

IN THE MATTER OF
MARC WEINBERG, P.D.
LICENSE NO. 13316

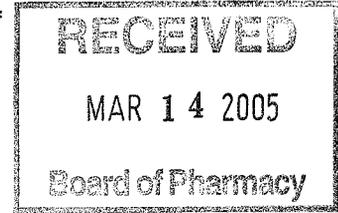
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BEFORE THE MARYLAND
STATE BOARD OF
PHARMACY

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CONSENT ORDER

Background



Based upon 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 January 12, 2005, in which it summarily suspended the pharmacist's license held by Marc Weinberg, 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:

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

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 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, 2005.

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.

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)(20).

ORDER

Based on agreement of the parties, it is this 18TH 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 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,

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,

ORDERED that upon any lifting of suspension, the Respondent shall be placed on probation with the following terms and conditions:

1. Mr. Weinberg may not practice pharmacy over 40 hours per week;

2. Mr. Weinberg is limited to practicing in one pharmacy, and shall not be employed as a floater;
3. Mr. Weinberg's pharmacy employer shall be in good standing;
4. Mr. Weinberg shall provide the pharmacy employer with a copy of this Consent Order prior to commencing employment;
5. Mr. Weinberg shall insure that the pharmacy employer provides the Board with quarterly progress reports;
6. Mr. Weinberg 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. Mr. Weinberg 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,

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

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,

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).

Date

3/18/05



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.

3/4/05
Date

Marc R. Weinberg
Marc Weinberg

STATE OF MARYLAND
COUNTY/CITY OF Howard:

I hereby certify that on this 4th day of march, 2005, before me, a Notary Public of the State of Maryland and County/City aforesaid, personally appeared Marc Weinberg, and made an oath in due form that the foregoing Consent was his voluntary act and deed.



Notary Public

My commission expires: _____

DEBORAH A. KIMBLE
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 1, 2007