IN THE MATTER OF	*	**BEFORE THE**
ALVIN JOHNSON, P.D.	*	**MARYLAND STATE**
License No. 07796	*	**BOARD OF PHARMACY**

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

FINAL ORDER

This case arose out of allegations that Alvin Johnson, P.D. (the "Respondent"), dispensed prescription drugs to his wife without first receiving a written or oral prescription for the drugs from an authorized prescriber. Based upon its investigation, on March 23, 1998, the Maryland State Board of Pharmacy (the "Board") issued charges against the Respondent for violating the Maryland Pharmacy Act, Md. Code Ann., Health Occ. §12-101 et seq. (1994 Repl. Vol.) (the "Act"), specifically §12-313(b)(14) which provides as follows:

> (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:
>
> (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.

On June 4, 1998, a settlement conference was held. The settlement proposed by the Board representatives at that conference was not approved by a quorum of the Board. Instead, the Board required amendments to the proposed settlement, which amendments were rejected by the Respondent. Consequently, a hearing on the merits was held before a quorum of the Board on November 18, 1998.

On that day and prior to the hearing on the merits, the Board entertained oral argument on the Respondent's public information request for certain documents from the Board's investigative file which had been denied by Norene Pease, Executive Director and Custodian of the Board's records.

Sherrai Hamm, Assistant Attorney General and Administrative Prosecutor, presented the case on behalf of the State. Joseph S. Kaufman, Esquire, presented the case in defense of the Respondent. At the conclusion of the proceedings on November 18, 1998, a quorum of the Board convened to deliberate and voted to uphold the charges brought against the Respondent and to impose the sanctions contained in this Final Order. On February 17, 1999, a majority of a quorum of the Board approved this Final Order.

RULING ON MOTION TO DISMISS

On the day of the hearing the Respondent filed a Motion to Dismiss or, in the Alternative, Motion to Recuse the Members of the Board. The Board denied this motion at the hearing. The basis for this motion was the fact that the Board had previously rejected a settlement proposal offered by then Board member, George Voxakis, P.D., unless the Respondent would agree to two additional provisions proposed by the Administrative Prosecutor. The Respondent claims that the Administrative Prosecutor's inclusion of these provisions was evidence of an ex parte communication between herself and the Board and that therefore the matter should be dismissed or forwarded to the Office of Administrative Hearings for review. The Board rejects these arguments.

The Board, not the Administrative Prosecutor, required the additional conditions at its June 10, 1998 meeting. It is quite common for a full quorum of the Board to require amendments to a settlement proposal recommended by a Board member who attended the settlement conference. The Administrative Prosecutor was merely providing to Mr. Kaufman an amended version of the proposed consent order that included the additional conditions communicated to her by the Board. While in hindsight it would have been better for the Board's staff to have communicated the Board's amendments in writing to both parties rather than verbally to the Administrative Prosecutor through Ms. Pease, the direction to change the proposed consent order came from the Board, not from the Administrative Prosecutor. Thus, there was no ex parte communication regarding the merits of the proposed consent order as alleged by the Respondent. Instead, Ms. Pease simply conveyed the full Board's requirements for settlement to Ms. Hamm so that the proposed consent order could be amended accordingly.

The Respondent also claims that he was denied access to documents necessary to his defense. First of all, there is no right to discovery in administrative proceedings. Replacement Rent-A-Car v. Smith, 99 Md.App. 588 (1994) ("It is equally well established that there is no broad constitutional right to discovery in administrative proceedings and that any general right must come from the statutes or rules governing those proceedings."). Neither the Act nor the Board's regulations provide for a right to discovery.

However, in fairness to the Respondent the Board allowed Mr. Kaufman to present oral argument as to whether certain attorney-client correspondence between the Board's investigator and Administrative Prosecutor constituted privileged documents and whether internal memoranda prepared by Board members constituted predeliberative documents exempt from disclosure under the Public Information Act.[1] In this way, the Board could determine prior to the hearing whether the documents should have been provided to the Respondent. Instead, Mr. Kaufman chose to primarily complain that a staff member sat with him when he reviewed the records which were made available to him and that he was not provided the records after he refused to be accompanied in that manner. (T. 21, 28-29). However, Mr. Kaufman did refer to two cases to support his argument regarding attorney-client privilege: Moberly v. Herboldsheimer, 276 Md. 211 (1975), and Harris v. Baltimore Sun, 330 Md. 595 (1993). (T. 27). Neither of these cases are applicable to the facts of the instant case. In these cases, fees paid to an attorney or expenses incurred by an attorney were held not to constitute confidential attorney-client communications. Here, in contrast, attorney-client communications regarding a Board investigation obviously concerned

[1]As a matter of judicial economy, the Board chose not to schedule a contested case hearing on the Public Information Act request prior to the hearing as there would have been no time to schedule such a hearing prior to the previously scheduled hearing on the merits of the case. In addition, the Board finds that the issues concerned purely legal arguments regarding the applicability of the Public Information Act to certain types of documents. As such, there was no need for witnesses or the introduction of documentary evidence in order to resolve the issues surrounding the Respondent's Public Information Act request.

a confidential matter. Otherwise, agencies would have no right to assert attorney-client privilege at all. The General Assembly could not possibly have intended such an absurd result.[2]

The Board has the right to preserve the integrity of its files by monitoring their inspection by members of the public. The fact that Mr. Kaufman took offense and refused to continue to inspect those records does not excuse him from failing to avail himself of the opportunity to inspect those records at that time. In addition, the Board was willing to send him copies of those records. It was incumbent upon him to prepare for the hearing by assuring that he obtained copies well in advance of the hearing. He cannot be heard to complain at the 11th hour that he was not given an opportunity to prepare an adequate defense.[3]

---

[2] The Respondent also cited Fioretti v. Board of Dental Examiners, 351 Md. 66 (1998), to support his argument that the records of an agency, to be utilized in an administrative proceeding, are not exempt from disclosure under the PIA. (T. 27). The Respondent misreads the meaning and scope of the Fioretti opinion. The Fioretti opinion held that most administrative agencies must make a particularized showing regarding how the disclosure of investigative materials would prejudice a board investigation. However, in this case no investigative material exception from disclosure was asserted by Ms. Pease. Instead, she determined that certain records could not be disclosed under the attorney-client privilege and under the internal memoranda exception to disclosure in the Public Information Act.

[3] The Respondent complained that Mr. Ballard and Ms. Pease remained in the room during deliberations regarding the Public Information Act request. First, Mr. Ballard was not the custodian of records and the fact that he merely identified the content of the records in question did not transform him into the custodian. Second, Ms. Pease did not discuss with the Board the legal basis for the denial of the records but only stated whether or not she knew whether the Board had mailed to Mr. Kaufman the records she had previously determined that he was entitled to view. The Board then gave Mr. Kaufman the benefit of the doubt that they were not mailed as he claimed but believed that he was nonetheless

The Board finds that the Respondent failed to present any convincing arguments regarding why these privileged and confidential materials should have been disclosed to him. Furthermore, the Respondent was not prejudiced by the Board's refusal to disclose these privileged documents. The Respondent admitted to the acts which formed the basis for the charges against him. Therefore, the Board is not persuaded by the Respondent's arguments that these obviously privileged documents were required for his defense. Nor were the remaining documents required for his defense in light of his admissions to wrongdoing.

The Respondent further alleged in a letter dated November 19, 1998, that the Board failed to respond to his request within thirty days. This allegation is simply not correct. Norene Pease, Executive Director of the Board, responded to his request within thirty days after receipt, on October 9, 1998, in accordance with State Gov't Art., §10-614(b)(1). Ms. Pease had ten additional days to provide a written explanation for her denial under §10-614(b)(3), which she had provided at the same time that she partially granted and partially denied his request.

In addition, the Respondent claims that Paul Ballard, Assistant Attorney General and Board Counsel, added new grounds supporting the denial of the documents concerning attorney-client privilege because in his letter he referred to their subject matter as regarding the "investigation." However, the Board finds that

---

responsible for following up on their receipt rather than waiting until the last minute to object to their nonreceipt.

this was simply a descriptive term for the contents of the letters and did not change the ground for denial of their disclosure, i.e., that they are privileged attorney-client communications. The Board views its attorney-client communications regarding Board investigations as privileged communications that are not subject to disclosure under the Public Information Act.[4] As the Respondent presented no arguments to support his novel proposition that the Board must disclose obviously privileged documents to him, the Board denied his request for these documents.

SUMMARY OF THE EVIDENCE

A. Documents.

The following documents were admitted into evidence.

Board's Exhibit No. 1 - Charges of March 23, 1998.

State's Exhibit A1-A12 - Prescription Labels.

State's Exhibit B - CVS Voluntary Statement by Alvin Johnson.

State's Exhibit C - Affidavit of Alice Adams, M.D.

Respondent's Exhibit A - Letter by Alice Adams-Martin, M.D. and Affidavit of Joseph S. Kaufman, Esquire.

Respondent's Exhibit B - Letter by Errol Daum, R.Ph. and Ellen H. Yankellow, Pharm.D.

B. Witnesses.

---

[4] At the hearing Mr. Kaufman argued that the internal memoranda from a Board member to David Denoyer must have been a prohibited ex parte communication because Mr. Ballard's letter identified it as being dated September, 1998. (T. 38). However, the Board's review of the document shows that it was in fact dated on December 15, 1997, when a preliminary investigation was still being conducted. Mr. Ballard's letter contained this typographical error because the memo was labelled with the investigative case number "98/9". Thus, there was no ex parte communication.

The following witnesses testified.

On behalf of the State: Timothy Shovlin, CVS Loss Prevention Specialist; David Denoyer, Board Pharmacist Compliance Officer.

On behalf of the Respondent: Patient A[5]; Alvin Johnson.

FINDINGS OF FACT

Based on a preponderance of the evidence presented at the hearing, a majority of a quorum of the Board finds the following:

1. At all times relevant hereto, the Respondent was licensed to practice pharmacy in the State of Maryland.

2. On twelve separate occasions the Respondent dispensed prescription drugs without the approval of an authorized prescriber, purportedly pursuant to phoned-in prescriptions. See State's Exhibits B and C, and Transcript of Proceedings ("T"), 76, 100, 149-150. These incidents included the following:

A. On February 2, 1996, the Respondent dispensed to Patient A 40 tablets of hydrocodone, a Schedule III controlled dangerous substance, without the approval of an authorized prescriber. The prescription label provided for two refills through July 9, 1996. See State's Exhibit A6.

B. On March 5, 1996, the Respondent dispensed to Patient A 40 tablets of Vicodin ES, a Schedule III controlled dangerous substance, without the approval of an authorized prescriber. The prescription label provided for no refills. See State's Exhibit A7.

---

[5]Patient A's identity is kept confidential to protect her privacy. The Respondent was informed of her identity.

C. On March 13, 1996, the Respondent dispensed to Patient A 40 tablets of Vicodin ES, a Schedule III controlled dangerous substance, without the approval of an authorized prescriber. The prescription label provided for no refills. See State's Exhibit A8.

D. On April 13, 1996, the Respondent dispensed to Patient A 40 tablets of Vicodin ES, a Schedule III controlled dangerous substance, without the approval of an authorized prescriber. The prescription label provided for no refills. See State's Exhibit A9.

E. On April 24, 1996, the Respondent dispensed to Patient A 40 tablets of Vicodin ES, a Schedule III controlled dangerous substance, without the approval of an authorized prescriber. The prescription label provided for two refills through October 21, 1996. See State's Exhibit A10.

F. On May 22, 1996, the Respondent dispensed to Patient A 40 tablets of Vicodin ES, a Schedule III controlled dangerous substance, without the approval of an authorized prescriber. The prescription label provided for four refills through November 18, 1996. See State's Exhibit A1.

G. On June 22, 1996, the Respondent dispensed to Patient A 40 tablets of Vicodin ES, a Schedule III controlled dangerous substance, without the approval of an authorized prescriber. The prescription label provided for four refills through December 19, 1996. See State's Exhibit A2.

H. On July 22, 1996, the Respondent dispensed to Patient A 40 tablets of Vicodin ES, a Schedule III controlled dangerous substance, without the approval of an authorized prescriber. The prescription label provided for no refills. See State's Exhibit A3.

I. On July 29, 1996, the Respondent dispensed to Patient A 40 tablets of Vicodin ES, a Schedule III controlled dangerous substance, without the approval of an authorized prescriber. The prescription label provided for no refills. See State's Exhibit A11.

J. On August 14, 1996, the Respondent dispensed to Patient A 40 tablets of Vicodin ES, a Schedule III controlled dangerous substance, without the approval of an authorized prescriber. The prescription label provided for no refills. See State's Exhibit A4.

K. On September 1, 1996, the Respondent dispensed to Patient A 40 tablets of Vicodin ES, a Schedule III controlled dangerous substance, without the approval of an authorized prescriber. The prescription label provided for no refills. See State's Exhibit A5.

L. On September 1, 1996, the Respondent dispensed to Patient A 40 tablets of Vicodin ES, a Schedule III controlled dangerous substance, without the approval of an authorized prescriber. The prescription label provided for no refills. See State's Exhibit A12.

3. Patient A had to be admitted to inpatient treatment with Pathways due to her dependence on the narcotics Vicodin ES and Vicodin's generic equivalent, hydrocodone. (T. 137-138).

OPINION

Pursuant to an investigation of drug shortages, Timothy Shovlin, CVS Loss Prevention Specialist, focused his investigation on twelve purported phone-in prescriptions for Patient A (See State Exhibits A1-A12) and contacted the physician listed on the prescriptions, Dr. Alice Adams-Martin, to ascertain whether she had authorized these prescriptions. She stated she had not authorized the prescriptions and later signed an affidavit affirming under the penalties of perjury that she had not authorized these prescriptions. (T. 76; State's Exhibit C). David Denoyer, Pharmacist Compliance Officer for the Board, was also told by Dr. Adams-Martin that she had not authorized the twelve prescriptions in question. (T. 100).

On August 5, 1997, when Mr. Shovlin and Ron Hendy, then District Manager for Revco/CVS, confronted the Respondent with the prescriptions and the report of Dr. Adams-Martin's statement, the Respondent admitted that Dr. Adam-Martin had not authorized the prescriptions. (T. 79-80). When asked by Mr. Shovlin why he had dispensed these unauthorized prescriptions to Patient A, his wife, the Respondent stated "Because my wife was in constant pain and addicted to hydrocodone." (T. 79).

On August 5, 1997, the Respondent signed a CVS Voluntary Statement in which he admitted to dispensing twelve "prescriptions"

for Vicodin ES and hydrocodone without receiving authorization.[6] See State's Exhibit B, T. 80-81. In his testimony, the Respondent admitted that he had signed this statement. (T. 146). Respondent admitted in his testimony that none of the twelve "prescriptions" at issue had been authorized by Dr. Adams-Martin. When asked "[Dr. Adams-Martin] wrote those prescriptions?", the Respondent replied "She didn't write these, no." (T. 149-150).

The Respondent argued that he violated §12-313(15) rather than §12-313(14) as charged because allegedly he had refilled Dr. Adams-Martin's original prescription rather than having dispensed a prescription drug without first receiving a written or oral prescription as charged by the Board. Hence, the Respondent asserted that he had been charged with the wrong violation and that thus the Board's charges cannot be upheld. (T. 158-159).

The Board disagrees with the Respondent's arguments and instead concludes that in order to legally dispense most of the drugs dispensed by the Respondent, a new and separate prescription was required under both federal and Maryland law. To conclude that the Respondent refilled these drugs without valid authorization presupposes that such authorization could have been legitimately given. However, both federal and Maryland law governing the dispensing of Schedule III controlled dangerous substances would have required the Respondent to receive a new and separate original

---

[6] Hydrocodone is the generic equivalent of Vicodin E.S. Both Vicodin ES and hydrocodone are controlled dangerous substances under Schedule III. See Md. Code Ann., Article 27, §279 and the schedules of controlled dangerous substances published by the Department of Health and Mental Hygiene.

prescription from Dr. Adams-Martin prior to dispensing Vicodin ES[7] Thus, even assuming, without finding as such, that the Respondent is correct that he received an original prescription from Dr. Adams-Martin, the Respondent would have been limited to five refills in any event, regardless of whether or not he validly refilled that prescription five times under Dr. Adams-Martins's authority. Even were the Board to give the Respondent the benefit of the doubt with regard to five "refills" of the Vicodin ES, the evidence still shows that the Respondent violated §12-313(14) of the Act when he dispensed the remaining hundreds of tablets of Vicodin ES and its generic equivalent Hydrocodone to Patient A without first receiving a new and separate prescription as required by both federal and State laws governing the dispensing of controlled dangerous substances.

Patient A testified that she began seeing Dr. Adams-Martin as a patient in the summer of 1995, at which time she originally prescribed Vicodin ES (T. 126-127). The Respondent claimed that he was given the original prescription for Vicodin ES, but admitted that he had not obtained authorization for any of the twelve

---

[7] Both 21 CFR 1306.22 and COMAR 10.19.03.07N provide in pertinent part as follows:

> A prescription for a controlled dangerous substance listed in Schedule III or IV may not be filled or refilled more than 6 months after the date on which the prescription was issued. A prescription authorized to be refilled may not be refilled more than five times ... Additional quantities of controlled dangerous substances listed in Schedule III or IV may only be authorized by a prescribing practitioner through issuance of a new prescription as provided in §M above, which shall be a new and separate prescription.

"prescriptions" he dispensed between February and November of 1996. (T. 149-150). See State's Exhibits A1-A12. Instead, he claimed that some of these "prescriptions" were refills under the original prescription written back in the summer of 1995. (T. 150). The Board does not find the Respondent's testimony to be credible on this point.

The Respondent's testimony makes no sense given that the February 2, 1996 prescription label provides for two refills and then the March 5, 1996 prescription label provides for no refills. If those prescriptions had been dispensed pursuant to the original prescription, it would have made no sense to provide for two refills and then to provide for no refills. The Respondent's testimony is also inconsistent with the CVS Statement that he admitted to signing. The Board does not believe that any of these prescriptions were refills from the original prescription.

Even were the Board to give the Respondent the benefit of the doubt with regard to these two acts of dispensing that they were in fact refills of the original prescription, that would still leave ten acts of dispensing that would have required new and separate prescriptions. This is because the Respondent admitted he had received authorization only for the original prescription, which would have been limited in any event to five refills under Federal and Maryland laws. Because the March 5, 1996 prescription label provides for no refills, the ten "prescriptions" dispensed after that were clearly not authorized.

In addition, the fact that Respondent admitted to using a fictional Drug Enforcement Administration ("DEA") number for Dr. Adams makes less credible his claim that he was "under the impression" that she had authorized some of the twelve "prescriptions" in question. (T. 151-154). In fact, the Respondent's testimony indicates that he repeatedly attempted to contact Dr. Adams-Martin without success, and that when he finally did reach her, that she refused to authorize further prescriptions for Patient A. In response to the question whether he got authorization from Dr. Adams-Martin regarding the twelve prescriptions at issue, the Respondent testified:

> Just the original prescription. That's it.
>
> ...
>
> ...
>
> I can't say that she has authorized all of those [prescriptions], but I was under the impression that she did, based on [the original prescription]. And I probably didn't - I didn't follow up like I should have. But at that point it was too late to correct it. Once I got in touch with her and she didn't want - she told me that she didn't want anymore. (T. 150-151).

It is clear from his testimony that the Respondent never affirmatively claimed to have received authorization for any prescription but the original prescription issued by Dr. Adams. His "impression" that she had authorized some of these prescriptions is contradicted by his use of a fictional DEA number for Dr. Adams and by his voluntary statement, and by his testimony that "once he got in touch with her" that Dr. Adams did not want to authorize further prescriptions for Patient A.

The Respondent also objected to Dr. Adams' affidavit as hearsay.[8] While Dr. Adams' affidavit is hearsay, the Board may rely on such hearsay if it possesses sufficient reliability and probative value to satisfy the requirements of procedural due process. Travers v. Baltimore Police Department, 115 Md.App. 395, 411 (1997). In an administrative proceeding, "evidence may not be excluded solely on the basis that it is hearsay." Md. Code Ann., State Gov't Art., §10-213(c) (1995 Repl. Vol.).

Given the testimony of both Mr. Denoyer and Mr. Shovlin that Dr. Adams told them she did not write prescriptions for the drugs dispensed by the Respondent, as well as the fact that Dr. Adams' affidavit was sworn under the penalties of perjury, the Board believes that Dr. Adams' affidavit may be relied upon to corroborate the admissions of the Respondent that she did not authorize the dispensing of these drugs.[9] See Travers, 115 Md.App. at 413 ("statements that are sworn under oath" are "presumed to possess a greater caliber of reliability."). Finally, the Respondent failed to exercise his right to request a subpoena of Dr. Adams even though he was notified by letter attached to the charges that he could request that the Board subpoena witnesses.

---

[8] Dr. Adams-Martin's surname is now "Adams".

[9]The General Assembly has found that an affidavit by a prescriber possesses sufficient indicia of reliability and probative value to be admitted as evidence into criminal proceedings to show that a prescription was not authorized by the prescriber. Article 27, §305 (1998 Supp.). Of course, due to the greater due process interests at stake in a criminal proceeding, the General Assembly also requires that the defendant may require that the prescriber appear in court as a prosecution witness.

The Respondent knew the identity of Dr. Adams when he received the Board's charging document back in April of 1998 and thus there was clearly ample time for him to request that the Board subpoena Dr. Adams prior to the hearing. Such a failure waived his right to complain about a denial of the opportunity to cross-examine Dr. Adams. Id., at 418-19.

The Respondent's voluntary statement and testimony are sufficient to show by a preponderance of the evidence that he dispensed prescription drugs without first having received a written or oral prescription for the drug from an authorized prescriber, which dispensing violates §12-313(14) of the Act. The Board views the affidavit of Dr. Adams together with her similar statements made to Mr. Shovlin and Mr. Denoyer as merely constituting corroborating evidence that the Respondent dispensed prescriptions without her authorization, which corroborating evidence supports, but is not essential to the Board's decision. Thus, Dr. Adams' failure to testify in person did not prejudice the due process rights of the Respondent and the Board may consider the affidavit for its limited probative value of providing evidence corroborating the Respondent's admitted violations of the Act.

The Respondent also objected to the admission of the voluntary statement because he was not advised of his rights by the CVS personnel prior to signing the statement. (T. 81-82). However, the Maryland Court of Special Appeals has rejected the argument that the criminal law regarding the admission of confessions applies in administrative hearings. Widomski v. Chief of Police,

41 Md.App. 361, cert. denied, 284 Md 750 (1979). The Widomski court declared that "[w]e know of no law that requires an administrative agency to adhere strictly to rules of criminal procedure." Id., 41 Md.App. at 379. But even under the far stricter requirements of Maryland criminal law regarding the admissibility of criminal confessions, their meeting with the Respondent was clearly not coercive in character. For example, in Hall v. State, 223 Md. 158 (1960), the Maryland Court of Appeals held that a defendant's confession was not rendered inadmissible by the mere fact that at the time of the confession the defendant was under arrest without counsel present during several hours of questioning.

In order to show duress, there must be a wrongful act which deprives a person of the exercise of his free will. Bell v. Bell, 38 Md.App. 10 (1977), cert. denied, 282 Md. 729 (1978). There was clearly no wrongful act committed by Mr. Shovlin or Mr. Hendy when they questioned the Respondent regarding the prescriptions in question. Nor did the Respondent testify to any threatening acts by Mr. Shovlin or Mr. Hendy if he did not sign the voluntary statement. Most importantly, however, the Respondent did not dispute the accuracy of the voluntary statement but instead tried to argue that the original prescription authorized some of the 12 acts of dispensing as constituting "refills" of the original prescription, although he acknowledged that at least some of these 12 prescriptions were dispensed without Dr. Adams' authorization. (T. 152).

There was simply no evidence of duress presented that would make the voluntary statement unreliable. Nor did the Respondent deny the accuracy of that voluntary statement in his testimony before the Board. As such, the Board shall rely on the voluntary statement as constituting sufficient evidence that the Respondent dispensed prescription drugs on twelve occasions without receiving the authorization of an authorized prescriber. This voluntary statement was further corroborated by the Respondent's own testimony together with the testimony of Mr. Shovlin and Mr. Denoyer, as well as by the sworn affidavit of Dr. Adams.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, a majority of a quorum of the Board concludes that the Respondent violated §13-313(14) of the Act when he dispensed prescription drugs on twelve separate occasion without first receiving a written or oral prescription for the drugs from an authorized prescriber.

SANCTIONS

The Board views as quite serious the Respondent's unauthorized dispensing of addicting controlled dangerous substances to Patient A. This unauthorized dispensing placed Patient A in danger, who ultimately had to be admitted to inpatient treatment with Pathways due to her dependence on narcotics. (T. 137-138). While his desire to alleviate the chronic pain of his wife serves to mitigate the gravity of his actions because the unauthorized dispensing was limited to one person without malicious motivation, his ready willingness to divert controlled dangerous substances to Patient A

There was simply no evidence of duress presented that would make the voluntary statement unreliable. Nor did the Respondent deny the accuracy of that voluntary statement in his testimony before the Board. As such, the Board shall rely on the voluntary statement as constituting sufficient evidence that the Respondent dispensed prescription drugs on twelve occasions without receiving the authorization of an authorized prescriber. This voluntary statement was further corroborated by the Respondent's own testimony together with the testimony of Mr. Shovlin and Mr. Denoyer, as well as by the sworn affidavit of Dr. Adams.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Opinion, a majority of a quorum of the Board concludes that the Respondent violated §13-313(14) of the Act when he dispensed prescription drugs on twelve separate occasion without first receiving a written or oral prescription for the drugs from an authorized prescriber.

SANCTIONS

The Board views as quite serious the Respondent's unauthorized dispensing of addicting controlled dangerous substances to Patient A. This unauthorized dispensing placed Patient A in danger, who ultimately had to be admitted to inpatient treatment with Pathways due to her dependence on narcotics. (T. 137-138). While his desire to alleviate the chronic pain of his wife serves to mitigate the gravity of his actions because the unauthorized dispensing was limited to one person without malicious motivation, his ready willingness to divert controlled dangerous substances to Patient A

greatly troubles the Board. Therefore, the Board views probationary restrictions on the Respondent's practice as necessary to deter further diversions of controlled dangerous substances by the Respondent. Therefore, the Board shall place the Respondent's license on probation for a period of two years with the following conditions of probation:

1. The Respondent cannot own a pharmacy without submitting a request for written approval from the Board. This condition is designed to insure that the Respondent's practice is being directly monitored by an employer to prevent further diversions of controlled dangerous substances.

2. The Respondent cannot work in more than one pharmacy without the Board's prior approval. This condition is designed to deter drug diversion by prohibiting a situation in which direct supervision of the Respondent's practice would be inconsistent.

3. The Respondent cannot fill prescriptions for immediate family members. This condition is designed to prevent a repeat of the situation that led to the violations in this case.

4. The Respondent shall obtain 6 continuing education credits in ethics. This condition is designed to educate the Respondent regarding his ethical obligations so as to avoid future conflicts of interest such as the conflict he experienced in this case.

5. The Respondent shall give written notification to the Board of his current employer and any change in employment. This condition is designed to enable the Board to monitor the Respondent's compliance with the order.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, by a majority of a quorum of the Board it is hereby

ORDERED that the Respondent be placed on **PROBATION** for a period of two years, during which period he must abide by the following probationary conditions:

1. The Respondent cannot own a pharmacy without submitting a request for written approval from the Board.

2. The Respondent cannot work in more than one pharmacy without the Board's prior approval.

3. The Respondent cannot fill prescriptions for immediate family members.

4. The Respondent shall obtain 6 continuing education credits in ethics.

5. The Respondent shall obtain written notification to the Board of his current employer and any change in employment. And be it further

ORDERED that if the Respondent violates any of the foregoing conditions of probation, the Board may, after affording Respondent an opportunity for a hearing, take action to suspend, revoke, or take any other disciplinary action. And be it further

ORDERED that this is a Final Order of the State Board of Pharmacy and as such is a PUBLIC DOCUMENT pursuant to Md. Code Ann., State Gov't §§10-611, et seq.,

2/17/99
Date

~~David Russo, P.D., M.B.A.~~ STANTON G. ADES RD
President, Board of Pharmacy

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. §12-316, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Gov't §§10-201 et seq., and Title 7, Chapter 200 of the Maryland Rules.