



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

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Board of Registration in Pharmacy
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June 1, 2010

VIA FIRST CLASS AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED NO. 7009 1680 0001 1520 0279
Gbolahan Diyaolu

[redacted]

RE: In the Matter of Gbolahan O. Diyaolu, PH License No. 19258
Board of Registration in Pharmacy, Docket No. PH-07-078

Dear Mr. Diyaolu:

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

Please note your appeal rights on page 5 of the decision.

Sincerely,

Joanne M. Trifone, R.Ph.
President

Enc.

cc: BY INTEROFFICE DELIVERY
Vita Palazzolo Berg, Prosecuting Counsel

SUFFOLK COUNTY

In the Matter of
GBOLAHAN DIYAOLU, R.Ph.
Pharmacist License No. 19258

FINAL DECISION AND ORDER AFTER SANCTION HEARING

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 based on the record in this matter, which includes the February 10, 2010 Board Ruling on Motion for Summary Decision¹ ("Summary Decision Ruling") and Respondent's testimony at the April 1, 2010 sanction hearing held in this matter by request of Gbolahan Diyaolu ("Respondent").

The procedural background of this matter is described in the Summary Decision Ruling. On April 1, 2010, at Respondent's request, Administrative Hearings Counsel Beverly Kogut conducted a hearing on sanctions. Respondent testified at the sanction hearing and one exhibit was entered into the record.²

Respondent filed as Exhibit 1 a written copy of the prepared statement he made at the sanction hearing.

¹ The Board's February 10, 2010 Summary Decision Ruling is incorporated herein by reference. In that ruling the Board held that Respondent's pharmacist registration was subject to discipline for professional conduct that was found to be in violation of M.G.L. c. 112, §§ 42A and 61 and multiple sections of Board regulations 247 CMR 2.00 et seq.; specifically, Respondent was found to be responsible for the management and operation of Plaza Pharmacy II (Pharmacy Permit No. 3382), where the Board determined various pharmacy operations were in violation of multiple state and federal regulations pertaining to the practice of pharmacy, as more particularly specified in the Summary Decision Ruling.

² The sanction hearing in this case was dispositional in nature. No evidence other than Respondent's statement was submitted and 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).

IV. Discussion

The Board has reviewed the undisputed facts set forth in the Summary Decision Ruling; in particular the findings that: (1) In March 2005, the Board issued a retail pharmacy license to Plaza Pharmacy II (the "pharmacy"), with Respondent as (a) manager of record and (b) president and director of owner Olubode Enterprises, Inc. d/b/a Plaza Pharmacy II; (2) Respondent remained the pharmacist manager of record of the pharmacy until March 2007 when Respondent surrendered the pharmacy permit to the Board and closed the pharmacy; (3) Respondent was the manager of record and pharmacist on duty during the Board inspections of the pharmacy on February 27 and 28, 2007, when Board investigators observed multiple violations of state and federal regulations pertaining to the practice of pharmacy, including misbranded, previously dispensed, improperly stored and quantities of sample medications on pharmacy premises, as well as supervisory ratio violations; and (4) Respondent was the pharmacist manager of record when the pharmacy purchased controlled substances for dispensing to consumers from an entity (a retail pharmacy) other than a registered wholesaler on various occasions.

The Board has reviewed Respondent's history of license discipline. As noted in the Summary Decision Ruling, the Board reprimanded Respondent's pharmacist license on July 12, 2006 for submitting a license renewal application falsely attesting to completion of required continuing education credits. After failing to complete agreed upon course requirements as set forth in the Consent Agreement dated July 12, 2006 that Respondent entered into with the Board relating to the license renewal disciplinary matter, the Board suspended Respondent's pharmacist license, effective June 15, 2007. His license remains suspended.

The Board has reviewed the statement and information Respondent presented in mitigation which he requests the Board to consider in determining a sanction. He states that in August 2006, his [redacted] who lived in [redacted], was [Redacted] and that he had the responsibility to travel to [redacted] to take care of her and handle matters after her demise. He asserts that he sold the pharmacy and believed his lawyer had notified the Board that he had transferred his interest in the pharmacy and that he was no longer manager of record of the pharmacy. He asserts he was out of the country at the time of the unlawful pharmacy purchases of drugs from an entity other than a registered wholesaler. He states he was only filling in as the pharmacist on duty on the dates that Board investigators inspected the pharmacy and found multiple violations of state and federal regulations as no other pharmacist was available and he wanted to make sure the clients received their medications.

Prosecuting Counsel noted Respondent's history of license discipline as demonstrating a pattern of non-compliance with Board regulations as well as his false attestation to completion of renewal requirements. Regarding certain

operations of the pharmacy of which the Respondent claims little or no knowledge, Prosecuting Counsel submits that a failure to be aware of the pharmacy operations at issue does not explain or excuse Respondent's failure to meet his obligations as pharmacy manager of record as well as pharmacist on duty.

Section 39 of M.G.L. c. 112 requires the management of a retail pharmacy to be "in the hands of a registered pharmacist." Board regulations impose significant personal responsibility on the pharmacist manager of record of a retail drug business for monitoring pharmacy operations to insure compliance with state and federal regulations regarding the operation of a pharmacy. 247 CMR 2.00; 247 CMR 6.02 (1) through (10); 247 CMR 6.07 (1)(a) through (j); 247 CMR 9.01 (1) through (19). *Strasnick v. Board of Registration in Pharmacy*, 408 Mass. 654, 666 (1990). The Board notes that the information Respondent presented as mitigation in sanction determination does not explain or excuse his failure to exercise proper professional diligence and responsibility to insure that the management and operations of the pharmacy were conducted in accordance with statutory and regulatory requirements. Respondent should have made appropriate and necessary arrangements to transfer the oversight of the pharmacy to a new manager of record given the personal circumstances he described. He failed to assure that manager of record responsibilities were properly transferred to another pharmacist, as mandated by M.G.L. c. 112, § 39 and in compliance with Board regulations at 247 CMR 6.07. Contrary to Respondent's assertions, Board review and approval of accurate and timely applications for transfer of pharmacy ownership and change in manager of record are crucial for the Board to meet its responsibility to the public to assure that all appropriate and necessary oversight of pharmacy operations are in place. The filing of timely and accurate required application and notice forms is not mere paperwork, but an important means of assuring that every retail drug business is managed by a pharmacist who is personally accountable for pharmacy operations and whose license may be subject to discipline for violations found to exist at the pharmacy.

The Board has grave concerns regarding Respondent's multiple professional roles in the unlawful activities of the pharmacy, as described in the Summary Decision Ruling. Respondent has neither acknowledged nor demonstrated any appreciation or acceptance of the complex statutory and regulatory requirements that apply to the operation of pharmacies and the practice of pharmacists in the Commonwealth.

As noted, the Board is charged with the responsibility of protecting the public health, safety, and welfare. To that end, the Board acts to insure that pharmacists practice 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. M.G.L. c. 94C, § 6; Board regulations at 247 CMR 2.00 *et seq.* The Board's public protection mission includes keeping "close oversight" over (a) the ownership of pharmacies; and (b) the pharmacists who manage and operate a pharmacy and are responsible for the security of prescription drugs. *Strasnick* at 408 Mass. 654, 666 (1990).

After consideration of all of the mitigating circumstances put forth by Respondent, his disciplinary history as a pharmacist licensed by the Board, and the conduct at issue in this matter, and in keeping with its duty to promote the public health, welfare, and safety, the Board imposes the following sanction based on its experience and discretion and careful consideration of the facts and mitigating circumstances before it.

ORDER

On June 1, 2010, the Board voted to issue this Final Decision and Order after Sanction Hearing and **REVOKE** Respondent's Pharmacist registration No. 19258, by the following vote:

In favor: Stanley B. Walczyk, R.Ph.; Steven Budish, Public Member; Joanne M. Trifone, R.Ph.; William A. Gouveia, R.Ph., M.S., and Donald D. Accetta, M.D., Michael Tocco, R.Ph., James T. DeVita, R.Ph., Kathy J. Fabiszewski, Ph.D., N.P.
Opposed: None

Absent: George A. Cayer, R.Ph. and Sophia Pasedis, R.Ph., Pharm.D.

The Board will not review any petition for pharmacist licensure in the Commonwealth filed sooner than five (5) years from the effective date of this Final Decision and Order after Sanction Hearing. 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 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 meet such conditions as the Board may require at the time of application, including, but not limited to, re-application, re-examination and re-training and such other reinstatement terms and conditions the Board deems to be necessary and appropriate

EFFECTIVE DATE OF ORDER

This Final Decision and Order after Sanction Hearing becomes effective as of the date issued (see "Date Issued" below).

RIGHT OF APPEAL

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

Board of Registration in Pharmacy

Joanne M. Trifone

Joanne M. Trifone, R.Ph.
President

Date Issued: June 1, 2010

Dec. No. 2313

Board Final Decision and Order to:

VIA FIRST CLASS AND CERTIFIED MAIL

RETURN RECEIPT REQUESTED NO. 7009 1680 0001 1520 0279

Gbolahan Diyaolu

[redacted]

BY INTEROFFICE DELIVERY

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