

State of Maryland Department of Health and Mental Hygiene

arris N. Glendening, Governor - Martin P. Wasserman, M.D., J.D., Secretary



State Board of Pharmacy

May 5, 1999

HAND DELIVERY AND FIRST CLASS MAIL

Robb Vincent Foote, P.D.
5027 Middlesmoor Court
Ellicott City, Maryland 21043

Re: Order to Summarily Suspend
License #12098

Dear Mr. Foote:

Enclosed is an executed Order for Summary Suspension (the "Order") of your license to practice pharmacy in the State of Maryland issued pursuant to the State Government Article, §10-226(c) of the Annotated Code of Maryland.

Please be advised that on April 14, 1999 a majority of the Maryland State Board of Pharmacy (the "Board") voted to immediately suspend your license as of May 5, 1999. You have the opportunity to appear before the Board on **May 27, 1999 at 10:00 a.m.**, 4201 Patterson Avenue, Baltimore, Maryland 21215, for a Show Cause hearing. This limited appearance is intended to provide you with an opportunity to show cause why the Order to Summarily suspend your pharmacy license should be lifted. You are not required to appear at this hearing. An evidentiary hearing on the merits of the summary suspension will be held within a reasonable time period of said Show Cause Hearing, if requested by you.

At the Show Cause Hearing scheduled for **May 27, 1999**, you will have the opportunity to address the Board before its final deliberations on the matter. You will have a half hour to address the Board. Following your presentation, Sherrai Hamm, Assistant Attorney General will present the State's argument in favor of continuing the Summary Suspension.

At the time of delivery of this letter, you are required to surrender to the Board investigator the following items:

4201 Patterson Avenue - Baltimore, Maryland 21215-2299 - (410) 764-4755
Fax (410) 358-6207 - TDD (800) 542-4964 - Maryland Relay Service (800) 735-2258

Healthy People in Healthy Communities

Robb Vincent Foote, P.D.

Re: Order to Summarily Suspend
License #12098

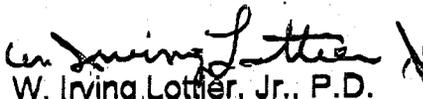
Page 2

- (1) your original Maryland pharmacy display license, number 12098;
- (2) your current wall license, number 12098.

This opportunity to address the Board is not intended as a substitute for any subsequent hearing which you may request as to the merits of the Summary Suspension. Moreover, if you choose to meet with the Board on **May 27, 1999**, it will be without prejudice to any of your rights in this matter. If you intend to appear at the Show Cause hearing, please let Norene Pease, Executive Director, know on or before **May 24, 1999**.

As previously stated, the Administrative Prosecutor in this case is Sherrai Hamm, Assistant Attorney General. If you have any questions about the summary suspension or your appearance at the Board meeting, then please contact Ms. Hamm at (410) 767-1872. Because your license is suspended, please be advised that you are entitled to be represented by an attorney and that attorney must be qualified to practice in Maryland.

Yours truly,


W. Irving Lottier, Jr., P.D.
Secretary
State Board of Pharmacy

Enclosure (copy to all ccs)

cc: Timothy J. Paulus, Deputy Counsel
Paul J. Ballard, Assistant Attorney General,
Counsel, Board of Pharmacy
Sherrai V. Hamm, Assistant Attorney General,
Administrative Prosecutor
Gloria Toney, Legal Secretary

IN THE MATTER OF * BEFORE THE
ROBB VINCENT FOOTE * STATE BOARD
License Number 12098 * OF
Respondent * PHARMACY

* * * * *
**ORDER FOR SUMMARY SUSPENSION
OF LICENSE TO PRACTICE PHARMACY**

The State Board of Pharmacy hereby SUMMARILY SUSPENDS the license of Robb Vincent Foote, P.D. (D.O. B. 12/9/64), to practice pharmacy in the State of Maryland. The Board takes such action pursuant to its authority concluding Md. Code Ann., State Gov't § 10-226 that the public health, safety and welfare require emergency action.

INVESTIGATIVE FINDINGS

The Board has reason to believe that the following facts are true:

1. At all times relevant hereto, the Respondent was and is licensed to practice pharmacy in the State of Maryland. The Respondent was originally licensed to practice pharmacy in Maryland on July 27, 1990.
2. At all times relevant hereto, the Respondent was employed as a pharmacist at NeighborCare Infusion Pharmacy ("NeighborCare") located at 9070 Junction Drive, Annapolis Junction, Maryland.
3. On or about December 29, 1998, McKesson Wholesale Drug Distributors ("McKesson") shipped NeighborCare forty-seven (47) one gram bottles of hydromorphone powder to NeighborCare. The Respondent signed for the shipment of hydromorphone powder when it arrived at Neighbor Care. However, the Respondent failed to record the receipt of the hydromorphone in NeighborCare's inventory log.

4. On or about January 8, 1999, NeighborCare discovered twenty-three (23) bottles of hydromorphone missing from inventory. The missing hydromorphone bottles were part of the December shipment from McKesson.

5. On or about February 19, 1999, NeighborCare discovered that several bottles of hydromorphone showed evidence of tampering. As a result of recent shortages of hydromorphone and other narcotics, and evidence of narcotic tampering, NeighborCare placed a video camera in the pharmacy.

6. On or about April 15, 1999, the Respondent was videotaped taking two bottles of discarded hydromorphone from a cabinet, removing the hydromorphone from the bottles with a syringe and placing the contents of the syringe into a container. The Respondent then placed the container of hydromorphone in his pocket.

7. On April 19, 1999, the Respondent was arrested by the Maryland State Police and charged in a three (3) count Statement of Charges with possession of a controlled dangerous substance ("CDS") of Schedule II to wit: hydromorphone; with intent to distribute in violation of Md. Ann Code art. 27, § 286; distribution of a CDS of Schedule II, to wit: hydromorphone; and theft, in violation of Md. Ann. Code. art. 27, §286 of hydromorphone with a value of over \$300.00 in violation of Md. Ann. Code. art. 27, §342. (A copy of the statement of charges, application for statement of charges and the arrest warrant on charging document is attached hereto and incorporated herein as Exhibit A).

8. Based on the above-investigative facts, the Board has cause to believe that the Respondent has violated Md. Code Ann. Health Occ. §12-313(b) (1994). The pertinent provision of H.O. §12-313(b) provides as follows:

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:

- (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.

CONCLUSIONS OF LAW

Based on the foregoing investigative facts, the Board concludes that the public health, safety and welfare imperatively require emergency action in this case, pursuant to Md. Code Ann., State Gov't §10-226(c)(2) (1995).

ORDER

Based on the foregoing, it is this 6 day of May 1999, that a majority of the fully authorized membership of the State Board of Pharmacy:

ORDERED that pursuant to the authority vested by Md. Code Ann., State Gov't Art. § 10-226, Respondent's license to practice pharmacy in the State of Maryland be and is hereby **SUMMARILY SUSPENDED**; and be it further

ORDERED that upon the request of the Respondent in writing within ten (10) days of the issuance of this **SUMMARY SUSPENSION**, and a hearing will be scheduled to consider this **SUMMARY SUSPENSION**, will be held at the Board of Pharmacy, 4201 Patterson Avenue, Baltimore, Maryland 21215, within thirty (30) days after the Respondent's request for a hearing; and be it further

ORDERED that on presentation of this Order, the Respondent **SHALL SURRENDER** to the Board's Executive Director, the following items:

- (1) Respondent's original Maryland display license, number 12098;
- (2) Respondent's current wallet license, number 12098; and be it further

ORDERED that this is a Final Order of the Board and, as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't § 10-611 et seq. (1995).

5/6/99

Date

W. Irving Lottier, Jr.

W. Irving Lottier, Jr., P.D.
Secretary Board of Pharmacy

A:\sumsus.ord.wpd



STATE OF MARYLAND

VS

FOOTE, ROBB VINCENT
5027 MIDDLESMOOR COURT
ELLICOTT CITY, MD 21043

CC#: _____ SID: _____
Local ID: _____ DL#: _____
Race: 2 Sex: M Ht: 4'8" Wt: 195 Hair: _____ Eyes: _____
DOB: 12/09/1964 Phone(H): _____ Phone(W): _____

Charge | Statute | Arrest
D&P W/1 DIST:NARC | 27286 |
THEFT: \$300 PLUS VALUE | 27342 |

Charge | Statute | Arrest
CDS-DISTRIBUTE | 27286 |

ARREST WARRANT ON CHARGING DOCUMENT - Warrant No. D990120386



STATE OF MARYLAND, Howard County
TO ANY PEACE OFFICER, Greetings:

YOU ARE ORDERED to arrest and bring before a judicial officer the above-named Defendant as soon as practicable and without unnecessary delay. If a judicial officer is not readily available, this Warrant shall authorize the prisoner's detention until compliance is had with Rule 4-212 and the arresting officer is authorized and required to comply with Rule 4-212.

IF THE DEFENDANT IS NOT IN CUSTODY FOR ANOTHER OFFENSE,
Initial appearance is to be held in county in which Defendant is arrested.

IF THE DEFENDANT IS IN CUSTODY FOR ANOTHER OFFENSE, this Warrant is to be lodged as a detainer for the continued detention of the Defendant for the offense charged in the charging document. When the Defendant is served with a copy of the charging document and Warrant, the Defendant shall be taken before a judicial officer of the District Court.

Date: 04/16/1999 Time: 09:27 PM Judge/Commissioner: [Signature] ID: A066
Given to: HOWARD COUNTY POLICE DEPT

RETURN OF SERVICE

I certify that at RIOA M on 4-19-99 at Dorsey Run Rd & Co. Rd

_____, I executed this Arrest Warrant by arresting the Defendant and delivered a copy of the Statement of Charges to the Defendant.
 I left a copy of the Warrant and Charging Document as a detainer for the continued detention of the Defendant at:

Facility: _____

Location: _____

Signature & Title of Peace Officer: [Signature]

Printed Name of Officer: Sgt Thomas G. McPherson

Agency, Sub-Agency, I.D.: MSG 9007 220

Date: 4-19-99

Tracking No. 991001181413

ARREST WARRANT ON CHARGING DOCUMENT

COPY

EXHIBIT A



STATE OF MARYLAND

VS

FOOTE, ROBB VINCENT
5027 MIDDLESMOOR COURT
ELLCOTT CITY, MD 21043

COMPLAINANT:
Officer: STICKLES, LESLIE
Agency/Subagency: CB 13
.58

CC#: SID:
Local ID: DL#:
Race: 2 Sex: M Height: 4'8" Weight: 195 Hair: DL State:
DOB: 12/09/1964 Phone (H): Phone (W): Eyes:

STATEMENT OF CHARGES

UPON THE FACTS CONTAINED IN THE APPLICATION OF STICKLES, LESLIE
IT IS FORMALLY CHARGED THAT FOOTE, ROBB VINCENT at
the dates, times and locations specified below:

NUM	CHG/CIT	STATUTE	PENALTY	DESCRIPTION OF THE CHARGE
001	3 0233	27286	20 Y &/or \$25,000.00	CDS-P W/I DIST-NARC On or About 04/15/1999 9070 JUNCTION DRIVE, SAVAGE, HO, CO MD ...did unlawfully possess a controlled dangerous substance of Schedule 11, to wit: HYDROMORPHONE, a narcotic drug, in sufficient quantity to indicate an intention to distribute same. Against the Peace, Government, and Dignity of the State.
002	1 3550	27284	2 Y &/or \$100,000.00	CDS-DISTRIBUTE On or About 04/15/1999 9070 JUNCTION DRIVE, SAVAGE, HO, CO MD ...did distribute a controlled dangerous substance of schedule 11, to wit:HYDROMORPHONE, the defendant not being a registrant and not acting pursuant to a proper order form. Against the Peace, Government, and Dignity of the State.
003	3 2400	27342	15 Y &/or \$1,000.00	THEFT: \$300 PLUS VALUE On or About 04/15/1999 9070 JUNCTION DRIVE, SAVAGE, HO, CO MD ...did steal HYDROMORPHONE property NEIGHBORCARE INFUSION SERVICES having a value of \$300 or greater, in the violation of Article 27, Section 342 of the Annotated Code of Maryland. Against the Peace, Government, and Dignity of the State.

Date: 04/16/1999 Time: 09:26 PM

Judicial Officer: _____

Henry [Signature]
1999

Tracking No. 991001181413

COPY

DEFENDANT'S NAME (LAST, FIRST, MI)

Foote, Robb Vincent

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 2 of 6

On 04/16/99, DFC Leslie Stickles was contacted by Sgt. Thomas McElroy of the Maryland State Police who provided the following information:

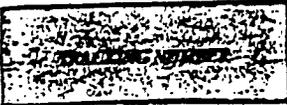
On Wednesday, March 16, 1999, Sgt. Thomas G. McElroy (Maryland State Police, assigned to the D.F.A. Tactical Diversion Squad) responded to 9070 Junction Drive, Suite K, Annapolis Junction, Howard County, Maryland 20701 (Neighborcare Infusion Services) and contacted Marc Stranz (Regional Managing Director). Stranz advised McElroy that in December, 1998, a Pharmaceutical distributor delivered forty seven (47) bottles of Dilaudid (Hydromorphone-Narcotic Controlled Dangerous Substance of Schedule II) to the pharmacy. The defendant, Robb Vincent Foote received the delivery and signed for the package but failed to put it into inventory. Twenty-four of these bottles were placed into inventory, however the signature on the logbook is illegible. When questioned about the delivery, Foote advised his superiors that he had left the package unattended and that he had not put the items into inventory. This incident was reported to the Howard County Police Department, Officer Mould (ID# 4921) who conducted an initial investigation (IR#99003561). Officer Mould interviewed Foote on January 8, 1999, and Foote stated that he had not counted the number of items that had been delivered, and that upon receipt of the delivery he placed the items on the floor next to a walk-in refrigerator. Foote then stated that he had not seen the items since. Foote further told Officer Mould that everybody who was working that day had access to the items. Officer Mould states in his report that he spoke with employees at Neighborcare Pharmacy and concluded that there were numerous employees who had access to the items and would need additional information to continue the investigation.

Stranz further advised that on February 19, 1999, another pharmacist prepared a 1 gram bottle of Hydromorphone powder to compound a prescription for a patient. This powder failed to dilute in the solution and clumped up in the syringe. The pharmacist attempted the procedure with a second bottle of Hydromorphone with the same results. These bottles were removed from the shelves. Later examination of all the Hydromorphone bottles by Stranz and other pharmacists at Neighborcare revealed a total of fifteen bottles that appeared suspicious or possibly tampered with. These bottles were quarantined.

Sgt Thomas G McElroy
1155 9007
4-17-99 DFC

4/14/99
Date

Applicant's Signature



DEFENDANT'S NAME (LAST, FIRST, MI)

Foote, Robb Vincent

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 3 of 6

Stranz advised that they (Neighborcare) contacted a private security firm and had an overt surveillance camera installed. Initial installation of the camera and review of the tapes found no suspicious activity but failed to fully display activity behind the dispensing counter and with the narcotic cabinet. A covert camera was then installed. This covert camera gives a clear view of the dispensing/preparation counter, and the narcotic camera.

Stranz told Sgt. McElroy that these tapes were regularly reviewed by Barbara Church, R.N., CRNI, who discovered some suspicious activity on the tapes. Stranz described Neighborcare's Narcotics Cabinet to Sgt. McElroy. He stated that on the top part of the cabinet are stored the narcotics that have not been opened or used at all. These are the drugs that the pharmacist would use for mixing the infusion solution. The bottom part of the cabinet is for returned drugs (from patients who either die or no longer need the drugs), and partially dispensed drugs. Stranz advised that typically, when filling a prescription for infusion, the compounding/preparing pharmacist will remove the drug from the top part of the cabinet and dilute it or mix it with some saline solution. The proper amount of that mixed solution would then be further placed in the patient's infusion bag. The remainder of the drug would be sealed, labeled as being the leftover/discarded drug from that particular patient's prescription, double sealed in a plastic bag, and locked in the lower part of the narcotics cabinet. In short, a 1 gram dosage of powdered Hydromorphone would be diluted into liquid. If the patient's prescription called for a 100 mg dosage, 500 mg would be placed in an infusion bag and the remaining 500 mg would be discarded and placed in the bottom part of the narcotics cabinet. This leftover waste would then be collected monthly by representatives of the Maryland State Department of Health and Mental Hygiene, Division of Control and destroyed.

Stranz advised that Foote was the night pharmacist, who regularly worked from 6:00 P.M. to 4:00 A.M. He also advised that Foote normally worked alone. Stranz advised that Foote has the keys to the narcotics cabinet, would have no reason to go into the lower part of that cabinet. With that, Stranz played the videotape dated 01/01/99 and 01/05/99. These tapes clearly show Foote going into the bottom part of the narcotics cabinet and removing packages. Foote carries the packages out of the view of the camera and returns a short time later. Foote then seals these packages and returns them to the bottom part of the narcotics cabinet.

4/16/99
Date

STANZ
305 J... G...
1123 703...
4-17-99
Applicant's Signature



DEPENDANT'S NAME (LAST, FIRST, MI)

Footo, Robb Vincent

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 4 of 6

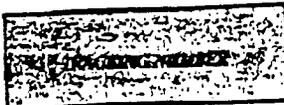
On Thursday, March 15, 1999, a surveillance was initiated at the Neighborcare Pharmacy, 9070 Junction Drive, Suite K. Parked in the rear of the building by the exit door is a dark colored 1997 Honda, four (4) door, Maryland Registration 048-AZW (A check with the Maryland Motor Vehicle Administration reveals this vehicle to be registered to Robb Vincent Footo, W/M, 12/09/64, and Elisabeth Marie Footo, W/F, 08/09/65, 5027 Middlesmoor Court, Ellicott City, Howard County, Maryland 21043). At approximately 5:10 A.M., Footo was observed exiting the pharmacy and entering the above mentioned vehicle. The vehicle was then followed and observed pulling onto Junction Drive. Prior to Dorsey Run Road, the vehicle pulled onto a parking lot. Surveillance observed Footo parked on the lot for approximately fifteen (15) minutes during which time he could be seen leaning to the passenger seat and fumbling with objects. Reaching into his lap and into the console, he then was observed leaning forward and putting his face in his lap. Shortly thereafter he sat straight up, then laid back in the seat. Footo continued this making several motions indicative of a person who was zoning high.

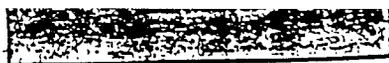
At 5:25 A.M., Footo pulled from the parking lot and proceeded onto Route 32 (west bound). He was then followed to a parking lot near Snowden River Parkway and Broken Land Parkway, where he parked his car and laid back in his seat. At approximately 6:05 A.M., he proceeded to a donut shop on Snowden River Parkway, followed into shop and observed slurping his speech, dropping his money, and swaying while he walked. Footo then returned to his vehicle and was followed to Brampton Road. Upon pulling onto Brampton Road, Footo was observed stopping under a street lamp and again fumbling with items on the passenger seat and in the console. Shortly thereafter he was observed driving his Honda to his residence and into the garage at 5027 Middlesmoor Court, Ellicott City, Howard County, Maryland 21043.

On Friday, March 16, 1999, surveillance was again initiated at the pharmacy. Parked in the rear of the building was a dark colored Dodge Van, Maryland Registration 8BA-92P (A check with the Maryland Motor Vehicle Administration reveals this vehicle to be registered to Robb Vincent Footo, W/M, 12/09/64 and Elisabeth Marie Footo, W/F, 08/09/65, 5027 Middlesmoor Court, Ellicott City, Howard County, Maryland 21043). At approximately 3:35 A.M., Footo was observed leaving the pharmacy and entering this van. The vehicle was followed from the Neighborcare Pharmacy to Brampton Road where Footo stopped under a street light as he had on

4/16/99
Date

Robb Vincent Footo
720
77
D.F.C. H. E. Walker
Applicant's Signature





DEPENDANT'S NAME (LAST, FIRST, MI)

Foote, Robb Vincent

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 5 of 6

the previous evening and again was observed fumbling with items on the passenger seat. After several minutes, Foote pulled away from under the street lamp and headed toward his home. Foote then turned onto a street and began driving away from his home. Foote was temporarily unobserved by surveillance units but at approximately 4:12 A.M. was observed pulling the van into the garage of the his home located at 5027 Middlesmoor Court, Howard County, Maryland 21043.

On Friday, April 16, 1999, Sgt. McElroy responded to the Neighborcare Pharmacy and again contacted Mark Stranz. Stranz and McElroy then viewed a surveillance tape from Thursday, April 15, 1999. This tape clearly shows Foote pulling two (2) packages from the bottom part of the narcotics cabinet, removing the labels, and opening the packages. The contents of each of the two (2) packages (500 mg of Hydromorphone) were then removed via a syringe by Foote and placed in another container which Foote put into his pocket. These empty containers previously labeled as Dilaudid are then filled with another solution (possibly saline or sterile water). These containers are then resealed, and the original labels placed back on the packages. These packages are then returned to the bottom part of the narcotics cabinet where they would eventually be destroyed. According to Marc Stranz and Barbara Church, each package contained approximately 500 mg of Hydromorphone for a total of 1000 mgs. The wholesale cost of this product to Neighborcare is approximately \$11.00.

The current street value of the drug ranges from \$5.00 to \$10.00 per mg.

As a result of this information DFC Leslie Suddles will obtain search and seizure warrants for the residence located at 5027 Middlesmoor Court and both of the aforementioned vehicles.

Due to the aforementioned facts and circumstances the following charges are requested:

- 3.0233 did possess a controlled dangerous substance of Schedule II, to wit: Hydromorphone, a narcotic drug, in sufficient quantity to indicate an intent to distribute.
- Article 27, Section 286

4/16/99

Date

DFC A

Applicant's Signature



DEFENDANT'S NAME (LAST, FIRST, MI)

Boote, Robb Vincent

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 6 of 6

1-3550 ...did possess a controlled dangerous substance, schedule II, to wit Hydromorphone. Article 27, Section 287

3-2400 ...did steal Hydromorphone from Neighborcare Infusion Services, the property of Neighborcare Infusion Services, having a value of less than \$300.00. Article 27, Section 342

4/16/09
Date

DFC h. J. Tucker
Applicant's Signature

