

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure

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GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

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First Class and Certified Mail No. 7010 2780 0001 8675 8350

June 6, 2012

Samuel Lazarus, Esq.
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Dedham, MA 02026

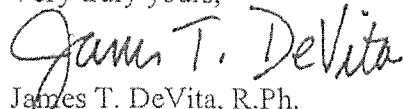
Re: Matter of Ernest M. McGee, R.Ph. - Complaint Docket No. PHA-2009-0128
Final Decision and Order After Sanction Hearing

Dear Atty. Lazarus:

Enclosed is the **Final Decision and Order After Sanction Hearing** issued by the Board of Registration in Pharmacy in the above-referenced matter.

Please be advised that Mr. McGee's appeal rights are noted on page 9 of the enclosed decision.

Very truly yours,


James T. DeVita, R.Ph.
President

Encl.

✓ cc: Eugene Langner, Prosecuting Counsel w/encl. by Interoffice Delivery

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

)
IN THE MATTER OF)
Ernest M. McGee)
License No. 20084)
License Expired: 12/31/10)
_____)

Docket No. PHA-2009-0128

FINAL DECISION AND ORDER AFTER SANCTION HEARING

Procedural Background

This matter comes before the Board of Registration in Pharmacy ("Board") for determination of an appropriate sanction and issuance of a Final Decision and Order following the Stipulation of the Parties ("Stipulation") and Request for Sanction Hearing filed on October 11, 2011. The Stipulation filed by the parties provided as follows:

1. On or about January 27, 1987, the Board issued the Respondent a license to practice as a pharmacist in the Commonwealth of Massachusetts, License No. 20084. The Respondent's license expired on December 31, 2010, and has not been renewed to date.
2. On or about July 19, 2011, in the United States District Court for the District of Massachusetts Docket No. [REDACTED] the Respondent pled guilty to, and was convicted of, one count of Conspiracy to Defraud the Government with Respect to Claims, in violation of 18 U.S.C. § 286.
3. The Respondent's conduct warrants disciplinary action by the Board against his license to practice as a pharmacist pursuant to G.L. c. 112, § 61, for deceit, gross misconduct, or malpractice in the practice of the profession, or for committing any offense against the laws of the commonwealth relating thereto.
4. The Respondent's conduct warrants disciplinary action by the Board against his license to practice as a pharmacist pursuant to 247 CMR 9.01, for violation of the

Code of Professional Conduct and Professional Standards for Registered Pharmacists, Pharmacies and Pharmacy Departments, namely:

- a. 247 CMR 9.01(1) for failing to conduct professional activities in conformity with federal, state and municipal laws, ordinances and/or regulations, including the regulations of the Board; and
 - b. 247 CMR 9.01(6) for engaging in any fraudulent or deceptive act.
5. The Respondent's conduct warrants disciplinary action by the Board against his license to practice as a pharmacist pursuant to 247 CMR 10.03(1) on the following Grounds for Discipline:
- a. 247 CMR 10.03(1)(a) for violating any of the duties and standards set out in Board regulations (247 CMR 2.00 *et seq.*) or any rule or written policy adopted by the Board;
 - b. 247 10.03(1)(e) for engaging in misconduct in the practice of the profession;
 - c. 247 CMR 10.03(1)(l) for engaging in conduct that has the capacity or potential to deceive or defraud;
 - d. 247 CMR 10.03(1)(n) for being convicted of any crime, entering a plea of guilty to any crime, entering a plea of *nolo contendere* to any crime, or admitting to sufficient facts to warrant a finding of guilty of any crime;
 - e. 247 CMR 10.03(1)(r) for engaging in conduct that demonstrates a lack of good moral character;
 - f. 247 CMR 10.03 (1)(u) for engaging in conduct which undermines public confidence in the integrity of the profession; and
 - g. 247 CMR 10.03(1)(w) for failing to comply with recognized ethical standards of the profession, including, but not limited to, the standards of practice of pharmacists, pharmacy interns, pharmacies and pharmacy departments set forth in 247 CMR 9.01: *Code of Conduct for Registered Pharmacists, Pharmacies and Pharmacy Departments*.
6. The Respondent's conduct constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the profession. *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982).


On October 13, 2011, Administrative Hearings Counsel ("AHC") issued a Notice of Hearing scheduling the sanction hearing for November 9, 2011 from 1:00 p.m. to 2:00 p.m. On November 8, 2011, Counsel for Respondent filed a Request for Continuance of the Hearing on Sanctions ("Request for Continuance"). The Request for Continuance

was allowed and the sanction hearing was continued to November 22, 2011 from 1:00 p.m. to 2:00 p.m.

The sanction hearing was convened on November 22, 2011 before the Board pursuant to G.L. c. 30A and the Standard Rules of Adjudicatory Practice and Procedure at 801 CMR 1.00 *et seq.* AHC Maimoona Ahmad presided at the sanction hearing. Respondent was represented by Samuel Lazarus, Esq. Prosecuting Counsel was Eugene Langner, Esq.¹

Witnesses

The following witnesses testified at the sanction hearing:

1. Ernest McGee, Respondent
2. 
3. Samuel Lazarus, Esq., Respondent's Attorney

Exhibits

The following exhibits were entered into the record at the sanction hearing:

1. Order to Show Cause dated August 1, 2011.
2. Answer to the Order to Show Cause dated August 21, 2011.
3. Stipulation of the Parties and Request for Sanction Hearing dated October 11, 2011.
4. Thirteen (13) letters of Reference/Support from personal and professional acquaintances of the Respondent.

¹ The sanction hearing in this case was dispositional in nature and not part of the underlying fact-finding. In addition, the parties' written submissions, consisting of the Stipulation and Exhibits 1-5 were before the Board. Therefore, no tentative decision is required. 801 CMR 1.01 (11). *Weinberg v. Board of Registration in Medicine*, 443 Mass. 679, 690 (2005); *Kobrin v. Board of Registration in Medicine*, 444 Mass. 837 (2005).

5. Two (2) Certificates: Certificate of Appreciation from the Health Careers Academy and Certificate of Completion for a Computer Training for Employment program.

Discussion

The Board has reviewed the undisputed facts set forth in the Stipulation, namely the finding that on July 19, 2011, the Respondent pled guilty to and was convicted of, one count of Conspiracy to Defraud the Government with Respect to Claims, in violation of 18 U.S.C. § 286, in the United States District Court for the District of Massachusetts.

The Board summarily suspended any right Respondent may have to renew Pharmacist registration no. 20084 (Expired 12/31/10), pursuant to the *Temporary Order of Summary Suspension* (effective July 19, 2011) and *Final Order of Summary Suspension* (effective July 25, 2011) based on the *Information* dated June 23, 2011 issued in the matter of *U.S. v. Ernest McGee* (U.S. District Court, District of Massachusetts, Criminal No. 11-10248 and referenced in the *Temporary Order of Summary Suspension*; which *Information* details Respondent's conduct as the assistant pharmacist at Codman Square Pharmacy (formerly located at 624-626 Washington Street in Dorchester, Massachusetts), from on or about October 2007 till on or about July 2009, soliciting customers (Title 42, United States Code, Section 301, *et seq.* "Medicaid Program" beneficiaries) to bring their prescriptions to the pharmacy and to sell them for cash, with payments to the customers ranging from one-tenth to one-third of the amount Codman Square Pharmacy billed and was paid by the Medicaid Program, as well as, in some instances, Medicare as a secondary insurance, without ever dispensing the medications to

the beneficiaries. (U.S. District Court, District of Massachusetts, [REDACTED]

[REDACTED] Filed 6/24/11). (Board records)

The Board has reviewed the conclusions of law, as stipulated to by the parties and set forth above, acknowledging that Respondent's conduct warrants disciplinary action by the Board against Respondent's license to practice as a pharmacist, and also constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the profession. *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982)

The Board has reviewed the statements and information Respondent presented in mitigation which he requests the Board to consider in determining a sanction. The Respondent states that he was born in Roxbury in 1960 and was the eighth of ten children. He was raised by a single mother in a working class community. He was the first member of his family to attend college. He worked very hard to pursue an education and obtain a pharmacy degree, despite many obstacles and a lack of guidance. The Respondent states that he is passionate about pharmacy and devoted to the patients and the healthcare staff he served as pharmacist. He has submitted numerous letters of support from the healthcare community he worked with, in addition to character reference letters from family and friends.

Respondent admits to the fraudulent conduct that is the subject of the Stipulation. He states that poor judgment led to his misconduct and that when he approached his employer about fraudulent activities taking place at the pharmacy, he was told to follow orders or he would be replaced. Respondent states that due to his strong relationship with

his patients and his desire to serve his community, he participated in the fraudulent activities so he could continue to practice at the pharmacy. He states that he made a terrible mistake, one that has left an awful blemish on his career. He wishes to put this incident behind him, and practice pharmacy once again in the future. He is willing to do volunteer work, attend continuing education classes and take any other steps the Board may recommend so that one day he may have his pharmacy license reinstated.

The Board has reviewed the testimony of [REDACTED] [REDACTED] on behalf of Respondent. [REDACTED] states that Respondent is a devoted husband and father. He is responsible for the care of five generations of his family and viewed as a patriarch of the family. She states that as a pharmacist, Respondent goes above and beyond the call of duty to serve his patients. As an example, [REDACTED] states that she was once in the car with Respondent when he received a call from an 80 year old patient concerned about new medication the patient had been prescribed and that Respondent proceeded to visit the patient at home so that he could instruct the patient on the proper use of the medication.

The Board has also considered the testimony of Respondent's attorney, Samuel Lazarus, Esq. ("Mr. Lazarus"). Mr. Lazarus states that he understands, as does the Respondent, that what happened in this case was a choice and that he believes Respondent participated in fraudulent behavior because he was insecure about finding a new job, and wanted to continue to serve his community. Mr. Lazarus states that he knows Respondent worked very hard to gain his pharmacy skills and wants to use them in the future.

The Board is charged with the responsibility of protecting the public health, safety, and welfare. To that end, the Board acts to insure that pharmacies are operated in a safe, competent, and professional manner and that pharmacists acting as managers of record manage and operate pharmacies in accordance with state and federal regulations. The Board has broad authority to regulate the conduct of the profession and broad discretion in determining an appropriate sanction. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); see also *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982). The Board's regulations establish a system designed to allow the Board to monitor carefully the conduct of pharmacists and the management and operation of pharmacies, as well as the dispensing and flow of prescription drugs within the Commonwealth. G.L. c. 94C, § 6; Board regulations at 247 CMR 2.00 *et seq.*

Based on the Stipulation, the statements made and exhibits introduced at the sanction hearing, Respondent's conduct in violation of multiple federal and state statutes and regulations, and the Board's responsibility to protect the health, safety, and welfare of the public and duty to maintain the public's confidence in the integrity of the pharmacy profession, the Board enters the following Order:

ORDER

At a Board meeting on June 5, 2012, the Board voted to issue this Final Decision and Order after Sanction Hearing and **REVOKE** Respondent's Pharmacist registration No. 20084 (expired December 31, 2010/summarily suspended July 19, 2011) by the

following vote: In favor: Stanley B. Walczyk, R.Ph.; George A. Cayer, R.Ph.; Joanne M. Trifone, R.Ph.; Karen M. Ryle, R.Ph.; Anita Young, R.Ph.; Donald D. Accetta, M.D.; James T. DeVita, R.Ph.; Kathy J. Fabiszewski, Ph.D., N.P.; and Sophia Pasedis, R.Ph., Pharm.D. Opposed: None. Absent: Steven Budish, Public Member.

The Board will **not** review any petition for pharmacist licensure in the Commonwealth filed sooner than July 19, 2016 (or five (5) years from the Effective Date (July 19, 2011) of the summary suspension of Respondent's right to renew his expired pharmacist registration). During the period Respondent's pharmacist license is revoked, Respondent may not be employed as a pharmacist or pharmacy technician to provide any services related to the practice of pharmacy, or be employed to provide any pharmacy related services in any capacity, in any pharmacy setting in the Commonwealth. If at any time in the future Respondent seeks re-licensure by the Board, he will be required to re-apply to the Board and meet all current requirements for licensure, including, but not limited to, requirements related to good moral character, re-examination, re-training and such other reinstatement terms and conditions as the Board may deem to be necessary and appropriate. Any decision to grant a petition for licensure in the future would include probationary status, practice limitations and other monitoring conditions as the Board may deem to be necessary and appropriate.

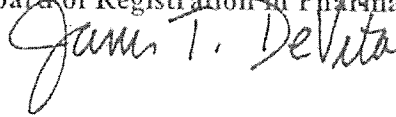
EFFECTIVE DATE

The Order of the Board shall be effective as of June 6, 2012

RIGHT TO APPEAL

Respondent is hereby notified of his right to appeal this Final Decision and Order after Sanction Hearing to the Supreme Judicial Court, pursuant to G.L. c. 112, § 64 and G.L. c. 30A, §§ 14 and 15, within thirty days of receipt of notice of this Final Decision and Order after Sanction Hearing.

Board of Registration in Pharmacy



James T. DeVita, R.Ph.
President

Date Issued and Effective Date of REVOCATION ORDER: June 6, 2012

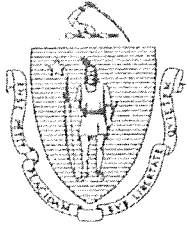
Decision No. 2928

**VIA FIRST CLASS MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED NO. 7010 2780 0001 8675 8350**

Samuel Lazarus, Esq.
888 Washington Street, 3rd Floor
Dedham, MA 02026

VIA HAND DELIVERY

Eugene Langner, Prosecuting Counsel
Division of Health Professions Licensure
Department of Public Health
239 Causeway Street
Boston, MA 02114



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July 19, 2011

Ernest M. McGee



Re: *Temporary Order of Summary Suspension* effective July 19, 2011
Proposed Voluntary Surrender Agreement
Complaint Docket No. PHA-2009-0128/Pharmacist License No. 20084 (Exp. 12/31/10)

Dear Mr. McGee:

The Board of Registration in Pharmacy (Board) has voted to issue the enclosed *Temporary Order of Summary Suspension* suspending any right you may have to renew your expired pharmacist license based on your guilty plea on this date in U. S. District Court relating to conduct alleged in above-referenced Board Complaint Docket No. PHA-2009-0128 (Complaint) concerning your practice as a pharmacist while employed at Codman Square Pharmacy. You may request a hearing limited to the necessity of the summary suspension by filing a written request with the Board by 5:00 p.m. on Thursday, July 21, 2011 (address as noted above or by Fax 617 973 0980).

Also enclosed is a *Voluntary Surrender Statement* (two copies) for your consideration to be executed in resolution of the Complaint. If you desire to resolve the Complaint by surrendering your right to renew your pharmacist registration, please return one signed and dated *Voluntary Surrender Statement* to the Board.

Very truly yours,


Stanley B. Walczyk, R.Ph., President

Encls.

First Class and Certified Mail 7009 1680 0000 6389 7651
cc: Elliot M. Weinstein, Esq. w/Encls. by FAX 617 523 7554 and First Class Mail

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
ERNEST M. MCGEE, R.Ph.)
Pharmacist No. 20084)
Exp. 12/31/10)
_____)

DOCKET NO. PHA-2009-0128

TEMPORARY ORDER OF SUMMARY SUSPENSION

In accordance with its broad grant of authority, pursuant to Massachusetts General Laws Chapter 112, Section 42A; 247 CMR 10.07 and 247 CMR 11.15, to decide when professional standards have been violated and to discipline any violations in order to promote the public health, safety and welfare (*Strasnick v. Board of Registration in Pharmacy*, 408 Mass. 654; 562 N.E. 2d 1333 (1990); *Rosen v. Board of Registration in Medicine*, Supreme Judicial Court, June 3, 1987), and following the withdrawal of a request for a hearing on the necessity of the summary suspension (letter of counsel dated May 11, 2011), the Board of Registration in Pharmacy (Board) ORDERS that:

Any right to renew the EXPIRED pharmacist registration of ERNEST MCGEE (Respondent), a pharmacist previously employed at CODMAN SQUARE PHARMACY (Pharmacy), formerly licensed to operate at 624-626 Washington Street in Dorchester, Massachusetts (Pharmacy No. 2692/Status: SUSPENDED, effective August 6, 2009; REVOKED, eff. July 13, 2010), be SUSPENDED, as of this date, pending a hearing, if requested, on the merits of the allegations relating to above-referenced Complaint Docket No. PHA-2009-0128 or other agreed upon disposition by the parties.

The Board has determined that based upon the information contained in that certain *Information* (Complaint) dated June 23, 2011 in the matter of *United States of America v. Ernest McGee* (U.S. District Court, District of Massachusetts, Criminal No. [REDACTED] and Respondent's guilty plea to related charges in U.S. District Court on July 19, 2011, the health, safety, and welfare of the public necessitates such summary action.

Respondent may request the Board to schedule a hearing limited to the necessity of the summary action within seven days of the Board's action by filing a written request for such hearing with the Board at 239 Causeway St., 5th Floor, Boston MA 02114 (FAX 617 973 0980) not later than 5:00 p.m. on July 21, 2011.

BOARD OF REGISTRATION
IN PHARMACY



Stanley B. Walczyk, R.Ph.
President

Effective Date: July 19, 2011

Decision No. 2632

First Class Mail and Certified Mail 7009 1680 0000 6389 7651
By FAX to Atty. Elliott M. Weinstein