

MAINE BOARD OF PHARMACY

IN RE: John J. Bartash, Jr. ) DECISION AND ORDER #2  
Complaint No. 2008-PHA-4912 & PR 2805 )

**I. PROCEDURAL HISTORY**

Pursuant to the authority found in 32 M.R.S. Sec. 13743(2), the Maine Board of Pharmacy (Board) met in public session on January 6, 2011 at 10:00 a.m. at the offices of the Department of Professional and Financial Regulation (Department) in Gardiner, Maine. The purpose of the meeting was to conduct an adjudicatory hearing in accordance with the provisions of 5 M.R.S. Sec. 9051, *et seq.* to determine whether to grant John Bartash's petition for reinstatement of his pharmacist's license. A quorum of the Board was in attendance during all stages of the proceedings. Those participating were Board President Lori A. McKeown, R. Ph., public member John Harris, Dana Hunter, R. Ph., Courtney Oland, R. Ph., and Anne Theriault, R. Ph. Carrie Carney, Assistant Attorney General, presented the State's case. Mr. Bartash was present and not represented by an attorney. James E. Smith, Esq., served as Presiding Officer. The Board first found that there were no conflicts of interest or bias to prevent any Board member from participating in this matter. State's Exhibits A-J and applicant's Exhibit 1 were entered into evidence. Subsequent to John Bartash's opening statement, taking of testimony, submission of the exhibits, and the closing arguments, the Board deliberated and made the following conclusions of law, and findings of fact by a preponderance of the evidence regarding the petition.

**II. FINDINGS OF FACT**

Preliminarily, to aid in the comprehension of this matter, the following 9 paragraphs contain a prior history of John Bartash's Board proceedings. The language cited in those paragraphs is borrowed from the Board's June 3, 2010 Decision and Order and October 14, 2008 Consent Agreement.

## **A. Prior Discipline**

John Bartash, 65 years of age, has been a pharmacist in the State of Maine for approximately 40 years. He assumed proprietorship of his father's Rumford, Maine pharmacy in 1968 after the latter passed away. As the owner and pharmacist in charge, he supervised approximately 44 pharmacists and other employees over the years until 2004, at which time he sold the pharmacy to Rite Aid, a licensed drug outlet. As a condition of sale, Mr. Bartash was required to become a pharmacist employee of Rite Aid for a period of 5 years.

Unfortunately, John Bartash realized too late that his employment as an employee was much different in nature than his self-employment as the owner/pharmacist in charge. He at first began his Rite Aid employment in Rumford but "experienced strong resistance" and a "major conflict with a technician and a pharmacist in charge." He then requested a transfer, which was granted, to work as a Rite Aid pharmacist in Bethel, Maine, where his efforts directed at correcting his alleged substandard practices of the technicians and pharmacists proved to be unsuccessful and were highly resented.

On or about August 27, 2008, the Board received a report from Rite Aid that Mr. Bartash had been terminated from his employment at Rite Aid for allegedly diverting the controlled substance Hydrocodone from the pharmacy. The Board docketed the Complaint as No. 2008-PHA-4912. Specifically, on or about August 10, 2008, Mr. Bartash wrote out a prescription for Vicodin 5/500 for his dog "Steele Rose" and signed the name of a local veterinarian on the prescription form. Mr. Bartash then filled the prescription, dispensed the prescription of 25 pills to himself, and ingested two pills for the half hour car ride to his home in Rumford. His employer discovered the deception soon thereafter and reported the incident to the Board and authorities.

On September 9, 2008, following a presentation of the complaint regarding the above diversion, the Board preliminarily found that licensure of Mr. Bartash as a pharmacist placed the health and physical safety of the public in immediate jeopardy, and that waiting for a full hearing to adjudicate the matter would fail to adequately respond to this known risk. Accordingly, the Board summarily suspended the license of Mr. Bartash for thirty (30) days and authorized a hearing to be held within thirty (30) days to adjudicate the matter. The Board and Mr. Bartash then entered into a Consent Agreement with an effective date of October 14, 2008, which resolved Complaint No. 2008-PHA-4912.

Pursuant to the Consent Agreement, Mr. Bartash admitted to the allegations contained in the complaint. He admitted that such conduct constituted violations pursuant to 10 M.R.S. § 8003(5-A)(5), specifically Board of Pharmacy Rules, Chapter 30 § 1(17), by committing theft while licensed to practice pharmacy, and Chapter 30 § 1(12), by improperly acquiring or obtaining possession of a controlled substance. As discipline for committing these violations, Mr. Bartash agreed to accept a reprimand and the immediate revocation of his license.

Mr. Bartash subsequently pled guilty to Acquiring a Drug by Deception which is a felony. He received a suspended prison sentence on September 28, 2009, with two years of probation ending September 2011 and payment of a fine and costs totaling \$2,425. The applicant then was evaluated for substance abuse on a few occasions from October 26, 2009 until November 9, 2009, by a counselor at the Crooked River Counseling agency, which specializes in substance abuse evaluation and treatment. He does not currently counsel with that counselor who determined that Mr. Bartash did not “meet DSM- IV Criteria for Substance Abuse nor Dependence and was not recommended for further treatment.” This assessment was supported by his family physician.

At the June 3, 2010 hearing, John Bartash testified that the reasons for the above illegal acts included frustration and anger at his employer for not acceding to his requests: (1) to work fewer hours (4-5 hours per day); (2) not to continue as the PIC in which capacity he “voluntarily” served for one year; and (3) to provide him with more staff. In fact, at times Mr. Bartash was left alone in the pharmacy to fill prescriptions, counsel customers, answer the phone, and operate the cash register. He also developed a physical problem related to a previous back surgery which contributed to his stress.

If the application was granted, John Bartash on June 3, 2010 testified that he would apply at a pharmacy other than Rite Aid to work no more than 4-6 hours a day. However, as previously noted, the applicant had serious difficulties with the staff at both Rite Aid pharmacies due in part to his inability to transition from the role of owner/pharmacist in charge to that of an employee. Of particular significance to the Board was Mr. Bartash’s failure as a pharmacist to report to his superiors the alleged questionable acts of other store pharmacists such as drinking on the job during work hours, suspected diversion of drugs, and failing to maintain accurate inventory records. He also suspected a good deal of drug diversion was occurring by the technicians whom he also failed to report. The applicant did not seem to recognize his responsibility or shortcomings regarding those issues and he had difficulty focusing on several matters raised by the Board.

The Board voted 3-2 to deny the application for licensure since Mr. Bartash still posed a threat of harm to the public. The primary reasons for the denial were his lack of awareness to report alleged violations by other pharmacists and technicians, his placing much of the blame for the perceived violations on his staff, and the absence of counseling regarding how to deal with his stress. In Mr. Bartash's favor is a previously clean record and no evidence that he has a substance abuse problem.

**B. Present Circumstances**

At this hearing, Mr. Bartash recounted how his recent counseling with Marie DiScicullo-Naples, Ph. D. has enabled him to successfully deal with the issues of anger, stress, and anger management. He now also recognizes that several of his work related problems were directly attributable to him rather than others. Dr. DiScicullo-Naples affirmed his commitment and progress in her October 14, 2010 letter to the Board and wrote that "Mr. Bartash exhibits sound judgment and both welcomes and seeks the opportunity to demonstrate his reflective, responsible and ethical conduct in his return to his professional work." Her opinion is similar to that rendered by Stephanie LeBlanc, L.C.S.W. who assessed and counseled Mr. Bartash at Tri-County Mental Health Services on September 9, 2010 and October 1, 2010. She recommended that he continue counseling with Dr. DiScicullo-Naples. Mr. Bartash's efforts at reinstatement were also supported by physician Albert Aniel who stated in his February 3, 2009 letter that "[O]ver the years as a physician I have always been impressed by Mr. Bartash's knowledge and helpfulness as a patient advocate. His reinstatement as a pharmacist will certainly benefit our patient population."

**III. CONCLUSIONS OF LAW AND CONDITIONS**

The Board concluded by the vote of 5-0 that John Bartash has addressed head-on his emotional and physical problems. He appears to be trustworthy and no longer poses a threat of harm to the public as a licensed pharmacist. The Petition for Reinstatement is therefore granted, with the following conditions on his license.

1. John Bartash shall not serve as a pharmacist in charge.
2. John Bartash may work no more than 40 hours a week as a pharmacist and no more than 8 hours daily.

3. Mr. Bartash shall continue counseling with Dr. DiSciullo-Naples and he shall notify the Board forthwith if she discontinues or reduces the frequency of the sessions which currently are once each month.
4. Mr. Bartash shall give copies of the Board Decisions and Orders and the Consent Agreement to all future employers.
5. The Board hereby waives the requirement that John Bartash retake the NAPLEX and MPJE exams since he has reapplied for reinstatement within the two year period authorizing waivers.

WHEREFORE, effective January 6, 2011, the Application for Reinstatement is GRANTED.

So Ordered.

Dated: February 3, 2011

  
Lori McKeown, R. Ph., Chairman  
Maine Board of Pharmacy

#### **IV. APPEAL RIGHTS**

Pursuant to the provisions of 5 M.R.S. Sec. 10051.3 and 10 M.R.S. Sec. 8003(5)(G) and (5-A)(G), any party that appeals this Decision and Order must file a Petition for Review in the Maine Superior Court having jurisdiction within 30 days of receipt of this Order.

The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Pharmacy, all parties to the agency proceedings, and the Maine Attorney General.