

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

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

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 September 24, 2007. On October 10, 2007, Respondent filed an Answer to the Order to Show Cause ("Answer"). In that Answer, Respondent admitted the allegations in ¶¶ 1-2 and 4-7 of the Order. On November 27, 2007, Prosecuting Counsel filed the MSD now before the Board. Respondent filed an Opposition to the Motion for Summary Decision on December 14,

2007 (“Opposition”)¹. For the reasons set forth below, Prosecuting Counsel’s Motion for Summary Decision is ALLOWED.

EXHIBITS

In his Motion for Summary Decision, Prosecuting Counsel submitted the following exhibits:

- A. Order to Show Cause, issued September 24, 2007
- B. Respondent’s Answer to the Order to Show Cause, filed October 10, 2007
- C. Judgment and Probation/Commitment Order, US District Court, May 22, 1981
- D. Board Hearing Minutes, April 12, 1983
- E. Board Decision and Order, *In the Matter of Steven A. Shraiar*, PH 82-117, December 2, 1986
- F. Commonwealth of Massachusetts, Division of Registration, Board of Registration in Pharmacy, Application for a Transfer of Ownership, Margolis Pharmacy, Inc., (“transfer of ownership document”), June 1, 2000
- G. United States Department of Justice Drug Enforcement Administration Renewal Application for DEA Registration Under Controlled Substances Act of 1970 (“DEA Renewal Application”), November 29, 2004

¹ On December 6, 2007, Respondent filed a Motion to Extend the Time to Respond to the Motion for Summary Decision (“motion”). The Administrative Hearings Counsel granted that motion on December 10, 2007, extending the deadline to December 14, 2007 for the filing of an Opposition in this matter.

FINDINGS OF FACT

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

1. The Board issued Respondent a registration to practice as a pharmacist in the Commonwealth of Massachusetts ("Commonwealth") on June 26, 1967. That license is scheduled to expire on December 31, 2008, unless renewed. On June 2, 2000, the Board issued Respondent a permit to manage and operate Margolis Pharmacy, Inc. ("Margolis"), a pharmacy located in Chelsea, Massachusetts. On that date, the Board also registered Margolis to operate as a pharmacy pursuant to Registration No. 2974. Respondent's permit and Margolis' registration are current and scheduled to expire on December 31, 2009, unless renewed. Board Records.
2. On May 22, 1981, Respondent was convicted in the United States District Court for the District of Massachusetts ("Federal Court") of "willfully and knowingly devising a scheme and artifice to defraud and obtain money from insured accident victims and their respective insurance companies by false and fraudulent pretenses, representations, and promises, well knowing at the time that such pretenses, representations, and promises were false in material respects; and, for the purpose of executing the aforesaid scheme and artifice to defraud, knowingly using or causing the use of the United States mails in executing said scheme in violation of Title 18, United States Code, Section (sic) 1341 & 2." Respondent was sentenced to a term of imprisonment of two (2) years, and fined a total of eight thousand dollars (\$8,000.00). Ex. C

3. The convictions described in ¶ 2, above are classified as Class D felonies.
United States Code, Title 18, §§ 1341, 1342, 3559.
4. Based on the convictions described in ¶ 2, above, on May 17, 1983, the Board revoked Respondent's personal registration. On October 9, 1984, the Board converted Respondent's revocation into a suspension scheduled to terminate on May 17, 1987. On December 2, 1986, the Board extended Respondent's suspension through May 17, 1988.² Exhts. D and E
5. On June 1, 2000, in connection with an application for transfer of ownership of Margolis Pharmacy, Respondent, described as the previous manager, responded "none" to the following question:

" [H]ave any of the applicant(s) and/or managers-in-charge had: . . . 2) any felony convictions; 3) any suspension(s) or revocation(s) or other sanction(s) by federal, state or local governmental agency of any license or registration currently or previously held by the applicant or licensee for the manufacture, distribution, or dispensing of any drugs, including controlled substances?"

The above-referenced transfer of ownership document was an official state document. Respondent, in affixing his signature to this official state document stated that "all statements are true and correct in all respects and are made under the penalties of perjury". Ex. F

6. On November 29, 2004, in completing the DEA Renewal Application, Respondent answered "No" to the following question:

² The extension of Respondent's suspension was in resolution of a complaint alleging that Respondent practiced pharmacy with an invalid certificate of registration between November 1985 and April 1986.

“Has the applicant ever surrendered or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or place on probation”?

The above-referenced document is an official federal document. In affixing his signature to the document, Respondent certified that “the foregoing information furnished on this application is true and correct”. Ex. G

RULINGS OF LAW

1. Based on Finding of Fact in ¶ 1, above, the Board has jurisdiction to hear this disciplinary matter.
2. Based on Findings of Fact in ¶¶ 2-6, above, Respondent, by responding with untruthful statements on official state and federal documents related to the transfer of ownership of the Margolis pharmacy and the renewal of a federal DEA registration, violated Board regulations at 247 CMR 10.03(1)(a) and (1)(b) that prohibit the violation of Board regulations as well as state and federal statutes or rules.
3. Based on Findings of Fact in ¶¶ 2-6, Respondent provided false statements on the Board transfer of ownership document warranting Board discipline pursuant to 247 CMR 10.03(o) and (p).
4. Based on Findings of Fact in ¶¶ 2-6, above, Respondent, by filing federal and state documents in which Respondent responded in an untruthful and dishonest manner, has engaged in a fraudulent or deceptive act in violation of Board regulations at 247 CMR 9.01(6) and 247 CMR 10.03(1)(l).

5. Based on Findings of Fact in ¶¶ 2-6, Respondent, by filing federal and state documents in which Respondent answered in an untruthful and dishonest manner, has failed to demonstrate the good moral character required for licensure as a pharmacist pursuant to Board regulation at 247 CMR 3.01(1)(a)(4) and in violation of 247CMR 10.03(1)(r).
6. Based on Findings of Fact in ¶¶ 2-6, above, by violating Board regulations at 247 CMR, Respondent has violated Board rules and regulations and the laws of the Commonwealth in violation of G.L. c. 112, §§ 42A and 61.
7. Based on Findings of Fact in ¶¶ 2-6, above, Respondent's conduct constitutes gross misconduct in the practice of pharmacy in violation of G.L. c. 112, § 61.
8. Based on Findings of Fact in ¶¶ 2-6, above, Respondent's conduct constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the pharmacy profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); *Kvitka v. Board of Registration in Medicine*, 407 Mass 140 (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). If the moving party establishes the absence of a triable issue, the party opposing the motion must respond and allege specific facts which would establish the existence of a genuine issue of material fact in order to defeat the motion. *Pederson v. Time, Inc.*, 404 Mass 14, 17 (1989). The opposing party cannot rest on his or her pleadings and mere assertions of disputed facts to defeat the motion for summary judgement. *LaLonde v. Eissner*, 405 Mass. 207, 209 (1989). 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 his MSD, Prosecuting Counsel has submitted documentary evidence that establishes the following: 1) Respondent was convicted of offenses related to mail fraud in Federal Court on May 22, 1981; 2) on October 9, 1984, the Board converted the revocation of Respondent's certificate of registration (based on the mail fraud conviction) to a suspension scheduled to terminate on May 17, 1987; 3) in a decision dated December 2, 1986, the Board extended Respondent's suspension for an additional year through May 17, 1988; 4) in a June 2000 state document relative to the application for a transfer of ownership of the Margolis Pharmacy, Respondent indicated that he had never had any felony convictions and had never had a professional license suspended or revoked by any local governmental agency; 5) in a November 2004 federal document relative to a DEA renewal application, Respondent responded that he had never had a state professional license revoked or suspended.

In his Opposition, Respondent maintains that pursuant to M.G.L. c. 268, § 1 he did not perjure himself when executing the transfer and renewal documents as his behavior was not willful as defined in Cheek v. United States, 498 U.S. 192, 201 (1991). Respondent further claims that in executing those documents, his responses were "a good faith misunderstanding of the law or a good-faith belief that he was not violating the law. According to Respondent, he was relying in good faith on the advice of former legal counsel, Attorney Richard Gens. With his Opposition, Respondent submitted an affidavit from [REDACTED] ("[REDACTED] affidavit") who reportedly heard Respondent's legal counsel advise Respondent that said convictions would be expunged and would not prevent him from obtaining a license to practice pharmacy or own a pharmacy. Respondent claims he answered the questions in a good faith misunderstanding that does

not rise to the level of willful swearing or affirming. Respondent further claims that pursuant to the [REDACTED] affidavit and Respondent's good faith belief, a dispute of fact has been established and Summary Decision should be denied.

The Board's OTSC alleges that Respondent engaged in deceptive and or fraudulent conduct by responding untruthfully to questions in the documents at issue. The Board's OTSC does not allege that Respondent committed perjury. Therefore, Respondent's reliance on the definition of perjury and related case law is misplaced.

Prosecuting Counsel in his MSD has established that Respondent was convicted in Federal Court of offenses related to mail fraud, and as a result, his license to engage in the practice of pharmacy in the Commonwealth was suspended. Prosecuting Counsel has further demonstrated that Respondent subsequently answered questions related to his federal convictions and the suspension of his professional license in an untruthful, dishonest manner on federal and state documents. Respondent, in his Opposition, has failed to provide any credible arguments or evidence to dispute those facts.

Respondent's arguments may be relevant on the issue of mitigating circumstances but those arguments in no way raise a dispute of fact. The Board notes that Respondent, who was sufficiently educated to obtain academic degrees and licensure to practice the profession of pharmacy, now claims ignorance in differentiating between a truthful and dishonest statement. The most reasonable presumption is, however, that Respondent has a basic understanding of the meaning of such terms as conviction, suspension, and revocation. Respondent's rationale in completing the documents with untruthful statements does not raise any dispute relative to the fact that Respondent committed the act at issue. Whether Respondent reasonably relied on the attorney's purported assertions

is a factor the Board may consider on the issue of mitigation but that argument is not sufficient to create a material fact in dispute in order to defeat this MSD.

Therefore, based on Respondent's admissions and documentary evidence submitted, the Board concludes there is no genuine issue of material fact in dispute relative to Respondent's conduct as described. Since there are no material facts in dispute, 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.

Board regulations at 247 CMR establish a Code of Conduct for pharmacists and provide specific grounds for discipline. 247 CMR 9.01(6) prohibits a pharmacist from engaging in any fraudulent or deceptive act. Board regulations at 247 10.03 (1) include as grounds for discipline the following: (a) 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) violating any provision of M.G. L. c. 112, §§ 24 through 42A or any provision of state or federal statutes or rules or regulations promulgated thereunder related to the practice of the profession; (l) engaging in conduct that has the capacity or potential to deceive or defraud; (o) fraudulently procuring a license or registration or its renewal; (p) providing false information on an application for a license or registration or its renewal; and (r) engaging in conduct that demonstrates a lack of good moral character. There is no question that Respondent's conduct in this matter was dishonest, deceptive, and in contravention of the above-referenced regulations. By engaging in this behavior, Respondent has demonstrated a lack of integrity and an egregious inability to adhere to the rules and regulations that govern the profession of pharmacy.

G.L. c. 112, § 61 permits the Board to “suspend, revoke or cancel any license issued by the Board when the Board finds that a licensee is guilty of deceit, malpractice, or gross misconduct in the practice of the profession or of any offense against the laws of the Commonwealth. G.L. c. 112, § 42A authorizes the Board to suspend or revoke the license to practice pharmacy for any violation of the Board’s rules and regulations. Based on Respondent violations of Board regulations, and based on his deceptive and deceitful conduct, Respondent has also failed to adhere to the laws of the Commonwealth. As such, Respondent is subject to discipline by this Board.

The Board anticipates that its registrants and licensees will conduct themselves with integrity, professionalism and in a manner that protects the image of the profession. Respondent’s conduct, as described above, is unprofessional and the type of conduct that would tarnish the public’s perception of the profession of pharmacy and undermine public confidence in the integrity of the profession.

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 ¶¶ 2-6 subject Respondent to discipline pursuant to Board regulations at 247 CMR and G.L. c. 112, §§ 42 and 61.

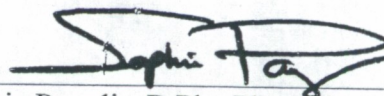
Therefore, as there is no genuine issue of material fact in dispute and Prosecuting Counsel is entitled to judgment as a matter of law, the Board **GRANTS** Prosecuting Counsel’s Motion for Summary Decision.

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 **March 5, 2008**. Respondent's failure to request a hearing on sanctions by returning the enclosed form by **March 5, 2008** will result in the Board deciding on a sanction without Respondent's input. If Respondent fails to request a sanction hearing by **March 5, 2008**, the Board may revoke Respondent's license to practice as a pharmacist, or take other appropriate disciplinary action against Respondent's registration.

The Board voted to **ALLOW** Prosecuting Counsel's Motion for Summary Decision at its meeting on February 12, 2008 by the following vote: - In favor: Sophia Pasedis, R.Ph., Pharm.D., Pres.; George A. Cayer, R.Ph.; Karen M. Ryle, R.Ph., M.S.; Joanne M. Trifone, R.Ph.; James T. DeVita, R.Ph.; Michael Tocco, R.Ph.; M.S.; Steven Budish, Public Member, Secy.; Donald D. Accetta, M.D.; William A. Gouveia, R.Ph., M.S.; Marilyn M. Barron, MSW, Public Member. Opposed: None. Abstained: None. Absent: Kathy J. Fabiszewski, Ph.D., N.P. Recused: None.

Board of Registration in Pharmacy



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

Date Issued: February 13, 2008

To:

Paul M. Garbarini, Esq. by First Class and Certified Mail No. 7006 2760 0003 7733 3840

Eugene Langner, Esq. (By Hand)

**SUMMARY DECISION HAS BEEN GRANTED IN THIS CASE
TO REQUEST A HEARING ON SANCTIONS YOU MUST RETURN THIS
COMPLETED FORM TO THE BOARD WITHIN TWENTY-ONE (21) DAYS**

Stephanie B. Carey, Esq.
Administrative Hearings Counsel
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street, Room 217
Boston, MA 02114

RE: In the Matter of Steven Shraiar
Docket No. PH 07-023

In the Matter of Margolis Pharmacy
Docket No. DS 07-063

To the Board of Registration in Pharmacy

- (1) Please schedule a hearing on sanctions before the Board.
- (2) Here is my telephone number and address to which all mail should be sent.

Name: _____

Address: _____

Telephone _____

Signed: _____

Dated: _____

Mail this form to the Administrative Hearings Counsel at the above address.



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street, Suite 200, 2nd Floor, Boston, MA 02114
(617) 973-0800

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD
SECRETARY

JOHN AUERBACH
COMMISSIONER

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)
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_____)

Docket No. PH 07-023

In the Matter of)
Margolis Pharmacy)
License No. 2974)
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_____)

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

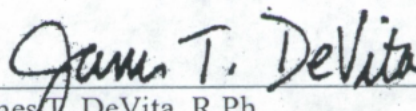
The Order of the Board shall be effective thirty (30) days from the date of this
Final Decision and Order.

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, 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]