

IN THE MATTER OF
FRANK LEUNG, P.D.
LICENSE NO. 15395

*
*
*

BEFORE THE MARYLAND
STATE BOARD OF
PHARMACY

* * * * *

CONSENT ORDER

Background

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board"), and subject to the Maryland Pharmacy Act (the "Act"), Md. Code Ann., Health Occ. §§ 12-101, et seq., (2000 Repl. Vol.), the Board issued an Order for Summary Suspension dated November 8, 2004, in which it summarily suspended the pharmacist's license held by Frank Leung, P.D. (the "Respondent"). Specifically, the Board found that the public health, safety or welfare imperatively required emergency action, pursuant to Md. Code Ann., State Gov't §10-226(c)(2)(2004 Repl. Vol.). The Board also found that the Respondent had violated the following provisions of § 12-313:

(b) *In general* - 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;
- (6) Willfully makes or files a false report or record as part of practicing pharmacy;
- (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;
- (24) Violates any rule or regulation adopted by the Board.

The Board further charged the Respondent with violations of the Board's Code of Conduct regulations. Code Md. Regs. tit. 10, 34.10.

On February 8, 2005, the Board held a hearing before a quorum of the Board to allow the Respondent the opportunity to show cause why the Respondent did not pose an imminent threat to the health, safety and welfare of the public. In lieu of continued summary suspension, the parties and the Board agree to resolve the matter by way of settlement. The parties and the Board agree to the following:

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent was licensed to practice pharmacy in Maryland. The Respondent was first licensed on October 20, 1999. The Respondent's license expires on June 28, 2005.

2. At all times relevant hereto, the Respondent was employed as a dispensing pharmacist at Suburban Hospital in Bethesda, Maryland, in Montgomery County.

3. On or about September 7, 2004, it was discovered by a pharmacy technology specialist (Pharm Tech) that, on September 6, 2004, the Respondent had removed from the PYXIS¹ machine three tablets of Oxycontin, 40 mg², as expired, but the pills were not returned to the pharmacy vault as required by hospital policy.

1 A Pyxis is an automated medication dispenser. To use it, a code is entered by an individual who has a password. That individual pulls the medication from the Pyxis. It also automatically records the time of withdrawal of medication, the name of the individual, the name of the patient for whom it is being withdrawn, and the dosage amount. In addition, the Pyxis records the wasting of medication by an individual and who witnessed it. It records medication that has been returned to the Pyxis or medication that has been mistakenly withdrawn. All the information is contained in a printout. It is a comprehensive and objective way to maintain records of narcotics access rather than relying upon individuals to do a hand count.

2 OxyContin contains oxycodone HCL, an opioid agonist with an addiction potential similar to that of morphine. Opioid agonists are substances that act by attaching to specific proteins called opioid receptors, which are found in the brain, spinal cord, and gastrointestinal tract. When these drugs attach to

4. On September 8, 2004, the Respondent gave the Pharm Tech two Oxycontin, 40 mg tablets and said they were in a return bin in the main pharmacy area. The Pharm Tech returned them to the vault.

5. After speaking with the Assistant Director of Pharmacy, the Pharm Tech realized that the returned pills were not expired. Thereupon, the Pharm Tech and the Assistant Director of Pharmacy performed an inventory of the Oxycontin, 40 mg tablets and found that none of the pills had expired. Upon further checking for any other discrepancies, the Pharm Tech identified the following:

- A. Multiple inventories existed for several narcotics;
- B. Many of the Controlled Dangerous Substances (CDS) had been listed as outdated;
- C. There was a failure to return purported outdated drugs to the pharmacy vault;
- D. There were two instances where the Respondent indicated that he dispensed from the Pyxis certain medication, but there was no indication on the Medication Administration Record (MAR) that these patients were actually given those meds at that time.

6. Thereafter, the Pharm Tech ran a controlled drug activity report for the Pyxis for the Respondent from 8/11-9/1/04 and found multiple events showing that the Respondent had removed narcotics and a few non-controlled medications using the outdate function, yet none of these had been returned to the vault.

7. The following is a list of medicines that were removed by the Respondent from 8/11-9/10/04 from the Pyxis as expired but not returned to the pharmacy vault:

| | | |
|----------------------------|---|---------|
| Percocet 10/325 mg tablets | – | 50 tabs |
| Percocet 5/325 mg tablets | – | 6 tabs |

certain opioid receptors in the brain and spinal cord they can effectively block the transmission of pain messages to the brain.

| | | |
|------------------------------------|---|---------|
| Oxycontin 20 mg tablets | — | 43 tabs |
| Oxycontin 40 mg tablets | — | 11 tabs |
| Morphine 30 mg Immediate Rel. Tabs | — | 3 tabs |
| Morphine 30 mg Ext. Rel. Tabs | — | 1 tab |

The Respondent denies taking the morphine tablets.

8. The Pharm Tech then ran a report showing all medications dispensed directly to patients from the pharmacy, where no entries for these medications showing that same had been dispensed to them and/or no orders were found for these medicines:

| | | |
|----------------------------------|---|----|
| Percocet 10/325 mg tablets | — | 69 |
| Oxycontin 10 mg | — | 2 |
| Oxycontin 20 mg | — | 4 |
| Oxycontin 40 mg | — | 10 |
| Oxycontin Oral Syringes 20 mg/ml | — | 6 |

9. A listing of the total medications and costs follows:

| | |
|---------------------------------------|----------|
| Percocet 10/325 = 119 tabs total cost | \$215.39 |
| Percocet 5/325 = 6 tabs total cost | .60 |
| Oxycontin 10 mg = 2 tabs total cost | 1.72 |
| Oxycontin 20 mg = 47 tabs total cost | 76.71 |
| Oxycontin 40 mg = 21 tabs total cost | 59.85 |
| Oxycodone Oral Syr = 6 syringes cost | 2.76 |
| Morphine 30mg IR = 3 tabs | 1.86 |
| Morphine 30 mg Ext. Rel = 1 tab cost | .05 |
| | \$358.94 |

The Respondent denies taking the morphine tablets.

10. Following this report, the Pharm Tech, Assistant Director and Director of the Pharmacy met with the Human Resources person and the Respondent, where this information was disclosed. The Respondent denied knowledge of how the discrepancies had occurred, whereupon the Respondent was suspended for three days, pending further hospital investigation.

11. Thereafter, the hospital investigated back to June 2004, when the Respondent first began employment there, and further discrepancies were discovered, such as more removals of

pills as expired, but the pills could not be located.

12. As a result of these discoveries, a second meeting was held on September 16, 2004 with the Respondent and the individuals present at the first meeting, with the exception of the Pharm Tech. At that meeting, the Respondent denied taking the pills and indicated that he did not use them, but he could not provide a clear answer as to where he had put the pills when he removed them from the machine. The Respondent acknowledged that he had removed expired drugs from the machine. The Respondent was informed that, unless the missing drugs could be found, a report would be sent to the Board and to the Drug Enforcement Administration (DEA) as required. The Respondent continued to insist that he did not know what had happened to the missing drugs. Thereupon the meeting was closed, and the Respondent, and the Director and Assistant Director left the Human Resources Office.

13. After leaving the Office, however, the Director again asked the Respondent whether there was anything he needed to state in order to get "some closure." At that time, the Respondent said the he did have something to tell them, if they could speak in private.

14. Thereupon, the Respondent stated that he had been forced to resign from his previous job at CVS due to missing narcotics, which he stated that he had filled for his friends without valid prescriptions and/or refills. The Respondent also admitted taking narcotics from the pharmacy for himself, although he insisted that he was not addicted and not a regular user. The Respondent then apologized for lying.

15. The Respondent admitted that he was taking narcotics for his wife who had begun using them after she had lost a baby two years ago. The Respondent further admitted that he removed the narcotics from Suburban for his wife, friends and for himself, although he still denied having a drug addiction. The Respondent asked that he not be reported to the Board and

stated that he wanted to get help for himself and his wife.

16. Thereafter, the three of them returned to the Human Resources Office where the above information was repeated. The Human Resources person contacted the Director of Occupational Health/Safety, who came to the Office and explained to the Respondent the next steps in the rehabilitation process. The Respondent was escorted to the Occupational Health/Safety Office for a drug screen and to be given information about the drug treatment program offered by Suburban.

17. As a result of the above, the Respondent was terminated from employment at Suburban and the Director filed a complaint with the Board.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that the Respondent violated Md. Code Ann., Health Occ. §§ 12-313(b)(2), (6), (14), (20), and (24).

ORDER

Based on agreement of the parties, it is this 29th day of MARCH, 2005, by an affirmative vote of a majority of the Board, hereby

ORDERED that the Respondent's license be SUSPENDED; and be it further,

ORDERED that during the suspension period, the Respondent shall be subject to the following conditions:

1. The Respondent shall enter into and fully comply with a rehabilitation contract with the Pharmacists Education and Assistance Committee ("PEAC"), which contract shall include quarterly progress reports by PEAC, and full urine screens and therapy as deemed appropriate by PEAC; and

2. The Respondent shall not work in a pharmacy prescription area as a technician; and be it further,

ORDERED that the Respondent may petition the Board to lift the suspension no earlier than November 8, 2005, PROVIDED THAT:

1. The Respondent submits to the Board a substance abuse evaluation that is satisfactory to the Board; and

2. The Respondent has complied with all conditions during the suspension period; and be it further,

ORDERED that the Board may impose any terms or conditions of probation upon any lifting of suspension of the Respondent's license; and be it further

ORDERED that the Respondent is responsible for all costs associated with complying with this Order; and be it further,

ORDERED that this is a final order of the Maryland Board of Pharmacy and as such is a public document pursuant to the Maryland Annotated Code, State Government Article, Section 10-617(h).

March 29, 2005
Date



Melvin Rubin, P.D.
President, Board of Pharmacy

CONSENT

By signing this Consent, I hereby admit to the truth of the foregoing Findings of Fact and Conclusions of Law, and agree to be bound by the foregoing Consent Order and its conditions.

1. By this Consent, I submit to the foregoing Consent Order as a resolution of this matter. By signing this Consent, I waive any rights I may have had to contest the findings of fact and conclusions of law contained in this Consent Order.

2. I acknowledge the validity of this Consent Order as if it were made after a hearing in which I would have had the right to counsel, to confront witnesses on my own behalf, and to all other substantial procedural protections provided by law.

3. I acknowledge the legal authority and the jurisdiction of the Board to enter and enforce this Consent Order.

4. I acknowledge that, by entering into this Consent Order, I am waiving my right to appeal any adverse ruling of the Board that might have followed an evidentiary hearing.

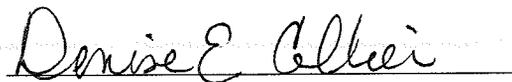
5. I sign this Consent Order freely and voluntarily, after having had the opportunity to consult with counsel. I fully understand the language, meaning, and effect of this Consent Order.

3/23/05
Date


Frank Leung

STATE OF MARYLAND
COUNTY/CITY OF Montgomery :

I hereby certify that on this 23 day of March, 2005, before me, a Notary Public of the State of Maryland and County/City aforesaid, personally appeared Frank Leung, and made an oath in due form that the foregoing Consent was his voluntary act and deed.



Notary Public
My commission expires: January 7, 2009