

IN THE MATTER OF

\*

BEFORE THE

MOSLEM ESKANDARI, P.D.

\*

MARYLAND STATE

LICENSE NO. 14714

\*

BOARD OF PHARMACY

Respondent

\*

\* \* \* \* \*

**FINAL DECISION AND ORDER**

**Background**

This case arose out of allegations that Moslem Eskandari, P.D. (the "Respondent") failed to comply with the conditions set out in a Consent Order, dated November 17, 1999. Specifically, the Respondent was charged with failing to: (1) provide the Board in writing the name, address and, telephone number of his immediate supervisor/employer; (2) provide the Respondent's employer with a copy of the Consent Order; (3) direct the Respondent's employer to submit-written quarterly job performance evaluations to the Board; and (4) provide the Board with quarterly self-reports. Based upon its investigation, on October 18, 2000, the Board of Pharmacy (the "Board") issued a Notice of Violation of Final Consent Order. On January 30, 2001, a case resolution conference was scheduled, however the Respondent failed to appear.

A contested case hearing was held under the Administrative Procedure Act, Md. Code Ann., State Gov't §10-201 *et seq.*, before a quorum of the Board on March 21, 2001. On the same date, the same quorum of the Board convened to deliberate and voted to uphold the charges against the Respondent and to impose the sanctions contained in this Final Decision and Order. On April 18, 2001, this quorum of the Board unanimously approved this Final Decision and Order.

## SUMMARY OF THE EVIDENCE

### **A. Documents.**

The following documents were admitted into evidence.

- State's Exhibit No. 1 - Notice of Violation of Final Consent Order, dated October 18, 2000.
- State's Exhibit No. 2 - Board of Pharmacy Confidential Report of Investigation
- State's Exhibit No. 3 - Charges and Notice of Hearing, dated September 15, 1999
- State's Exhibit No. 4 - Performance Review from Drug Emporium
- State's Exhibit No. 5 - Employee Records from Drug Emporium

### **B. Summary of Pertinent Witness Testimony.**

Michelle Andoll, Pharmacist Compliance Officer for the Board, testified that she monitored the Respondent during his probationary period under the November 17, 1999 Consent Order. (T. 10). On approximately March 15, 2000, Ms. Andoll noticed that the Board had not received quarterly reports from the Respondent's employer or self-reports from the Respondent. (T. 11). Ms. Andoll testified that although the Board did receive an employer report on December 15, 1999, it never received any self-reports. (T. 12). Furthermore, Ms. Andoll stated that the Respondent never provided the Board with the name of his supervisor or employer. (T.13). Ms. Andoll testified that she sent the Respondent several letters via regular and certified mail regarding his lack of compliance with the terms of the Consent Order. (T. 14, 19). Ms. Andoll testified that in June 2000, she contacted Drug Emporium, which was the last place of employment documented in

the Board's file. Ms. Andoll stated that she was connected with a voice message of the Respondent indicating that he was the pharmacy manager. (T. 15-16). Ms. Andoll testified that the Respondent provided the Tifton Street address, to which the first two notification letters were sent, on his renewal application in February 2000. (T. 16-17).

Deitra Gale, Compliance Specialist, monitored the Respondent beginning in July 2000. (T. 22). Ms. Gale testified that she contacted Mr. Cymbalski, the Respondent's supervisor at Drug Emporium, and that he informed her that he did not have a copy of the Respondent's Consent Order. (T. 23-24). Ms. Gale further testified that although Mr. Cymbalski confirmed that the Respondent was the pharmacy manager, he did not inform her that the Respondent was supervising other pharmacists. (T. 24-25). Ms. Gale stated that Mr. Cymbalski was never informed of his obligation to submit quarterly reports for the Respondent. (T. 25). Ms. Gale testified that the Respondent was terminated on April 30, 2000, after an extended leave of absence. (T. 26-27). Ms. Gale confirmed that the Board has never received any self-reports from the Respondent. (T. 29).

The Respondent testified on his own behalf. The Respondent stated that although he did not inform the Board in writing of the name of his employer and supervisor, he verbally informed the Board of the same at the hearing on November 8, 1999, prior to entering into the Consent Order. (T. 29-30). The Respondent testified that he provided his supervisor with a copy of the Consent Order and informed the supervisor that quarterly reports had to be submitted to the Board. (T. 30). The Respondent stated that his father's illness overseas caused him to leave Drug Emporium in February 2000. (T. 30). The Respondent testified that he did not contact the Board regarding his change in

employment or current address because he did not think it was that "critical". (T. 31). The Respondent testified that he submitted his cousin's address (Tifton Street) as his home address, but that his cousin would not have known to sign for a certified letter addressed to the Respondent. (T. 32). The Respondent testified that he was a good employee for Drug Emporium and that he was terminated because he was unable to inform Drug Emporium exactly when he would be returning from overseas. (T. 31).

### FINDINGS OF FACT

Based upon the testimony and documentary evidence presented at the evidentiary hearing, the Board finds that the following facts are true:

1. The Respondent was at all relevant times licensed to practice pharmacy in the State of Maryland. (State's Ex. 1).
2. On November 17, 1999, the Respondent entered into a Consent Order as part of a settlement of several violations of the Maryland Pharmacy Act. The Consent Order set forth certain terms and conditions under which the Respondent was permitted to continue practicing pharmacy. (State's Ex. 1).
3. The Consent Order mandated, among other things, that the Respondent: (1) provide the Board in writing within ten days of the Order the name, address and telephone number of his supervisor employer; (2) provide the Respondent's employer with a copy of the Consent Order; (3) direct the Respondent's employer to submit quarterly performance reports to the Board; and (4) submit quarterly self-reports. (State's Ex. 1).

4. The Respondent failed to notify the Board in writing within ten (10) days of the date of the Consent Order dated November 17, 1999, the name, address and telephone number of his immediate supervisor. (T. 13).
5. The Respondent failed to provide his supervisor, Mr. Cymbalski, with a copy of the Consent Order. (T. 23-24).
6. The Respondent failed to direct Mr. Cymbalski to submit quarterly job performance evaluations to the Board. (T. 25).
7. The Respondent failed to submit any quarterly self-reports to the Board. (T. 12, 29).
8. The Respondent submitted a renewal form in February 2000, listing his cousin's address as the Respondent's home address without any further information regarding his whereabouts or his employment situation. (T. 17).

#### **OPINION**

It is clear that the Respondent has failed to comply with the majority of terms and conditions of the November 17, 1999 Consent Order. The sole purpose of the Consent Order was to reach a settlement of a case involving serious violations committed by the Respondent. (*See State's Ex. 3*). Not only did the Respondent fail to abide by the terms and conditions he voluntarily agreed to, he has failed to demonstrate reasonable justification for doing so.

The Respondent failed to comply with the very first condition - to notify the Board within ten days of the name of his supervisor. The Board, on its own initiative, was able to locate the Respondent's last employer and supervisor based on other records in the Board's file. (T. 14-15). In addition, the Respondent failed to apprise his

supervisor, Mr. Cymbalski, of the Consent Order or that Mr. Cymbalski was obligated to submit quarterly performance reports to the Board. (T. 23-25). Although the Board received an employee evaluation for the Respondent dated December 15, 1999, it is unclear as to who submitted the evaluation since Mr. Cymbalski informed Ms. Gale that he was not aware of the Consent Order or that he was supposed to submit a report for the Respondent. Furthermore, the evaluation submitted to the Board on December 15, 1999, appears to be a general employee performance review done as part of Drug Emporium's company employment policy, rather than a substantive progress report of the Respondent's pharmacy practice. (See State's Ex. 4). Lastly, the Respondent failed to submit even the first self-report, which would have been due on December 15, 1999, before the father became ill and before the Respondent left the country. The Respondent offered no reason for disregarding this condition.

The Respondent lays blame on everyone else for his failure to comply with the Consent Order. The Respondent claims that he informed Mr. Cymbalski of the Consent Order and the obligation to send in quarterly reports (T. 30), yet Mr. Cymbalski informed Ms. Gale that he was never apprised of any Consent Order or its conditions. (T. 25). The Respondent blames his cousin for not signing for the Board's certified notification letters (T. 32), yet the Respondent never made the effort to affirmatively notify the Board of his whereabouts, as he was mandated to do. The Respondent excuses his failure to submit any self-reports stating that he did not know that the requirements of the Consent Order were so "critical". (T. 31).

The terms and conditions set forth in the Consent Order were reasonable in that

they merely required that the Respondent remain in contact with the Board with respect to his living and working conditions. These probationary terms can hardly be viewed as overly burdensome. However, the Respondent failed to make even a minimum effort to comply. The Board made several attempts to notify the Respondent of the ramifications of his actions, however the Respondent was never able to heed the Board's warnings because of his own failure to comply with the condition to inform the Board of his current address on a self-report. The Board has been more than accommodating to the Respondent considering his total disregard for the Board's order and its disciplinary process.

The Respondent asserts that he now understands that a Board order should be taken seriously and he will comply with any conditions the Board wishes to impose. Based on the Respondent's history with the Board of non-compliance, the Board is wary of the Respondent's promises.

For all of the above reasons, the Board finds the Respondent's excuses for his failure to comply with the terms and conditions of the Consent Order to be unpersuasive.

### **CONCLUSION**

Based upon the foregoing summary of evidence, findings of fact, and opinion, the Board concludes that the Respondent violated Condition No. 3 (In the event that the Respondent is employed as a pharmacist, the Respondent shall provide the Board in writing within ten (10) days of the date of this Order, the name, address, and telephone number of his immediate supervisor/employer); Condition No. 5 (The Respondent shall provide his employer with a copy of this Order in its entirety); Condition No. 6 (The Respondent shall direct his employer to provide written quarterly job performance

evaluations to the Board. The quarterly reports to the Board will be due on December 15, 1999, March 15, 2000, June 15, 2000, September 15, 2000, December 15, 2000, March 15, 2001, June 15, 2001, September 15, 2001 and December 15, 2001.); and Condition No. 7 (The Respondent shall submit quarterly self-reports which shall include his current address and the address of his current employment.). The Respondent's failure to comply with the Consent Order subjects him to the imposition of sanctions in accordance with H.O. §12-313.

### **SANCTIONS**

The Respondent's blatant disregard of the terms upon which the Board conditioned its settlement of serious violations of the practice of pharmacy demonstrates that the Respondent has failed to acknowledge accountability for his actions.

In order to impress upon the Respondent the seriousness of the Respondent's conduct, as well as to deter future violations of the Board's orders and the Maryland Pharmacy Act, the Board will issue an indefinite suspension. During the suspension period, the Respondent shall: (1) submit monthly self reports including his home address and place of employment; (2) maintain current continuing education credits; and (3) enroll in and successfully complete a Board-approved ethics course. Upon successful completion of the Board-approved ethics course and compliance with the remaining terms, the Respondent may petition the Board for reinstatement of his license.

### **ORDER**

Based on the foregoing Findings of Fact, Opinion, and Conclusion, by a unanimous decision of a quorum of the Board it is hereby:

**ORDERED** that the Respondent be **SUSPENDED INDEFINITELY**; And be it further,

**ORDERED** that the Respondent shall abide by the following conditions during the suspension period:

1. Enroll in and successfully complete a Board-approved ethics course;
2. Submit monthly self-reports to the Board containing the Respondent's current address and place of employment.
3. Maintain current continuing education credits. And be it further,

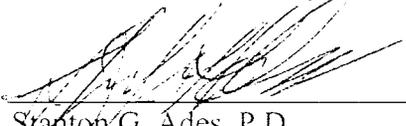
**ORDERED** that the Respondent may petition the Board for reinstatement of his license to practice pharmacy upon successful completion of the Board-approved ethics course, provided that the Respondent has complied with the terms herein; And be it further,

**ORDERED** that upon the filing of any Petition to reinstate the Respondent's license, the Board may impose any additional conditions or requirements the Board deems necessary to insure that the Respondent will be practicing pharmacy in compliance with the Maryland Pharmacy Act. And be it further,

**ORDERED** that the Respondent shall submit his wall certificate, wallet license, and renewal certificate to practice pharmacy to the Board of Pharmacy immediately upon receipt of this Final Decision and Order: And be it further,

**ORDERED** that this is a final order of the State Board of Pharmacy and as such is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., State Gov't Art., §§10-611, *et seq.*

04/18/01  
Date

  
Stanton G. Ades, P.D.  
President, Board of Pharmacy

**NOTICE OF RIGHT TO APPEAL**

Pursuant to Md. Code Ann., Health Occ. Art., §12-316, you have the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days of your receipt of this Final Decision and Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Act, Md. Code Ann., State Gov't Art., §§10-201. *et seq.*, and Title 7, Chapter 200 of the Maryland Rules.