

IN THE MATTER OF * BEFORE THE
STEPHEN KLEBROWSKI, Pharm.D. * STATE BOARD
License No. 07202 * OF PHARMACY
Respondent * CASE NUMBER: 07-101

* * * * *

ORDER FOR SUMMARY SUSPENSION

Pursuant to Md. State Govt. Code Ann. §10-226 (c) (2004 Repl. Vol. and 2006 Repl. Vol.), (the Administrative Procedures Act (the APA)) the State Board of Pharmacy (the "Board") hereby summarily suspends the license to practice pharmacy issued to Stephen C. Klebrowski, Pharm.D., (the "Respondent") License No. 07202, under the Maryland Pharmacy Act (the "Act"), Md. Health Occ. Code Ann. §§ 12-101, et seq., (2005 Repl. Vol. and 2006 Supp.).

FINDINGS OF FACT

This Order is based on the following investigative findings, which the Board has reason to believe are true:

1. At all times relevant, the Respondent was licensed to practice pharmacy in the State of Maryland. He was initially licensed in Maryland on or about January 29, 1970. The Respondent's license expires in May of 2008 and is currently in a probationary status.¹

2. On or about February 15, 2007, the Respondent was convicted in the Circuit Court for Baltimore County, Maryland, of one count of unlawful distribution of Hydrocodone² in violation of Md. Criminal Law Article Code Ann. § 5-602(1),³ and was

¹ Respondent entered into a Consent Order with the Board in August of 1998, placing him on probation for 12 months and requiring him to petition the Board for termination of probation at the expiration of the 12 month period. There is no record of Respondent's ever petitioning to be released from probation.

² A Schedule II Controlled Dangerous Substance ("CDS").

sentenced to six months incarceration all of which was suspended, ordered to serve six months of unsupervised probation, ordered to pay court costs, and issued a fine in the amount of \$15,000.00 to be paid before the termination of probation.

3. During the hearing held on February 15, 2007, the following statement of facts served as the basis for the Respondent's conviction:

Your Honor, thank you. Your Honor, on or about October 6th of 2006, officers of Baltimore County Police Department were made aware through the Rite Aid Pharmacy through Mr. (sic) John Moore regarding a discrepancy of one of the pharmacists, [the Respondent].

In reviewing [the Respondent's] records as a pharmacist [sic] at the Dundalk location of Right Aid [sic], it was determined he had filled out a number of prescriptions done without a proper prescription, without other required paperwork.

The officers responded to, eventually, to Rite Aid Pharmacy for Lutherville for copies of records given by Rite Aid pharmacist. After conducting an investigation, the detectives discovered from the period of approximately November 1, 2004 through November 1, 2006, the defendant had given over one thousand pills to a—a—another individual by the name of [Patient A].⁴

[Patient A] was a customer and patient of [the Respondent], who befriended him. While in the store on a number of occasions he had, in fact, given him valid prescriptions, those prescriptions had been filled for various pain medication including Hydrocodine [sic].

There came a time in which [Patient A] came into the pharmacy without the proper prescription, on a number of those occasions [the Respondent] would, in fact, still fill the prescription or give him Hydrocodine [sic] without a prescription. At that time, [Patient A] would pay a co-pay, five dollar co-pay. [The Respondent] would, in fact, submit the proper paperwork for that to be reimbursed through the company.

Your Honor, on November 7, 2006, the detectives executed a search and seizure warrant on [the Respondent's] home. After conducting that search and seizure warrant they advised [the Respondent] of his Miranda rights. He advised he understood the rights.

³ A person convicted of a violation of § 5-602 of the Criminal Law Article is guilty of a felony. See Md. Criminal Law Article Code Ann. § 5-607(a).

⁴ The patient's name is confidential, but may be disclosed to the Respondent by contacting the Administrative Prosecutor.

[The Respondent] stated that he knew [Patient A], the subject that came to Rite Aid Pharmacy where he worked for the past two years. He had provided Percocet, Oxycotin [sic] to help with pain and submitted fraudulent claims to the insurance company. [Patient A] had to pay the co-pay.

Detective Arseago asked if he knew he was defrauding them. Yes, he was sorry for the mistake. The [Respondent] was asked if there were any fraudulent claims or pills he had given to anyone else, he advised he had not given any to any other individuals.

If called to testify, witnesses from Rite Aid and the Baltimore County Police Department would identify the [Respondent] who, in fact, distributed Hydrocodine [sic] during the two-year period without the proper prescription or documentation to [Patient A], an individual not in way [sic] licensed to receive those. That would be the State's case at this time, Your Honor.

4. During the time that the Respondent was providing Patient A with Hydrocodone without a prescription, he was actively employed as a pharmacist with Rite Aid. The Respondent was terminated from Rite Aid in October 2006. Upon his termination, the Respondent gave a written statement to officials at Rite Aid confirming that he refilled a patient's prescriptions for Hydrocodone without a valid prescription and without contacting the patient's physician.

5. Between November 2004 and November 2006, the Respondent improperly dispensed to Patient A 4090 pills of the above narcotics and billed Patient A's insurer for the prescriptions he dispensed without authorization.⁵

6. Based upon the Respondent's dispensing potent, habit-forming pain medication, Hydrocodone and Oxycontin, without prescriptions, and fraudulently billing Patient A's insurer, there is a substantial likelihood that his continued ability to practice pharmacy in the State of Maryland poses a risk of harm to the public health, safety, or welfare.

⁵ Patient A paid a \$5.00 co-pay for each bottle of pills dispensed by the Respondent. The insurer was billed for the balance of the cost.

6. The above actions also constitute violations of the Act and the Pharmacist Code of Conduct adopted by the Board. Specifically, the Respondent violated § 12-313 of the Act as follows:

(b) 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;
- (15) Dispenses any drug, device, or diagnostic for which a prescription is required without a written, oral, or electronically transmitted prescription from an authorized prescriber;
- (16) Except as provided in § 12-506 of this title, unless an authorized prescriber authorizes the refill, refills a prescription for any drug, device, or diagnostic for which a prescription is required;
- (22) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;
- (24) Is . . . convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes;
- (25) Violates any rule or regulation adopted by the Board.

The Board further charges that the Respondent violated the following provisions of the Board's Regulations, Code Md. Regs., tit. 10, § 34.10 (November 21, 2001), Pharmacist Code of Conduct, the Respondent violated are as follows:

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

CONCLUSIONS OF LAW

Accordingly, the Board concludes that the public health, safety or welfare imperatively requires emergency action in this case, pursuant to the APA § 10-226(c).

ORDER

Based on the foregoing, it is this 6th November 2007, by a majority vote of a quorum of the Board, hereby:

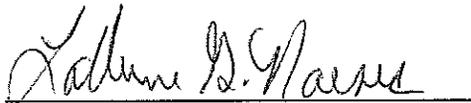
ORDERED that, pursuant to the authority vested by § 10-226(c) of the APA, the Respondent's license to practice pharmacy in Maryland, is hereby **SUMMARILY SUSPENDED**; and be it further

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 upon the Board's receipt of a written request from the Respondent, a Show Cause Hearing shall be scheduled within a reasonable time of said request, at which the Respondent will be given an opportunity to be heard as to whether the Summary Suspension should be continued, regarding the Respondent's fitness to practice pharmacy and the danger to the public.

ORDERED that this document constitutes a formal disciplinary action of the Maryland State Board of Pharmacy and is, therefore, a public document for purposes of public disclosure, pursuant to the Public Information Act, State Gov't § 10-611, et seq., and COMAR 10.34.10.12

11/6/07
Date



LaVerne G. Naesea, Executive Director
Board of Pharmacy