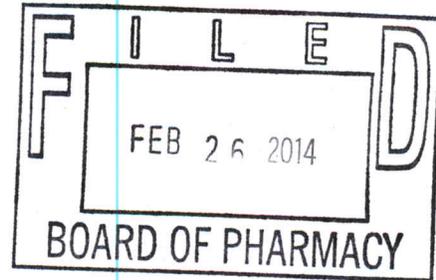


JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law - 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Attorney for the Board of Pharmacy



By: Jodi C. Krugman
Deputy Attorney General
(973) 648-2436

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

IN THE MATTER OF THE : Administrative Action
APPLICATION OF :
 :
MICHAEL D. STAVITSKI, R.Ph. : **ORDER OF DENIAL OF**
License No. 28RI01887400 : **REINSTATEMENT OF LICENSE**
 :
 :
FOR REINSTATEMENT OF LICENSURE:
TO PRACTICE PHARMACY IN THE :
STATE OF NEW JERSEY :

This matter was opened to the New Jersey State Board of Pharmacy (the "Board") upon receipt of the application of respondent Michael D. Stavitski ("respondent") for reinstatement of his license to practice pharmacy in the State of New Jersey. On March 14, 2002, a Final Order of Discipline (the "2002 Final Order") was entered by the Board revoking respondent's license to practice pharmacy, but providing that respondent could file an application for reinstatement after completion of his criminal probation. The order also contained certain provisions

regarding respondent's ownership interests in certain pharmacies, and provided that he could not be a permit holder in New Jersey for five years from the entry of that Order. The basis for the discipline was respondent's October 5, 2001 plea of guilty in the United States District Court, District of New Jersey, to the crime of conspiracy to defraud the United States and to purchase drug samples in violation of law. Specifically, it was found that from 1994 through 1997, respondent knowingly purchased diverted drug samples from other persons for a discounted price and thereafter sold the samples to the public as prescription drugs from several different pharmacies. In addition, most of the drugs did not contain the control number, the expiration date or adequate labeling.

Subsequent to the entry of the 2002 Final Order, respondent was indicted and charged with health care claims fraud and Medicaid fraud. Based upon respondent's plea of guilty to second degree health care claims fraud, on February 18, 2004, a second Final Order of Discipline was filed with the Board revoking respondent's right to reinstate his license to practice pharmacy in New Jersey, with prejudice to reinstatement.¹ On June 18, 2004, pursuant to his guilty plea, respondent was

¹ On November 9, 2006, an amended Final Order of Discipline was filed which removes the "with prejudice to reinstatement" language.

sentenced in Monmouth County Superior Court to seven years imprisonment, and he was to remain in the Monmouth County Correctional Institution until his Intensive Supervision Program ("ISP") application was decided. In addition, the judge suspended his pharmacy license for one year and his Medicaid license for seven years. Respondent was released to the ISP on June 2, 2005, and completed the program on May 24, 2007.

On March 28, 2013, respondent, through his counsel, Pamela Mandel, Esq., submitted an application for reinstatement of his license. The letter from counsel outlined the facts of the prior Board orders and respondent's convictions, his assistance to prosecutors handling the criminal matters, and provided 27 character references from professionals, business associates, friends and customers. The Board considered the information presented, and determined to deny the application for reinstatement, based in part on the egregiousness of respondent's misconduct. By letter dated April 29, 2013, Ms. Mandel requested a more specific reason for the denial, arguing that the November 2006 Final Order of Discipline was amended after negotiations with the DAG representing the Board so that respondent would be permitted to seek reinstatement of his license at some point in the future. The Board treated the letter as a request for reconsideration, and determined that respondent's testimony would be necessary to more fully consider

the matter. On July 29, 2013, respondent appeared with counsel and testified before a Committee of the Board in support of his application for reinstatement of his license to practice pharmacy in the State of New Jersey.

Respondent testified that his first criminal conviction was related to use and sale of drug samples. Respondent testified that he paid doctors and a drug company salesman for sample drugs. For the drugs obtained from the physicians, respondent punched the drugs out of sample cards, but in the case of the drug salesman, the salesman punched the drugs out of the cards, and gave them to respondent in a small plastic bag, with no lot number, no expiration date or other specific information. In both cases, respondent took the sample drugs and added them to the stock bottles in his pharmacy inventory so that he could save some money. Respondent testified that he trusted that the people giving him samples would only give him "valid medication". As to whether this behavior was consistent with his responsibility as a pharmacist, respondent stated: "I felt it was irresponsible, but I didn't think it was that irresponsible."

Respondent also testified about his conviction and sentence for health care claims fraud. He explained that he made up fraudulent prescriptions or a new prescription for a rejected claim and then submitted the claim under a different patient's

name, one that he knew had prescription coverage. He was providing medications for residents at assisted living facilities, and as that business grew, he was not diligent about verifying continuing coverage for the patients. He invested money in a private room, computers and additional staff, and when he started losing money he began to make up claims. His sentence for the health care claims fraud conviction was seven years, but he applied for the ISP program. He spent 50 weeks in Monmouth County Correctional Institution before being released to the ISP program. He testified that he appeared before the ISP board after three months in prison, but that the Board told him that he had not "suffered enough" and told him to come back for future review. He had expected to be released after three months, and as a result, he lost the dollar store business that he had started before going to prison. At the time of sentencing, respondent believed that he could get back into pharmacy after a year; he did not focus on the orders revoking his license, and believed that because the prosecutor agreed to it and the criminal judge ordered it, after a year he could have his license back. However, as he and his counsel acknowledged, the Board never consented to the one-year suspension.

In further testimony, respondent acknowledged that he is debarred from participation in federal programs for 20 years, beginning March 31, 2006. Respondent acknowledged that the

debarment would make it difficult for him to find a position as a pharmacist, as he would not be able to work in a retail or hospital setting. He suggested that he might work as a pharmacy technician to regain some experience, but after some consideration, realized that the debarment would prevent him from working in that capacity as well. He said that he would like to work in industry or as a clinical abstractor, which are jobs that often require a license. Currently, he is operating a party store, which is on a short-term lease; he has moved the store several times as different opportunities arose. He is struggling with some outstanding judgments from vendors for his pharmacies as well as some past-due rent and outstanding child support payments, for which he has negotiated repayment terms through probation, though the information on the precise amount of the arrears was not provided.

DISCUSSION

The Board finds that a denial of reinstatement is appropriate at this time. Respondent has demonstrated a lack of understanding of the seriousness of his prior misconduct and of his responsibilities as a pharmacist. He exhibited an almost dismissive attitude toward the risk of co-mingling sample drugs with drugs in stock bottles in his pharmacy. The drugs given to him in plastic bags could have been expired or adulterated, or could have been kept in conditions that affected their efficacy.

If a particular lot and expiration date of a drug had been recalled, he would not have been able to identify whether any of the drugs in his stock were affected, as he did not have documentation of lot numbers or expiration dates of the sample medications, and could not rely on the information on the stock bottles because of the co-mingling. Respondent acknowledged that if there had been a recall, he would have had to destroy all of the co-mingled medications in the stock bottle, but as he had not heard about any recall, he assumed everything was fine; or, as he put it, he "didn't think [co-mingling the drugs] was that irresponsible." Moreover, his admission that he made up prescription claims and charged the insurance of patients with coverage for medications for uncovered clients, solely because he wanted to make up money he was losing in his business, demonstrates a level of moral turpitude that is not compatible with a return to licensure as a pharmacist at this time.

Although respondent claimed that he was remorseful, his demeanor at the investigative inquiry belied his claim. He continues to blame others for schemes that he launched in an effort to make more money. Even his discussion of his loss of his dollar store business while in prison suggests that he blames his elderly mother for not being able to continue working for more than the three months that he expected to be in jail. He seemed to exhibit no real remorse, insight or understanding

that it was his misconduct in the first instance that resulted in his two convictions and ultimately the seven-year prison sentence. Respondent even seemed to blame the ISP Board for denying him release after three months: he painted himself as the victim who "had not suffered enough," even though he was released after less than one year of the seven to which he was sentenced.

That the Board considered respondent's misconduct as serious was evident from the entry of multiple orders revoking respondent's license. The Board has reviewed the record in this matter and concludes that respondent's conduct repeatedly demonstrated that his store's profit and his ability to earn more money was more important than the safety of his patients. Respondent has failed to demonstrate sufficient understanding of his misconduct, meaningful remorse or rehabilitation such that reinstatement of his license would be warranted. Counsel for respondent cites to the case of Kenneth Rizzo, R.Ph., a pharmacist who was granted reinstatement after a conviction, and during a period of debarment. The Board is satisfied that the facts of this case and the lack of meaningful rehabilitation and remorse are distinguishable. The Board judges applications for reinstatement on the merits of each individual case, and concludes that a grant of reinstatement is not appropriate in this case at this time.

ACCORDINGLY, IT IS on this 26th day of February, 2014,

ORDERED THAT:

1. Respondent's application for reinstatement of his license to practice pharmacy in the State of New Jersey is hereby denied.

NEW JERSEY STATE BOARD OF PHARMACY

By: Thomas F.X. Bender, Jr., R.Ph.
Thomas F.X. Bender R.Ph.
Board President