



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

JOHN AUERBACH
COMMISSIONER

January 16, 2008

Paul Warzecki by First Class and Certified Mail No. 7006 2760 0003 7733 3932
424 East Street
Ludlow, MA 01056

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

RE: In the Matter of Paul Warzecki, PH 07-040

Dear Mr. Warzecki and Ms. Berg:

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 3 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, ss.

Board of Registration in Pharmacy

In the Matter of)
PAUL WARZECKI, R.Ph.)
PH License No. 15226)
License Expired: 12/31/06)
_____)

Docket No. PH 07-040

BOARD'S FINAL DECISION AND ORDER ¹

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 November 21, 2007 ruling granting Prosecuting Counsel's Motion for Summary Decision ("Summary Decision Ruling").² In that Summary Decision Ruling, the Board advised Respondent as follows:

"Respondent is hereby notified that he has the right to a hearing on the issue of sanctions. Respondent will waive this right if he does not complete and return the enclosed form to the Administrative Hearings Counsel within twenty-one (21) days, by December 12, 2007. Respondent's failure to request a hearing on sanctions by returning the enclosed form by December 12, 2007 will result in the Board deciding on a sanction without Respondent's input. If Respondent fails to request a sanction hearing by December 12, 2007, the Board may revoke Respondent's license to practice as a pharmacist, revoke his

¹ Pursuant to 801 CMR 1.01(11), because a majority of the Board presided at the reception of evidence in this matter, the Board was not required to issue a Tentative Decision in the first instance.

² The Board's Summary Decision Ruling, attached hereto, is incorporated by reference herein. In the Summary Decision Ruling, the Board found that Respondent pleaded guilty in federal court to the sale of drug samples and to filing a false tax return.

right to renew his license to practice as a pharmacist or take other appropriate disciplinary action against Respondent's license."

Respondent did not request a hearing on the issue of sanctions by December 12, 2007 or at any time subsequent thereto. Therefore, based on the Board's Summary Decision Ruling, the Board's responsibility to protect the health, safety, and welfare of the public, and the Board's duty to maintain the public's confidence in the integrity of the pharmacy profession, the Board enters the following Order:

ORDER

The Board voted to issue this Final Decision and Order and REVOKE Respondent's inchoate right to renew his Pharmacist License No. 15226 (expired 12/31/06) at its meeting held on January 15, 2008 by the following vote - In favor: Sophia Pasedis, R.Ph., Pharm.D., Pres.; George A. Cayer, R.Ph.; Karen Ryle, R.Ph., M.S.; Joel R. Berman, R.Ph., Pres. Elect; Kathy J. Fabiszewski, Ph.D., N.P.; James T. DeVita, R.Ph.; Michael Tocco, R.Ph.; M.S.; Marilyn M. Barron, MSW, Public Member. Opposed: None. Abstained: None. Absent: Steven Budish, Public Member, Secy.; Donald D. Accetta, M.D.; William A. Gouveia, R.Ph., M.S. Recused: None.

The Board will not review a petition for reinstatement of Registrant's pharmacist license filed sooner than December 31, 2010. The Board will determine applicable examination and experience requirements at the time Registrant files any such petition.

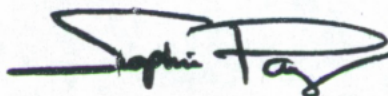
EFFECTIVE DATE

The Final Decision and Order becomes effective on the date it is issued (see "Date Issued" below).

RIGHT TO APPEAL

The 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 his receipt of this Final Decision and Order.

Board of Registration in Pharmacy



Sophia Pasedis, R.Ph., Pharm.D.
President

Issue Date: January 16, 2008

VIA FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7006 2760 0003 7733 3932

Paul Warzecki, R.Ph.
Redacted

By Hand

Vita Berg, Esq.
Prosecuting Counsel
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street
Boston, MA 02114

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Board of Registration in Pharmacy

In the Matter of)
PAUL WARZECKI)
PH License No. 15226)
License Expired: 12/31/06)

Docket No. PH 07-040

BOARD'S RULING ON PROSECUTING COUNSEL'S
MOTION FOR SUMMARY DECISION

Procedural Background

This matter comes before the Board of Registration in Pharmacy ("Board") on Prosecuting Counsel's Motion for Summary Decision ("MSD"). The Board filed its Order to Show Cause ("Order") in this matter on August 7, 2007. On August 21, 2007, Respondent filed an Answer to the Order to Show Cause ("Answer"). On October 5, 2007, Prosecuting Counsel filed the MSD now before the Board. Respondent filed no opposition to the MSD. For the reasons set forth below, Prosecuting Counsel's Motion for Summary Decision is ALLOWED.

EXHIBITS

In her Motion for Summary Decision, the Prosecutor submitted the following exhibits:

Exhibit A: Board Record of Standing re: Respondent

Exhibit B: Order to Show Cause, October 5, 2007

Exhibit C: United States District Court, District of Massachusetts,
United States v Paul Warzecki, Case 3:06-cr-30025-MAP

1. Judgment
2. Probation
3. Additional Probation Terms
4. Criminal Monetary Penalties
5. Schedule of Payments
6. Statement of Reasons

FINDINGS OF FACT

The Board now finds the following as facts supported by a preponderance of the evidence:

1. On June 18, 1969, the Board issued Respondent a license to engage in practice as a pharmacist in the Commonwealth of Massachusetts ("Commonwealth").

Respondent's license expired on December 31, 2006 and has not been renewed.

Ex. A

2. On February 13, 2007, the United States District Court for the District of Massachusetts ("Court" or "federal court") entered a Judgment in a Criminal Case against Respondent based on Respondent's pleas of guilty to the following offenses:

- a. Sale of Drug Samples in violation of 21 U.S.C. §§ 331(t) and 331(b)
- b. Filing a False Tax Return in violation of 21 U.S.C. 26, § 7207

Ex. C (1)

3. Pursuant to 21 U.S.C. § 331(b) a maximum penalty for a violation of § 331 (t) is imprisonment for not more than 10 years or a fine of not more than \$250,000 or

both. Pursuant to 18 U.S.C. § 3559 (a)(4) an offense for which the maximum term of imprisonment authorized is “less than ten years but five or more years” is classified as a Class D felony. United States Code, Titles 18 and 21.

4. On February 13, 2007, the Court imposed a sentence that included the following provisions: three (3) years probation for each offense, eight (8) months home detention with electronic monitoring and payment of an associated daily rate, performance of 200 hours of community service, and payment of a \$10,000.00 fine (\$5,000.00 per offense). Ex. C (1-5).

RULINGS OF LAW

1. Based on Finding of Fact at ¶1, above, the Board concludes it has jurisdiction to hear this disciplinary matter.
2. Based on the Findings of Fact in ¶¶ 2-4, above, Respondent’s conduct constitutes deceit and gross misconduct in the practice of the profession in violation of G. L. c. 112, § 61.
3. Based on the Findings of Fact in ¶¶ 2-4, above, Respondent’s conduct represents a violation of the rules of professional conduct at 247 CMR 9.01 (1) and (6) warranting discipline pursuant to G.L. c. 112, § 42A.
4. Based on Finding of Fact in ¶¶ 2-4, above, Respondent’s conduct was in violation of the Board regulations at 247 CMR 10.03(1).
5. Based on Findings of Fact in ¶¶ 2-4, above, Respondent’s conduct demonstrates a lack of the good moral character required for licensure as a pharmacist in the Commonwealth

pursuant to Board regulation at 247 CMR 3.01(1)(a)(4), warranting disciplinary action by the Board pursuant to G.L. c. 112, §§ 42A and 61.

6. Based on Findings of Fact in ¶¶ 2-4, above, Respondent's conduct constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); *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)

Discussion

Rule 1.01 (7)(h) of the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00 *et seq.*, provides in relevant part that “[w]hen a Party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for summary decision on the claim or defense.” The standards governing summary decision in an administrative proceeding correspond to those articulated in *Mass.R.Civ.P. 56. Catlin v. Board of Registration of Architects*, 414 Mass. 1, 7 (1992). Summary judgment is a “device to make possible the prompt disposition of controversies on their merits without a trial, if in essence there is no real dispute as to the salient facts or if only a question of law is involved.” *Cassesso v. Commissioner of Corrections*, 390 Mass 419, 422, 456 N.E.2d 1123, 1125 (1983). Summary judgment should be entered (1) when there is no genuine issue of material fact in dispute, and (2) when there is substantive law under which such judgment may be entered for the moving party. *Theran v*

Rokoff, 413 Mass. 590, 591 (1992); See *Mass.R.Civ.P. 56(c)*, 365 Mass. 824 (1974). A party moving for summary judgment bears the burden of affirmatively demonstrating that there is no genuine issue of fact in dispute on every relevant issue raised by the pleadings. *Attorney General v. Bailey*, 386 Mass. 367, 371 (1982). All doubt as to the existence of a genuine issue of material fact in dispute must be resolved against the party moving for summary judgment. *Noble v. Goodyear Tire & Rubber Co.*, 34 Mass.App.Ct. 397, 402 (1993). Summary judgment “is favored . . . where . . . the determinative issue is one of law, not of fact.” *Theran, supra* at 591.

In the instant case, the undisputed facts demonstrate that Respondent entered guilty pleas to the sale of drug samples and filing a false tax return. On February 13, 2007, the Court entered a criminal judgment against Respondent and imposed a sentence that included a three (3)-year probationary term for each offense, a period of home detention, performance of community service and a \$10,000 fine. Respondent does not dispute the facts of his guilty pleas, the criminal judgment, and sentence.

The Board, therefore, concludes there are no material facts in dispute with respect to Respondent’s conduct as described above. The remaining issue for the Board to determine is whether substantive law exists to support a resolution of this matter by way of summary decision. See *Theran, supra* at 591

G.L. c. 112, § 61 reads, in part:

. . . [E]ach board of registration . . . may . . . suspend, revoke or cancel any certificate, registration, license or authority . . . if it appears . . . that the holder of such certificate, registration, license or authority, . . . is guilty of deceit, malpractice, gross misconduct in the practice of his profession, or of any offense against the laws of the commonwealth relating thereto . . .

The Supreme Judicial Court has described gross misconduct as intentional wrongdoing or a lack of concern for one’s conduct . . . amounting to a heedless and palpable violation of the

legal duty respecting the rights of others. See *Hellman v. Board of Registration in Medicine*, 404 Mass 800, 804 (1989); *Altman v. Aronson*, 231 Mass. 588, 591 (1919). Gross misconduct in the practice of one's profession may include all conduct of the practitioner in carrying out his professional activities, and is conduct which seriously undermines public confidence in the profession. *Forziati v. Board of Registration in Medicine*, 333 Mass. 125, 129, 128 N.E.2d 789 (1955).

The Board's authority to discipline a licensee who has been convicted of a crime is well established. The Massachusetts Courts have consistently ruled that boards of registration may discipline licensees based on criminal convictions. Such discipline may be warranted under a statute, regulation, or pursuant to G.L. c. 112, § 61. Respondent's felony conviction relative to the sale of drug samples as well as his conviction for filing a false tax return constitute offenses against the laws of the Commonwealth as well as gross misconduct under G.L. c. 112, § 61. Moreover, the sale of drug samples represents a significant potential for harm to the public. The deceit inherent in the filing of a false tax return and the fraud associated with the sale of drug samples also implicate Respondent's honesty and integrity. As such, Respondent's guilty pleas to the offenses described above not only impugn the integrity of the profession but also represent a tangible threat to the health, safety, and welfare of the public. The Board, therefore, concludes that Respondent's conduct represents deceit and gross misconduct in the practice of the profession warranting discipline pursuant to G.L. c. 112, § 61.

The Board has promulgated rules and regulations governing the profession of pharmacy as a means of ensuring that the profession and its practitioners operate at optimum levels and in a manner that ensures the health, safety, and welfare of consumers and the general public. The Board anticipates that its licensees will conduct their professional activities in a manner that is

consistent with Board regulations. Pursuant to G.L. c. 112, § 42A, the Board has the statutory authority to suspend or revoke the license of any pharmacist who fails to adhere to the Board's rules and regulations at 247 CMR 2.00 *et seq.*.

The Code of Professional Conduct for Registered Pharmacists at Board regulations 247 CMR 9.01 (1) and (6) provides:

“(1) A registered pharmacist shall at all times conduct professional activities in conformity with federal, state and municipal laws, ordinances and/or regulations, including the regulations of the Board.

(6) A pharmacist shall not engage in any fraudulent or deceptive act.”

As noted above, the Court's judgment and sentence entered against Respondent demonstrate his failure to conform with federal and state laws. The criminal, fraudulent, and deceptive nature of Respondent's offenses are unquestioned. Pursuant to the guilty plea and sentencing in federal court, Respondent's conduct also represents a failure to conform his behavior to federal laws. As such Respondent's conduct represents a violation of 247 CMR 9.01 (1) and (6).

Board regulations at 247 CMR 10.03 set forth the type of conduct that represents grounds for discipline by the Board including but not limited to: violation of any Board regulation, rule or written policy (10.03(1)(a)); violation of any state or federal statutes, rule or regulation (10.03(1)(b)); engaging in misconduct in the profession (10.03(1)(e)); engaging in conduct that has the potential to deceive or defraud (10.03(1)(l)); conviction of or entering a plea of guilty to any crime (10.03(1)(n)). As noted above, Respondent's fraudulent and deceitful conduct represents a failure to adhere to federal, and state laws as well as Board regulations. As such, the Board concludes that Respondent's misconduct reflects a violation of each of the above-referenced grounds for discipline.

Pursuant to his felony conviction and the deceit and fraud inherent in his offenses, Respondent has failed to demonstrate the good moral character required by the Board for licensure as a pharmacist pursuant to 247 CMR 301 (1)(a)(4). Such a demonstrable lack of good moral character is also grounds for discipline pursuant to 247 CMR 10.03 (1)(r).

The Board, by statutory mandate, is charged with the protection of the public health, safety, and welfare. The Board has a compelling interest in ensuring that its licensees practice the profession in a safe, competent and trustworthy manner. Based on Respondent's egregious lapse in judgment and his inability to conform his conduct to federal law, state law, and the laws governing his profession, the Board concludes that Respondent is not capable of practicing his profession in a manner that would safeguard the general public.

Based on the Findings of Fact set forth above, the Board concludes that, as a matter of law, Respondent's actions as set forth in ¶¶ 2-4, above, subject Respondent to discipline pursuant to Board regulations at 247 CMR 2.00 et seq. and G.L. c. 112, §§ 42A and 61.

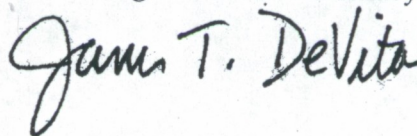
In accordance with G.L. c. 112, § 61 and the Board's mandate to protect the public welfare and the integrity of the profession, the Board has the authority to impose discipline as a sanction for Respondent's conduct. Respondent is hereby notified that he has the right to a hearing on the issue of sanctions. Respondent will waive this right if he does not complete and return the enclosed form to the Administrative Hearings Counsel within twenty-one (21) days, by **December 12, 2007**. Respondent's failure to request a hearing on sanctions by returning the enclosed form by **December 12, 2007** will result in the Board deciding on a sanction without Respondent's input. If Respondent fails to request a sanction hearing by **December 12, 2007**, the Board may revoke Respondent's license to practice as a pharmacist, revoke his right to renew his

license to practice as a pharmacist or take other appropriate disciplinary action against Respondent's expired license.

The Board voted to **ALLOW** Prosecuting Counsel's Motion for Summary Decision at its meeting of November 20, 2007 by the following vote:

In favor: George A. Cayer, R.Ph., Pres., Karen Ryle, R.Ph., M.S., Joel R. Berman, R.Ph., Sophia Pasedis, R.Ph., Pharm.D., Kathy J. Fabiszewski, Ph.D., N.P., Steven Budish, Public Member, James T. DeVita, R.Ph., Michael Tocco, R.Ph., M.S. Opposed: None. Abstained: None. Absent: Marilyn M. Barron, MSW, Public Member. Donald D. Accetta, M.D., William A. Gouveia, R.Ph., M.S. Recused: None

Board of Registration in Pharmacy



James T. DeVita, R.Ph.
President

Date Issued: November 21, 2007

To: Paul Warzecki by First Class and Certified Mail No. 7006 2760 0003 7733 3956

Vita Berg, Esq. (By Hand)