

IN THE MATTER OF
ELLEN SUBER, P.D.
LICENSE NO.: 07231

* BEFORE THE
* MARYLAND BOARD
* OF PHARMACY

CONSENT ORDER

Based on information received and following an investigation, the State Board of Pharmacy (the "Board") charged Ellen Suber, P.D. ("Respondent") with violation of Md. Ann. Code, Health Occupations, §12-313, as follows:

Subject to the hearing provisions of §12-315 of this subtitle, the Board 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:

(5) Submits a false statement to collect a fee;

(6) Willfully makes or files a false report or record as part of practicing pharmacy;

(7) Willfully fails to file or record any report that is required by law;

(14) Without first having received a written or oral prescription for the drug from an authorized prescriber, dispenses any drug for which a prescription is required;

(15) Except as provided in §12-511 of this title, unless an authorized prescriber authorizes the refill in the original prescription or by oral order, refills a prescription for any drug for which a prescription is required;

(20) Is professionally, physically,
or mentally incompetent.

Respondent was given notice of the charges and their bases by letter and charging documents dated January 21, 1992 [sic]. These documents were sent to Respondent and were served on her attorney, Jack C. Tranter.^{1/} A prehearing conference was held on March 2, 1993 and was attended by George Voxakis, P.D., and Robert Kabik, P.D., members of the Board, and Roslyn Scheer, Executive Director of the Board. Also in attendance were Respondent, her attorney, Mr. Tranter, and Roberta L. Gill, Assistant Attorney General and Administrative Prosecutor.

As a result of negotiations entered into at the prehearing conference, the parties have agreed to enter into this Consent Order.

FINDINGS OF FACT

1. During all times relevant hereto, Respondent was a licensed pharmacist in the State of Maryland.

2. Respondent was licensed as a pharmacist in the State of Maryland in 1970, and Respondent worked part-time at Riverside Pharmacy in Salisbury, Maryland for many years, as well as at the Welch Pharmacy in Ocean City during the summer months.

^{1/} The Board had no personal (home) address for Respondent and her attorney agreed to accept service. The letter was actually sent January 21, 1993, not 1992.

3. In 1988, Respondent began working for ASCO Pharmacy ("ASCO") in Salisbury, Maryland. Although Respondent initially worked part-time, in 1991, she began working full-time. Since May of 1989, ASCO has functioned exclusively as an institutional pharmacy, serving nursing homes located on the Eastern Shore.

4. In addition to preparing medications for nursing home residents, Respondent performs chart audits at the various nursing homes ASCO serves.

5. In a February 25, 1993 letter to Mr. Tranter that was presented at the Prehearing Conference, ASCO advised that it has been aware of this matter since July of 1991 and states that Respondent's "job performance has consistently been well above average." Respondent continues to be employed at ASCO.

6. Beginning in May of 1989 and continuing at three-month intervals thereafter until February of 1991, Respondent submitted requests for reimbursement to Blue Cross/Blue Shield of Maryland ("BC/BS") for medications dispensed for her son that did not accurately reflect the amount of medication she actually dispensed. Specifically, Respondent's son has been treated for asthma for many years. Throughout this period, he has been under the care of Frank Johnson, M.D. Because Respondent was a pharmacist, Dr. Johnson's practice was to give

her verbal orders for medication, either during a visit to his office or by phone.

7. During the period in question (May of 1989 to February of 1991), Dr. Johnson stated that he prescribed the following medications for Respondent's son: Theodur-300 mg, 60 tablets per month; Proventil-2 mg at 30-50 tablets per month; and Ventolin Inhaler-17 mg, one spray bottle per month.^{2/} Instead of dispensing these medications in the specific amounts noted, Respondent states that she dispensed these medications based on her son's need. However, regardless of the amount actually dispensed, Respondent submitted claims to BC/BS every three months seeking reimbursement for 100 tablets of Theodur, 100 tablets of Proventil and two Ventolin inhalers. While Respondent states that her intent was to approximate the amount of medication dispensed, she acknowledges that the amount of medication for which she sought reimbursement from BC/BS exceeded the amount she actually dispensed. Also, although Respondent paid ASCO for these medications at ASCO's wholesale price, she sought reimbursement from BC/BS as if she had paid ASCO's retail price.

^{2/} Although the Respondent accepts this finding as to the amount of medication prescribed, her recollection of the arrangement differs. Respondent believes that she was authorized by Dr. Johnson to dispense larger quantities of the medications than as noted above if her son's condition warranted.

8. While employed at ASCO and at Riverside Pharmacy, on three occasions Respondent dispensed Marax, Theodrine and Hydrophen for herself for asthma. Respondent's physician denied prescribing these drugs for her, but states that he would have done so if the Respondent had asked.^{3/} Although Respondent maintains that she had her physician's implicit approval to dispense this medication, she acknowledges that he did not directly issue a verbal or written order so authorizing.

9. In April or May of 1987, Respondent's husband was prescribed diphenoxylate hydrochloride with atropine sulfate and dicyclomine hydrochloride by his personal physician. Although this physician did not prescribe any refills for these medications, Respondent dispensed refills in 1989 while employed at Riverside Pharmacy.^{4/}

10. In February of 1991, Respondent was contacted by a BC/BS representative regarding the reimbursement she had requested and received for the medication she dispensed for her

^{3/} Although Marax, Theodrine and Hydrophen are all different brand names for the same chemical compound, Respondent's physician was only familiar with Marax.

^{4/} Respondent states that her usual practice was to request refills for prescriptions issued for family members. However, she has no recollection of whether he did so or not in the case of these medications. Accordingly, she cannot dispute the physician's recollection that no refills were requested.

son. In response to this inquiry, Respondent immediately sought treatment with Charles Bagley, M.D., a psychiatrist who has cared for her in the past. Respondent remained in treatment with Dr. Bagley until he decided that treatment was no longer required.

11. After discussing the claims she had submitted to BC/BS with her therapist and counsel, Respondent, through counsel, revealed to BC/BS that the claims she submitted exceeded the amount of medication she actually dispensed and that she had sought more in reimbursement than she had paid. Due to the difficulty of identifying the quantities of drugs she actually dispensed, Respondent made restitution to BC/BS in the full amount of the reimbursement requests she had submitted for the period May of 1989 to February of 1991, even though most of this medication, at least in the quantities Dr. Johnson prescribed, had actually been dispensed. Respondent maintains that the amount of overpayment by BC/BS to her was approximately \$1,800. However, she paid \$5,200, the entire amount of all claims submitted during the period May of 1989 through February of 1991, as restitution to BC/BS, due to her inability to substantiate the amount of medication she had, in fact, dispensed.

12. In addition to revealing the improper nature of the claims she submitted to BC/BS, after being contacted by a BC/BS

representative in February of 1991, Respondent commenced intensive psychotherapy with Dr. Bagley. Dr. Bagley's diagnosis is that Respondent suffered an acute panic attack as a result of her husband's change in employment from college professor to commodities broker. Dr. Bagley concludes that Respondent was terrified that her family would lose its medical benefits as a result of her husband's career change, thus threatening her son's ability to obtain the maintenance medication he needed for his asthma.

13. Respondent has been discharged as a patient by Dr. Bagley, and, in his view, no longer requires psychiatric care.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as a matter of law that Respondent violated §12-313(5) and (6) by billing BC/BS at the retail price for pharmaceuticals purchased at wholesale, and by billing BC/BS for medications not dispensed in the amount billed for.^{5/} The Board also concludes that Respondent violated §12-313(7) by failing to document the medication dispensed. The Board further concludes that Respondent violated §12-313(14) and (15) by dispensing or refilling medication without an order from a

^{5/} Respondent maintains that she did not violate §12-313(5) because the bills submitted to BC/BS were done in her capacity as the insured, not as a pharmacist.

valid prescriber. The Board also concludes that Respondent was professionally incompetent, in violation of §12-313(20) by: (i) dispensing medication in amounts unauthorized by the prescriber; (ii) billing BC/BS for drugs not dispensed and at prices not paid; and (iii) dispensing medications to family members without valid prescriptions.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law, and the agreement of the parties, it is this 7th day of June, 1993, by a two-thirds majority vote of the Board,

ORDERED that Respondent be placed on PROBATION subject to the following conditions:

1. Respondent shall immediately contact the Pharmacists Rehabilitation Committee of the Maryland Pharmacists Association (the "Committee"), enter into a contract with that Committee for one year, and comply with all contractual requirements. Respondent shall submit to an evaluation by a psychiatrist selected by the Committee. If the evaluating psychiatrist recommends and the Committee agrees, Respondent shall participate in therapy as recommended until discharged. Respondent shall arrange for her therapist, if therapy is ordered, to acknowledge in writing that he/she: (i) has received a copy of the Order; (ii) will submit the various

reports described below, and (iii) will immediately notify the Board if Respondent discontinues therapy prior to release by her therapist.

2. If therapy is recommended and Respondent discontinues such therapy without being released by her therapist, she shall immediately notify the Board and the Committee in writing.

3. Respondent shall immediately give a copy of this Consent Order to her employer. Within ten (10) days of Respondent's receipt of a signed copy of this Order, she must arrange for her employer to: (i) acknowledge to the Board in writing that Respondent has delivered a copy of this Order; and (ii) agree to comply with any applicable requirements.

4. Respondent may not enter into any subsequent employment as a pharmacist unless she provides the Board with written notification from the prospective employer within thirty (30) days of employment that the employer has received a copy of this Order and agrees to comply with all conditions herein pertinent to Respondent's employers.

✓ 5. Respondent shall arrange for the Committee, her employer, and her therapist, if therapy is ordered, to submit quarterly written reports to the Board regarding Respondent's performance as a pharmacist and compliance with this Order. The first report shall be due on September 1, 1993, with the remaining reports due at quarterly intervals thereafter (i.e.,

December 1, March 1, June 1 and September 1) while Respondent remains on probation. In its first report, the Committee shall forward a copy of its contract with Respondent, as well as a copy of the evaluation noted in paragraph 1 above. In addition to the foregoing reports, Respondent herself shall submit quarterly reports beginning on September 1, 1993, and at quarterly intervals thereafter while she is on probation.

6. Respondent shall provide the Board with her home address. In the event that Respondent moves, she shall promptly notify the Board in writing of her new address and of any change in her home and work telephone number.

7. Respondent shall refrain from engaging in the type of conduct that led to the filing of charges against her pharmacist license, shall practice in a competent manner and in accordance with the Maryland Pharmacy Act.

✓ 8. Respondent shall take and complete a college-level ethics course that has been approved by the Board and document that she has received a grade of C or better.

✓ 9. Respondent shall perform 200 hours of Board-approved community service; and be it further

ORDERED, that the conditions of this Consent Order be, and the same are hereby, effective as of the date of this Order; and be it further

ORDERED, that in the event the Board finds in good faith and for sufficient reasons that Respondent has violated any provision of Section 12-313 of the Maryland Pharmacy Act or regulations thereunder or has violated the conditions of this Order, the Board may take immediate action, including, but not limited to, revocation or suspension of the Respondent's license to practice Pharmacy prior to giving the Respondent an opportunity for a hearing. However, Respondent shall have a right to a hearing, in accordance with the Administrative Procedure Act, State Government Article, Section 10-201 et seq., within thirty (30) days after Respondent notifies the Board in writing of her desire for such a hearing regarding the Board's action. The Board may, in its discretion, fail to entertain such notice if received more than ninety (90) days after its action; and be it further

ORDERED, that one year after the effective date of this Order, the Board shall entertain a petition for termination of Respondent's probationary status and full reinstatement of her license to practice pharmacy without any conditions or restrictions. If the Board determines that the termination of probation and complete reinstatement would be inappropriate at the time, the Board may modify one or more of the conditions upon which Respondent was placed on probation. However, if Respondent fails to make any such petition, then her

probationary status shall continue indefinitely, subject to the conditions set forth in this Order; and be it further

ORDERED, that for the purposes of public disclosure as permitted by Maryland Annotated Code, State Government Article §10-617(h), this document constitutes the Board's Findings of Fact, Conclusions of Law, and Order in this case.



Steven S. Cohen, P.D.
President, Board of Pharmacy

CONSENT OF ELLEN SUBER, P.D.

I, Ellen Suber, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Jack C. Tranter, Esq., and have sought his counsel prior to signing this Consent:

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 §12-313 of the Act and §10-205 et seq. of the Administrative Procedure Act, State Government Article, Annotated Code of Maryland;

3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I hereby consent and submit to the foregoing Findings of Fact, Conclusions of Law, and Order, provided the Board adopts the foregoing Final 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 §10-205 of the Administrative Procedure Act, State Government Article, Annotated Code of Maryland and any right to appeal as set forth in §12-316 of the Act and §10-215 of the Administrative Procedure Act. I acknowledge that by 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.

05/21/93
DATE

Ellen M. Suber
ELLEN SUBER, P.D.
407 N. Division Street
Salisbury, Maryland 21801

STATE OF MARYLAND
CITY/COUNTY OF:

I HEREBY CERTIFY that on this 21st day of May,
1993, a Notary Public of the State of Maryland and
(City/County) of Wicomico, personally appeared
Ellen Suber, P.D., License No. 07231, and made oath in due form
of law that signing the foregoing Consent Order was her
voluntary act and deed, and the statements made herein are true
and correct.

AS WITNESSETH my hand and notarial seal.

M P Masseron
NOTARY PUBLIC

MARGARET P. MASSERON
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires July 24, 1996

My Commission Expires: