

BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF:)	
)	Docket No. 2017-55
Nonresident Pharmacy License of)	DIA No. 18PHB0017
DISTINGUISHED PHARMACY,)	
License No. 4272,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	DECISION, AND ORDER
)	

STATEMENT OF THE CASE

On November 1, 2017, the Iowa Board of Pharmacy (Board) found probable cause to file a Notice of Hearing and Statement of Charges against Respondent Distinguished Pharmacy. The Statement of Charges alleges three counts: 1) Misleading, Deceptive, Untrue, or Fraudulent Representations; 2) Fraud in Procuring a License; 3) Failure to Have a Pharmacist in Charge; and 4) Failure to Provide Records.

The hearing was held on January 16, 2018. The following members of the Board presided at the hearing: Sharon Meyer, chairperson; LaDonna Gratiyas; Gayle Mayer; Edward McKenna; Brett Barker; and Jason Hansel. Assistant attorney general Laura Steffensmeier represented the State. Respondent Distinguished Pharmacy did not appear.¹ The hearing was open to the public pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. Administrative Law Judge Laura Lockard assisted the Board in conducting the hearing and was instructed to prepare the Board's written decision in accordance with its deliberations.

THE RECORD

The record includes the Notice of Hearing and Statement of Charges. The record also includes hearing testimony of Sue Mears. The State introduced Exhibits 1 through 13, which were admitted as evidence.

FINDINGS OF FACT

Respondent Distinguished Pharmacy holds Iowa nonresident pharmacy license number 4272. Respondent is located in Houston, Texas. (Exh. 3, p. 7).

On or about April 21, 2017, Respondent sent a faxed request to the office of a physician in Adel, Iowa for a prescription for a patient with ID number 45360. The prescription request was for lidocaine ointment 5% and diclofenac sodium 3% gel. The cover sheet

¹ Distinguished Pharmacy was served the Statement of Charges & Notice of Hearing by restricted certified mail, return receipt requested. (Exh. 2).

sent with the fax states, “Your patient [name redacted] is requesting a refill from Distinguished Pharmacy.” The included form indicates that the patient has requested and authorized Respondent to be their supplier. (Exh. 4, p. 14).

The physician’s office contacted the Board on or about April 21, 2017 and reported that the clinic had received a fax from Respondent asking for authorization to dispense prescription medications for a patient who died in August 2014. Board staff instructed the clinic to refuse the prescription request and submit a copy to the Board office, which the clinic did. (Exh. 3, p. 7; Mears testimony).

As part of the investigation into Respondent, Board compliance officer Sue Mears reviewed Respondent’s licensure file. Respondent was initially licensed in Iowa in April 2014. At that time, the owner was listed as Toni Ingram and the pharmacist in charge (PIC) was listed as Ezinne Ozurumba. On both the February 8, 2016 and January 17, 2017 renewal applications from Respondent, the PIC was listed as Noureen Wadhwanian. Wadhwanian’s signature does not appear to be the same on the 2016 and 2017 renewal applications. (Exh. 5, pp. 15, Exh. 11; Mears testimony).

Mears accessed the Texas Board of Pharmacy license verification system on April 27, 2017 and saw that a different PIC, Chinenye Akor, was listed for Respondent on that system. When the Board reviewed the Texas verification system again on July 22, 2017, an update to the Texas license reflected that there was no longer any pharmacist or PIC listed. Four technicians were listed, but no pharmacists. Additionally, the Texas verification information indicated that the pharmacy had responded “no” to the question regarding whether prescriptions were shipped out of state. A Texas inspection report from an inspection that took place on February 2, 2016 lists “[n]o PIC” as an item that warranted a warning notice. Wadhwanian was acting as PIC at the time of the inspection report and she signed the warning notices that were issued in conjunction with the report. Her signature on the inspection report differs from the signature that purports to be hers on Respondent’s January 17, 2017 renewal application. (Exh. 3, p. 10, Exh. 6, pp. 22, 29, Exh. 7, pp. 38-39, Exh. 11).

Mears corresponded with Wadhwanian by e-mail during the investigation. Wadhwanian advised that she left her position as PIC with Respondent on June 3, 2016. (Exh. 3, p. 8; Mears testimony).

Mears contacted Respondent several times in an attempt to speak with the pharmacist in charge. On May 3, 2017, Respondent was informed that the PIC was not available. The representative with whom Mears spoke could not provide her with the name and e-mail address of the PIC and transferred her to someone named Sonya, who identified herself as the “credentialing manager.” Sonya stated that Respondent had a temporary PIC, Fatemeh Khajehei, who was hired on or around April 27, 2017. Mears asked when Wadhwanian left her position as PIC, and Sonya responded that she did not know the exact date, but that it had been “sometime recent.” Sonya reported that Respondent had been using temporary pharmacists in the interim but had hired a permanent PIC who would start work on May 8, 2017. Sonya identified the new PIC as a person with the last name Akor. Sonya could not provide the new PIC’s first name. Sonya provided two e-

mail addresses to Mears in response to an inquiry about where a request for information could be submitted. (Exh. 3, p. 8; Mears testimony).

On August 8, 2017, Mears again contacted Respondent by phone in an effort to speak with the PIC. Mears spoke with a person who identified himself as Wallace. When Mears asked to speak with the PIC, Wallace put her on hold and then stated he would need to transfer the call to the licensing department. Wallace informed Mears that she would need to call back in the afternoon, as the person with whom she needed to speak was out. Mears stated that she needed to speak with the pharmacist. Wallace put Mears on hold, then came back and stated that Respondent had a temporary pharmacist due to flooding in Houston, Texas. Wallace told Mears that Respondent's PIC was Wadhwanian and identified Amanda Rechdan as the pharmacy manager. Mears asked to speak with Rechdan and was told she was not available. Rechdan did not return Mears' call at any point. (Exh. 3, p. 10; Mears testimony).

Records Request

On May 3, 2017, Mears sent a notice of the complaint and request for records to the two e-mail addresses that Sonya provided on the same date. Specifically, Mears requested Respondent's dispensing history into Iowa and information regarding Respondent's PIC and staffing changes that had occurred in that position. A notice of complaint and opportunity to respond was also sent by certified mail to owner/director Mohamed Mokbel at his address of record. That letter was returned to the Board as unclaimed. (Exh. 3, p. 8; Mears testimony).

As of July 21, 2017, Respondent had not responded to the notice of complaint and request for records. The e-mail sent to one of the addresses that Sonya provided was read on May 3, 2017 at 4:16 PM. A second records request was sent by e-mail on July 22, 2017. That request was read on July 24, 2017 at 1:31 PM. Additionally, Mears received a text message from Mokbel on July 24, 2017 requesting a copy of the unsolicited prescription request that began the investigation. Mears responded that a copy had been sent to both of the e-mail addresses provided. (Exh. 3, p. 9).

Mears attempted to call Mokbel on August 8, 2017 and left a voicemail message. Mears asked for a return call and reminded Mokbel that two records requests had gone unanswered. Mears reminded Mokbel of the pharmacy's responsibility under the Board's rules to provide the records requested. Mokbel did not return the call. (Exh. 3, p. 10).

CONCLUSIONS OF LAW

Count I: Misleading, Deceptive, Untrue, or Fraudulent Representations

The Board's regulations provide for disciplinary sanctions where a licensee has knowingly made misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaged in unethical conduct or practice harmful or detrimental

to the public.² This count arises from the allegation that Respondent requested a refill for a patient who died in 2014. The evidence reflects that Respondent represented to the physician's office in April 2017 that the patient had requested a refill and had authorized the pharmacy to be his or her supplier. This information was clearly false, as the patient at issue died in 2014. The pharmacy did not respond to the Board's request for information and there is no information to suggest any legitimate reason for this misstatement. Under these circumstances, a violation has been proven.

Count II: Fraud in Procuring a License

The Board's regulations provide for disciplinary sanctions upon a determination that a licensee has committed fraud in procuring a license. Fraud in procuring a license includes intentional perversion of the truth in making application for a license to operate a pharmacy doing business in the state of Iowa. It includes false representations of material fact which should have been disclosed when making application.³

In its 2017 renewal application, which was received by the Board on January 17, 2017, Respondent listed Wadhwanian as the pharmacist in charge. The credible evidence demonstrates that Wadhwanian ended her employment with Respondent as PIC on June 3, 2016. The signature that purports to be Wadhwanian's on the January 2017 renewal application does not appear to be the same signature as Wadhwanian's signature on the Texas inspection report or Respondent's 2016 renewal application. Respondent falsely represented on its January 2017 renewal application that Wadhwanian was its PIC, despite the fact that she had not been employed by Respondent for over six months. This false representation of material fact constitutes a violation.

Count III: Failure to Have a Pharmacist in Charge

The Board's regulations require that there be at least one professionally competent, legally qualified pharmacist in charge in each pharmacy.⁴ The pharmacist in charge is responsible for working cooperatively with the pharmacy owner or license holder and all staff pharmacists to ensure the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations that govern the practice of pharmacy.⁵

Respondent has not filed any information with the Board naming a new pharmacist in charge since the January 2017 renewal application was filed. That application named Wadhwanian, who was not at that time actually serving as PIC for Respondent. Various representatives of Respondent provided conflicting information during the Board's investigation regarding Respondent's current PIC. The Texas license verification site showed that Respondent did not have a PIC as of August 2017. Under these circumstances, the Board concludes that Respondent is not in compliance with the

² 657 Iowa Administrative Code (IAC) 36.6(3).

³ 657 IAC 36.6(1).

⁴ 657 IAC 6.2.

⁵ 657 IAC 8.3(1).

Board's requirement of having at least one pharmacist in charge. A violation has been proven.

Count IV: Failure to Provide Records

The Board's regulations provide for disciplinary sanctions upon a finding that a licensee failed to timely provide to the Board or a representative of the Board prescription fill data or other required pharmacy or controlled substance records.⁶ During the investigation, the Board requested that Respondent provide information and records regarding fill data into Iowa and regarding its pharmacist in charge. Respondent never provided such records. Under these circumstances, a violation has been proven.

Sanction

The Board may consider a number of factors in determining the nature and severity of the disciplinary sanction to be imposed when a violation is established, including the relative seriousness of the violation as it relates to assuring a high standard of professional care; the facts of the violation; any extenuating circumstances; number and seriousness of prior violations or complaints; whether remedial action has been taken; and any other factors that reflect upon the competency, ethical standards, and professional conduct of the licensee.⁷

In this case, the Board has considered the totality of the violations proven. Respondent requested authorization to fill a prescription for a deceased patient and has subsequently provided no explanation of its conduct. In conjunction with this irregularity, Respondent has provided false information about its pharmacist in charge and, in fact, does not currently have a pharmacist in charge. Respondent failed to appear for hearing and explain its actions or any potentially mitigating circumstances. The combination of fraudulent representations in pharmacy practice with the lack of any pharmacist in charge ensuring compliance with applicable laws and regulations is particularly troubling. Additionally, Respondent has affirmatively misrepresented the status of its pharmacist in charge and attempts to clarify whether Respondent has a pharmacist in charge – or any pharmacists for that matter – have been met with resistance and misinformation. While there is no evidence that this licensee has any prior violations, the seriousness of the present violations is such that the lack of previous violations does not mitigate the licensee's conduct. The Board has determined that revocation is necessary in order to protect the public interest.

⁶ 657 IAC 36.6(33).

⁷ 657 IAC 36.1(3).

DECISION AND ORDER

IT IS THEREFORE ORDERED that the nonresident pharmacy license of Distinguished Pharmacy is revoked.

IT IS FURTHER ORDERED pursuant to Iowa Code section 272C.6 and 657 Iowa Administrative Code 36.18(2), that Distinguished Pharmacy shall pay \$75 for fees associated with conducting the disciplinary hearing. In addition, the executive director of the Board may bill the licensee for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Respondent shall remit for these expenses within 30 days of receipt of the bill.

Dated this 14th day of March, 2018



Sharon Meyer
Chairperson, Iowa Board of Pharmacy

cc: Laura Steffensmeier, Assistant Attorney General

A default decision or decision rendered on the merits after a party has failed to appear or participate in a contested case hearing shall become final board action unless within 15 days after the date of notification or mailing of the decision a motion to vacate is filed and served on all parties or unless an appeal of a decision on the merits is timely initiated within the time provided by rule 35.30. A motion to vacate must state all facts relied upon by the moving party which establish good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated shall be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) shall be attached to the motion. 657 IAC 35.27. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 657 IAC 35.27(4).

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.