

IN THE MATTER OF
ROBB FOOTE, P.D.

Respondent

LICENSE No: 12098

* BEFORE THE STATE
* BOARD OF
* PHARMACY
* CASE No.: 07-114

* * * * *

ORDER FOR SUMMARY SUSPENSION

Pursuant to Md. State Govt. Code Ann. ("S.G.") §10-226 (c) (2009 Repl. Vol. and 2011 supp.), the Maryland Pharmacy Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 12-101 *et seq.* (2009 Repl. Vol. and 2011 Supp.), and Code Md. Regs. tit. 10, § 34.01.12, the State Board of Pharmacy (the "Board") hereby summarily suspends the license of **ROBB FOOTE, LICENSE NUMBER 12098, (the "Respondent") (D.O.B. 12/09/1964)**, to practice pharmacy under the Act. This Order is based on the following investigative findings, which the Board has reason to believe are true:¹

FINDINGS OF FACT

1. The Respondent is licensed to practice pharmacy in the State of Maryland under License Number 12098. The Respondent was first licensed on July 27, 1990. The Respondent's license is current and is scheduled to expire on December 31, 2012.
2. The Respondent is currently on probation with the Board.
3. On or about March 19, 2012, the Board received information alleging that the Respondent submitted a fraudulent prescription and falsified patient medical records to the Board.
4. Thereafter the Board initiated an investigation.

¹ The statements regarding the Respondent's conduct are only intended to provide the Respondent with notice of the basis of the suspension. They are not intended as, and do not necessarily represent a completed description of the evidence, either documentary or testimonial, to be offered against the Respondent in this matter.

I. **1999 Summary Suspension**

5. In 1998, the Respondent was employed as a pharmacist at NeighborCare Infusion Pharmacy ("NeighborCare") in Annapolis, Maryland.

6. On or about December 29, 1998, McKesson Wholesale Drug Distributors ("McKesson") shipped NeighborCare 47 one-gram bottles of hydromorphone, a Schedule II controlled dangerous substance ("CDS").

7. The Respondent signed for the shipment of hydromorphone when it arrived at NeighborCare.

8. The Respondent failed to record the receipt of the shipment of hydromorphone from McKesson in NeighborCare's inventory log.

9. On or about January 8, 1999, NeighborCare staff discovered 23 bottles of hydromorphone missing from their inventory.

10. The missing hydromorphone bottles were part of the December 29, 1998 shipment from McKesson.

11. On or about February 19, 1999, NeighborCare staff discovered that several bottles of hydromorphone showed evidence of tampering.

12. As a result of the discovery of inventory shortages and tampering in the pharmacy, NeighborCare staff placed a video camera in the pharmacy.

13. On or about April 15, 1999, the Respondent was recorded by NeighborCare's video camera removing two discarded bottles of hydromorphone from the narcotics cabinet.

14. The video camera also recorded the Respondent extracting the contents of the hydromorphone with a syringe and placing the contents of the syringe into a container. The video camera further recorded the Respondent placing the container of hydromorphone in his pocket.

15. On April 16, 1999, the Respondent was arrested and charged with one count of possession with intent to distribute a CDS of schedule II, to wit; hydromorphone; one count of distribution of hydromorphone; and one count of theft over \$300.

16. On May 6, 1999, the Respondent's license was summarily suspended.

17. On October 4, 1999, in the Circuit Court for Howard County, the Respondent pleaded guilty to one count of possession of hydromorphone and was sentenced to a six month suspended sentence. He was also placed on supervised probation for a period of two years and ordered to undergo substance abuse therapy and urinalysis.

18. On June 11, 1998, the Board permitted the Respondent to surrender his license to practice pharmacy.

19. On June 21, 2000, the Board reinstated the Respondent's license to practice pharmacy, and placed him on probation for a period of two years.

II. 2008 Summary Suspension and 2008 Consent Order

20. In or around March 2007, the Respondent was working as a full-time pharmacist at Giant Pharmacy in Glen Burnie, Maryland, when the pharmacy supervisor discovered missing narcotics.

21. In April 2007, the pharmacy supervisor did a complete inventory audit of the pharmacy for the period of April 29, 2006 through March 23, 2007.

22. At the conclusion of the audit, the pharmacy supervisor determined that the following schedule II narcotics were missing:

Hydromorphone 8 mg	635 tablets
Hydromorphone 4 mg	691 tablets
Morphine 15 mg	120 tablets
Methadone 5 mg	203 tablets
Methadone 40 mg	55 tablets
Morphine 30 mg	600 tablets
Hydromorphone 8 mg	95 tablets
Hydromorphone 2 mg	244 tablets
Morphine 100 mg	390 tablets
Methadone 10 mg	525 tablets

23. During the audit, the pharmacy supervisor reviewed the pharmacy's purchase orders and discovered that the Respondent had received orders that included hydromorphone.

24. The Respondent did not record the receipt of the hydromorphone orders in the pharmacy's perpetual inventory form for schedule II CDS.

25. The pharmacy supervisor also compared the pharmacy computer records with hard copies of the prescriptions for patients who had been prescribed CDS. The hard copies of prescriptions could not be located.

26. The computer records indicated that the prescriptions with missing hard copies had been filled and dispensed by the Respondent.

27. The pharmacy supervisor contacted the doctors of patients whose prescription hard copies could not be located in the pharmacy. Each patient's doctor indicated that s/he did not authorize the prescriptions.

28. On or about April 25, 2007, the pharmacy supervisor and the detectives from the Anne Arundel County Police Department met with the Respondent.

29. The Respondent admitted that he had taken narcotics from the pharmacy, created prescriptions in the names of patients, and taken the medication himself.

30. On June 13, 2007, the Respondent was charged with three counts of obtaining a schedule II CDS, to wit: hydromorphone.

31. On July 25, 2007, the Board summarily suspended the Respondent's license.

32. On January 30, 2008, the Board held a hearing to allow the Respondent to show cause why he did not pose an imminent threat to the health, safety and welfare of the public.

33. On April 4, 2008, in lieu of a continued summary suspension, the Board and the Respondent entered into a Consent Order Terminating Summary Suspension ("2008 Consent Order") to resolve the matter.

34. Pursuant to the 2008 Consent Order, the Respondent's license was suspended for a period of at least two years beginning July 25, 2007.

35. During the suspension period, the Respondent was ordered to participate in a Board-approved substance abuse program, including NA/AA meetings and individual therapy; to submit to Board-ordered random urinalysis; and to refrain from working as a pharmacist in any capacity.

36. The 2008 Consent Order also stated that upon reinstatement, the Respondent would be placed on immediate probation for three years.

III. 2010 Consent Order

37. On May 19, 2010, in response to the Respondent's request, the Board voted to lift the suspension and reinstate the Respondent's license.

38. By the Order Lifting Suspension ("2010 Consent Order") dated June 18, 2010, the Board lifted the suspension and placed the Respondent on probation for a period of at least three years.

39. The Respondent was permitted to work as a pharmacist under certain terms and conditions set forth in the 2010 Consent Order.

40. The 2010 Consent Order contained myriad terms and conditions, including but not limited to the following:

ORDERED that [the Respondent] shall abstain from the ingestion of controlled dangerous substances, narcotics, cocaine or other mood altering substances, except that [the Respondent] may only ingest prescribed controlled dangerous substances for legitimate medical reasons under the following conditions:

- (1) [The Respondent] must be a bona fide patient of a licensed Maryland prescriber who is aware of this Order;
- (2) The medication must be lawfully prescribed by [the Respondent's] physician or other authorized medical practitioner;
- (3) [The Respondent] must provide the Board, in writing, within 72 hours of receiving the medication: (a) the name and address of the prescriber; (b) the illness or medical condition diagnosed; (c) the type, strength, amount and dosage of the medication; and (d) a

signed statement consenting to the release of all medical information about [the Respondent] from the prescriber to the Board[.]

...
ORDERED that in the event the Board finds for any good faith reason that [the Respondent] has violated any of the conditions of probation herein, or in the event that the Board finds for any good faith reason that [the Respondent] has committed a violation of Title 12 of the Health Occupations Article or regulations adopted thereunder, the Board may immediately summarily suspend [the Respondent's] license prior to a hearing, provided that [the Respondent] is given the opportunity for a show cause hearing within a reasonable amount of time of such action[.]

IV. Current Allegations

41. On February 14, 2012, the Respondent petitioned the Board to modify his probation to reduce his random urinalysis from weekly to monthly.

42. The Board's Compliance Coordinator asked the Respondent to provide the required documentation from his physician to explain the Respondent's recent positive urinalysis results. The Respondent's urinalysis was positive for Tramadol, a narcotic pain reliever, on March 1, 2012 and March 6, 2012.²

² In 2010, the Respondent had a valid prescription for Tramadol from his physician, but it hadn't been updated.

43. On March 9, 2012, the Board's Compliance Coordinator began his attempts to contact the Respondent's physician, Dr. A., to verify that the Respondent had a lawful prescription for Tramadol.³

44. On March 15, 2012, the Respondent's urinalysis was again positive for Tramadol.

45. On March 15, 2012, the Respondent received two documents from Dr. A's office. One document was a telephone triage note documenting a March 14, 2012 telephone call from the Respondent stating the following:

Pt states he was seen at Urgent Care last summer for foot pain dx'd bone spur. Rx'd Tramadol, which he has taken sporatically, including last week when he had more foot pain p exercise. Reports recent drug testing positive for Tramadol and that compliance coordinator from State of MD will be calling for more info. HO Dilaudid addiction.

The second document was a list of the Respondent's current medications, which did not include Tramadol.

46. On March 15, 2012, the Board's Compliance Coordinator spoke with the Respondent and instructed him to fax a copy of the Tramadol prescription and the medical report from his visit to Urgent Care.

47. On March 19, 2012, the Respondent faxed the requested documents, which reflect the Respondent's alleged September 3, 2011 visit to AllCare of Maryland ("AllCare") in Ellicott City, Maryland.⁴

³ In order to maintain confidentiality, names of individuals other than the Respondent will not be used in this document, but will be provided to the Respondent or his attorney upon request.

⁴ AllCare also has a location in Columbia, Maryland.

48. The medical report reflects that the Respondent was seen by Dr. B for right foot pain. The Respondent also provided a copy of the prescription, with Dr. B's signature, for Ultram 50 mg Tabs, 1-2 tab po q4-6h prn.⁵

49. Upon receipt of the documents, the Board's Compliance Coordinator contacted AllCare to verify the accuracy of the information. The Board's Compliance Coordinator faxed the documents to AllCare and spoke with the office manager.

50. AllCare's office manager reviewed the documents and stated that the Respondent's prescription for Ultram, purportedly written by Dr. B, was not from AllCare and the signature on the prescription was not Dr. B's signature.

51. Furthermore, AllCare's office manager stated that the Respondent had not been seen for an appointment at either location on September 3, 2011. The Respondent's last visit to AllCare was on October 1, 2009.

52. At that time AllCare's office manager faxed the Board's Compliance Coordinator the Respondent's medical records in their entirety.

53. A review of the Respondent's AllCare medical records revealed substantial similarities between the notes from the Respondent's December 4, 2008 visit and his alleged September 3, 2011 visit.

54. Furthermore, Dr. B's signature on the prescription provided by the Respondent does not match Dr. B's signature on documents provided by AllCare.

55. On March 20, 2011, the Board received correspondence from Dr. A stating that the Respondent was evaluated at AllCare for foot pain and prescribed

⁵ Ultram is the brand name for Tramadol. The prescription instructed the Respondent to take one to two tablets by mouth every four to six hours as needed.

Ultram/Tramadol for pain. The correspondence also included a copy of the visit alleged to have occurred on September 3, 2011.

56. The Board's Compliance Coordinator contacted Dr. A regarding this correspondence and Dr. A stated that the Respondent had provided him with the notes from the AllCare visit. Dr. A stated that he wrote his letter to the Board based only on the documents provided by the Respondent and did not independently confirm that the Respondent visited AllCare on September 3, 2011.

CONCLUSIONS OF LAW

Accordingly, the Board concludes that the public health, safety or welfare imperatively requires emergency action in this case, pursuant to Md. State Gov't Code Ann. § 10-226(c)(2)(i) (2009 Repl. Vol. and 2011 Supp).

ORDER

Based on the foregoing, it is this 4th day of April 2012, by a majority vote of a quorum of the Board, hereby:

ORDERED that pursuant to the authority vested by Md. State Gov't Code Ann., § 10-226(c)(2) License No. 12098, the Respondent's license to practice a pharmacy in Maryland, is hereby **SUMMARILY SUSPENDED**; and be it further

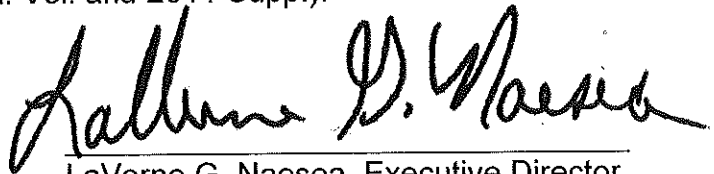
ORDERED that the Respondent must request a post-deprivation show cause hearing in writing **WITHIN 30 DAYS** of her receipt of this notice. The written request should be made to: LaVerne Naesea, Executive Director, Maryland Board of Pharmacy, Department of Health & Mental Hygiene, 4201 Patterson Avenue, Baltimore, Maryland 21215 with copies mailed to: Tracee Orlove Fruman, Assistant Attorney General, Office of the Attorney General, 300 West Preston Street, Suite 207, Baltimore, Maryland

21201, and Linda Bethman, Assistant Attorney General, Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201; and be it further

ORDERED that if the Respondent fails to request a post-deprivation show cause hearing, the Respondent's license will remain suspended; and it is further

ORDERED that the Respondent shall immediately turn over to the Board his license to practice a pharmacy issued by the Board; and be it further

ORDERED that this document constitutes an Order of the Board and is therefore a public document for purposes of public disclosure, as required by Md. State Gov't Code Ann. § 10-617(h) (2009 Repl. Vol. and 2011 Supp.).

A handwritten signature in black ink, reading "LaVerne G. Naesea". The signature is written in a cursive style with a horizontal line underneath the name.

LaVerne G. Naesea, Executive Director
Maryland Board of Pharmacy