IN THE MATTER OF	*	**BEFORE THE**
LAWRENCE APPEL, P.D.	*	**STATE BOARD**
License No. 08351	*	**OF PHARMACY**
Respondent	*	

* * * * * * * * * * * * *

ORDER FOR SUMMARY SUSPENSION

Pursuant to Md. State Govt. Code Ann. §10-226 (c)(2000 Repl. Vol.), the State Board of Pharmacy (the "Board") hereby suspends the license to practice pharmacy in Maryland issued to Lawrence Appel, P.D., (the "Respondent"), under the Maryland Pharmacy Practice Act (the "Act"), Md. Health Occ. Code Ann. § 12-101, et seq., (2000 Repl. Vol.). This Order is based on the following investigative findings, which the Board has reason to believe are true:

BACKGROUND

1. At all times relevant hereto, the Respondent was licensed to practice pharmacy in Maryland. The Respondent was first licensed on July 26, 1976. The Respondent's license expires on February 28, 2005.

2. The Board and the Respondent entered into a Consent Order dated September 16, 1992. The Consent Order, which resolved charges filed against the Respondent, dated November 25, 1991, was based upon a violation of § 12-313 (4) (ii) (provides professional services while using any narcotic or controlled dangerous substance...) and (14) (without first having received a written or oral prescription for the drug from an authorized prescriber, dispenses a drug for which a prescription is required).

The Board found that on April 22, 1990, while being treated in the emergency room of Frederick Memorial Hospital for lower back pain, the Respondent admitted that he self-medicated with Tylenol #3 and Flexeril from the shelf at the Rite Aid pharmacy where he was employed. Because of the Respondent's refusal to meet with the Rehabilitation (Rehab) Committee, (currently the Pharmacists' Education and Assistance Committee (PEAC)), the matter was turned over to the Board. During the course of the Board's investigation, the Respondent admitted to an Investigator that he was addicted to Phentermine, Diazepam, Tylenol # 3 and Tylenol # 4, all controlled dangerous substances requiring prescriptions. The Respondent further admitted that he consumed four to six pills a day off the shelves of his employers. Under that 1992 Order, the Board suspended the Respondent's license, with an immediate stay, and placed the Respondent on Probation for two years, subject to conditions, including: not allowing the Respondent to work as a "floater"[1]; extension of his contract with the Rehab Committee for an additional two years; attendance at least four Alcoholics Anonymous or Narcotics Anonymous meetings per week; as well as attendance at group therapy; and, submission of weekly random urine samples. The Respondent was also required to take 10 additional continuing education credits in substance abuse or addiction. The Respondent successfully completed the terms of the Order and his license was reinstated without conditions.

3. On August 25, 2000, the Board issued a Summary Suspension Order against the Respondent's license. The Respondent assaulted a customer, while working as a pharmacist for Rite Aid on February 12, 1999. As a result of statements made at the

[1] A floater is a pharmacist that works wherever needed at different stores.

criminal hearing that resulted from the assault, the Board referred the Respondent to a psychiatrist, Dr. Ellen G. McDaniel, who concluded, *inter alia*, in a written report to the Board that the Respondent:

> *" [H]as no insight at all into his contributions to his difficulties. Judgment is grossly impaired in interpersonal situation (sic). He uses projection, externalization, and rationalization to avoid facing his emotional problems... [The Respondent] is a very immature individual and has significant interpersonal difficulties which are not directly linked to drug abuse...his characterological difficulties are serious and persistent....does not accept any responsibility for his assault charges, for his inability to keep a job, for his years of ongoing interpersonal conflict...I see no evidence of empathy, guilt or remorse. His thinking is rigid and concrete and he does not learn from experience. He lacks insight and has impaired judgment...illustrate poor judgment and a gross lack of sensitivity....It is my professional opinion that without a significant intervention, [the Respondent]will continue to have interpersonal conflict at work. I have concerns about his initiating or provoking future violence at workplaces—given [the Respondent's] lack of ability to learn from experience, his degree of anger about perceived victimizations, his suspiciousness and mistrustfulness, his relative social isolation, his lack of acceptance of any responsibility for his problems, and his lack of motivation to change his behavior. He has a clear pattern of interpersonal conflict at work. His behavior threatens others and has led to at least two known assaults. [The Respondent] is not a good psychotherapy candidate for the same reasons I have listed when discussing his potential for violence."*

4. The Board concluded that, based upon the Respondent's assault on a customer while employed as a dispensing pharmacist, his second-degree assault conviction, and the conclusions of the psychiatric evaluation, the public health or welfare

was imperiled.

5. On October 18, 2000, following an evidentiary hearing on the Summary Suspension, the Board voted to terminate the Summary Suspension and to place the Respondent on indefinite probation. The Board further ordered that the Respondent enter into a therapy program, developed with the advice and counsel of Dr. Ellen McDaniel, with reports of that therapy provided to the Board every six months. The Board further ordered that the Respondent be directly supervised if he is employed as a dispensing pharmacist.

6. On August 31, 2000, the Board issued charges against the Respondent, which charges included many of the items that occasioned the Order for Summary Suspension. On November 15, 2000, the Board and the Respondent entered into a Consent Order to resolve the issues raised in the Summary Suspension and the Charges. The Board found, *inter alia,* that the Respondent's employment records demonstrated that the Respondent's combative tendencies have consistently created conflicts in the workplace, with customers, employers and fellow employees, often resulting in his termination from employment. The Board further found that the Respondent may be able to practice pharmacy effectively again once the Respondent's various issues with respect to anger management, responsibility, and interpersonal skills were dealt with. The Board's Order was identical to the October 2000 Order with the exception that the therapy plan had to be developed by PEAC and approved by the Board.

7. By letter dated March 29, 2001, the Board sent the Respondent a Violation of the Consent Order of November 15, 2000. The bases for the Board's Notice of Violation are set forth below:

A. The Respondent entered into a contract with PEAC for three years, with an annual review to determine the need to continue the contract at the end of each year.

B. The Respondent agreed to undergo a screening evaluation and treatment plan assessment by Dr. David McDuff by December 11, 2000, and agreed to abide by and follow through on the treatment as outlined in Dr. McDuff's assessment.

C. PEAC was to monitor the Respondent through a combination of monthly reports from his therapist, his PEAC monitor and his employer supervisor.

D. On December 19, 2000, LaVerne Naesea, Executive Director of the Board, had written the Respondent, informing him that the Board had been informed of his recent termination from Y&S and reminded him that he was required by the Consent Order to enter into a therapy program, whether he was employed or not.

E. Ms. Naesea gave the Respondent a deadline of January 10, 2001, to submit the required therapy treatment plan to the Board for the Board's approval.

F. On March 20, 2001, PEAC wrote the Board a letter indicating that the Respondent had been terminated from therapy for failure to establish a trusting relationship with his therapist.

G. Dr. McDuff had recorded that the Respondent had refused to submit

to urine testing recommended in Dr. McDuff's evaluation.

H. The Violation was based upon the Respondent's failure to abide by the specifics of the Board's therapy and reporting requirements.

8. By Order dated July 27, 2001, the Board concluded that the Respondent violated the Consent Order of November 15, 2000 by failing to obtain the Board's approval for his treatment program with Dr. McDuff and failing to obtain Board approval prior to initiating a new treatment program with Victor Fritterman, LCSW-C. The Board indefinitely suspended the Respondent's license, but immediately stayed the suspension and placed the Respondent on indefinite Probation subject to conditions, including: directing the Respondent's current therapist to submit a treatment plan to the Board within 30 days of the Order, for Board approval of same; and, submitting to random drug testing as ordered by the Board. The Board further ordered that the Respondent's pharmacy practice be supervised, with said supervisor submitting quarterly reports to the Board.

9. On November 30, 2001, the Board issued an Amended Final Decision and Order in order to settle an appeal of the Final Order issued by the Board on July 27, 2001. The main difference in the Orders was that the Respondent had to take and pass one random urine screen prior to October 31, 2001, which the Respondent took, with negative results.

BASIS FOR SUMMARY SUSPENSION

1. On or about December 23, 2002, the Respondent became employed by Wal*Mart Stores, Inc. as a dispensing pharmacist. On or about March 17, 2003, the Respondent signed an acknowledgement of receipt of alcohol and drug abuse policy in

which stated, in pertinent part, that "I understand that such drug testing may consist of the taking of urine and/or blood samples or any other medically recognized test designed to detect traceable amounts of drugs or alcohol in the body...I understand that if such testing indicates the presence of illegal drugs or abuse of prescriptions drugs...in my body in any detectable amount, I will be terminated."

2. On March 24, 2003, a Wal*Mart employee went to the restroom in the pharmacy and found a bag of marijuana. Audits were requested and drug screening was called for. No one admitted to the marijuana during interviews. However, once it was announced that drug testing was going to be performed, the Respondent, a relief pharmacist, admitted that the bag was his. Police took possession of the marijuana for destruction and decided not to file charges. The Respondent admitted possession to the Co-Manager of the store on the way to the test. The Respondent also admitted to smoking a "joint"[2] a week ago. The Respondent was terminated that day for violation of drug/alcohol abuse policy.

FINDINGS OF FACT

1. As set forth above, at all relevant times herein, the Respondent was licensed to practice pharmacy in Maryland.

2. On March 24, 2003, while working as a relief pharmacist at Wal*Mart, the Respondent was terminated after admitting that the bag of marijuana found in the pharmacy restroom was his. Furthermore, the Respondent admitted that he had smoked a joint one week earlier.

[2] Joints are commonly used expressions for marijuana cigarettes.

3. The above actions also constitute violations of the Pharmacy Act, Md. Health Occ. Code Ann. tit. 12-101, *et seq.*, (2000 Repl. Vol.). Specifically, the Respondent violated the following provisions § 12-313 of the Act:

> (b) 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:
>
> (4) Provides professional services while:
>
> (ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;
>
> (20) Is professionally, physically, or mentally incompetent;
> (24) Violates any rule or regulation adopted by the Board[;].

The Board further charges the Respondent with violating the Code Md. Regs. tit. 10 § 34.10 (2000):

> 01. Patient Safety and Welfare.
>
> A. A pharmacist shall:
>
> (1) Abide by all federal and State laws relating to the practice of pharmacy and the dispensing, distribution, storage and labeling of drugs and devices, including but not limited to:
>
> (a) United States Code, Title 21,
>
> (b) Health-General Article, Titles 21, and 22, Annotated Code of Maryland,
>
> (c) Health Occupations Article, Title 12, Annotated Code of Maryland,
>
> (d) Article 27, 276-304, Annotated Code of Maryland, and COMAR 10.19.03[;].

CONCLUSIONS OF LAW

Based on the foregoing, the Board finds that the public health, safety or welfare imperatively requires emergency action, pursuant to Md. St. Govt. Code Ann. §10-226(c)(2) (1999 Repl. Vol.).

ORDER

Based on the foregoing, it is therefore this 7th day of July, 2003, by a majority vote of a quorum of the State Board of Pharmacy, by authority granted by the Board by Md. St. Govt. Code Ann. § 10-226(c)(2) (1999 Repl. Vol.), the license held by the Respondent to practice pharmacy in Maryland, License No. 08351, is hereby **SUMMARILY SUSPENDED;** and be it further

ORDERED, that upon the Board's receipt of a written request from the Respondent, a Show Cause Hearing shall be scheduled within thirty days of said request, at which the Respondent will be given an opportunity to be heard as to whether the Summary Suspension should be lifted/terminated, regarding the Respondent's fitness to practice pharmacy and the danger to the public; and be it further

ORDERED, that the Respondent shall immediately turn over to the Board his wall certificate and wallet-sized license to practice pharmacy issued by the Board; and be it further

ORDERED, that this document constitutes a final Order of the Board and is therefore a public document for purposes of public disclosure, as required by Md. State

Govt. Code Ann. §10-617(h) (1999 Repl. Vol.).

Melvin M. Rubin, Secretary FOR

Stanton G. Ades, P.D., President
Board of Pharmacy

NOTICE OF HEARING

A Show Cause hearing to determine whether the Summary Suspension shall be lifted/terminated will be held before the Board at 4201 Patterson Avenue, Baltimore, 21215 following a written request by the Respondent for same.