

IN THE MATTER OF

* BEFORE THE

CHRISTOPHER FLEMING, P.D.

* MARYLAND STATE

LICENSE NO. 11762,

* BOARD OF PHARMACY

RESPONDENT

*

* * * * *

CONSENT ORDER

Based on information received and a subsequent investigation by the Maryland State Board of Pharmacy (the "Board") and subject to the Health Occupations Article, Code Ann., §12-101 et seq., 1994 Repl. Vol. (the "Act") the Board charged **CHRISTOPHER FLEMING, P.D., License No. 11762**, (the "Respondent"), with having violated certain provisions of the Act under §12-313 (b).

Specifically, the Board charged the Respondent with having violated the following provisions of §12-313(b) of the Act:

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 :

(21) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime of moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside[.]

BACKGROUND

On May 21, 1998 a case resolution conference was held at the Board's office on Patterson Avenue. Present was Ms. Norene Pease, Executive Director to the Board; Mr. Irving Lottier, P.D., pharmacist Board member, Secretary to the Board; Mr. William Johnson, consumer Board member; Mr. Paul Ballard,

Assistant Attorney General, Board Counsel; Ronald Crisp, M.D., Respondent's sponsor; Toni P. Conner, Respondent's PEAC advisor; Ms. Rose Matricciani, Respondent's counsel; and Lisa B. Hall, administrative prosecutor. The parties have entered into this agreement to avoid the necessity of further litigation and to resolve the issues. This Consent Order consists of the Findings of Fact, Conclusions of Law, and Order as if an evidentiary hearing had been held.

FINDINGS OF FACT

The Board bases its charges on the following facts that the Board has cause to believe are true:

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

Respondent was originally licensed in Maryland in August 1989.

2. Respondent pled guilty to two counts of insurance fraud in Baltimore County Circuit Court, specifically with having violated the Annotated Code of Maryland, Article 48A, §233 (b) in Criminal Case No. 97 CR 3424.

3. Count One of the Criminal Information in criminal case 97-CR 3424 involved Respondent's fraudulent claims to Blue Cross and Blue Shield of Maryland, Inc. in the amount of One Thousand Seven Hundred Thirty-Six Dollars and Fifty-Three cents (\$1,736.53).

4. Count Two involved Respondent's fraudulent claims to Nationwide Insurance Company, Inc. in the amount of Three Thousand One Hundred Seventeen Dollars and Forty-six cents

(\$3,117.46).

5. While Respondent was employed at the Revco Pharmacy on Harford Road in Baltimore County, the Respondent accessed the computerized patient information of two persons. Respondent then submitted claims for prescribed medications to the insurance companies of the two persons. In order to be eligible for insurance reimbursement, a claim must indicate the prescribing physician's name. Respondent falsely represented on the submitted claims that physicians had prescribed the medications to these two persons when neither person's physician had prescribed these medications.

6. Respondent has performed approximately one-half of the community service as required by his criminal conviction. Additionally, the Respondent has made full restitution to both insurance companies, has paid his court costs, and paid a substantial portion of his court-imposed fine.

7. The Respondent has a contract with PEAC and has substantially complied with the terms of that agreement. The Respondent participates in therapy, both individual and group, has random observed urine screens, and has identified several sponsors. The Respondent's urine screens have been negative according to his PEAC sponsor.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that the Respondent violated Health Occupations Article §12-313 (b)(21) as the conviction is a crime of moral turpitude.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 19th day of August, 1998, by a majority of the Board, hereby

ORDERED that Respondent is **SUSPENDED** for a period of one (1) year, with an immediate **stay** of the **SUSPENSION** and that the Respondent be **placed on PROBATION** for a period of two (2) years, subject to the following conditions:

1. During the period of PROBATION, the Respondent shall remain in compliance with his PEAC contract;
2. During the period of PROBATION, the Respondent shall consent to the release of information to the Board with respect to a) the Respondent's compliance or non-compliance with the PEAC contract; b) the Respondent's participation in group and individual therapy; c) the results of the drug screens; d) any other information relating to his PEAC contract;
3. During the period of PROBATION, the Respondent shall have monthly blood serum screening to screen for Prozac; the results of which shall be forwarded to the Board;
4. During the period of PROBATION, the Respondent shall take a continuing education course on pharmacy abuse, this course may not be counted towards the Respondent's renewal period for the required continuing education credits;
5. The Respondent will not work a floating schedule in a pharmacy while on probation;
6. During the period of PROBATION, the Respondent shall

have changes to his PEAC contract reported to the Board;

7. During the period of PROBATION, the Respondent shall not increase his employment hours without the express approval of PEAC;

8. The Respondent shall ensure that his employer is aware of the probationary status of his pharmacist license and the existence of the Consent Order;

9. The Respondent shall cease from self-prescribing and will inform his PEAC advisor if he has prescribed scheduled medications;

10. Respondent shall immediately notify the Board in writing of any change in his address and Respondent shall further furnish the Board with the business address and telephone number of any employment;

11. At the end of the probationary period the Respondent shall petition the Board in writing to be released from the probationary conditions.

ORDERED that in the event the Board finds for any reason in good faith that the Respondent has substantially violated any provision of Title 12 of the Health Occupations Article, Maryland Annotated Code or the regulations thereunder, or if the Respondent **substantially**¹ violates any of the foregoing

¹ The Board will take immediate action for a substantial violation of this Consent Order. The term "substantial" is given its usual meaning and is used here to indicate that it is the intent of the Board and the Respondent to mean that in general a singular violation would not be a substantial violation, however, a single violation of gross proportion would be a substantial violation.

conditions of Probation, the Board may take **immediate action** by lifting the stay of his suspension. Additionally, after notice and an opportunity for a hearing the Board may impose any additional lawful disciplinary sanction it deems appropriate, including but not limited to revocation or suspension of Respondent's licensee to practice pharmacy; and be it further

ORDERED that the conditions of the Consent Order be, and the same hereby are, effective as of the date of this Order; and be it further

ORDERED that for purposes of public disclosure, as permitted by §10-617 (h), State Government Article, Maryland Code Annotated, this document constitutes the Board's Findings of Fact, Conclusions of Law, and Order, resulting from formal disciplinary proceedings.

8/19/98

Date

David Russo

David Russo, P.D.
President

CONSENT of Christopher Fleming, P.D.

I, Christopher Fleming, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney.
2. I am aware that without my consent, my license to practice pharmacy in this State cannot be limited, except

pursuant to the provisions of §12-315 of the Act and §10-201 et seq. of the Administrative Procedure Act, State Government Article, Annotated Code of Maryland.

3. I am aware that I am entitled to a formal evidentiary hearing before the Board or an Administrative Law Judge.

4. By this Consent Order, I hereby admit the truth of the Findings of Fact, and accept and submit to the Foregoing Order and its conditions.

5. I acknowledge the validity of this Order as if made after a hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protection provided by law and I waive any appeal right under Maryland Code Annotated, State Government Article §10-222.

6. I hereby consent and submit to the foregoing Findings of Fact, Conclusions of Law, and Order provided the Board adopts the foregoing Final Consent Order in its entirety. By doing so, I waive my right to a formal hearing as set forth in §12-315 of the Act and §10-201 et seq. of the Administrative Procedure Act except on connection with any alleged violation of this Order. I acknowledge that by failing to abide by the conditions set forth in this Order, I may suffer disciplinary action.

7. I understand that this Consent Order is a public document, disclosable under §10-617 (h) of the State Government Article, Annotated Code of Maryland.

8. I sign this Order after having an opportunity to consult

with an attorney, whether or not I have done so, and without reservation, and I fully understand its meaning.

7/4/98

DATE

Christopher Fleming P.D.
Christopher Fleming, P.D.

STATE OF Maryland
CITY/COUNTY OF: Montgomery

I HEREBY CERTIFY that on this 4 day of July, 1998, a Notary of the State of Maryland and (City/County), Montgomery, personally appeared CHRISTOPHER FLEMING, P.D. License No. 11762, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESS my hand and notarial seal.

Jean Friedman
Notary Public

My commission expires: 9/1/00