

IN THE MATTER OF * BEFORE THE
MARC R. WEINBERG, P.D. * STATE BOARD
License No. 13316 * OF PHARMACY
Respondent * CASE NUMBER: 05-148

* * * * *

**FINAL ORDER TO REVOKE RESPONDENT'S
PHARMACIST LICENSE**

Pursuant to Md. State Govt. Code Ann. § 10-201, et seq., (2004 Repl. Vol.) the Administrative Procedure Act (APA), and the Maryland Pharmacy Act, codified at Md. Health Occ. Code Ann. § 12-101, et seq., ("the Act") (2005 Repl. Vol.), the State Board of Pharmacy ("the Board") sent an initial Notice of Intent to Revoke Pharmacist License of **MARC R. WEINBERG, P.D.**, ("Respondent"), license number 13316, on **September 27, 2006**.

The Notice instructed the Respondent to request a hearing in writing within thirty (30) days of the Notice. More than 30 days has passed and the Respondent has failed to request a hearing. Therefore, the State Board of Pharmacy hereby **REVOKES** the pharmacist license of Marc R. Weinberg, P.D..

BACKGROUND

1. At most times relevant hereto, the Respondent was licensed to practice pharmacy in Maryland. The Respondent was first licensed on October 28, 1993. The Respondent's license expires on December 31, 2006.

2. In 2002, the Board discovered that the Respondent had been terminated from his employment at Walgreen's after he had diverted Phentermine, a Schedule IV controlled dangerous substance. In lieu of disciplinary charges, on September 18, 2002, the Respondent voluntarily surrendered his license.

3. On June 12, 2003, the Respondent submitted a Petition for Reinstatement to the Board. In support of that Petition, John E. Davis, the Respondent's therapist, sent to the Board a letter, dated October 9, 2003, stating that the Respondent had been regular in his attendance and very responsive to and involved in his therapy.

4. On October 15, 2003, the Respondent appeared before a quorum of the Board, along with his PEAC sponsor, in support of his Petition for Reinstatement.

5. By Order dated October 31, 2003, the Board reinstated the Respondent's license to practice and placed him on probation, subject to the following condition, *inter alia*:

The Respondent shall continue his PEAC contract, to include weekly random and supervised urine testing, NA meetings, and therapy.

6. The October 31, 2003, Order of Reinstatement further provided that the Board may immediately suspend the Respondent's license prior to a hearing in the event that the Board found that the Respondent had violated any of the probationary conditions or if the Board, in good faith, found that the Respondent had relapsed.

7. By letter, dated September 24, 2004, PEAC notified the Board that the Respondent had failed to comply with the PEAC contract or Reinstatement Order conditions. Specifically, the Respondent was out of compliance in the following ways:

A. According to the June 1 - September 1, 2004 PEAC Quarterly Report, the Respondent was scheduled for six therapy appointments, yet only attended two sessions.

B. The Respondent's therapist rated his progress as "1" or "2" on a scale of 5, with 5 indicating "excellent progress".

C. The Respondent missed eight (8) out of twelve (12) urine screens.

8. Based upon the above information, the Board issued an Order for Summary Suspension, dated January 12, 2005, in which it summarily suspended the Respondent's license.

9. 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 or welfare of the public. In lieu of continued summary suspension, the Board agreed to resolve the matter by way of settlement. The Respondent and the Board agreed to a Consent Order, effective March 18, 2005.

10. The pertinent provisions of the Consent Order are as follows:

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

B. ORDERED that during the suspension period 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 be it further,

- C. **ORDERED** that the Respondent may petition the Board to lift the suspension no earlier than May 8, 2005, provided that the Respondent has been fully compliant with the PEAC contract; and be it further,
- D. **ORDERED** that upon any lifting of suspension, the Respondent shall be placed on probation with the following terms and conditions:
- 1) The Respondent may not practice pharmacy over 40 hours per week;
 - 2) The Respondent is limited to practicing in one pharmacy, and shall not be employed as a floater;
 - 3) The Respondent's pharmacy employer shall be in good standing;
 - 4) The Respondent shall provide the pharmacy employer with a copy of this Consent Order prior to commencing employment;
 - 5) The Respondent shall insure that the pharmacy employer provides the Board with quarterly progress reports;
 - 6) The Respondent shall continue and fully comply with his PEAC contract to include quarterly progress reports from PEAC, and full urine screens and therapy as deemed appropriate by PEAC;
 - 7) The Respondent shall insure that his therapist submits quarterly progress reports to the Board and shall comply with the therapist's treatment plan; and be it further,
- E. **ORDERED** that the Respondent may petition the Board for modification of the above probationary conditions no earlier than October 31, 2005; and be it further
- F. **ORDERED** that the Respondent may petition the Board for release from probation no earlier than October 31, 2006,

provided that he has been in compliance with all of the terms of probation; and be it further

G. **ORDERED** that the Respondent is responsible for all costs associated with complying with this Order [;].

SUMMARY

FACTS THAT WARRANT THE REVOCATION OF THE RESPONDENT'S LICENSE

11. The Respondent failed to comply with the terms of the Consent Order of March 18, 2005 in the following ways:

A. According to the PEAC reports for January through March 2005, the Respondent was unemployed and stated that he was overqualified for the positions he was applying for. The April report indicated that the Respondent was working at Mc Donald's. The May report indicated that the Respondent was anxious to return to pharmacy practice and the therapist report was good. The report further stated that the Respondent had missed two monitoring contacts. The June report stated that the Respondent was reporting all urines. There is a note on the report received on August 17, 2005 that the Respondent was reinstated on June 5th and placed on probation. However, there was no Board Order to that effect in the files maintained by the Board.

B. On November 25, 2005, PEAC reported that the Respondent "encountered serious difficulty in re-establishing employment. He was not successful after interviewing with a number of potential employers. This has been complicated by the onset of a Major Depressive disorder. He was hospitalized at Howard County General Hospital on 9/15/2005 and discharged 9/21/2005." PEAC further reported that "[t]he financial stressors from unemployment has (sic)

caused him to lose the means to pay the rent on his home and for other necessities... that his depressive illness has severely affected his ability and motivation to continue actively seeking re-employment." PEAC indicated that "he has missed some therapy appointments, but has remained compliant with urine testing." PEAC requested the Board to suspend the requirement for urine testing because of the "prohibitive costs" and opined that he was a "minimal risk to public safety while he is unemployed." PEAC concluded by stating that it planned to work with the Respondent to engage in therapy to address his mental health concerns and then to assist him in seeking employment.

C. In March 2006, PEAC requested that the Board issue an emergency suspension because the Respondent had been out of contact for several months. In May 2006, PEAC informed the Board that it was unaware of the Respondent's residence and status. PEAC's June 2006 report stated that PEAC wanted to cease monitoring the Respondent because he had made no contact with PEAC. A July 12, 2006 note from PEAC indicated that the Board should close the case since there has been "no correspondence for approximately one year" and that the Respondent "suffered from severe depression and eventually became homeless."

12. A pharmacist who has become non-compliant with the terms of his rehabilitation and with the Board's Order regarding his Probationary conditions is a threat to the public health, welfare or safety and should have his license to practice pharmacy revoked.

CONCLUSION OF LAW

The pertinent provisions of the APA state:

§ 10-226 (C)

(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.

ORDER

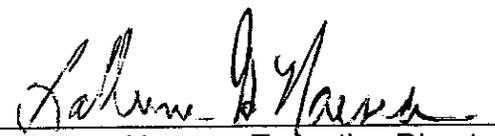
Based on the foregoing Facts that Warrant Revocation of the Respondent's License and Conclusion of Law, by a majority vote of a quorum of the Board present, it is hereby

ORDERED on this 14th day of NOVEMBER, that the Respondent's license to practice pharmacy in the State of Maryland be and is hereby **REVOKED**; and be it further

ORDERED that upon presentation of this Order of Revocation, the Respondent shall immediately have delivered to the Board the display license and wallet-sized license to practice as a pharmacist in the State of Maryland, previously issued by the Board; and be it further

ORDERED that this is a final Order of the Maryland Board, and as such is a public document pursuant to the Maryland Public Information Act, codified at Md. State Govt. Code Ann. § 10-611, et seq.

November 14, 2006
Date


LaVerne Naesea, Executive Director
Board of Pharmacy

NOTICE OF RIGHT TO APPEAL

Pursuant to H.O. § 12-316, you have a right to take a direct judicial appeal. A Petition for Judicial Review must be filed within thirty days of your receipt of this executed Order, and shall be made as provided for judicial review of a final decision in the APA, codified at State Govt. Code Ann. § 10-201, et seq.

November 14, 2006
Date

LaVerne Naesea
LaVerne Naesea, Executive Director
Board of Pharmacy