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Lt. Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
Board of Pharmacy
124 Halsey Street, 6th Floor, Newark, NJ 07102



PAULA T. DOW
Attorney General

THOMAS R. CALCAGNI
Acting Director

May 17, 2011

By Certified and Regular Mail

Howard M. Shulman, RPIC
Keansburg Drug
199 Main Street
Keansburg, NJ 07734-1719

Mailing Address:
P.O. Box 45018
Newark, NJ 07101
(973) 504-6400

**RE: Riteshkumar Shah, RP
Complaint #71978**

Dear Mr. Shulman:

This letter is to advise you that the New Jersey State Board of Pharmacy (the "Board") has had an opportunity to review information concerning your practice of pharmacy following an investigation that uncovered the following infractions of the law and regulations:

The Board agreed to issue a \$750.00 fine to Howard Shulman, RP for violation of NJAC 13:39-7.8. Transfer of prescriptions between pharmacies

The Board has determined that it will first offer you an opportunity to settle this matter and thereby avoid the initiation of formal disciplinary proceedings. Should you wish to avail yourself of this opportunity, you should sign the acknowledgment below and agree to the following:

pay a penalty in the amount of ~~\$750.00~~ (to be paid immediately upon your signing of the acknowledgment at the bottom of this letter), and **Letter of Correction.**

Alternatively, you may waive your right to a hearing and submit a written statement or explanation to the Board. The Board will then consider your submission and render a final decision, which may include any of the terms set forth above. Any disposition by way a settlement will be a public record, and will have the same effect as an order of the Board. Any failure to comply with the terms to which you agree will be deemed a violation.

Howard Shulman, RPIC
Keansburg Drug

May 17, 2011

If you do not wish to settle this matter, you may request a hearing. In that event, this letter will serve as notice of the charges against you and a hearing will be scheduled before the Board. At that hearing you either personally or with the assistance of an attorney will have an opportunity to respond to the charges and submit evidence and present testimony as may be necessary in order for the Board to make a final determination concerning the charges of unlawful activity.

You should be aware that in making its final decision, the Board may, if unlawful activity has been proven, assess civil penalties in an amount greater than that offered in this letter. Additionally, the Board may, if the facts are found to so warrant, enter an order requiring you to pay costs incurred in the matter.

Should you have any questions concerning this letter or the settlement offer herein, I suggest that you contact the Board of Pharmacy, at (973) 504-6450.

The enclosed certification should be completed and returned to the Board within fifteen (15) days following your receipt of this letter. In the event that the Board receives no response from you within fifteen (15) days, the Board's settlement offer will be withdrawn, and you will be deemed in default. The allegations against you will be deemed uncontested. The Board will then proceed to schedule the matter for final review and will enter an appropriate order. Once an order has been entered, your failure to pay any penalties may result in further action to suspend or revoke your license.

NEW JERSEY STATE
BOARD OF PHARMACY

By: Joanne Boyer
Joanne Boyer, R.Ph.
Executive Director

JB/me



WILENTZ, GOLDMAN & SPITZER P.A.

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< Certified Civil Trial Attorney [C] Certified Criminal Trial Attorney [C] Certified Workers Comp. Attorney [C] National Certified Civil Trial Specialist Approved by the ABA 1 Not admitted NJ 2 Admitted NY 3 Admitted PA 4 Admitted CT 5 Admitted DC 6 Admitted MA 7 Admitted MD 8 Admitted VA 9 Admitted CA 10 Admitted FL 11 Admitted PR 12 Admitted VI

June 8, 2011

VIA REGULAR & CERTIFIED MAIL: R.R.R.

New Jersey Board of Pharmacy 124 Halsey Street, 6th Floor P.O. Box 45013 Newark, New Jersey 07101 Attn: Joanne Boyer, Executive Director

Re: Keansburg Drug

Dear Director Boyer:

Please accept this letter in response to the Board's May 17, 2011 correspondence and as a supplement to my letter dated August 23, 2010. Both are attached herewith for your reference. For the reasons set forth below and in my previous correspondence, we respectfully request that the Board mitigate its findings in this matter.

The sole basis of the instant Uniform Penalty Letter ("UPL") is an allegation by Riteshkumar Shah, the owner of a new pharmacy in the vicinity of Keansburg Drug. While we refrain from ascribing motives for his complaint, it must nonetheless be noted that Mr. Shah has not offered

1 A simultaneous complaint was filed by Danielle Basile, a patient that apparently utilizes the services of both pharmacies (Complaint No. 71966). We addressed the merits of that complaint in our previous correspondence. Based on the caption of the instant UPL it appears that Ms. Basile's complaint was dismissed by the Board. However, to the extent this UPL is based on Ms. Basile's complaint, we respectfully request the opportunity to supplement this letter.

JUN 13 2011

any evidence to support his complaint. Moreover, Mr. Shah's complaint must be read in the context of Keansburg Drug's impeccable record.

There is no evidence supporting the allegation that Mr. Shulman or Keansburg Drug violated N.J.A.C. 13:39-7.8. That regulation provides that when a patient or a "pharmacy acting on behalf of the patient" requests a transfer of a valid prescription, then the transferring pharmacy must comply with that request. *Id.*² Here, Mr. Shah, in his two paragraph complaint (Complaint No. 71978), fails to offer one single fact to support his legal conclusions. For example, Mr. Shah cannot identify a particular patient, prescription number, conversation, or instance that Keansburg Drug acted contrary to N.J.A.C. 13:39-7.8 in support of his assertions.

The Board should not impose a penalty based on a complainant's mere assertions. Such a standard runs contrary to the general principle that a complaint must give the defending party fair notice of the specific allegations. For example, the United States Supreme Court has repeatedly ruled that "[w]hile legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009). Although *Ashcroft* was not an administrative law case, its reasoning is equally applicable here. Allowing any less of a standard would open the flood gates for arbitrary and baseless complaints.

We have previously provided the details regarding Keansburg Drug's policies concerning the transfer of prescriptions. Certainly, should the Board have any questions regarding these policies or suggest any modifications to them, we are willing to address the same. In the interim, if you have any questions on the above, please do not hesitate to contact me.

Very truly yours,



ANGELO J. CIFALDI

AJC/cg

Enclosure

cc: Mr. Howard Shulman

² Drug Smart was not a licensed pharmacy at the time of this incident. Drug Smart apparently celebrated its grand opening before it received a pharmacy license. Curiously, the complaint of Mr. Shah was drafted on August 4, 2010, only eight business days after Drug Smart pharmacy received its license. Thus, even if Mr. Shah's complaint is taken at face value, Drug Smart could not qualify as a "pharmacy acting on behalf of the patient" because it was not even licensed by the Board.

CERTIFICATION

I, Howard Shulman, hereby acknowledge that I have read and reviewed the Board's letter dated 5-17-2011 regarding allegations of violations of the Board's enabling act and/or regulations.

Please check one:

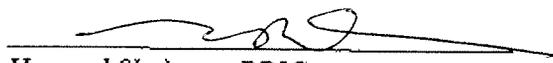
I acknowledge the conduct which has been charged and agree to:

1. pay a penalty in the amount **\$750.00** (to be paid upon signing of this certification);
2. proof of successful completion of **zero(0)** CE credits within thirty (30) days of receipt of this letter; and
3. **Letter of Correction.**

I am also aware that the action taken against me by the Board here is a matter of public record, and that the Board's letter and this certification are public documents.

I hereby waive any rights I may have to a hearing in this matter in order to defend myself against any charges, but ask the Board to **consider my explanation** before rendering its final decision I understand that the Board may order any of the terms specified in its letter and that if does so I will be obligated to comply. I am also aware that the action taken against me by the Board herein is a matter of public record, and that the Board's letter and this certification are public documents. Failure to comply may subject me to further disciplinary action and any failure to make a required payment will result in the filing of a certificate of debt.

I request a formal administrative hearing to contest the charges specified in the UPL. I understand that I will be advised of the time, date and place for that hearing at another time. I am aware that I may be represented by an attorney and that at the time of the hearing I may submit to the Board testimony and documentation relevant to the charges. I understand that in making its final decision, the Board may, if unlawful activity has been proven, assess civil penalties in an amount greater than that herein offered in its letter and may order such other remedies as it may deem appropriate. I am also aware that this proceeding is a matter of public record and that the Board's letter and this certification are public documents.


Howard Shulman, RPIC

Dated:

Ref: Riteshkumar Shah, R.Ph.
Complaint #71978
Howard Shulman, RPIC, 28ri01702900
Keansburg Drug
199 Main Street
Keansburg, NJ 07734-1719
4/13/2011 me

5600000070576050

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□ Certified Criminal Trial Attorney
† Certified Workers Comp. Attorney
* National Certified Civil Trial Specialist
Approved by the ABA
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3 Admitted PA
4 Admitted CT
5 Admitted DC
6 Admitted MA
7 Admitted WA
8 Admitted VA
9 Admitted CA
10 Admitted FL
11 Admitted PR
12 Admitted VI

August 15, 2011

VIA CERTIFIED MAIL R.R.R.

New Jersey Board of Pharmacy
124 Halsey Street, 6th Floor
P.O. Box 45013
Newark, New Jersey 07101
Attn: Joanne Boyer, Executive Director

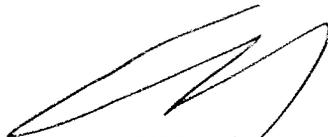
Re: Howard Shulman/ Keansburg Drug

Dear Director Boyer:

Please find enclosed a check payable to the Board of Pharmacy in the sum of \$750.00 in connection with the Uniform Penalty Letter issued by the Board pursuant to Complaint No. 71978. A letter of Corrective Action was previously submitted along with a request for the mitigation of the fine.

Please feel free to contact me if there are any questions regarding the above.

Very truly yours,



ANGELO J. CIFALDI

AJC/cg
Enclosure
cc: Howard Shulman, R.Ph.