

IN THE MATTER OF * BEFORE THE
THANH DINH NGUYEN, P.D. * MARYLAND STATE
LICENSE NO. 10693, * BOARD OF PHARMACY
RESPONDENT *

* * * * *

FINAL ORDER

Background

On November 4, 1996, the Maryland State Board of Pharmacy (the "Board") issued charges against **Thanh Dinh Nguyen, P.D., License No. 10693** (the "Respondent"). The Board charged the Respondent with violating certain provisions of the Maryland Pharmacy Act, Maryland Health Occupations Article, Code Ann. §12-313 et seq. Repl. Vol. (1994) (the "Act"). Specifically, the Board charged the Respondent with violating the following provisions of §12-313:

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:

(21) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime of moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or appeal set aside; and

(23) Is disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes.

Several representatives of the Board held a prehearing conference with the parties on December 2, 1996, in order to discuss any possible resolution of the case and to prepare for the

contested case hearing regarding the charges. However, neither the Respondent nor his counsel attended that prehearing conference. An abbreviated prehearing conference was held in his absence during which Lisa Hall, Staff Attorney and Administrative Prosecutor, described what evidence she planned on presenting at the contested case hearing.

On January 16, 1997, a quorum of the Board conducted a contested case hearing in this matter pursuant to Md. Code Ann., Health Occupations Article § 12-315 and the Maryland Administrative Procedure Act, State Government Article, §§ 10-201 et seq. In attendance at that hearing were the following members of the Board: George C. Voxakis, P.D., Board President, David Russo, P.D., Wayne Dyke, P.D., Stanton Ades, P.D., W. Irving Lottier, P.D., Barbara Faltz Jackson, Consumer Member, and Theodore Litwin, Consumer Member. Also in attendance were Lisa Hall, David Denoyer, Pharmacist Compliance Officer for the Board, Norene F. Pease, Executive Director of the Board, Paul J. Ballard, Assistant Attorney General and Counsel to the Board, and Monique A. Cheatham, secretary to the Board.

Although notice of the charges and the hearing date and place were sent to the Respondent by certified mail to his last known address that he kept with the Board and a receipt for that certified letter was returned to the Board on November 20, 1996 as having been received by the Respondent, neither the Respondent nor counsel for the Respondent appeared at the hearing. No explanation was offered to the Board for the Respondent's absence. Therefore,

pursuant to the authority of Health Occupations Article, § 12-315(g), the Board conducted the contested case hearing in his absence.

SUMMARY OF THE EVIDENCE

I. Exhibit List

The following State's exhibits were admitted into evidence by the Board:

1. True Test Copy of Falls Church City General District Court Warrant of Arrest and disposition dated January 8, 1987;

2. Certified true copy of the Consent Order entered by the Virginia Board of Pharmacy on January 9, 1988;

3. Certified true copy of the Consent Order entered by the Virginia Board of Pharmacy on October 8, 1990;

4. Certified true copy of the Order entered by the Virginia Department of Health Professions on November 9, 1995;

5. True test copy of the U.S. District Court for the Eastern District of Virginia Indictment for Criminal Case #95-00183-a; and

6. True test copy of the U.S. District Court for the Eastern District of Virginia Judgment in Criminal Case #95-00183-a, dated October 6, 1995.

7. Charges issued by Board against the Respondent on November 4, 1996.

7A. Return Receipt of charges Dated November 12, 1996.

II. Testimony

David Denoyer, Pharmacist Compliance Officer for the Board, testified as witness for the State. There were no other witnesses.

FINDINGS OF FACT

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

2. On October 6, 1995 respondent pled guilty and was convicted in the United States District Court, Eastern District of Virginia for income tax evasion, a felony. (State's Exhibit #6).

3. As a result of the October 6, 1995 felony conviction, respondent was the subject of disciplinary action on November 9, 1995 by the State of Virginia Board of Health Professions Pharmacy Board. (State's Exhibit #4). Respondent's license to practice pharmacy in the State of Virginia was mandatorily suspended by the Department of Health Professions, Board of Pharmacy, as a result of his conviction for income tax evasion for which respondent pled guilty to Count I on October 6, 1995¹. (State's Exhibit #4, 6) Count I states in part that respondent "willfully attempted to evade and defeat a substantial part of the income tax and self-employment tax" by his failure to report and pay taxes on "at least \$61,790.58." (State's Exhibit #5). Respondent was placed on two years probation by the United States District Court for the Eastern District of Virginia, including four months of home detention. (State's Exhibit #5).

4. On January 8, 1987, respondent pled guilty and was convicted for dispensing a controlled substance on five (5)

¹. Respondent was fined \$1,000.00, assessed \$50.00 and costs, ordered to pay restitution in the amount of \$80,000.00, and placed on probation for a period of two years.

occasions, a misdemeanor of the laws of the State of Virginia². Respondent's conviction was for dispensing Tylenol III, a Schedule III drug, without a prescription or valid doctor's order. (State's Exhibit #1).

5. On October 28, 1987, Respondent was the subject of disciplinary action by the State of Virginia Board of Health Professions Pharmacy Board for his conviction on January 8, 1987 of dispensing a controlled substance on five (5) occasions. Respondent entered into a Consent Order on January 9, 1988 with the State of Virginia Board of Health and Professions Pharmacy Board. Respondent's license to practice pharmacy was suspended. The suspension was immediately stayed and the Respondent was placed on probation with conditions. (State's Exhibit #2).

6. On October 8, 1990 Respondent was the subject of a disciplinary action by the State of Virginia Board of Health Professions Pharmacy Board for respondent's failure to maintain complete and accurate records of certain schedule III and IV drugs. Respondent failed to document on prescriptions the dispensing of Tussend Tablets (hydrocodone), a Schedule III drug, in lieu of Hycodan Tablets (hydrocodone) which was prescribed. Respondent failed to document on the prescription the substitution of Lorazepam, a Schedule IV drug, 1mg., when the 2 mg. tablet was not in stock and was prescribed. Further, Respondent failed to document the return to stock of Fastin capsules (phentermine),

² Respondent was found guilty and sentenced for a period of 365 days, with all but five days suspended. Respondent was also fined \$500.00

Hydrocodone Tablets and Dextropropoxyphene Tablets, all Schedule IV drugs, thereby creating an excess of drugs in Respondent's inventory. Respondent entered into a Consent Order with that State's Pharmacy Board. Respondent was subjected to a penalty of \$500.00. (State's Exhibit #3).

CONCLUSIONS OF LAW

By being disciplined by the State of Virginia Board of Health Professions Pharmacy Board and by being convicted of dispensing Tylenol III, a Schedule III drug without a prescription or valid doctor's order, Respondent violated §12-311 (b) (23), to wit, §12-313 (b) (14), which provision subjects a licensee to discipline for dispensing any drug for which a prescription is required without first having received a written or oral prescription for the drug from an authorized prescriber. Moreover, Respondent violated §12-313 (b) (21) of the Act by dispensing Tylenol III, a Schedule III drug without a prescription or a valid doctor's order, as it is a crime of moral turpitude.

By being disciplined by the Virginia Board of Health and Professions Pharmacy Board for his failure to maintain complete and accurate records of certain Schedule III and Schedule IV drugs, Respondent violated §12-313 (b) (23) of the Act, to wit, §12-313 (16) which subjects a licensee to discipline for not meeting the labeling requirements for prescription medications and (20) which subjects a licensee to discipline for professional incompetence.

Respondent's guilty plea and conviction for tax evasion, a felony, violated §12-313 (21). By being disciplined by the State

of Virginia Board of Health Professions Pharmacy Board for the felony conviction, Respondent violated §12-313 (b) (23).

SANCTION

Pursuant to the Health-Occupations Article, §12-313 and 12-315, and if, after a hearing, the Board finds that Respondent violated any of the above listed provisions and if the Board finds the above allegations of fact to be true, the Board may impose disciplinary sanctions against Respondent's license, including revocation, suspension, reprimand, or may place Respondent on probation or impose a monetary penalty.

In view of the gravity of the Respondent's offenses and serious the risk to public health posed by his dangerous pharmacy practices, his untrustworthy behavior, and the indefinite suspension of his license by the Virginia Board of Pharmacy, the Board will issue a sanction consistent with the Virginia Board's sanction of indefinite suspension and will not lift that indefinite suspension until the Virginia Board has first reinstated his license with no restriction on his practice, at which time the Board will consider the Respondent's petition that his suspension be lifted.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 16th day of January, 1997, by a unanimous vote of the quorum of the Board present at the contested case hearing, hereby

ORDERED that the pharmacist's license of the Respondent, THANH DINH NGUYEN, is hereby **SUSPENDED INDEFINITELY**; and it is further

ORDERED, upon presentation of this Order, Respondent shall immediately deliver to the Board, through the Board's executive director or its designee, the display, renewal certificate, and wallet-sized license to practice pharmacy previously issued by the Board; and be it further

ORDERED that the Respondent may not petition the Board for the lifting of his license until the Virginia Board of Pharmacy reinstates his license to practice pharmacy in Virginia with no restrictions; and be it further

ORDERED that upon the reinstatement of the Respondent's license to practice pharmacy in Virginia with no restriction, the Board shall entertain a petition from the Respondent for reinstatement of his license to practice pharmacy in Maryland, at which time the Pharmacy Board may attach whatever probationary conditions it should deem appropriate to protect the public health; and be it further

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

29 January 97
Date

George C. Voxakis, Pharm.D.
George C. Voxakis, Pharm.D.
President
Board of Pharmacy

NOTICE OF RIGHT TO APPEAL

Pursuant to Md. Code Ann., Health Occ. § 12-316, you have a 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.

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