



COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

1000 Washington Street, Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
TTY/TDD (617) 521-7490
<http://www.mass.gov/doi>

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

GREGORY BIALECKI
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

BARBARA ANTHONY
UNDERSECRETARY

JOSEPH G. MURPHY
COMMISSIONER OF INSURANCE

Mona-Lissa Frain, Petitioner
v.
Division of Insurance, Respondent
Docket No. E2012-02

Decision and Order

I. Introduction and Procedural History

On February 27, 2012, Mona-Lissa Frain (“Ms. Frain”) filed with the Division of Insurance (“Division”) a Notice of Claim for an Adjudicatory Proceeding, appealing the denial of her application for a Massachusetts resident insurance producer license. Ms. Frain submitted her producer license application on or about January 11, 2012; by letter dated February 21, 2012 (the “February 21 Letter”), the Division’s Director of Producer Licensing (“Director”) denied the application pursuant to Massachusetts General Laws Chapter 175, §162R (a)(8) (“§162R (a)(8)”). That section permits the Commissioner of Insurance (“Commissioner”) to deny a license if evidence shows that the applicant has used “fraudulent, coercive or dishonest practices,” or demonstrated “incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the commonwealth or elsewhere.” As support for her decision, the Director relied on facts relating to the diversion of prescription medications alleged in an administrative action brought by the Massachusetts Board of Registration in Pharmacy (“Pharmacy Board”) against Ms. Frain, which was settled through a consent agreement (the “Agreement”).

A notice of procedure, issued on February 29, 2012, scheduled a prehearing conference for March 27 and an evidentiary hearing for April 13, 2012. The Division timely filed its answer, which consisted of a copy of the February 21 Letter. At the prehearing conference, the parties agreed that the facts relating to the Pharmacy Board's action that formed the basis for the Director's decision were not disputed and that no evidentiary hearing was necessary. Ms. Frain requested an opportunity to provide additional information on the circumstances underlying the Pharmacy Board's action.

Both parties were ordered to provide for the record copies of the documents on which the Director relied to make her decision and to submit memoranda setting forth their arguments in this appeal. On April 3, 2012, the Division submitted copies of the following documents to the record: Ms. Frain's producer license application; a contemporaneous letter from her providing information on the proceeding before the Pharmacy Board; the Agreement between Ms. Frain and the Pharmacy Board, and a September 23, 2011 letter from the Pharmacy Board to Ms. Frain relating to compliance with that Agreement. The Division submitted its memorandum on April 6, 2012; Ms. Frain submitted her statement on April 10, 2012.

Ms. Frain's statement describes the family, financial and employment circumstances in which the events underlying the Pharmacy Board action occurred. In brief, shortly after taking a position as a pharmacist with CVS, Ms. Frain became pregnant. Because the pregnancy was difficult, she had to take a leave of absence from her job and incurred substantial medical bills. At about the same time, Ms. Frain's mother was diagnosed with diabetes and, at her income level, found it difficult to comply with the costs of her prescribed medications. When her mother decided that the cost of a particular drug to control her diabetes was prohibitive, out of concern about her mother's health Ms. Frain filled the prescription under her own name and submitted a claim to her insurance company.

Ms. Frain returned to work after her daughter's birth, but continued to encounter health problems. On three occasions, when she was unable to leave work to go to her physician to obtain prescription medicines for herself, she filled prescriptions for antibiotic, anti-nausea and anti-fungal medications for her own use and did not thereafter obtain appropriate backup prescriptions. Ms. Frain acknowledges that she made a serious mistake, states that she had no intent to commit fraud, and expresses remorse for her actions. She asserts that her actions were motivated by family needs, points out that the medications were not narcotics, and observes that there have been no complaints about her performance as a pharmacist. She argues that the

Pharmacy Board's action suspending her pharmacy license for at least a year has sufficiently punished her for her poor choices, and asks that the Division reconsider its decision on her application.

The Division argues that the record in this case shows that the Director had a substantial basis for her decision to deny Ms. Frain's license application. It points out that, under the Agreement, Ms. Frain's pharmacy license was suspended for a year for conduct that included the diversion of Schedule VI controlled substances for personal use by her and by family members. It also notes that she made insurance claims for the prescriptions. Those facts and Ms. Frain's probationary status with the Pharmacy Board are, the Division argues, appropriate reasons for denying her license application. It notes that the burden is on Ms. Frain to demonstrate that she meets the statutory standards for a license, and that she does not dispute the basis for the Director's actions.

On this record, I find the following facts. On September 13, 2011, Ms. Frain entered into an Agreement with the Pharmacy Board pursuant to which her pharmacy license was suspended for a minimum one year period.¹ The Agreement states that Ms. Frain admitted to diverting Schedule VI controlled substances for personal use and for family members by creating fraudulent prescriptions and to processing insurance claims for those prescriptions.² The Agreement identifies the bases for the administrative action against Ms. Frain as certain sections of 247 CMR 9.01, the Code of Ethics for Pharmacists, and 247 CMR 10.03, Grounds for Disciplinary Proceedings. With her license application, Ms. Frain submitted a statement about the circumstances of the diversion referred to in the Agreement, in which she asserted that, with respect to prescriptions for her own medications, the nature of her offense was not dispensing the drugs but failure to obtain promptly hard copy prescriptions from her physician.

The Director denied Ms. Frain's application on the ground that her conduct supported license denial under § 162R (a)(8), *i.e.*, she had used "fraudulent, coercive or dishonest practices" or demonstrated "incompetence, untrustworthiness or financial irresponsibility in the conduct of business. On appeal, Ms. Frain's burden is to present persuasive argument that the evidence before the Director did not support her decision on Ms. Frain's license application. I find that she has failed to do so. The events that supported the Pharmacy Board's disciplinary action

¹ The suspension would be lifted at the end of the one-year period if Ms. Frain had completed continuing education requirements and passed the Multistate Pharmacy Jurisprudence Examination.

² According to Ms. Frain, the medications included, for her mother, a drug to control diabetes and for herself an antibiotic, nausea medication and an antifungal preparation.

against Ms. Frain also support the Director's decision. Ms. Frain's explanation of the circumstances which led her to obtain a single prescription for her diabetic mother and to file a claim for that medication with her own insurance company does not reduce its relevance as evidence that she committed a dishonest practice in the conduct of business that was directly related to insurance. On this record, however, I am not persuaded that Ms. Frain's conduct in obtaining necessary medications for herself and filing claims for them with her own insurance company was fraudulent or dishonest or would otherwise support disciplinary action under §162R (a)(8).

I note as well that Ms. Frain submitted her application for an insurance producer's license in January 2012, four months after entering into the Agreement with the Pharmacy Board. Ms. Frain's pharmacy license was suspended when she applied for an insurance producer license and would remain suspended at least until September 2012. The recent nature of the proceeding at the Pharmacy Board further supported the Director's February 2012 decision to deny her application at that time.

Ms. Frain argues that the one-year suspension of her pharmacy license is sufficient punishment for her acknowledged failure to comply with the standards applicable to that occupation. The sole question before the Director, however, was whether the actions supporting that suspension also supported a conclusion that she did not qualify for an insurance producer's license at the time of her application. While I found credible Ms. Frain's acknowledgement of her mistakes and her expressed regret for engaging in improper conduct, they do not constitute a sufficient legal basis for setting aside the Director's decision.

For the reasons stated above, Ms. Frain's appeal is denied and the Director's decision is hereby affirmed.

July 24, 2012

Jean F. Farrington
Presiding Officer

Pursuant to G.L. c. 26, §7, this decision may be appealed to the Commissioner of Insurance.