

APPROVED/8/1/07
VIRGINIA BOARD OF PHARMACY
MINUTES OF A PANEL OF THE BOARD

Tuesday, June 12, 2007
Fifth Floor
Conference Room 2

Department of Health Professions
6603 West Broad Street
Richmond, Virginia 23230

Orders/Consent Orders referred to in these minutes are available upon request

CALL TO ORDER: A meeting of a panel of the Board of Pharmacy ("Board") was called to order at 1:22 p.m.

PRESIDING: John O. Beckner, Chairman

MEMBERS PRESENT: Gill B. Abernathy
Willie Brown
Jennifer H. Edwards
Bobby Ison
David C. Kozera
Leo H. Ross
Michael E. Stredler
Brandon K. Yi

STAFF PRESENT: Elizabeth Scott Russell, Executive Director
Cathy M. Reiniers-Day, Deputy Executive Director
Caroline D. Juran, Deputy Executive Director
Ishneila Moore, Senior Assistant Attorney General

QUORUM: With nine members of the Board present, a quorum was established.

JEFFREY R. MARTIN
0202-204815

Mr. Schliessmann presented a signed Consent Order to the Board for consideration in lieu of proceeding to the formal hearing regarding this matter.

Mr. Martin was represented by Michael L. Goodman, Esquire.

DECISION: Mr. Ross moved, and the Panel voted 9-0 to accept the Consent Order as presented. The Consent Order made certain Finding of Fact and Conclusions of Law and reinstates Mr. Martin's license on probation with terms and conditions (Attachment 1)

RONALD J. MALSAM
License #0202-005051

A formal hearing was held in the matter of Ronald J. Malsam following the summary suspension of his

pharmacist license on February 14, 2007, and to discuss allegations that he may have violated certain laws and regulations governing the practice of pharmacy in Virginia.

James Schliessmann, Assistant Attorney General, prosecuted the case with the assistance of Amanda E. Mitchell, DHP Adjudication Specialist.

Scott Arnott, DHP Pharmacy Inspector, and Billy Lambrinides, Rite Aid District Manager, testified on behalf of the Commonwealth.

Mr. Malsam appeared with Melinda L. VanLowe, Esquire.

Mr. Malsam testified on his own behalf. Also, Linda Kleiner, HPIP Case Manager, testified on behalf of Mr. Malsam.

CLOSED MEETING:

Mr. Ison moved, and the Panel voted 9-0, to convene a closed meeting pursuant to Section 2.2-3711(A)(28) of the Code of Virginia for the purpose to reach a decision in the matter of Ronald J. Malsam. Additionally, he moved that Scotti Russell, Cathy Reiniers-Day, Caroline Juran and Ishneila Moore attend the closed meeting.

RECONVENE:

Mr. Ison moved, and the Panel voted 9-0, that only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

DECISION:

Mr. Kozera moved, and the Panel voted 9-0, to accept the Findings of Fact and Conclusions of Law as proposed by Mr. Schliessmann and modified by the Panel and read by Ms. Moore (Attachment 2).

Mr. Kozera moved, and the Board voted 9-0 that Mr. Malsam be continued on indefinite suspension for a period of not less than three months.

ADJOURN:

With all business concluded, the meeting adjourned at 4: 20 p.m.

Cathy M. Reiniers-Day
Deputy Executive Director

John O. Beckner, Chairman

Date

Attachment 1
Board of Pharmacy
Formal Hearings – Panel
June 12, 2007

VIRGINIA:

BEFORE THE BOARD OF PHARMACY

IN RE: JEFFREY R. MARTIN, PHARMACIST
License No. : 0202-204815

CONSENT ORDER

Now come the Virginia Board of Pharmacy ("Board") and Jeffrey R. Martin, as evidenced by their signatures affixed below, and enter into this Consent Order affecting the license of Mr. Martin to practice pharmacy in the Commonwealth of Virginia.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Jeffrey R. Martin held license number 0202-204815 issued by the Board to practice pharmacy in the Commonwealth of Virginia, which was summarily suspended by an Order of the Board entered on October 30, 2006.

2. During the course of Mr. Martin's employment as a pharmacist at Sentara Williamsburg Community Hospital ("SWCH"), Williamsburg, Virginia, by his own admission, he violated § 18.2-250, § 54.1-3316(5) and (7), and § 54.1-3408 of the Code. More specifically, on ten occasions between on or about August 15, 2006, and on or about September 1, 2006, Mr. Martin entered falsified information in various Pyxis automated dispensing devices throughout SWCH, where he both reported and resolved discrepancies involving Percocet (oxycodone), a Schedule II controlled substance; Vicodin (hydrocodone), a Schedule III controlled substance; and Ritalin (methylphenidate), a Schedule II controlled substance. Mr. Martin gave a range of admissions when questioned about the above discrepancies by SWCH's Pharmacist-in-Charge on or about September 5, 2006, and by an inspector from the Department of Health Professions on or about September 5, 6, and 13, 2006; however, at a minimum, he did admit to diverting Percocet for his own personal and unauthorized use on or about August 27, 2006, and on or about September 1, 2006. As a result of his actions, Mr. Martin's employment with SWCH was terminated on or about September 11, 2006.

J.R. Martin

3. On or about November 1, 2006, Mr. Martin entered into a Participation Contract with the Health Practitioners' Intervention Program ("HPIP"). Subsequently, on or about February 28, 2007, Mr. Martin entered into a Recovery Monitoring Contract with HPIP.

4. Pursuant to a letter dated June 4, 2007, Patricia A. Pade, M.D., Associate Medical Director of HPIP, stated:

- a. Mr. Martin attended the residential treatment program at William J. Farley Center, Williamsburg, Virginia, from November 13, 2006, until February 23, 2007, when he was successfully discharged;
- b. Mr. Martin is compliant with his treatment and has a solid recovery program in place;
- c. Mr. Martin's random urine drug screens have all been negative; and
- d. Dr. Pade is advocating for the return of Mr. Martin's license to practice pharmacy in the Commonwealth of Virginia.

CONSENT

Jeffrey R. Martin, by affixing his signature hereon, agrees to the following:

1. He has been advised specifically to seek the advice of counsel prior to signing this document, and is represented by Michael L. Goodman, Esquire;
2. He is fully aware that without his consent, no legal action can be taken against him except pursuant to the Virginia Administrative Process Act, § 2.2-4000 et seq. of the Code;
3. He has the following rights, among others:
 - a. the right to a formal hearing before the Board;
 - b. the right to representation by counsel; and
 - c. the right to cross-examine witnesses against him.
4. He waives all rights to a formal hearing;
5. He neither admits nor denies the truth of the above Findings of Fact but agrees not to contest them at future administrative hearings; and

J.R. Martin

6. He consents to the following Order affecting his license to practice pharmacy in the Commonwealth of Virginia.

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law, and with the consent of the licensee, it is hereby ORDERED that upon receipt of the appropriate licensure renewal fee, the license of Jeffrey R. Martin to practice pharmacy in the Commonwealth of Virginia be, and hereby is, REINSTATED ON PROBATION, subject to the following terms and conditions:

1. The period of probation shall begin on the date that this Order is entered and shall continue INDEFINITELY. Mr. Martin may petition the Board to end his probation after he has been successfully discharged from HPIP.

2. Mr. Martin shall comply with all terms and conditions for the period specified by HPIP.

3. Any violation of the terms and conditions of HPIP or any of the terms and conditions stated in this Order shall be reason for revoking the license of Mr. Martin, and an administrative proceeding shall be held to decide whether Mr. Martin's license shall be revoked. Mr. Martin shall be noticed to appear at an administrative hearing at such time as the Board is notified that he is not in compliance with the terms and conditions specified by HPIP, or has been terminated from participation in HPIP.

4. All reports required by this Order shall be submitted in writing to the Board office with the first report being received no later than thirty (30) days following the date that this Order is final. Subsequent reports must be received quarterly by the last day of the months of March, June, September and December, until the period of probation ends. Mr. Martin is fully responsible for ensuring that required reports are properly submitted and received by the Board in a timely manner.

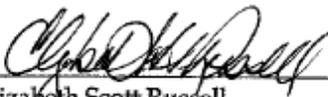
5. Mr. Martin shall submit quarterly self-reports which must include his current address and current employment, if any.

6. Mr. Martin shall maintain a course of conduct commensurate with the requirements of Chapters 33 and 34, Title 54.1 of the Code of Virginia and the Board of Pharmacy Regulations.

J.R. Martin

Pursuant to § 2.2-4023 and § 54.1-2400.2 of the Code, the signed original of this Consent Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public release, inspection and copying upon request.

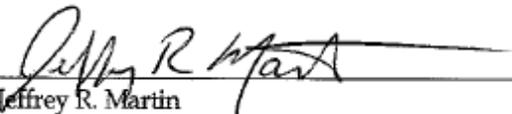
FOR THE BOARD:



Elizabeth Scott Russell
Executive Director

ENTERED: June 15, 2007

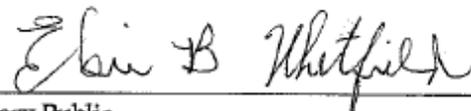
SEEN AND AGREED TO:



Jeffrey R. Martin

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Williamsburg/James City

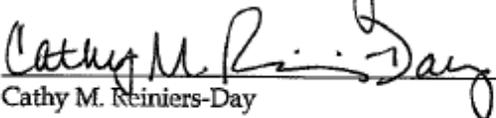
Subscribed and sworn to before me, a Notary Public in and for the Commonwealth of Virginia, this 15th day of June, 2007, by Jeffrey R. Martin. My commission expires the 30th day of November, 2010.



Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Consent Order was mailed to Jeffrey R. Martin at 225 Charter House Lane, Williamsburg, Virginia 23188, on this 15th day of June, 2007



Cathy M. Reiniers-Day
Deputy Executive Director

Attachment 2
Board of Pharmacy
Formal Hearings – Panel
June 12, 2007

Ronlad J. Malsam
License # 0202-005051

Findings of Fact:

- Ronald J. Malsam previously held License No. 0202-005051 issued by the Board to practice pharmacy in the Commonwealth of Virginia, which was summarily suspended by the Board pursuant to an Order entered February 14, 2007, in accordance with § 54.1-2408.1 of the Code.
- By Mr. Malsam's own admission, during the course of his employment as the pharmacist-in-charge at Rite Aid Pharmacy #3686, Fairfax City, Virginia, from approximately January 2005 until November 29, 2006, he diverted from pharmacy stock an estimated 621 tablets total of hydrocodone (Schedule III), alprazolam (Schedule IV), acetaminophen with oxycodone (Schedule II), methylphenidate (Schedule II), Flomax (tamsulosin HCl, Schedule VI), Fioricet #90 (butalbital/APAP, Schedule VI), and Lipitor (atorvastatin, Schedule VI), for his personal and unauthorized use. As a result of his actions, Mr. Malsam's employment was terminated on or about November 29, 2006.
- Linda Kleiner, his Health Practitioners' Intervention Program ("HPIP") Case Manager, testified that Mr. Malsam signed a Participation Contract on February 23, 2007, and was evaluated by Marworth Treatment Center, Waverly, Pennsylvania ("Marworth"), from March 4, 2007, through March 9, 2007. He then received inpatient treatment at Marworth from March 19, 2007, through May 18, 2007. On June 8, 2007, Mr. Malsam signed a Recovery Monitoring Contract with HPIP. Ms. Kleiner stated that HPIP would not allow for Mr. Malsam to return to work until he has a permanent sponsor, three to six months of negative drug screens and participation in appropriate meetings and counseling.
- Mr. Malsam testified that he is currently on Naltrexone. He further testified that he gave some of the diverted hydrocodone to his wife.

Conclusions of Law:

- The Board concludes that Finding of Fact #2 constitutes a violation of § 54.1-3316(4) and (7) and § 54.1-3410(A) and (B) of the Code.

Sanction:

- The license of Ronald J. Malsam be INDEFINITE SUSPENDED for a period of not less than three months from the date of entry of this Order. Mr. Malsam may thereafter petition the Board for reinstatement, contingent upon his continued compliance with the terms of his Recovery Monitoring Contract and consistent with the recommendation of HPIP.