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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  
239 Causeway Street, Suite 200, 2<sup>nd</sup> Floor  
Boston, MA 02114  
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June 22, 2010

**VIA FIRST CLASS MAIL**

Godson A. Anosike  
2464 Massachusetts Ave., Suite 240  
Cambridge, MA 02140

**VIA FIRST CLASS AND CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED NO. 7009 1680 0001 1520 0125**

Madiwe K. Okongwu  
Deruko Pharmacy, Inc.  
201 Boylston St.  
Jamaica Plain, MA 02130

**RE:** Matters of **Mbadiwe K. Okongwu** (PH18415) - Docket No. PH-07-120  
Deruko Pharmacy (DS2887) - Docket No. DS-07-057

Dear Atty. Anosike and Mr. Okongwu:

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

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

Sincerely,

  
Joanne M. Trifone, R.Ph.  
President

Encl.

cc: Vita Palazzolo Berg, Prosecuting Counsel BY INTEROFFICE DELIVERY



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN PHARMACY

\_\_\_\_\_  
IN THE MATTER OF )  
MBADIWE K. OKONGWU )  
REGISTRATION NO. 18415 )  
EXP. DATE 12/31/08 )  
\_\_\_\_\_ )

DOCKET NO. PH-07-120

\_\_\_\_\_  
IN THE MATTER OF )  
DERUKO PHARMACY )  
REGISTRATION NO. 2887 )  
EXP. DATE 12/31/07 )  
\_\_\_\_\_ )

DOCKET NO. DS-07-057

**FINAL DECISION AND ORDER AFTER SANCTION HEARING**

I. Introduction

This matter comes before the Board of Registration in Pharmacy ("Board") for determination of an appropriate sanction as to Mbadiwe K. Okongwu ("Okongwu") and Deruko Pharmacy, Inc. d/b/a Ruggles Square Pharmacy ("Deruko Pharmacy") ("Respondents") and issuance of a Final Decision and Order based on the record in this matter. <sup>1</sup> The record includes the December 15, 2009 Board Ruling on Cross Motions for Summary Decision ("Summary Decision Ruling") and oral argument by Respondents' counsel presented at the February 17, 2010 sanction hearing held in this matter at Respondents' request. <sup>2</sup>

<sup>1</sup> On June 11, 2008, the proceedings against Okongwu's pharmacist license (Docket Number PH-07-120) and Deruko Pharmacy's registration to operate a pharmacy (DS-07-057) were consolidated into one proceeding. This Final Decision and Order after Sanction Hearing sets out a sanction as to each Respondent.

<sup>2</sup> The Board's December 15, 2009 Summary Decision Ruling is incorporated herein by reference. In that ruling the Board held that Okongwu and Deruko Pharmacy unlawfully engaged in the wholesale distribution of controlled substances (Schedules III-VI), without a registration to do so, and that Okongwu's pharmacist license and Deruko Pharmacy's registration to operate a pharmacy (Pharmacy Permit No. 2887) were subject to discipline pursuant to G.L. c. 112, § 61 and 247 CMR 2.00, *et. seq.* as more particularly specified in the Summary Decision Ruling.



## II. Procedural Background

The procedural background of this matter is described in the Summary Decision Ruling. On February 17, 2010, at Respondents' request, Administrative Hearings Counsel Beverly Kogut conducted a hearing limited to consideration of factors for consideration in determining sanctions. Okongwu was not present. Respondents' counsel, Godson Anosike, Esq., and Prosecuting Counsel Vita Berg made statements at the sanction hearing. Neither testimony nor exhibits were submitted.<sup>3</sup>

## III. Discussion

The Board has reviewed the undisputed facts set forth in the Summary Decision Ruling that Respondents, Okongwu and Deruko Pharmacy, without being registered to do so, engaged in the wholesale distribution of controlled substances (Schedules III-VI), in violation of G.L. c. 112, §§ 36A and 36B, by ordering controlled substances from a registered wholesale distributor for the purpose and with the intent of providing by sale or otherwise, such controlled substances to Plaza Pharmacy II (Pharmacy Permit No. 3382) (Plaza Pharmacy), knowing that Plaza Pharmacy (1) was not a consumer, patient, ultimate user, or research subject; and (2) intended to dispense these controlled substances to Plaza Pharmacy customers. Okongwu and/or Deruko Pharmacy distributed (as that term is defined in G.L. Chapter 94C) the controlled substances to Plaza Pharmacy for resale to Plaza Pharmacy customers. Okongwu, as president and Manager of Record of Deruko Pharmacy, is responsible for the violations of pharmacy practice committed at Deruko Pharmacy. Okongwu's registration to practice as a pharmacist and Deruko Pharmacy's registration to operate a pharmacy are subject to discipline as a matter of law, as set forth in the Summary Decision Ruling.

The Board has considered the comments of Atty. Anosike which he requests the Board to consider in determining a sanction. Anosike noted that Okongwu asserts that he has been a pharmacist since 1981 and has operated Deruko Pharmacy since 1999, with no disciplinary action by the Board until the 2008 Order to Show Cause in this matter. Anosike states that he has never diverted controlled substances nor engaged in fraud and that the only conduct at issue is a transfer of controlled substances from one pharmacy to another pharmacy; that Okongwu did not engage in the transfers for a profit but to help another pharmacy; and that his client did not know his conduct was illegal and that he would never do so again. Anosike requests the Board to impose a

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<sup>3</sup> The sanction hearing in this case was dispositional in nature. No evidence 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).



sanction of a warning or in the alternative a six month suspension retroactive to the date of Deruko Pharmacy's 2007 registration expiration.

Prosecuting Counsel asks the Board to note that Respondent's failure to be aware of the Board regulations regarding wholesale distribution does not explain or excuse his conduct and his failure to meet his obligations as operator and pharmacist manager of record of Deruko Pharmacy.

Section 39 of 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 Atty. Anosike presented for consideration in mitigation in sanction determination does not explain or excuse the failure of Okongwu to exercise proper professional diligence and responsibility to insure that the management and operations of Deruko Pharmacy were conducted in accordance with statutory and regulatory requirements. Okongwu has not demonstrated any understanding or acceptance of the complex statutory and regulatory requirements that apply to the wholesale distribution of controlled substances and the important role of these requirements and restrictions in assuring safe and lawful pharmacy practice 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 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.* The Board's public protection mission includes keeping "close oversight" over (a) the operations 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 statements made for consideration in determination of sanction 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 sanctions on Okongwu and Deruko Pharmacy based on its experience and discretion and careful consideration of the facts and mitigating circumstances before it.

### **ORDER**

On June 14, 2010, the Board voted to issue this Final Decision and Order after Sanction Hearing and (1) **REVOKE** Respondent's Pharmacist registration No. 18415 and (2) dismiss the allegations regarding Deruko Pharmacy (Complaint Docket No. DS-07-057) following the Board's September 12, 2007 approval of the Application for Transfer of Ownership of Pharmacy Registration (Deruko Pharmacy registration No. 2887 transferred from Okongwu to new owner per Board records), by the following vote: In favor: Stanley B. Walczyk, R.Ph.; George A. Cayer, R.Ph.; Joanne M. Trifone, R.Ph.; and William A. Gouveia, R.Ph., M.S. Opposed: None. Absent: Donald D. Accetta, M.D.; Michael Tocco, R.Ph.; James T. DeVita, R.Ph.; Kathy J. Fabiszewski, Ph.D., N.P.; Steven Budish, Public Member 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. 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 after Sanction Hearing 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

Dec. Nos. 2325 Mbadiwe K. Okongwu DOCKET NO. PH-07-120  
2326 Deruko Pharmacy DOCKET NO. DS-07-057

Date issued: June 22, 2010

**Final Decision and Order to be mailed to:**

**BY FIRST CLASS AND CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED NO. 7009 1680 0001 1520 0125**

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Jamaica Plain, MA 02130

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2464 Massachusetts Avenue, Suite 240  
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Vita Palazzo Berg, Prosecuting Counsel  
Office of Prosecutions  
Division of Health Professions Licensure  
Department of Public Health  
239 Causeway Street  
Boston, MA 02114