

BEFORE THE TENNESSEE BOARD OF PHARMACY

IN THE MATTER OF:

**CODY ALLEN PEELER, D.PH. (#41410)
1712 SOUTHWEST AVENUE, APT. 206
JOHNSON CITY, TN 37604**

)
)
)
)
)
)

Case No. 2019019451

CONSENT ORDER

Comes now the Division of Health Related Boards of the Tennessee Department of Health ("State"), by and through the Office of General Counsel, and Cody Allen Peeler, D.Ph. ("Respondent") and respectfully moves the Tennessee Board of Pharmacy ("Board") for approval of this Consent Order affecting Respondent's license to practice as a pharmacist in the State of Tennessee.

I. Authority and Jurisdiction

The Board regulates and supervises pharmacies, pharmacists, pharmacy technicians, and pharmaceutical manufacturers, wholesalers, and distributors licensed to practice pursuant to the Tennessee Pharmacy Practice Act ("Practice Act"), Tennessee Code Annotated Section ("TENN. CODE ANN. §") 63-10-101, *et seq.*, including the discipline of licensees, as well as those who are required to be licensed, who violate the Practice Act and the Rules promulgated by the Board, Official Compilation of Rules and Regulations of the State of Tennessee ("TENN. COMP. R. & REGS."), 1140-01-.01, *et seq.* The Board enforces the Practice Act to promote and protect the health, safety and welfare of the public; accordingly, it is the policy of the Board to require strict compliance with the law and to apply the law to preserve the quality of pharmacy care provided in Tennessee.

II. Stipulations of Fact

1. Respondent has been at all times pertinent hereto licensed by the Board as a pharmacist in the State of Tennessee, having been granted license number 41410 on July 25, 2017, which currently expires on July 31, 2021.
2. At all times pertinent hereto, Respondent was registered, employed, and on duty as a pharmacist at Cave's Drug Store located in Kingsport, Tennessee ("Cave's").
3. For the months of June, July, September, October, November, and December of 2018, and in January of 2019, while employed and on duty as a pharmacist at Cave's, Respondent served as the dispensing pharmacist (at Cave's) for Respondent's Schedule II controlled substance prescriptions ("prescription(s)") which were legally prescribed to Respondent. Respondent dispensed Respondent's prescriptions early (and not in strict conformity with the prescriber's directions) as follows:
 - a) June of 2018: 2 days early
 - b) July of 2018: 2 days early
 - c) September of 2018: 8 days early
 - d) October of 2018: 6 days early
 - e) November of 2018: on time
 - f) December of 2018: 9 days early and again 9 days early¹
 - g) January of 2019: 2 days early
4. On December 22, 2018²; January 12, 2019; and January 19, 2019 Respondent diverted generic Adderall from Cave's. Respondent perpetrated the thefts by entering Cave's prior to other employees or patients, retrieving a stock bottle of generic Adderall, pouring generic Adderall tablets into Respondent's hand, and placing the generic Adderall tablets into Respondent's pocket. On one occasion, while on duty, Respondent consumed a

¹ Respondent's prescription for November of 2018, a 30-day supply, should have lasted until December 10, 2018. On December 1, 2018, 9 days before December 1, Respondent dispensed another prescription to himself. On December 22, 2018, again 9 days early, Respondent dispensed an additional prescription to himself.

² Respondent dispensed a legally-written prescription to himself on the same day.

diverted generic Adderall tablet. Respondent claims to have diverted less than 10 generic Adderall tablets. In May of 2019, a Board investigator conducted an audit of all National Drug Code numbers associated with all generic Adderall in the possession of Cave's for the date range of July 22, 2018 to January 31, 2019. The audit revealed a discrepancy of -45 generic Adderall 30mg tablets and -8 generic Adderall 20mg tablets.

5. III. Stipulated Grounds for Discipline

5. The Board has the authority to revoke, suspend, or impose other lawful disciplinary action, including a civil penalty for any violation of the Practice Act and/or the Board's rules pursuant to TENN. CODE ANN. §63-10-305, and TENN. COMP. R. & REG. 1140-1-.08 [CIVIL PENALTIES].

6. The Stipulations of Fact are sufficient to establish Respondent has violated the following statutes or rules which are part of the Act, TENN. CODE ANN. § 63-10-101, *et seq.* and TENN. COMP. R. & REGS., 1140-01-.01, *et seq.*, for which disciplinary action by the Board is authorized.

7. The facts stipulated in paragraph three constitute grounds for which the Board may discipline a Respondent's license to practice as a pharmacist pursuant to TENN. COMP. R. & REG. 1140-03-.03(6)(a), the relevant portion of which reads as follows:

All medical and prescription orders shall be compounded and dispensed in strict conformity with any directions of the prescriber.

8. The facts stipulated in paragraph four constitute grounds for which the Board may discipline a Respondent's license to practice as a pharmacist pursuant to TENN. CODE ANN. §53-10-104(a), the relevant portion of which reads as follows:

(a) It is unlawful for any person, firm or corporation to possess, sell, barter or give away any drug known as legend drugs, as defined in §53-10-101, except upon the written prescription of a duly licensed physician, certified physician's assistant, nurse authorized pursuant to §63-6-204 or §63-9-

113, who is rendering service under the supervision, control and responsibility of a licensed physician, and who meets the requirements pursuant to §63-7-123, a dentist, an optometrist authorized pursuant to §63-8-102(12), or a veterinarian, and compounded or dispensed by a duly registered pharmacist.

9. The facts stipulated in paragraph four constitute grounds for which the Board may discipline a Respondent's license to practice as a pharmacist pursuant to TENN. CODE ANN. §53-10-104(b), the relevant portion of which reads as follows:

(b) It is unlawful for any person, firm or corporation to obtain or attempt to obtain a legend drug, or to procure to attempt to procure the administration of a legend drug, by fraud, deceit, misrepresentation, subterfuge, forgery, alteration of a prescription, by the concealment of a material fact, or by the use of a false name or address.

10. The facts stipulated in paragraph four constitute grounds for which the Board may discipline a Respondent's license to practice as a pharmacist pursuant to TENN. CODE ANN. §53-10-105(a), the relevant portion of which reads as follows:

(a) It is unlawful for any person to have in such person's possession, any drug herein defined or enumerated, without the same having been prescribed by a duly licensed physician, certified physician assistant, dentist, optometrist authorized pursuant to §63-8-102(12), or veterinarian, and having been dispensed by a pharmacy duly licensed and registered in this state, unless such person was a resident of another state and had the prescription therefore filled by a duly licensed and registered pharmacist of such other state.

11. The facts stipulated in paragraph four constitute grounds for which the Board may discipline a Respondent's license to practice as a pharmacist pursuant to TENN. CODE ANN. §53-11-402(a)(3), the relevant portion of which reads as follows:

(a) It is unlawful for any person knowingly or intentionally to:

(3) Acquire or obtain, or attempt to acquire or attempt to obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

12. The facts stipulated in paragraph four constitute grounds for which the Board may discipline a Respondent's license to practice as a pharmacist pursuant to TENN. CODE ANN. §63-10-305(4), the relevant portion of which reads as follows:

Engaging in conduct prohibited or made unlawful by any of the provisions of parts 2-5 of this chapter or any other laws of the state or of the United States relating to drugs or to the practice of pharmacy.

13. The facts stipulated in paragraph four constitute grounds for which the Board may discipline a Respondent's license to practice as a pharmacist pursuant to TENN. CODE ANN. §63-10-305(6), the relevant portion of which reads as follows:

Been guilty of dishonorable, immoral, unethical or unprofessional conduct.

IV. Stipulated Disposition

14. **NOW THEREFORE**, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

A. Respondent's license (license number 41410) to practice as a pharmacist in the State of Tennessee, pursuant to the authority vested in the Board under TENN. CODE ANN. § 63-10-305, shall be and is hereby **SUSPENDED** for a minimum of **SIX (6) MONTHS** which shall begin on the date this Consent Order is ratified by the Board.

B. During the period of suspension, Respondent shall engage the Tennessee Pharmacy Recovery Network ("TPRN"). For the period of suspension to conclude at the end of six months from the date this Consent Order is ratified by the Board, Respondent shall either have signed a monitoring agreement (and contract) with the TPRN (based upon the TPRN's recommendation) or received written notification from the TPRN that a monitoring agreement is not warranted and a return to active practice is

recommended.

In the event a monitoring agreement is signed with the TPRN:

(i) Respondent shall maintain 100% compliance with the terms of any and all monitoring agreements and contracts (and any amendments thereto) signed and entered into with the TPRN. Respondent is responsible for any costs associated with any monitoring agreements, contracts, or any amendments thereto.

(ii) Respondent's failure to maintain 100% compliance with the terms of all monitoring agreements and contracts (and any amendments thereto) signed and entered into with the TPRN until the completion of the monitoring agreements and contracts (and any amendments thereto) shall be considered a violation of this Consent Order and shall result in future disciplinary action including the revocation of Respondent's license to practice as a pharmacist in the State of Tennessee. The TPRN shall immediately provide the Board's executive director with written notification regarding Respondent's failure to maintain 100% compliance.

(iii) The TPRN may report the status of Respondent's compliance at any time, upon request from the Board or its executive director.

C. At the conclusion of six months from the date this Consent Order is ratified by the Board and in the event a monitoring agreement (with TPRN), contract, any amendments thereto is signed by Respondent prior to the conclusion of the period of suspension. Respondent's license to

practice as a pharmacist in the State of Tennessee shall be placed on **PROBATION** concurrently with the length of Respondent's monitoring agreement with TPRN. At the conclusion of Respondent's monitoring agreement, and after receipt of written notification from the TPRN stating such, Respondent's license to practice as a pharmacist in the State of Tennessee shall return to an unencumbered status.

- D. Respondent understands the ratification of this Consent Order is a formal disciplinary action and will be reported to the National Practitioner Data Bank (N.P.D.B.) and/or similar agency. Respondent further understands that failure to comply with the terms of this Consent Order shall constitute grounds for disciplinary action.

V. Notice

15. The Respondent, by his signature to this Consent Order, waives the right to a contested case hearing and any and all rights to judicial review in this matter. Respondent agrees that presentation to and consideration of this Consent Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this Consent Order not be ratified. Likewise, all matters, admissions and statements disclosed or exchanged during the attempted ratification process shall not be used against the Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.
16. Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Consent Order. Respondent understands that by signing this Consent Order. Respondent is allowing the

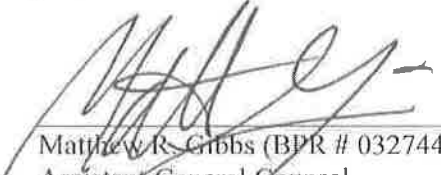
Board to issue this Consent Order without further process. In the event that the Board rejects this Consent Order for any reason, it will be of no force or effect for either party.

17. Should this Consent Order not be accepted by the Board, it is agreed that the presentation and consideration of this Consent Order shall not unfairly or illegally prejudice the Board or any of its members from further participation in or resolution of these proceedings, including a formal disciplinary hearing.
18. Furthermore, Respondent acknowledges that he understands the rights found in the Practice Act and the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 thru 4-5-404, including the right to a hearing on the Petition, the right to appear personally and by legal counsel, the right to confront and to cross-examine witnesses who would testify against Respondent, the right to testify and to present evidence on Respondent's own behalf, as well as the right to appeal for judicial review.
19. Respondent freely, voluntarily, knowingly, and intelligently waives each and every right set forth in paragraph eighteen, above.
20. Respondent understands and freely, voluntarily, knowingly, and intelligently admits the allegations, charges, and stipulations in this Consent Order.
21. Respondent agrees that facsimile/PDF copies of this Consent Order, including facsimile/PDF signatures thereto, shall have the same force and effect as originals.
22. Respondent agrees that he has not received any threats or promises of any kind by the State or any agent or representative thereof, except such as is detailed herein.
23. A **violation** of this Order shall constitute a **separate violation** of the Pharmacy Practice Act, TENN. CODE ANN. § 63-10-305(8), and is grounds for further disciplinary action by the Board.

APPROVED FOR ENTRY:

Cody A Peeler, PharmD
Cody Allen Peeler
Pharmacist License No. 41410
Respondent

8/14/19
DATE


Matthew R. Gibbs (BPR # 032744)
Assistant General Counsel
Tennessee Department of Health
Office of General Counsel
665 Mainstream Drive, 2nd Floor
Nashville, Tennessee 37243
(615) 741-1611

11/6/19
DATE

Approval by the Board

Upon the agreement of the parties and the record as a whole, this **CONSENT ORDER** was approved as a **FINAL ORDER** by a majority of a quorum of the Tennessee Board of Pharmacy at a public meeting of the Board and signed this 5th day of November, 2019.

ACCORDINGLY, IT IS ORDERED that the agreements of the parties will, and hereby do, become the Final Order of the Board.


Chairperson/Acting Chairperson
Tennessee Board of Pharmacy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Consent Order have been served upon Respondent, Cody Allen Peeler, D.Ph. at 1712 Southwest Avenue, Apt. 206, Johnson City, TN 37604, by United States Certified Mail, receipt number 7019 0700 0001 2470 8233 return receipt requested, and by United States First-Class Mail, with sufficient postage thereon to reach its destination.

This 13th day of November, 2019.


Matthew R Gibbs
Assistant General Counsel