducting an audit pursuant to St. Agnes' standard operating procedures and controls.

6. While completing the May Operations Report summary, the Pharmacy Operations Manager noted the utilization of Oxycontin CR (Controlled Release) by the Cancer Center Pharmacy and planned to monitor the June usage, because Oxycontin is not a medication that is dispensed or routinely administered during treatment of patients in the Cancer Center.

7. Usage of Oxycontin CR was monitored until July 26, 2004.

8. Meditech charge reports and utilization reports were generated, and they did not reconcile with the amount of medication being procured by the Respondent.

9. A review of the July 2004 Patient Dispensation logs was then conducted.

10. St. Agnes' standard operating procedures require the documentation of the day and patient name for each dose of controlled substance medication dispensed from the Oncology Pharmacy inventory pursuant to a physician's order.

11. An inventory count is completed daily, and the oncology pharmacist charges for the doses dispensed in the Meditech Pharmacy module.

12. A review of the dispensation records and daily count sheet indicated that all entries for three strengths of Oxycontin were completed by the Respondent, as opposed to two other pharmacists who work in the Cancer Center; the names of patients were generally illegible; two of the three Oxycontin products were not on the daily count sheet; and a hand-written rather than computer-generated daily count sheet was being utilized.

13. Due to the illegibility of the records, the names of patients could not be reconciled with the Meditech Pharmacy dispensing module or the electronic medical record; therefore a Cancer Center patient roster was generated after the Cancer Center Pharmacy closed on July 26, 2004.

14. On July 27, 2004, the St. Agnes Director of Pharmacy conducted reconciliation of the dispensing logs, sign out sheet and patient roster from July 19, 2004, until July 26, 2004.

15. None of the doses signed out by the Respondent matched the patient pharmacy Meditech dispensing profile.

16. In one incident, a patient was documented as receiving medication on a day he was not scheduled for treatment.

17. On July 27, 2004, the Director of the Cancer Center advised the Director of Pharmacy that the charts she had reviewed did not contain orders for the medication in question.

18. The Respondent was terminated from employment on July 28, 2004, after he admitted to officials at St. Agnes that he was responsible for the theft of controlled substance drugs for personal use, namely Oxycontin CR.

19. A toxicology report dated July 30, 2004, for a specimen received from the Respondent on July 28, 2004, confirmed the Respondent's admission of personal use of controlled substance drugs, as the toxicology report indicated a positive screening for opiates.

BASIS FOR SUMMARY SUSPENSION

20. The Respondent presents a danger to the public health, safety or welfare.

21. The above actions also constitute violations of the Act. Specifically, the Respondent violated the following provisions of § 12-313 of the Act:

(b) *In general.* – Subject to the hearing provisions of § 12-315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, place any licensee on probation,

or suspend or revoke a license if the applicant or licensee:

- (2) Fraudulently or deceptively uses a license;
- (4) Provides professional services while:
 - (ii) Using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication;
- (14) Dispenses any drug, device, or diagnostic for which a prescription is required without a written, oral, or electronically transmitted prescription from an authorized prescriber;
- (20) Is professionally, physically, or mentally incompetent; [or]
- (24) Violates any rule or regulation adopted by the Board.

The rule or regulation adopted by the Board violated by the Respondent is found at Code Md. Regs. tit. 10, § 34.10:

.01 Patient Safety and Welfare.

A. A pharmacist shall:

- (1) Abide by all federal and State laws relating to the practice of pharmacy and the dispensing, distribution, storage, and labeling of drugs and devices, including but not limited to:
 - (a) United States Code, Title 21,
 - (b) Health-General Article, Titles 21 and 22, Annotated Code of Maryland,
 - (c) Health Occupations Article, Title 12, Annotated Code of Maryland,
 - (d) Criminal Law Article, Title 5, Annotated Code of Maryland, and

(e) COMAR 10.19.03[;].

B. A pharmacist may not:

- (1) Engage in conduct which departs from the standard of care ordinarily exercised by a pharmacist[;].

CONCLUSIONS OF LAW

Based on the foregoing, the Board finds that the public health, safety or welfare imperatively requires emergency action, pursuant to Md. St. Govt. Code Ann. § 10-226(c) (2) (1999 Repl. Vol. and 2004 Supp.).

ORDER

Based on the foregoing, it is therefore this 26TH day of OCTOBER, 2004, by a majority vote of a quorum of the State Board of Pharmacy, by authority granted by the Board by Md. St. Govt. Code Ann. § 10-226(c)(2) (1999 Repl. Vol.), the license held by the Respondent to practice pharmacy in Maryland, License No. 09953, is hereby **SUMMARILY SUSPENDED**; and be it further

ORDERED, that upon the Board's receipt of a written request from the Respondent, a Show Cause Hearing shall be scheduled within thirty days of said request, at which the Respondent will be given an opportunity to be heard as to whether the Summary Suspension should be lifted/terminated, regarding the Respondent's fitness to practice pharmacy and the danger to the public; and be it further

ORDERED, that the Respondent shall immediately turn over to the Board his wall certificate and wallet-sized license to practice pharmacy issued by the Board; and be it further

ORDERED, that this document constitutes a final Order of the Board and is

therefore a public document for purposes of public disclosure, as required by Md. State Govt. Code Ann. § 10-617(h) (1999 Repl. Vol.).



Melvin N. Rubin, President
Board of Pharmacy

NOTICE OF HEARING

A Show Cause hearing to determine whether the Summary Suspension shall be lifted/terminated will be held before the Board at 4201 Patterson Avenue, Baltimore, 21215 following a written request by the Respondent for same.