

BEFORE THE IOWA BOARD OF PHARMACY

Re:)	Case No. 2012-98
Controlled Substance Registration of:)	
JIMMY MASCARO, DO)	ORDER TO SHOW CAUSE
Registration No. 1306300)	
Respondent)	

**TO: Jimmy Mascaro, DO
27 Riverview Terrace
Smithtown, NY 11787**

NOTICE: Pursuant to the provisions of Iowa Code chapter 124.304-305 (2013) and 657 Iowa Administrative Code 10.12(5-8), you are hereby ordered to appear before the Iowa Board of Pharmacy to show cause why controlled substance registration number 1306300, issued to Jimmy Mascaro, DO, should not be restricted, suspended or revoked. TO REQUEST A HEARING REGARDING THE RESTRICTION, SUSPENSION OR REVOCATION OF THIS CONTROLLED SUBSTANCE REGISTRATION, YOU MUST FILE A REQUEST FOR A HEARING BEFORE THE BOARD WITHIN THIRTY (30) DAYS OF ISSUANCE OF THIS ORDER.

I. JURISDICTION

Pursuant to Iowa Code Chapter 124 (2013) and 657 Iowa Administrative Code § 10.12(5)-(8), the Iowa Board of Pharmacy (Board) has jurisdiction over those who manufacture, distribute, and dispense controlled substances in Iowa. The Board issued Jimmy Mascaro (Respondent) controlled substance registration (CSR) number 1306300, subject to the laws of the State of Iowa and the rules of the Board.

II. BASIS FOR ORDER TO SHOW CAUSE

1. Respondent holds a license to practice medicine in Iowa.
2. Iowa Code Section 124.304(1)(d) provides the Board may suspend, revoke, or restrict a controlled substance registration upon a finding that the registrant has committed such acts as would render the registrant's registration under Section 124.303 inconsistent with the public interest as determined under that section. *See also* 657 Iowa Administrative Code 10.12.

3. Section 124.303 and 657 IAC 10.12(4) provide that in determining the public interest the Board shall consider a number of factors, including compliance with applicable state laws.
4. Respondent's CSR expired on January 31, 2012. It was renewed on June 6, 2012.
5. During the time Respondent's CSR was inactive he prescribed controlled substance prescriptions to patients in Iowa.

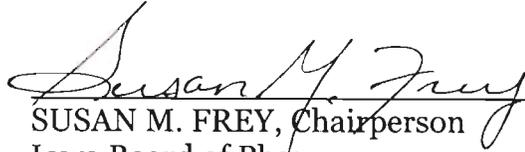
III. ORDER

Respondent is hereby ordered to appear before the Board and show cause why controlled substance registration number 1306300 should not be restricted, suspended or revoked.

Respondent may request a hearing before the Board in response to this Order by filing that request within thirty (30) days of the date of this Order. Respondent's request for a hearing should be directed to Lloyd Jessen, Executive Director, Iowa Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. The Board office telephone number is (515) 281-5944. If Respondent requests a hearing, the hearing will be held at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa, on the date of the next regularly scheduled meeting of the Board.

IF RESPONDENT DOES NOT REQUEST A HEARING IN THIS MATTER WITHIN THIRTY DAYS OF THE DATE OF THIS ORDER, RESPONDENT'S CONTROLLED SUBSTANCE REGISTRATION WILL BE SUSPENDED.

IT IS SO ORDERED THIS 13th day of March 2013.


SUSAN M. FREY, Chairperson
Iowa Board of Pharmacy

cc: Theresa O'Connell Weeg, Assistant Iowa Attorney General
Drug Enforcement Administration, Des Moines, Iowa
Iowa Board of Medicine

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon Respondent to the above cause by:

<input type="checkbox"/> personal service	<input type="checkbox"/> first class mail
<input checked="" type="checkbox"/> certified mail, return receipt requested	<input type="checkbox"/> facsimile
Article Number 9171999991703106849824	<input type="checkbox"/> other _____

on the 14th day of March, 2013.

I declare that the statements above are true to the best of my information, knowledge and belief.


Debbie S. Jorgenson

BEFORE THE IOWA BOARD OF PHARMACY

Re:) DIA NO: 13PHB032
) CASE NO: 2012-98
Controlled Substance Registration of)
Jimmy Mascaro, D.O.,)
) **FINDINGS of FACT,**
) **CONCLUSIONS of LAW,**
Respondent.) **and ORDER**

On March 13, 2013, the Iowa Board of Pharmacy (the Board) filed an order to show cause against Jimmy Mascaro, D.O. (respondent). Dr. Mascaro is a licensed physician and holds a controlled substance registration (CSR) from the Board. The order to show cause alleged that respondent's CSR expired on January 31, 2012, but he continued to prescribe controlled substances to patients in Iowa before renewing on June 6, 2013.

The case heard at the Board's headquarters on June 25, 2013. The following board members were present for the hearing: Susan Frey, LaDonna Gratiyas, Edward Maier, Edward McKenna, James Miller, Sharon Meyer, and Judith Trumpy. Jeffrey Farrell, an administrative law judge from the Iowa Department of Inspections and Appeals, assisted the board. Theresa Weeg, an assistant attorney general, represented the public interest. Respondent represented himself. Respondent made a request that the hearing be held confidentially.¹

THE RECORD

The State's exhibits 1-12 were admitted. The State called Jennifer O'Toole as a witness. Respondent's exhibits 1-9 were admitted. Respondent testified on his own behalf.

FINDINGS OF FACT

Dr. Mascaro has practiced medicine in Ottumwa, Iowa since 2006. He started with Ottumwa Regional, moved to Cornerstone Counseling Center (Cornerstone), and currently practices with Southern Iowa Mental Health Center (Southern Iowa). He resides (and also practices) in New York. He primarily practices in Iowa via

¹ See Iowa Code section 272C.6(1). I note that Dr. Mascaro was not offered the opportunity to a confidential hearing prior to the start of the hearing. The offer was made following the conclusion of the hearing by the State's attorney, with the knowledge of the administrative law judge and the Board. Dr. Mascaro's request was made of record. (Exhibit 12).

“telemedicine.” He generally travels to Iowa one week per month for business purposes. (Mascaro testimony; State’s exhibit 6).

Dr. Mascaro has held a CSR with the Board during the course of his practice. The registration has a term of two years. Dr. Mascaro renewed his registration in January of 2010, listing Cornerstone as his business address. The registration was approved with an expiration date of January 31, 2012. The Board’s practice is to send a renewal application approximately two months before a CSR expires. In this instance, Dr. Mascaro’s renewal application was sent around the first of December, 2011. The Board sent the renewal application to the Cornerstone address because it was the last known address in the file. (State’s exhibits 10-11; O’Toole testimony).

Dr. Mascaro had left Cornerstone by the time the Board sent the renewal application. He did not receive the application. He did not provide a change in address to the Board after leaving Cornerstone. He did not otherwise contact the Board to obtain a renewal application. His CSR lapsed on January 31, 2012. (Mascaro testimony; State’s exhibits 6, 10-11).

Dr. Mascaro was not aware that his CSR had lapsed. He continued to prescribe controlled substances. In or around June of 2012, Christina Schark of Southern Iowa contacted Debbie Jorgenson from the Board. Ms. Schark could not verify Dr. Mascaro’s registration online. She asked if the CSR was expired, how to renew it, and if a CSR was necessary if he had a federal DEA registration. Ms. Jorgenson informed Ms. Schark that the CSR had expired and that it was necessary if he intended to prescribe in Iowa. Dr. Mascaro responded by filing a renewal. The Board approved the application on June 6, 2012. (State’s exhibit 6; O’Toole, Mascaro testimony).

Dr. Mascaro prescribed a total of 1,276 medications during the period he had no valid CSR. Mr. Mascaro testified that a number of those may have been prescriptions that may have been issued earlier but not filled immediately, or refills of prescriptions that were issued before his CSR lapsed. Still, he admitted that he wrote hundreds of prescriptions during that period. He acknowledged fault and described the experience as an “embarrassment,” but stated the violation was not intentional. Cornerstone had a number of administrative and financial problems that contributed to him leaving, and was part of the reason for the administrative error in failing to timely renew. (Mascaro testimony; Respondent exhibits 2-5).

CONCLUSIONS OF LAW

Regulatory framework: The board is responsible to register individuals who seek to manufacture, distribute, or dispense controlled substances within the state.² “Dispense”

² Iowa Code section 124.302(2).

is defined to include the delivery of a controlled substance to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.³ Physicians are among the classes of professionals who may register.⁴

The board may suspend, revoke, or restrict a registration if the registrant has committed acts that are inconsistent with standards established in Iowa Code section 124.303.⁵ Section 124.303 sets forth seven factors that the board shall consider when deciding an application for registration. The factors include compliance with applicable state and federal laws and any other factors relevant to and consistent with the public health and safety.

The board is required to provide procedural due process to a registrant through a show cause hearing before considering disciplinary action.⁶ The board follows its regular contested case hearing process when considering orders to show cause.⁷

Analysis: The regulatory violation is clear. Dr. Mascaro obtained a CSR from the Board and prescribed controlled substances pursuant to that CSR. He allowed the CSR to lapse and continued to prescribe controlled substances for months without having a valid CSR. He committed a violation of the statute by dispensing numerous controlled substances without have a valid CSR.

The only real question concerns the level of sanction. The Board may consider disciplinary actions including revocation, suspension, probation, a civil penalty, and citation and warning.⁸ The Board did not consider revocation, suspension, or probation to be necessary in this case. Dr. Mascaro's violation was not intentional. He previously had a CSR, and he quickly remedied the violation by filing a renewal application once he learned about the problem. The Board saw no need to suspend Dr. Mascaro's registration or otherwise monitor his future compliance through probation.

The Board found a reprimand and civil penalty of \$1,000.00 to be an appropriate penalty. Dr. Mascaro issued 1,276 prescriptions without having a valid CSR. He prescribed for more than four months before the issue was spotted by an administrator with his current clinic. There may have been administrative problems at Cornerstone, but Dr. Mascaro was well-aware of those problems and did not follow up with the Board after leaving Cornerstone to make sure he was current with his mailing address or with his registration.

³ Iowa Code section 124.101(9).

⁴ 657 IAC 10.1.

⁵ Iowa Code section 124.304(1)(d).

⁶ Iowa Code section 124.305.

⁷ 657 IAC 10.12(6).

⁸ 657 IAC 36.1(2); *See also* Iowa Code sections 155A.18, 272C.3(2).

He is ultimately responsible to ensure his compliance with the regulations. While the violation was not intentional, the sanction is justified by number of prescriptions issue and the ongoing nature of the violation.

DECISION AND ORDER

The Iowa Board of Pharmacy finds that respondent Dr. Jimmy Mascaro violated statutory requirements by dispensing controlled substances with a lapsed controlled substances registration. The Board imposes a reprimand and a civil penalty of \$1,000.00. Respondent shall pay the civil penalty within 30 days from the date of this order.

Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary of the board may bill respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Respondent shall remit for these expenses within thirty days of receipt of the bill.

Violation of any of the provisions of this order may be the subject of additional disciplinary action.

Dated this *28th* day of *August*, 2013.



Edward Maier, Chairperson
Iowa Board of Pharmacy Examiners

cc: Meghan Gavin, Assistant Attorney General
Respondent

Notice

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.