

IN THE MATTER OF

*

BEFORE THE

JOHN D. HOELSHER, P.D.

*

STATE BOARD

LICENSE NO. 11115

*

OF PHARMACY

Respondent

*

* * * * *

FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board") and subject to Md. Health Occ. Code Ann. §12-101, *et seq.*, (the "Act") (200 Repl. Vol.), the Board charged John Hoelscher, P.D., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with violation of the following provisions of §§12-313:

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:

- (20) Is professionally, physically, or mentally incompetent;
- (24) Violates any rule or regulation adopted by the Board[;].

The Board further charges the Respondent with violating the Code of Maryland Regulations (COMAR) 10.34.10.--Pharmacist Code of Conduct--in the following manner:

.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 ad 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) Article 27, 276-304, Annotated Code of Maryland, and
- (e) COMAR 10.19.03; and

(2) Verify the accuracy of the prescription before dispensing the drug or device if the pharmacist has reason to believe that the prescription contains an error.

B. A pharmacist may not:

- (1) Engage in conduct which departs from the standard of care ordinarily exercised by a pharmacist; or
- (2) Practice pharmacy under circumstances or conditions which prevent the proper exercise of professional judgment.

The Respondent was given notice of the Charges by letter dated May 18, 2001. Accordingly, a Case Resolution Conference was held on August 23, 2001 and was attended by Melvin Rubin and Ramona McCarthy Hawkins, Pharmacists members of the Board, LaVerne Naesea, Executive Director of the Board, and Paul Ballard, Assistant Attorney General, Counsel to the Board. Also in attendance were the Respondent and his attorney, Marc K. Cohen, and the Administrative Prosecutor, Roberta L. Gill.

Following the Case Resolution Conference, the parties and the Board agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

FINDINGS OF FACT

1. At all times relevant to the charges herein, the Respondent was licensed to practice pharmacy in the State of Maryland and in the State of West Virginia. The Respondent was first licensed in Maryland on July 30, 1987. The Respondent's Maryland license expires on July 31, 2001. At all times relevant herein, the Respondent was working at either Heritage Pharmacy in Bolliver, West Virginia or at K Mart in Frederick, Maryland.

2. The Respondent has a history of substance abuse and self-prescribing. Consequently, he voluntarily surrendered his pharmacist license on June 30, 1995 after being reported to the Pharmacists Rehabilitation Committee (PRC), the predecessor of the Pharmacists Education and Assistance Committee (PEAC), by the Board for practicing pharmacy while under the influence of unprescribed Darvocet B100 while he was the owner and sole pharmacist at Medicap Pharmacy in Walkersville, Maryland.

3. On April 23, 1996, the Respondent appeared before the Board and requested that his license be reinstated, which request was granted. Subsequently, the Respondent was placed on Probation, with conditions including signing a new contract with PRC for two years, urine screenings, NA/AA meetings, group therapy, daily observations of work environment by a local Maryland State Trooper, random audits of CDS, quarterly PRC therapist and self-reports, abiding by PRC recommendations for treatment, notification to

the Board of change of address, and refraining from conduct that led to the voluntary surrender.

4. On May 9, 1997, the Board issued an Order suspending the Respondent's pharmacy license after receiving reports from the PRC that he was self-medicating with carisoprodol and meprobamate, in violation of his PRC contract. An Order of Summary Suspension of the pharmacy permit for Medicap was also issued on May 14, 1997.

5. On September 17, 1997, the Respondent's license was reinstated and he was placed on probation for two years with the following terms: non-dispensing employment; no access to drugs; health care employment approved by the Board; PEAC and /or Board to observe work setting; urine screens; quarterly employer/therapist/PEAC reports; PEAC contract; AA/NA meetings; follow therapist recommendations; notify Board of change of address; prior approval if employment changed; notification to employer and therapist of probation with a copy of the Consent Order to each. In September 1999, the Respondent was released from probation.

6. On or about March 7, 2001, the Board received an anonymous report by telephone that the Respondent was self-medicating and diverting Serzone, oxycodone and hydrocodone from his former place of employment, Heritage Pharmacy. The caller also stated that the Respondent was then employed at K Mart.

7. On March 28, 2001, Michelle Andoll, P.D., J.D., Pharmacist Compliance Officer of the Board, contacted the Respondent at K Mart. The Respondent informed her that he was the pharmacy manager at that store and had been since February 2001. On March 29, 2001, Ms. Andoll contacted Heritage regarding the Respondent's employment.

She was informed that Heritage closed on February 1, 2001 and its records were transferred to Jefferson Pharmacy.

8. On April 10, 2001, Jack Freedman, Chief of the Division of Drug Control (DDC), and Cathy Putz, P.D., a DDC employee, conducted an audit at K Mart on April 10, 2001. Kelly Shanahan, the Respondent's supervisor, was at the store that day. The Respondent, who began employment with K Mart in February 2001, was pharmacy manager at that store, which had recently been added to Ms. Shanahan's territory. Although Mr. Freedman reported that there were some shortages of Adderall and some other drugs, he did not deem these to be significant. However, the audit disclosed that the Respondent filled two Adderall 20 mg prescriptions for himself with double quantities of Adderall 10 mg¹, an amphetamine, which is a violation of K Mart company policy for employees to fill their own prescriptions. The audit further disclosed that prescriptions for one particular strength of hydrocodone/APA were filled with a different strength of the drug on several occasions, without any indication that the change was authorized.

9. These findings, in addition to other operational problems uncovered by Ms. Shanahan, indicated unacceptable work performance, which resulted in the Respondent's termination from K Mart on April 16, 2001.

¹ The Adderall prescriptions were later confirmed to be valid, inasmuch as the Respondent's psychiatrist issued same.

FINDINGS REGARDING K MART WORK PERFORMANCE

10. Ms. Shanahan's findings are as follows:

The floor of the Pharmacy department at K Mart was covered in mud and dirt.... prescriptions had not been organized, sorted, placed in numerical order, or bundled in California folders² since the beginning of January...not using the KARxE³ program at all . . . a number of stock bottles on the shelves with no caps on them⁴ . . . 6 prescriptions vials, that were evidently return (sic) to stocks that were sitting on an empty shelf, not where they belonged, with no lids on them as well...a customer approached the window, who wanted a transfer from County Market. Approximately, 30 minutes later, she returned to the window and I waited on her. When I could not find her prescription in the will call bin, I asked [the Respondent] if he knew anything about her prescription, and he told me that it had no more refills per Count (sic) Market. I asked if we were waiting for a call back from the doctor, or if we had called the doctor, and he snapped at me, and told me that he had not had time to do that Later that day, she returned to pick up her medication, and we still did not have it ready. [The Respondent] explained that he had called the doctor and had given them the information, but they had (sic) called back. This was the end of the discussion. He made no attempt to reach the customer at home when the doctor indicated they (sic) would call back later, he did not offer to try to make a follow up call to the doctor or anything

² A California folder is a jacket that pharmacists use to wrap prescription forms on intake and put prescription numbers on for identification, e.g., Rx #s 1-100.

³ K Mart has a drug utilization program, which checks things such as dosing and allergies.

⁴ Open bottles allow moisture inside, which can cause pills to lose their potency before the expiration date.

Additionally, he was placing bottles in the speed shelf⁵ that did not belong there (without the scanner label), and I found a number of items that were placed on the shelves in front of the wrong scanner label, and in the wrong order . . . In reviewing the printouts, I noted a number of prescriptions filled for drugs that we did not have in stock, so I began to try to match the actual prescriptions up to the printout in an attempt to find what was actually dispensed . . . There were 10 prescriptions filled on the report for Roxicet 5/500, a drug that we do not even carry. I could on (sic) find 9 of the original prescriptions, all 9 of which were written for Percocet 5. When questioned [the Respondent presumes he actually dispensed Roxicet 5/325⁶ . . . Another prescription was filled in the computer for Roxicet Solution, another product that we do not stock. The original prescription was written for Percocet 5, and, again, [the Respondent] presumes he dispensed Roxicet 5/325 . . . There were also 4 prescriptions on the print out . . . 2 of which were filled for Oxycodone 5 mg (which we do not carry), and 2 for Oxycodone/APA 5/500. Only 3 of the original prescriptions would be found, all of which were written for Exile 5⁷ mg. I then showed him the prescriptions and asked what he had dispensed, and he presumes that in all instances he dispensed the Oxymoron/APA 5/500. . . I additionally found several examples of prescriptions that were filled under the incorrect patient's name and profile . . . On Thursday, since we were still missing 12 hard copy prescriptions for CII's . . . we were

⁵ This is a fast mover shelf where certain drugs which are dispensed in high volume are placed, rather than being kept on shelves under the alphabetical listing; only the drug labeled which matches the scanner label on this shelf should be placed there.

⁶ If dispensing a different strength than the prescriber ordered, one should obtain and document authorization from the prescriber.

⁷ This is immediate Release Oxycodone, which the pharmacy did not carry.

never able to locate the original prescriptions. I then began a CIII-CV inventory. While doing that, I came across a branded Tylenol #3 tablet in the bottle with the generic Tylenol #3.

11. As a result of the above, the Board summarily suspended the Respondent's license on April 27, 2001. On May 1, 2001, the West Virginia Board also suspended the Respondent's license, pursuant to its mandate which requires suspension in West Virginia for a licensee who obtained a West Virginia license by reciprocity, if the State where he was licensed suspends his/her license.

12. As set forth above, the Respondent's actions violate the Act and regulations thereunder.

FINDINGS CONCERNING HERITAGE PHARMACY

13. On April 16, 2001, Robert Blair, Investigator for the West Virginia Board, conducted an audit of Heritage's Controlled Dangerous Substances (CDS) records from December 1999 to February 2001. Because the Respondent was the sole dispensing pharmacist at that pharmacy from December 1999 to December 2000, Mr. Blair re-audited the records for that time period only. The audit disclosed the following:

SCHEDULE IIs				
DRUG	INITIAL INVENTORY	CLOSING INVENTORY	TOTAL ACCOUNTED FOR	DIFFERENCE
Adderall 5mg	100	270	600	-100
Adderall 10 mg	40	155	335	-5

Adderall 20 mg	0	350	470	-430
Oxycontin 10 mg	100	235	459	-341
Oxycontin 20 mg	100	47	435	-165
Oxycontin 40 mg	0	0	280	-20
			Total Missing =	1,061
			Tabs	

SCHEDULE IIIs & IV				
DRUG	INITIAL INVENTORY	CLOSING INVENTORY	TOTAL ACCOUNTED FOR	DIFFERENCE
Propoxy-N/APAP 100/650	550	126	3222	-328
Oxazepam 10 mg	0	0	240	+40
Oxazepam 15 mg	0	67	202	-98
Oxazepam 30 mg	0	0	0	-300
Hydrocodone 5/500	550	370	1157	-893
Hydrocodone 7.5/500	206	178	278	-1128
Hydrocodone 7.5/650	115	560	2568	-3647
Hydrocodone 7.5/750	100	288	654	-1246

SCHEDULE IIIs & IV				
DRUG	INITIAL INVENTORY	CLOSING INVENTORY	TOTAL ACCOUNTED FOR	DIFFERENCE
Hydrocodone 10/500	108	0	240	+132
Hydrocodone 10/650	100	130	1190	-1910

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated §§ 12-313 (20), and (24). The Board further finds that the Respondent violated the following regulations: Code of Maryland Regulations (COMAR) 10.34.10.--Pharmacist Code of Conduct--.01A. (1) (a), (b), (c), and (d) and (e) COMAR 10.19.03; and (2) B. (1) and (2).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 9th day of ~~October~~ ^{November}, 2001, by a majority of a quorum of the Board,

ORDERED that the summary suspension placed upon the Respondent's license to practice pharmacy in Maryland be terminated and that the Respondent be placed on indefinite Probation, with the condition that the Respondent can petition the Board for release from probation after 18 months, subject to the following conditions:

1. The Respondent may not work in Maryland as a pharmacist until he passes a reinstatement examination and a Board-constructed law examination, with a grade of seventy-five percent (75%) or better;
2. The Respondent shall enter into a PEAC contract immediately upon execution of the Consent Order, which includes random urines at least twice a month;
3. The Respondent shall provide a copy of the Consent Order to his employer and provide proof to the Board that his employer has received the Consent Order and agrees to comply with the portions applicable to him/her;
4. The Respondent shall ensure that quarterly reports are submitted to the Board by PEAC, his employer/supervisor and himself; and
5. The Respondent shall work as a pharmacist under direct supervision in Maryland for one year prior to petitioning the Board for release from Probation.

ORDERED that should the Respondent have a positive urine test or if the Board is notified of a violation of the PEAC contract, or if any other condition of Probation is violated, the Board, at its discretion, may suspend the Respondent's license prior to a hearing;

ORDERED that should the Board receive a report that the Respondent's practice is a threat to the public health, welfare and safety, the Board may take immediate action

against the Respondent, including suspension or revocation, providing notice and an opportunity to be heard are provided to the Respondent in a reasonable time thereafter. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order or of Probation shall be on the Respondent to demonstrate compliance with the Order or conditions;

ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

ORDERED that for purposes of public disclosure, as permitted by §10-617(h) State Government Article, Annotated Code of Maryland, this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order.



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

CONSENT OF JOHN D. HOELSCHER, P.D.

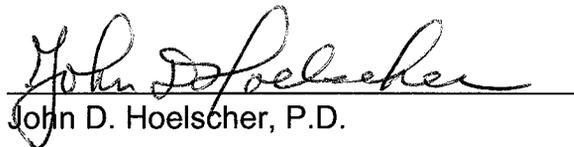
I, John D. Hoelscher, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Marc K. Cohen, and have been advised by him of the legal implication of signing this Consent Order.

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 Md. Health Occ. Code Ann. § 12-313 (2000 Repl. Vol.) of the Act, and the Administrative Procedure Act (APA), Md. State Govt. Code Ann. § 10-201, et seq., (1999 Repl. Vol.);

3. I am aware that I am entitled to a formal evidentiary hearing before the Board. By this Consent Order, I hereby consent and admit to the foregoing Findings of Fact, Conclusions of Law and Order provided the Board adopts the foregoing 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 APA, and any right to appeal as set forth in § 12-316 of the Act and §10-201, et seq., of the APA. I acknowledge that my failure to abide by the conditions set forth in this Order and following proper procedures, I may suffer disciplinary action, possibly including revocation, against my license to practice pharmacy in the State of Maryland.

10/13/01
Date


John D. Hoelscher, P.D.

STATE OF Pennsylvania

CITY/COUNTY OF Adams :

I HEREBY CERTIFY that on this 13th day of October, 2001, before
John D. Hoelscher
me _____, a Notary Public of the aforesaid State and City/County,
(Print Name)
personally appeared John D. Hoelscher, License No. 11115, 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 WITNESSETH my hand and notarial seal.

Nichole L. Brown
Notary Public

My Commission Expires: _____

Notarial Seal
Nichole L. Brown, Notary Public
Union Twp., Adams County
My Commission Expires July 26, 2004

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Member, Pennsylvania Association of Notaries