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FILED
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BOARD OF PHARMACY

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE BOARD OF PHARMACY

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF **Gary K. Kaczka, R.P.** **License No.28RI01937000** TO PRACTICE PHARMACY IN THE STATE OF NEW JERSEY	Administrative Action CONSENT ORDER

This matter was opened to the New Jersey State Board of Pharmacy (Board) upon receipt of information from the Administrator of the New Jersey Prescription Monitoring Program (PMP) concerning results of PMP compliance checks revealing that Gary Kaczka, R.P. (respondent), the owner and Pharmacist-in-Charge (RPIC) at Gallo's Health Mart Pharmacy, 192 Rochelle Avenue, Rochelle, New Jersey, conducted a request for prescription information for a deceased celebrity who was not a patient of record at that pharmacy and allowed unauthorized PMP

access to other staff pharmacy members in violation of provisions of the statute creating the PMP.

A review of the PMP Access History Report for respondent as well as statements provided on May 2, 2012 to Enforcement Bureau investigators by respondent, respondent's business partner and another staff pharmacy member, reveal the following. On December 26, 2011, respondent, in order to comply with the PMP, registered as a PMP user and signed a Request for Access Form (RFA) to utilize the PMP. The online PMP registration process includes a tutorial which respondent reviewed. At the end of each page, respondent activated the "next" icon, thus providing the equivalent of an electronic signature certifying having read and understood the provisions. These provisions clearly identify the requirement that the name being run through the PMP must be a patient of record at the pharmacy and state that unauthorized access or disclosure of information in the PMP is subject to punishment under the law. In addition, the tutorial states that a pharmacist must personally access the PMP system and members of the pharmacy staff may not have access to the system. Further, a request for access to the PMP system to run a patient search cannot be submitted until the pharmacist "checks" the certification which states: "I certify that the information I have entered above is accurate and that this use of the PMP is for the purpose of providing health care to a current patient."

Respondent initiated a policy requiring his staff pharmacists to routinely perform a PMP record review "check" on patients presenting CDS prescriptions at the pharmacy. Respondent acknowledged that he provided his username and password to the other staff pharmacists who worked for him in order to access PMP records, thus allowing unauthorized staff to access confidential PMP records. Respondent explained that he was not aware that sharing his username and password was in violation of the PMP but that he now realizes that this extension of his PMP privileges to unauthorized persons violated the terms of the PMP.

On February 13, 2012, a PMP request for prescription information for a deceased celebrity was conducted under respondent's username, yielding no data for the individual searched. Respondent acknowledged that he had personally run the search and knew that the celebrity had never been a customer at the pharmacy.

Although not physically present in the pharmacy at the time of the investigation, respondent, by telephone, assisted the investigators in their investigation and instructed his staff to assist the investigators in their inspection and review. Further, respondent immediately changed his password in order to restrict use of the PMP to other pharmacists using their own usernames and passwords. Respondent's business partner, not a

Board licensee, stated that he never ran the PMP program and a staff member pharmacist stated that he had utilized respondent's credentials per respondent's request, to conduct checks on persons presenting CDS prescriptions at the pharmacy.

Having reviewed the entire record, it appears to the Board that respondent failed to maintain the security of confidential patient information as required by the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 C.F.R. Part 160 and Subparts A and E of Part 164) and State laws and regulations regarding the privacy, confidentiality, disclosure and use of health information. Respondent's actions were in violation of N.J.S.A. 45:14-76 which requires pharmacists to comply with the Federal Standards of Practice of Individually Identifiable Health Information in the privacy rules above, and of N.J.S.A. 45:1-46(e) which requires pharmacists, as a condition of obtaining PMP information, to certify the reasons for seeking to obtain that information.

Further, it appears to the Board that the facts establish a basis for disciplinary action pursuant to N.J.S.A. 45:1-21(b) and (e) for engaging in the use of dishonesty, fraud, deception, or misrepresentation, and for engaging in professional misconduct in that respondent falsely certified that his request for information pertained to a current patient thus knowingly causing the Division of Consumer Affairs to release the

information to him pursuant to N.J.S.A. 45:1-46(d)(2) which provides that PMP information may be provided to an authorized pharmacist who certifies that the request is for the purpose of providing health care to a current patient. Further, it appears to the Board that the facts establish a basis for disciplinary action pursuant to N.J.S.A. 45:1-21(h) and N.J.S.A. 45:1-49(b)(1) and (2) in that respondent allowed unauthorized individuals to gain access to PMP data in violation of the following Board regulations:

1. N.J.A.C. 13:39-4.15(a)(2) which provides that the pharmacist must be responsible for ensuring that the security of the prescription dispensing area and its contents are maintained at all times,

2. N.J.A.C. 13:39-4.18(a) which provides that all permit holders shall be responsible for compliance with all the rules, regulations and laws governing the practice of pharmacy,

3. N.J.A.C. 13:39-6.2(f)(4) and (9) which require that an RPIC must be physically present in the pharmacy to supervise and ensure that security of the prescription area is maintained at all times consistent with the requirements of N.J.A.C. 13:39-4.14, and that all pharmacy personnel provide pharmaceutical services in accordance with acceptable professional standards and comply with all Federal and State statutes and regulations governing the practice of pharmacy.

The Board recognizes the potential for jeopardizing patient safety inherent in the use of the PMP system and that respondent created an environment which endangered the privacy of all patients in the PMP database. However, respondent's intentions in allowing other staff to utilize the system were good and he took immediate steps to ensure that no such unauthorized use occurs again. The Board further acknowledges that the PMP is a new tool for pharmacists and that while respondent's desire to utilize it was laudable, he showed an absolute abuse of his privilege and an extreme lack of judgment in the manner in which he chose to implement the PMP in his pharmacy and in the manner in which he himself utilized the system.

Respondent, being desirous of resolving this matter without the necessity of further formal proceedings, and having waived any right to same, and the Board having determined that this Order is sufficiently protective of the public health, safety and welfare, and all parties agreeing to the terms of this Order;

IT IS THEREFORE ON THIS 18th **DAY OF** December**, 2012**

ORDERED:

1. Respondent is hereby reprimanded for engaging in conduct in violation of statutes and regulations as described above.

2. Respondent shall continue to cease and desist from accessing the PMP information for any purpose other than providing health care to a current patient; and cease and desist from allowing anyone other than himself to access the PMP using his usernames and passwords; and shall continue as pharmacist-in-charge to restrict the use of the PMP to pharmacists using their own usernames and passwords.

3. Respondent shall take and successfully complete three (3) credits of continuing education in courses relating to HIPAA and/or patient confidentiality and privacy at his own expense. Successful completion means that all sessions were attended, all assignments were properly and appropriately completed and a passing grade was achieved which was unconditional and without reservation. Respondent shall submit the specific courses proposed to satisfy these requirements to the Board for approval within thirty (30) days of the entry of this Order, and shall provide the Board with proof of successful completion within six (6) months of the entry of this Order. These courses are in addition to the continuing education hours required by N.J.A.C. 13:39-3A.1 et seq.

4. Respondent shall pay civil penalties totaling five thousand dollars ($5,000.00) in consecutive monthly installments of no less than $500 per month, which shall be due by the 15th of each month, commencing November 15, 2012. Payment shall be

made by check or money order made payable to the New Jersey Board of Pharmacy and mailed to the New Jersey State Board of Pharmacy, ATTN: Anthony Rubinaccio, Executive Director, 124 Halsey Street, P.O. Box 45013, Newark, New Jersey 07101. In the event that Respondent fails to make any required monthly installment within 15 days of the date it is due, then the full amount shall become immediately due, interest shall begin to accrue at the annual court rule rate, and a Certificate of Debt shall be issued.

6. Failure to comply with any of the terms of this Consent Order may result in further disciplinary action.

NEW JERSEY STATE BOARD OF PHARMACY

By: Edward G. McGinley
Edward G. McGinley, R.P.,
President

I have read the within Order and understand its terms. I consent to the entry of this Order by the New Jersey Board of Pharmacy.

_____
Gary K. Kaczka, R.P.

Consent as to form and entry:

_____
Angelo J. Cifaldi, Esq.
Attorney for Gary Kaczka, R.P.

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