



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure
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June 18, 2008

Paul M. Garbarini, Esq. by First Class and Certified Mail No. 7007 3020 0000 4345 1125
P.O. Box 1551
Northampton, MA 01061

Steven Shrair and Margolis Pharmacy
[REDACTED]

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

RE: In the Matter of Steven Shrair, PH 07-023
In the Matter of Margolis Pharmacy, DS 07-063

Dear Mr. Garbarini, Mr. Shrair, and Mr. Langner:

Enclosed is the Board's Final Decision and Order in the above-referenced matter. Please note that Respondent's appeal rights are set forth on page 13 of the decision.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie B. Carey".

Stephanie B. Carey
Administrative Hearings Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN PHARMACY

In the Matter of)
Steven Shraiar)
PH License No. 14861)
Registration expires 12/31/08)
_____)

Docket No. PH 07-023

In the Matter of)
Margolis Pharmacy)
License No. 2974)
License Expires: 12/31/09)
_____)

Docket No. DS 07-063

FINAL DECISION AND ORDER¹

Procedural Background

This matter comes before the Board of Registration in Pharmacy ("Board") for a determination of an appropriate sanction and issuance of a Final Decision and Order following the Board's February 13, 2008 Ruling, granting Prosecuting Counsel's Motion for Summary Decision ("Summary Decision Ruling")². In that Summary Decision Ruling, the Board found that Respondent provided false statements in completing the Commonwealth of Massachusetts,

¹ Pursuant to 801 CMR 1.01(11), the Board was not required to issue a Tentative Decision in the first instance because the hearing in this matter was not evidentiary in nature.

² The Board's Summary Decision Ruling, attached hereto, is incorporated by reference herein.

Division of Registration, Board of Registration in Pharmacy, Application for a Transfer of Ownership form ("transfer form") and the United States Department of Justice Drug Enforcement Administration ("DEA") Renewal Application for DEA Registration form ("renewal form"), in violation of Board regulations at 247 CMR 10.03 and G.L. c. 112, §§ 42A and 61.³ Following the Board's Summary Decision Ruling, Respondent filed a timely request for a hearing on the issue of sanctions. The Board granted that request and scheduled a hearing on sanctions for May 5, 2008.

A hearing was convened on May 5, 2008 before the Board of Registration in Pharmacy pursuant to G.L. c. 30A and the Standard Rules of Adjudicatory Practice and Procedure at 801 CMR 1.00 *et seq.* Administrative Hearings Counsel ("AHC") Stephanie Carey presided at the hearing. Paul M. Garbarini, Esq. ("Counsel for Respondent" or "Counsel") represented Respondent at the hearing. Eugene Langner, Esq. was Prosecuting Counsel during the proceeding. Prosecuting Counsel did not submit exhibits or present witnesses. Respondent submitted the following exhibits:

1. Affidavit of [REDACTED] May 5, 2008
2. Letter from [REDACTED] May 22, 2007
3. Letter from [REDACTED] M.D., November 14, 2005
4. Letter from [REDACTED] October 4, 2007
5. Certificate of Appreciation from MGH Chelsea HealthCare Center, undated
6. Certificate of Appreciation from Jobs for Life Partnership, November 7, 2007

³ The Board also concluded that Respondent's conduct constituted unprofessional conduct and gross misconduct in the practice of pharmacy.

Respondent issued a statement and responded to questions from Counsel for Respondent and Prosecuting Counsel. The following witnesses presented testimony on behalf of Respondent:

1. [REDACTED] (" [REDACTED] ")
2. [REDACTED] (" [REDACTED] ")
3. [REDACTED] (" [REDACTED] ")

SUMMARY OF STATEMENTS

Statement of Respondent

According to Respondent, the Board issued him a license to practice pharmacy in 1967. In 1982, he was convicted of sending false bills for medical equipment through the United States mails. In 1986, Respondent was convicted of the misuse of patient funds with respect to patients residing at nursing homes that he owned. Both the 1982 and the 1986 convictions were based on acts committed by Respondent in 1981. Attorney [REDACTED] ("Attorney [REDACTED]" or "[REDACTED]"), who is now [REDACTED], represented Respondent in both cases. As a result of those convictions, the Board revoked Respondent's license to practice pharmacy. In 1986 or 1987, the Board reinstated Respondent's license with no conditions or restrictions. After his reinstatement, Respondent met with Attorney [REDACTED] who informed Respondent that he would get the convictions "washed out". Respondent believed that the statement made by [REDACTED] was true. According to Respondent, although he did not like [REDACTED] he believed [REDACTED] representations and consequently never sought another legal opinion on the issue. In 1998, Respondent purchased half the shares of Margolis Pharmacy and in 2000, he purchased the remaining shares and assumed the position of Manager of Margolis Pharmacy. When attempting to transfer ownership of the pharmacy, Respondent was required to complete a transfer form. In completing that form, Respondent

responded "no" to an inquiry pertaining to whether he had ever been convicted of a felony.

Respondent asserts that at the time he believed that he was making a truthful statement in that he assumed that Redac had done what he was supposed to do.⁴

During his career, Respondent has been involved in many community programs. He has lectured students at Chelsea High School regarding the dangers of the misuse of prescription drugs. He has participated in a symposium sponsored by Massachusetts General Hospital-North regarding the responsibilities of pharmacists in handling and managing Schedule II controlled substances. He has also donated medical supplies to the Chelsea Veterans Hospital and toothbrushes to the Chelsea school system. Respondent has made donations to Northeastern University School of Pharmacy, Massachusetts College of Pharmacy, Chelsea High School and Chelsea Veterans Hospital. In recognition of his community efforts, MGH Chelsea HealthCare Center issued Respondent a Certificate of Appreciation for his support of the young patients at the facility and Jobs for Life Partnership awarded Respondent a Certificate of Appreciation in recognition of Respondent's outstanding commitment to the Chelsea youth.

Respondent's pharmacy serves a lower socio-economic population in Chelsea. Many of Respondent's customers are Hispanic and unable to meet the costs of prescription drugs. As a result, on many occasions, Respondent dispenses prescription medications without receiving the co-pay from his customers. Respondent has never refused service to anyone in his community based on an inability to pay. In order to better accommodate his clients, Respondent increased his Spanish-speaking staff.

⁴ In his statement, Respondent did not address the untruthful responses he provided on both the transfer and renewal forms to inquiries related to sanctions imposed on his license to practice pharmacy.

Respondent acknowledges that the transfer form contained false information but he asks the Board to consider all his community efforts since that incident. Respondent insists that if he had known the statements were untruthful, he would not have completed the form in that manner. In hindsight, Respondent realizes that he should have further investigated the work and representations of Attorney [Redacted]. Respondent asserts that "the practice of pharmacy is his life and that he has never intentionally tried to hurt the profession of pharmacy".

Statement of [Redacted] ("[Redacted]")

According to [Redacted], after graduating from Northeastern University School of Pharmacy in 1977, he practiced as a pharmacist in a community drug store that he owned. [Redacted] is not currently licensed as a pharmacist and is not engaged in the practice of pharmacy. When [Redacted] first purchased a drug store in Brookline, Massachusetts (MA) in April 1978, Respondent assisted him by donating stock items that [Redacted] used as his initial inventory. At that time, Respondent owned Beaconsfield Pharmacy ("Beaconsfield") in Brookline, MA. According to [Redacted] Beaconsfield was an exemplary pharmacy and Respondent was a highly regarded pharmacist in Brookline.

In 1988, [Redacted] was convicted of receiving stolen property and as a result, the Board revoked his license to practice as a pharmacist for two (2) years. [Redacted] also owned nursing homes in the Boston area as part of a corporate entity. Subsequent to the reinstatement of his license to practice pharmacy, [Redacted] pleaded guilty to improper billing with respect to false Medicaid claims filed by his nursing homes. According to [Redacted], he was sentenced to a term of probation and the matter was later dismissed.

██████████ introduced Respondent to Attorney ██████████ and in the late 1980's, he was present in the ██████████ home when ██████████ told Respondent that he "was going to get Respondent's record expunged". At one time, Respondent filed a legal action against ██████████ related to Respondent's ownership of nursing homes.

During his association with Respondent ██████████ has always considered Respondent as an honest and trustworthy individual.

Statement of ██████████ ("██████████")

██████████ is a 1984 graduate of the Northeastern University School of Pharmacy ("NSP"). He is currently the Interim Chair of the Department of Pharmacy Practice. He is also the Executive Director of the Massachusetts Independent Pharmacists Association ("MIPA"). Respondent is a member in good standing of MIPA and has been a member for seven (7) or eight (8) years. ██████████ became familiar with Respondent through NSP interns that worked at Respondent's pharmacy. Although ██████████ has never visited Respondent's pharmacy, he is familiar with Respondent's practice and the challenges related to that practice. According to ██████████ independent pharmacists are usually very active in their communities. As a result, unlike chain pharmacies, it is not unusual for an independent pharmacist to extend credit to customers. Respondent has provided prescription medications to customers free of charge on a regular basis. In ██████████'s opinion, the loss of an independent pharmacy, such as Respondent's, would negatively impact the public health and welfare.

Statement of [REDACTED] (" [REDACTED] ")

[REDACTED] graduated from the Massachusetts College of Pharmacy in 1981 and has been a practicing pharmacist in the Commonwealth of Massachusetts ("Commonwealth") since he obtained his license. [REDACTED]'s pharmacy practice serves a middle class to upper-middle class population. He is a past president of MIPA and he has also been the Legislative Director of MIPA. [REDACTED] has known Respondent since Respondent joined MIPA and is familiar with Respondent's practice. According to [REDACTED], managing an independent pharmacy is a difficult business. There are pressures from insurers, competing outlets, mail order drug companies as well as the economics associated with doing business in the Commonwealth. Respondent maintains a practice in a lower socio-economic area, and as a result, the constraints on his practice are more pronounced. Because reimbursements from Medicaid and Medicare are inadequate and Respondent has a significant percentage of Medicaid and Medicare clients, he frequently dispenses medications to customers at no cost.

In 2002, [REDACTED] was disciplined by the Board for a dispensing error that occurred in the production of a medication compound. The matter was resolved by way of a Consent Agreement with the Board.

Affidavit and Letters of Support

Respondent submitted several letters of support attesting to his community involvement and charitable donations.

██████████, former Chief of Police in Chelsea notes that Respondent is a kind and compassionate member of the community who assisted police officers in identifying medications that had been discovered in the possession of suspects.

██████████, Superintendent of Chelsea Public Schools confirms Respondent's donation of toothbrushes to the Chelsea's John Silber Early Learning Center and notes Respondent's generosity.

██████████, Alabama State Health Officer, expressed gratitude for the donation of support hose by Margolis Pharmacy to the Alabama Department of Public Health.

██████████, Vice-President for College Advancement, Massachusetts College of Pharmacy and Health Sciences, expressed her gratitude and thanks for Respondent's donation to the Scholarship Fund.

DISCUSSION

The role of the boards of registration in the over-all statutory scheme is to take primary responsibility in the regulation of the practices of various professions in the Commonwealth in order to promote the public health, welfare, and safety. *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, 143 (1990). The courts have conferred upon boards considerable latitude in shaping appropriate sanctions and the discretion to impose sanctions that will best

protect the public. *Levy v. Board of Registration & Discipline in Medicine*, 378 Mass. 519, 525 (1979); *Arthurs v. Board of Registration in Medicine*, 383 Mass. 299 (1981). Moreover, the boards of registration have broad authority to regulate the conduct of professionals including the ability to sanction professionals for conduct that undermines public confidence in the integrity of the profession. *Kvitka, supra* at 142.

The Board, in making its determination on sanctions, must weigh the seriousness of the violation and its effect on the public's perception of the profession. Respondent's conduct in this matter involves deceit and dishonesty. Respondent claims his untruthful statements on the transfer form were the result of his good faith reliance on Attorney Redact "advice". Both Respondent and [REDACTED] testified that Redact indicated that he would arrange to have Respondent's record expunged. There was, however, no testimony to the effect that Attorney Redact ever stated or provided Respondent with documentation that the record had been expunged. Moreover, at no time did Respondent ever request such documentation. Respondent's failure to seek and demand verification that his record had been expunged permitted Respondent to adhere to the illusion that his responses on the transfer form were truthful. Thus, Respondent's neglect in ascertaining the status of his criminal conviction provided him with a convenient excuse for completing the transfer form in a completely dishonest manner. The Board concludes that Respondent's contention that he relied on the "advice" of Attorney Redact is not a persuasive argument. Based on his education and professional experiences, Respondent was sufficiently knowledgeable and astute to recognize that there was no basis in fact to believe that his record had been expunged. Respondent was, therefore, fully cognizant that his responses on the transfer form were deceptive and untruthful.

During these proceedings, neither Respondent nor his witnesses addressed Respondent's conduct with respect to Respondent's responses to inquiries related to his license to practice pharmacy. In both the transfer form and the renewal form, Respondent indicated that he had never had a state professional license revoked, suspended, placed on probation, or otherwise sanctioned. Based on the Board's May 1983 revocation of Respondent's license to practice pharmacy, Respondent was clearly aware that his responses to those inquiries were untruthful.⁵

Although Respondent has indicated his remorse in this matter, he has consistently avoided taking responsibility for his behavior. The Board is troubled by Respondent's failure to acknowledge and accept full responsibility for his dishonest representations on the transfer and renewal forms, including his failure to even address the misrepresentations related to sanctions against his license to practice pharmacy during these proceedings. The Board concludes that Respondent's conduct in this regard reflects poorly on his character and integrity. As a result, the Board questions Respondent's fitness to continue in the practice of pharmacy.

Respondent's commitment to the community and his community activities are admirable. However, those activities in no way obviate Respondent's deceitful and dishonest acts or assuage Respondent's reluctance to assume responsibility for his behavior. Respondent's conduct represents an egregious lapse in judgment that has had serious ramifications for Respondent, the profession of pharmacy, and the general public.

Pursuant to the Board's duty to protect the public health, safety, and welfare, the Board enters the following Order:

⁵ On October 9, 1984, the Board converted that revocation to a suspension scheduled to terminate on May 17, 1987. That suspension was later extended to May 17, 1988. See Board's Ruling on Prosecuting Counsel's Motion for Summary Decision

ORDER

Based on this Final Decision, **in the matter of Docket No. PH- 07-023**, the Board **ORDERS** the **SUSPENSION** of Respondent's license to practice Pharmacy in the Commonwealth (License No. 14861) for a minimum twelve month period ("Suspension Period"); the Suspension of Respondent's Pharmacist license to become effective thirty (30) days from the date of this Final Decision and Order. During the Suspension Period, Respondent may **not** (1) be engaged in any activity that constitutes the practice of pharmacy; (2) perform any pharmacy and pharmacist support services as a pharmacy technician or graduate pharmacy intern; (3) act as "Manager of Record" or pharmacist in charge of any pharmacy. During the Suspension Period, Respondent shall be required to complete (1) the Multistate Pharmacy Jurisprudence Examination (MPJE) with a score of at least 75%; and (2) a Board approved course in professional ethics. Following completion of the MPJE and ethics course, Respondent may petition the Board to terminate the Suspension Period and convert his license to probationary status for such period and upon terms and conditions determined to be appropriate by the Board; including any additional examination and retraining requirements for Respondent's practice of pharmacy the Board deems necessary depending upon the length of the Suspension Period. Respondent shall return his wallet license to the Board not later than thirty (30) days from the date of this Final Decision and Order.

Also based on this Final Decision, **in the matter of Docket No. DS-07-063**, the Board **ORDERS** the Pharmacy registration of Margolis Pharmacy, owned by Respondent and located in

Chelsea, Massachusetts, be placed on PROBATIONARY status for a minimum three (3) year period ("Probation Period"), effective thirty (30) days from the date of this Final Decision and Order. Margolis Pharmacy shall be required to submit an application for approval of a substitute Manager of Record in conformance with 247 CMR 6.03(1) within twenty one (21) days of the date of this Final Decision and Order. During the Probation Period, the Board may (1) require Respondent and other designated Margolis Pharmacy representatives to appear before the Board and provide information regarding pharmacy operations as may be requested; and (2) determine that additional probationary conditions are necessary and appropriate for the continued operation of Margolis Pharmacy. As noted, Respondent is prohibited from engaging in the practice of pharmacy during the Suspension Period, including the provision of support services as a pharmacy technician or graduate pharmacy intern. The Board will consider any conduct by Respondent during the Suspension of Probation Periods that constitutes the practice of pharmacy to be a basis for the Board to immediately suspend or revoke the Margolis Pharmacy registration, without the requirement of further proceedings pursuant to G.L. c. 30A. Not sooner than three (3) years from the date of this Final Decision and Order, Respondent may petition the Board to terminate the Probation Period; which petition the Board may grant or deny after consideration of all relevant information regarding the operations of Margolis Pharmacy during the Probation Period.

On June 10, 2008, the Board voted unanimously in favor of a motion to adopt the Proposed Final Decision and Order and issue this Final Decision and Order as follows:

In favor: George A. Cayer, R.Ph.; Joanne M. Trifone, R.Ph.; James T. DeVita, R.Ph.; Michael Tocco, R.Ph., M.Ed.; Steven Budish, Public Member, Secy.; Kathy J. Fabiszewski, Ph.D., N.P.;

Stanley Walczyk, R.Ph.; M.S.; Marilyn M. Barron, MSW, Public Member. Opposed: None.

Abstained: None. Absent: Sophia Pasedis, R.Ph., Pharm.D.; Donald D. Accetta, M.D., MPH;

William A. Gouveia, R.Ph.. Recused: None.

EFFECTIVE DATE

The Order of the Board shall be effective thirty (30) days from the date of this
Final Decision and Order.

RIGHT TO APPEAL

Respondent is hereby notified of his right to appeal this Final Decision and Order to the
Supreme Judicial Court pursuant to G.L. c. 112, § 64 within thirty (30) days of receipt of this
Final Decision and Order.

BOARD OF REGISTRATION IN PHARMACY

By: James T. DeVita
James T. DeVita, R.Ph.
Member

Date Issued: June 18, 2008

To: Paul Garbarini, Esq. by First Class and Certified Mail No. 7007 3020 0000 4345 1125

Eugene Langner, Esq. by Hand

Steven Shrair and Margolis Pharmacy Inc., [REDACTED]