STATE OF MARYLAND

DHMH

Department of Health and Mental Hygiene
Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

MARYLAND BOARD OF PHARMACY
4201 Patterson Avenue• Baltimore, Maryland 21215-2299
Michael N. Souranis, Board President - LaVerne G. Naesea, Executive Director

VIA REGULAR & CERTIFIED MAIL RETURN RECEIPT REQUESTED
ARTICLE #7008 1830 0001 1599 0716

October 20, 2010

David Lee
100 N. Broadway
Apartment 401
Baltimore, Maryland 21231

Re: Final Order of Revocation

Dear Dr. Lee:

On July 27, 2010, the Board notified you of its intent to Revoke your Pharmacist License and informed you that you had 30 days from the date of receipt of the Notice to request a hearing in writing. More than 30 days has elapsed, and no request has been received. Therefore, the enclosed Final Order of Revocation is in effect.

Sincerely,

Michael N. Souranis, P.D., President
Maryland Board of Pharmacy

Enclosure (copy to all ccs)

cc: John Nugent, Principal Counsel
Linda Bethman, Assistant Attorney General
Board Counsel
Francesca Gibbs, Staff Attorney
Board Counsel
Roberta Gill, Assistant Attorney General
Administrative Prosecutor
Rosalind Spellman, Administrative Officer

IN THE MATTER OF	*	**BEFORE THE**
DAVID LEE, PHARM.D.	*	**STATE BOARD**
License No.: 18121	*	**OF**
Respondent	*	**PHARMACY**
	*	**Case No. 09-072**

* * * * * * * * * * * *

FINAL ORDER OF REVOCATION
OF THE RESPONDENT'S PHAMACIST'S LICENSE

On July 27, 2010, the Maryland Board of Pharmacy (the "Board"), notified David Lee, , Pharm.D., the Respondent, of its Intent to Revoke his pharmacist's license. The Notice also informed the Respondent that, unless he requested a hearing in writing within 30 days of receipt of said Notice, the Board would sign the Final Order herein, which was enclosed. More than 30 days has elapsed and the Respondent failed to timely request a hearing. Therefore, this revocation is final.

The basis for the Board's action was pursuant to the Administrative Procedure Act (the "APA"), Md. State Govt. Code Ann. § 10-226(c)(1) (2009 Repl. Vol.) and the Maryland Pharmacy Act, codified at Md. Health Occ. Code Ann. § 12-101, et seq., ("the Act") (2009 Repl. Vol.).

The pertinent provision of § 10-226(c)(1) of the APA states:

Revocation of suspension.(sic)—(1) Except as provided in paragraph (2) of this subsection, a unit may not revoke or suspend a license unless the unit first gives the licensee:

(i) written notice of the facts that warrant suspension or revocation; and,

(ii) an opportunity to be heard.

The pertinent provisions of § 12-313 the Act state:

> (a) In this section, "convicted" includes a determination of guilt, a guilty plea, or a plea of nolo contendere followed by a sentence.
>
> (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 for a pharmacist's license, reprimand any licensee, place any licensee on probation, or suspend or revoke a license of a pharmacist if the applicant or licensee:
>
> > (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 [;].

FACTS THAT WARRANT THE REVOCATION OF THE RESPONDENT'S LICENSE

1. At all times relevant hereto, the Respondent was licensed to practice pharmacy in Maryland. The Respondent was first licensed on September 19, 2006. The Respondent's license expires on July 31, 2010.

2. In March 2008, the Respondent was terminated from Medstar Systems during his first month as a dispensing pharmacist for taking narcotics and benzodiazepines drugs from the inventory for his personal use, to the extent that he was impaired.

3. Upon termination, the Respondent entered into a three-year contract with the Pharmacists' Education and Advocacy Council (PEAC) on March 20, 2008.

4. PEAC referred the Respondent to the Resource Group (Counseling and Education Center), which diagnosed him with opioid and benzodiazepine abuse, and recommended the following: abstinence from all non-prescription use of psychoactive

drugs; ongoing monitoring by random urinalysis for drugs; through (*sic*) psychiatric evaluation; to see an experienced drug abuse clinician to continue the evaluation process.

5. Accordingly, a referral was made to a medical doctor who confirmed the opioid and benzodiazepine abuse, and added an additional diagnosis of adjustment disorder with anxiety and depression, chronic, mild. The physician recommended the following: that the Respondent return to work, even in a dispensing role, but consider a low stress, part-time situation, perhaps through a pharmacy placement company; continue in therapy at the Resource Group; no psychiatric medications indicated, but therapy should be weekly for the first 1-2 months until it is clear that he is doing well; continue random weekly urine testing for at least 12 weeks, and, continue monthly motivational sessions with him.

6. By letter dated September 10, 2008, PEAC notified the Respondent that it was notified that the Respondent had only attended therapy once in March, weekly in April, only once in May, and none in June. In addition, he underwent no urine testing. PEAC further noted that on July 11th, he began treatment with another physician and provided urine testing on July 11th and 16th, and informed that physician that he was returning to the Resource Group. However, the evaluating/treating physician indicated that the Respondent had not, in fact, returned for treatment at the Resource Group since May 5, 2008, and, as of July 16th, there has been no documentation of weekly urine testing provided to PEAC, as specified in his contract. Further, PEAC indicated that the Respondent had not been in weekly contact with this sponsor for several months, occurring only three times since he started his PEAC contract. PEAC further

informed the Respondent that he had not provided the address and supervisor's name at the Walmart where he reported being employed, stating that disclosure to his employer was mandatory. PEAC stated that it expected immediate compliance with therapy attendance, urine testing and weekly contact with his monitor and, that failure to meet these requirements within one week of receipt of the letter, will result in action to the Board of Pharmacy.

BASIS FOR CURRENT ACTION

7. By email dated 2/16/09, the Respondent reported that two of his recent urines have been positive and that his therapist is aware of the situation—based on a three-month old prescription for Valium that his doctor had prescribed for minor panic and anxiety episodes when traveling/flying. The Respondent stated that he had also advised his monitor. The Respondent further advised that he had the original prescription bottle.

8. On 2/20/09, the Respondent was terminated from the Walgreens #05409 on Eastern Avenue in Baltimore City as a result of the following:

A. On 2/18/09, someone reported that the Respondent was observed removing a bottle of pills, emptying the pills into his hand, placing the pills in his smock pocket, and throwing the empty bottle in the trash;

B. Based upon the above information, the Walgreens investigator conducted an audit and determined that the inventory was negative for 300 Alprazolam. Triazolam was also short;

C. On 2/19/09, an employee confirmed that the Respondent had filled a prescription for Valium himself;

D. Based upon the above incidents, the Investigator interviewed the Respondent on 2/20/09, wherein the Respondent admitted to taking Triazolam on occasions while on duty and that he was on a program through the State. The Respondent further admitted to filling a prescription for Diazepam for himself that was prescribed by his doctor and that he changed the amount from 30 to 60. The estimated amount of the pills that the Respondent admitted taking was $13.66. The Respondent prepared a written statement describing his action and made a voluntary restitution of the $13.66;

E. The report concluded that Baltimore City police would be contacted about pursing criminal prosecution, even though the amount taken would be a misdemeanor.

9. By email dated 2/23/09, Walgreens notified PEAC that it had terminated the Respondent for controlled substance issues and that the Respondent had admitted to theft of Triazolam and Alprazolam.

10. By email dated 2/24/09, PEAC notified the Respondent that it had received the email from Walgreens informing it of his termination of employment due to theft of Triazolam and advised him to meet with his sponsor immediately to hand over his wallet and wall license to insure public safety. He was further instructed to cease the practice of pharmacy as stated in his PEAC contract. It urged the Respondent to make an urgent appointment to see his therapist to discuss this incident.

11. By letter dated 2/26/09, PEAC advised the Board that the Respondent had violated his PEAC contract for the above reasons. It further reported that, prior to this

incident, his immediate supervisor reported on the January PEAC Monthly Employer Evaluation form her concern that the Respondent experienced light-headedness/dizziness spells on January 6, 2009; when PEAC discussed this condition wit the Respondent, he stated he experienced anxiety and panic attacks, especially before and during flying recently to California. When the Respondent was asked to send the prescription bottle or copy of the prescription to PEAC, he failed to do so. PEAC further reported that PEAC and the Respondent's monitor met with the Respondent on 12/29/09 (*sic*) to discuss the Respondent's non-compliance with contacting his monitor of a weekly basis and not being consistent with the therapy attendance in the past. PEAC further informed the Board of its direction to the Respondent to turn over to his monitor his license, which the Respondent mailed to PEAC.

12. By letter dated 3/24/09, PEAC wrote to the Respondent that he was instructed to meet with his PEAC mentor to surrender his pharmacy licenses and confirmed that, on March 6, 2009, PEAC had received his license by mail. PEAC further advised that it had received his 3/20/09 letter to his therapist that he was withdrawing from the PEAC program, indicating that he was discontinuing therapy with him and would no longer be practicing pharmacy for the period determined by the Board of Pharmacy. PEAC noted that his positive urine test results in February indicates his need for rehabilitative services and that it would like to continue assisting him in his recovery and providing ongoing advocacy and support on his behalf. PEAC asked the Respondent to reconsider whether he wanted to continue his treatment and informed him that it had sent his license to the Board.

13. As a result of the above, the Board on June 5, 2010 summarily suspended

the Respondent's license and gave the Respondent an opportunity to request a Show Cause hearing as to why the suspension should not be continued. The Respondent never requested a Show Cause hearing or a hearing on the merits of the suspension.

14. As set forth above, the Respondent violated the Act and the regulations thereunder and his license should be revoked.

CONCLUSIONS OF LAW

Based upon the aforegoing Facts, the Board concludes that the Respondent violated its Act and that the revocation is warranted, pursuant to § 12-313 (a) and (b) (22) and § 10-226 (c) (1) of the APA.

NOTICE OF RIGHT OF APPEAL

In accordance with Md. Health Occ. Code Ann. § 12-315 (2009 Repl. Vol.) and the Administrative Procedure Act, Md. State Govt. Code Ann. § 10-201, *et seq.*, (2009 Repl. Vol.) you have a right to a direct judicial appeal of this decision. A petition for appeal of the Final Board Order shall be filed within thirty days from your receipt of this Final Order and shall be made in accordance with the aforecited authority.

10-2010
Date

Michael N. Souranis, P.D., President
Maryland Board of Pharmacy