

IN THE MATTER OF \* BEFORE THE  
ARTHUR WEINSTEIN, P.D. \* STATE BOARD  
LICENSE NO. 10316 \* OF PHARMACY  
Respondent \*

\* \* \* \* \*

**FINAL CONSENT ORDER**

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board"), and subject to Md. Health Occ. Article, Title 12, Annotated Code of Maryland (the "Act"), the Board charged Arthur Weinstein, P.D., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with violation of the following provisions of § 12-313:

(a) "Convicted" defined---In this section, "convicted" includes a determination of guilt, a guilty plea, or a plea of nolo contendere followed by a sentence.

(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:

(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

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

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

The Respondent was given notice of the issues underlying the Board's charges by letter dated January 17, 2001. Accordingly, a Case Resolution Conference was held on May 30, 2001 and was attended by Irving Lottier, P.D., Secretary to the Board, Jean Furman, P.D., Board member, LaVerne Naesea, Executive Director of the Board, and Paul Ballard, Counsel to the Board. Also in attendance were the Respondent and his attorney, Louis Fireison, and the Administrative Prosecutor, Roberta L. Gill.

Following the Case Resolution Conference, the parties and the Board agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

#### **FINDINGS OF FACT**

1. At all times relevant to the charges herein, the Respondent was licensed to practice pharmacy in the State of Maryland. The Respondent was originally licensed by the Board on February 17, 1993. The Respondent last renewed his license on May 8, 2000. The Respondent's license expires on May 31, 2002.

2. At all times relevant herein, the Respondent was the principal of three pharmacies in Maryland: Professional Apothecary, a closed door<sup>1</sup> pharmacy, located in Chevy Chase, Maryland; Friendship Heights Pharmacy, a distributor operating out of the

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<sup>1</sup> Closed door pharmacies are not open to retail customers, but cater to a select clientele, such as nursing homes .

same Chevy Chase location; and, Medical Pharmacy of Chevy Chase, a retail pharmacy operated at a different location from the first two. The Respondent was sole principal and President of each pharmacy. The permits for Professional and Friendship expired and the pharmacies ceased doing business on December 31, 1998.

3. On or about December 14, 1995, on behalf of Professional Apothecary, Inc., ("Professional") the Respondent joined Managed Health Care Associates, Inc., a buying group which purchased pharmaceutical supplies at a reduced rate. The pharmaceutical supplies were to be used by Professional for its own use for its institutional patients, and not for resale to others.

#### **FINDINGS WITH RESPECT TO MAIL FRAUD CONVICTION**

4. On or about February 20, 2000, the Respondent pled guilty to one count of felony mail fraud in the Northern District of Texas. The basis of the guilty plea and subsequent guilty finding was that from February 5, 1997 through June 18, 1997, the Respondent, on behalf of Friendship Heights, purchased drugs at a discount for use of institutional patients. Despite the "own use" clause in the contract, the Respondent sold the purchased drugs to Innovated Wholesale, at a discount price, plus a commission. On a Factual Résumé filed with the United States District Court for the Northern District of Texas, Dallas Division, on February 8, 2000, the Respondent stipulated and agreed to plead guilty to Count 18 of the Indictment: Count 18 deals with mail fraud, aiding and abetting (a felony) for an offense dated May 13, 1997.

5. By engaging in the resale of the discounted drugs to Wholesale, the Respondent admitted that he "acted with a specific intent to commit fraud," as set forth more fully in pertinent court documents.

6. As a result of the plea agreement entered into by the Respondent, on May 24, 2000, Judge A. Joe Fish placed the Respondent on probation for three years, imposed a fine of \$7000.00, and ordered him to pay a special assessment of \$100.00.

7. Conviction of a felony or crime of moral turpitude is a violation of the Act.

#### **FINDINGS REGARDING LICENSURE RENEWAL**

8. By an application for licensure renewal, dated March 15, 2000, the Respondent answered "no" to Question Number 5 thereon, which states "[h]ave you pled guilty, nolo contendere (sic), or been convicted of or received probation before judgment of any criminal act (excluding traffic violations)?" In addition, the Respondent affirmed that the information given in answer to those "question" (sic) is true and correct to the best of his knowledge and belief.

9. However, at the time of signing the renewal application, the Respondent had pled guilty to mail fraud, as set forth above. The guilty plea did not become final until sentencing on May 24, 2000.

10. Based upon the Respondent's answer, which the Board subsequently determined to be false, the Board issued a renewal license to the Respondent.

11. By failing to reveal the fact that he had pled guilty to mail fraud, a felony, the Respondent violated the Act. The Respondent avers that he did not intend to deceive the Board and that he answered "no" based upon the fact that the Judge had not yet sentenced him; thus, he was not convicted yet. The Respondent further avers that, as soon as the conviction became final, he notified the Board of same.

#### **FINDINGS WITH RESPECT TO PROFESSIONAL INCOMPETENCE**

12. On or about November 16, 2000, the Division of Drug Control (DDC) conducted an audit of medicinal cocaine at Medical Pharmacy of Chevy Chase<sup>2</sup>.

13. The audit disclosed a shortage of 14.02 grams of cocaine, a significant amount. The Respondent claimed that, after the DDC audit, he conducted a self-audit, which disclosed that he had miscalculated the amount of medicinal cocaine that he had actually dispensed for two prescriptions: he stated that he actually dispensed more than he wrote down.

14. By maintaining records that reflected a substantial shortage of cocaine, the Respondent violated the Act.

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<sup>2</sup> DDC had obtained information that the Respondent was among the largest purchasers of medicinal cocaine in the United States.

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that Respondent violated § 12-313 (a) & (b) (2), (20) and (21).

## ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 15<sup>th</sup> day of August, 2001, by a majority of a quorum of the Board,

**ORDERED** that the Respondent's license to practice pharmacy in Maryland be **SUSPENDED** for one year, with all but three months Stayed. The Respondent shall deliver to the Board his wall certificate and his wallet-sized license upon signing this Order; and be it further

**ORDERED** that during the Suspension, the Respondent may work in an unlicensed capacity, as a pharmacy technician; and, be it further

**ORDERED** that, following the cessation of the Suspension, the Respondent shall be placed on two years' Probation, subject to the following conditions:

1. During the first year of the Probation, the Respondent shall take three (3) Continuing Education Units (CEUs) in ethics, preapproved by the Board, and three (3) CEUs in pharmacy law, in addition to any CEUs required for renewal purposes; the aforesaid CEUs shall be documented to the Board;

2. That one year after the Order is signed by the Board, the Respondent shall take and pass, with a grade of at least 75%, the Maryland Pharmacy Jurisprudence Examination, and document that passage to the Board;

3. The Respondent shall pay a fine to the Board of \$2000[.];

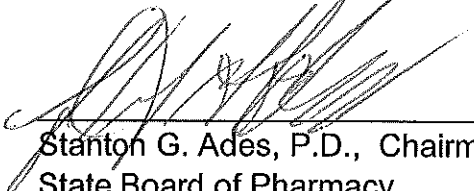
**ORDERED** that the Consent Order is effective as of the date of its signing by the Board; and be it

**ORDERED** that should the Board receive a report that the Respondent's practice is a threat to the public health, welfare and safety, the Board may take immediate action against the Respondent, including lifting the Suspension or revocation, provided that notice and an opportunity to be heard are provided to the Respondent in a reasonable time thereafter. Should the Board receive in good faith information that the Respondent has substantially violated the Act or if the Respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order or of Probation/Suspension shall be on the Respondent to demonstrate compliance with the Order or conditions; and be it

**ORDERED** that the Respondent shall practice in accordance with the laws and regulations governing the practice of pharmacy in Maryland; and be it further

**ORDERED** that, at the end of the Probationary period, the Respondent may petition the Board to be reinstated without any conditions or restrictions on his license, provided that he can demonstrate compliance with the conditions of this Order. Should the Respondent fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary;

**ORDERED** that for purposes of public disclosure, as permitted by §10-617(h) State Government Article, Annotated Code of Maryland, this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank that it is mandated to report to.



Stanton G. Ades, P.D., Chairman  
State Board of Pharmacy

**CONSENT OF ARTHUR WEINSTEIN, P.D.**

I, Arthur Weinstein, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Louis Fireison, and have been advised by him of the legal implication of signing this Consent Order;
2. I am aware that without my consent, my license to practice pharmacy in this State cannot be limited except pursuant to the provisions of § 12-313 of the Act and §10-



201, et seq., of the Administrative Procedure Act (APA), State Government Article, Annotated Code of Maryland;

3. I am aware that I am entitled to a formal evidentiary hearing before the Board

By this Consent Order, I hereby consent and admit to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. By doing so, I waive my right to a formal hearing as set forth in § 12-315 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in § 12-316 of the Act and §10-201, et seq., of the APA. I acknowledge that my failure to abide by the conditions set forth in this Order and following proper procedures, I may suffer disciplinary action, possibly including revocation, against my license to practice pharmacy in the State of Maryland.

7/10/01  
Date

Arthur Weinstein  
Arthur Weinstein, P.D.

STATE OF MARYLAND

CITY/COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 10 day of JULY, 2001, before me, Amy TOURISON a Notary Public of the State of Maryland and (City/County),  
(Print Name)

MONTGOMERY, personally appeared Arthur Weinstein, License No. 13016, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

  
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Notary Public

My Commission Expires: MAR. 24, 2003