

IN THE MATTER OF * BEFORE THE MARYLAND
RICHARD HALPERN, P.D. * STATE BOARD OF PHARMACY
FORMER LICENSE NO. 08178 * Case Number: 02-10-99

* * * * *
**FINAL ORDER ON PETITION FOR REINSTATEMENT OF LICENSE TO PRACTICE
PHARMACY**

I. INTRODUCTION

On January 21, 2009, a Reinstatement Hearing was held before the Maryland State Board of Pharmacy ("Board") to consider whether to reinstate the surrendered pharmacist's license of Richard Halpern, P.D. ("Petitioner"). Following oral presentations by the Petitioner, Petitioner's counsel, and the Administrative Prosecutor, the Board voted to deny the Petitioner's petition for the reasons stated herein. This Order constitutes the Board's final decision on the Petitioner's reinstatement petition.

II. PROCEDURAL AND FACTUAL HISTORY

On January 10, 1996, the Board charged the Petitioner with violations of the Maryland Pharmacy Act (*e.g.* Md. Code Health Occ., § 12-313) for his involvement in a Medicaid fraud scheme which was then being criminally investigated. The charges alleged that the Petitioner had filled 8,000 Schedule II controlled dangerous substance prescriptions between July and December 1994 without questioning the sole prescriber, Dr. Norman Greenberg, DPM.¹ The charges also alleged that the Petitioner received

¹ The Board of Podiatry ultimately revoked Dr. Greenberg's license to practice podiatry on June 6, 1998, after he had been found guilty of unlawful possession of controlled substances.

\$309,589 in reimbursement for fraudulent insurance claims for pharmaceutical products.²

The Board filed Amended and Supplemental Charges under the Act on September 28, 1998 related to the same underlying offenses. As a result of the Board's charges, the Petitioner submitted an executed Letter of Surrender on or about February 12, 1999, which the Board's President, David Russo, signed on February 17, 1999.³ The Petitioner later pled guilty to one count of felony insurance fraud and one count of felony theft on August 21, 2002. On October 28, 2002, he was sentenced by the Honorable Dana Levitz to seven years of incarceration with all but six months suspended, followed by five years probation. The Petitioner was also ordered to pay \$309,589 in restitution to the several insurance companies he defrauded.

On June 11, 2008, the Petitioner submitted a petition reinstatement of his pharmacist's license. The Board then posed several questions to the Petitioner to determine his fitness to practice pharmacy. The Petitioner submitted a reply on or about July 8, 2008. The Attorney General's Office, Department of Health and Mental Hygiene, submitted a position opposing the reinstatement of the Petitioner on September 15, 2008. A hearing was held on January 21, 2009 for the Board to consider the petition.

III. CONSIDERATION OF THE APPLICATION FOR REINSTATEMENT

Reinstatement following surrender is a discretionary act on the part of the Board. COMAR 10.34.01.15B. Thus, the burden is on the Petitioner to demonstrate to the

² The investigation into this matter stems from a complaint received from CareFirst BlueCross/BlueShield indicating that Irvin's Pharmacy, which was owned and operated by the Petitioner, had been billing the insurance company for prescription medications that had not been provided to the insured.

³ In his February 17, 1999 Letter of Surrender to the Board, the Petitioner stated, "I understand that even if I submit a petition for reinstatement of my Maryland pharmacy license, that the Board will not return that license if a guilty plea or nolo contendere plea has been filed in the criminal case or if there has been a finding of guilt in the criminal case."

Board that he or she possesses the requisite qualities to be reinstated. To that end, in determining whether to reinstate a licensee, the Board considers the following four factors:⁴

1. The nature and circumstances of the Petitioner's original misconduct;
2. The Petitioner's subsequent conduct and reformation;
3. The Petitioner's present character; and
4. The Petitioner's present qualifications and competence to practice.

The Board relied upon the Petitioner's written response to its questions regarding his fitness to practice as well as the oral argument he presented at his hearing before the Board on January 21, 2009 to reach its decision.

1. The nature and circumstances of the Petitioner's original misconduct

The Petitioner's actions were clear violations of the Maryland Pharmacy Act. Specifically, the Act provides that the Board may discipline a pharmacist if the pharmacist:

- (6) Submits a false statement to collect a fee; ...
- (12) Provides remuneration to an authorized prescriber for referring an individual to a pharmacist or pharmacy for a product or service to be provided by that pharmacist or pharmacy; ...
- (21) Is professionally, physically, or mentally incompetent; ...
- (22) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude....

Md. Code Health Occ., § 12-313.

⁴ The Board notes that the Maryland Court of Appeals has considered these four factors in attorney discipline cases involving reinstatement. See *Matter of Reinstatement of Wyatt*, 342 Md. 117 (1996), citing *In re Braverman*, 271 Md. 196 (1974) and *Matter of Murray*, 316 Md. 303 (1989).

The Petitioner fraudulently filed insurance claims totaling \$309,589 between January 1994 and October 1996. These crimes defrauded not only the insurance companies but the taxpayers who fund Medicaid. The Petitioner's scheme was a crime of moral turpitude in that it involved remarkable deception and displayed a conscious disregard for the professional standards of pharmacy. At least one patient was unable to have a prescription filled when she needed one because the Petitioner had been wrongfully submitting an excessive amount of claims to her insurance company without her knowledge. The Petitioner clearly valued his personal monetary gain above both patient care and ethics. These actions reveal the Petitioner's extreme lack of professional judgment and competence to practice pharmacy.

The Petitioner pled guilty to felony theft and insurance fraud and admits in his July 2008 letter to the Board that he made "serious errors in judgment both professionally and ethically."

2. The Petitioner's subsequent conduct and reformation

The Petitioner has failed to provide the Board with sufficient evidence that he has reformed. Although the Petitioner continues to make restitution payments and his letter to the Board acknowledged his wrongdoing, the Petitioner's presentation at the January 21, 2009 hearing displayed a failure to take full responsibility for his actions. Instead, the Petitioner blamed Dr. Greenberg, the other pharmacists working for him, and his prior attorney for his actions and their consequences.

The Petitioner provided no convincing evidence that he will not commit the same or similar offenses again were the Board to reinstate his license. In fact, the Petitioner did not even prepare a re-entry plan for where or how he would begin practicing again.

3. The Petitioner's present character

While the Petitioner admits to having committed theft and fraud in his July 2008 letter to the Board, he provides scant evidence of his current moral and ethical fiber. Rather, his letter to the Board merely describes the problems his family has faced as a result of his behavior. Moreover, his presentation to the Board did not demonstrate that he has reformed or fully accepted his role in the insurance fraud. It appears the Petitioner is primarily interested in reinstatement of his pharmacist's license for monetary gain because his current brokerage business is experiencing difficulties, not because he is genuinely interested in providing quality patient care. Again, as stated above, the Petitioner continues to blame others for his behavior despite the fact that he pled guilty to fraud and theft charges.

4. The Petitioner's present qualifications and competence to practice

The Petitioner states he has kept abreast of the developments in pharmacy by reading journals and has taken continuing education courses in the field.⁵ However, the Petitioner has not practiced pharmacy since February 1999. More importantly, however, regardless of the Petitioner's practical knowledge, his criminal conduct and his failure to acknowledge any accountability for his transgressions demonstrate that he does not possess the moral or ethical character to practice pharmacy. Thus, it is irrelevant whether the Petitioner has the technical knowledge for proper dispensing, which he has not even been able to establish.

⁵ The Petitioner did not present the Board with any evidence of having maintained continuing education units over the past 10 years.

IV. CONCLUSIONS AND FINDINGS

Based on the Board's review of the Petitioner's petition, his statements before the Board, and the factors discussed above, the Board finds that the Petitioner has not demonstrated that his license should be reinstated. The Petitioner has not satisfactorily demonstrated that he accepts responsibility for his criminal acts, and his subsequent conduct since his surrender shows that he has not yet come to terms with the seriousness of the fraudulent conduct that led to it.

The Board remains unconvinced that the Petitioner truly appreciates the dishonesty and lack of integrity that his conduct displayed. Moreover, the Board is not persuaded that reinstatement at this time would reflect honorably on the profession. Given the foregoing, the Board concludes that the Petitioner has failed to demonstrate that he is fit to practice pharmacy at this time. The Board will not entertain any application for reinstatement from the Petitioner for three (3) years.

ORDER


Accordingly, the Board hereby **ORDERS** that the Petition for Reinstatement of RICHARD HALPERN, former license number 08178, be **DENIED**; and it is further

ORDERED that the Board will not accept any further applications for reinstatement from the Petitioner earlier than **THREE (3) YEARS** from the date of this Final Order;

ORDERED that upon any further petition for reinstatement, the Petitioner shall demonstrate to the Board that he has met the standards set out above in this Order; and it is further

ORDERED that this **FINAL ORDER ON PETITION FOR REINSTATEMENT OF LICENSE TO PRACTICE PHARMACY** is a **PUBLIC** document under Md. Code Ann., State Gov't, § 10-611 *et seq.* (2004).

So **ORDERED** this 12th day of March, 2009.



LaVerne G. Nasea, Executive Director
Maryland Board of Pharmacy