

STATE OF FLORIDA
BOARD OF PHARMACY

Final Order No. DOH-07-2461-FOTMOA
FILED DATE - 11/13/07
Department of Health
By: Kelli M. Hardt
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2005-67265 & 2005-69439
License No.: PS 26142

DENIS R. BOUSQUET, R.PH.,

Respondent.

THIS MATTER came before the Board of Pharmacy (hereinafter "the Board") at a duly noticed public meeting on October 17, 2007, in Tallahassee, Florida, pursuant to Section 120.57(1)(l), Florida Statutes, for consideration of the Recommended Order issued by the Administrative Law Judge in the this matter.

Petitioner was represented by Patrick L. Butler and Billie Jo Owens, Assistant General Counsels, with the Department of Health. The Respondent was present but not represented.

Petitioner filed two (2) administrative complaints (Exhibits 1 & 2) against the Respondent alleging that the Respondent violated provisions of the Pharmacy Practice Act. The Respondent disputed the facts alleged in the administrative complaints and requested an evidentiary hearing before the Division of Administrative Hearings ("DOAH"). This matter was referred to the DOAH and on June 20, 2007, an evidentiary hearing was held before the honorable William F. Quattelbaum, Administrative Law Judge. On August 10, 2007, Judge Quattelbaum's Recommended Order (Exhibit 3) was transmitted to the Department of Health, Board of Pharmacy. On August 27, 2007,

Respondent filed exceptions to the Recommended Order (Exhibit 4). On August 30, 2007, Petitioner filed Petitioner's Response to Respondent's Exceptions (Exhibit 5).

After a complete review of the record in this matter, the Board makes the following findings and conclusions:

EXCEPTIONS

1. Respondent's first exception asserts that there was no basis for the finding in the Recommended Order that the Respondent "was no longer faced with financial hardship.

2. The Board rejects the Respondent's first exception on the basis that the Respondent's exception does not comply with the provisions of Section 120.57(1)(k), F.S., as the exceptions do not clearly identify the disputed portion of the recommended order by page number or paragraph, identify the legal basis for the exception, or include appropriate and specific citations to the record.

3. Respondent's second exception asserts that the administrative law judge "went far beyond the scope of the charge when he made the recommendation to allow the administrative costs to stand and not be discharged."

4. The Board rejects the Respondent's second exception on the basis that the Respondent's exception does not comply with the provisions of Section 120.57(1)(k), F.S., as the exceptions do not clearly identify the disputed portion of the recommended order by page number or paragraph, identify the legal basis for the exception, or include appropriate and specific citations to the record.

5. Respondent's third exception asserts that Respondent objects to "any addition of time being added to my probation" on the basis that "the Board never seeks this kind of penalty for similar cases."

6. The Board rejects the Respondent's first exception on the basis that the Respondent's exception does not comply with the provisions of Section 120.57(1)(k), F.S., as the exceptions do not clearly identify the disputed portion of the recommended order by page number or paragraph, identify the legal basis for the exception, or include appropriate and specific citations to the record.

FINDINGS OF FACT

1. The Board adopts the factual findings set forth in paragraphs one (1) through twenty-three (23) of the recommended order as the Board's findings of fact.

2. The Petitioner's Motions for Costs were supported by affidavits of itemized costs, which indicated that the total costs associated with the prosecution of these matters were \$21,370.75

3. There is competent, substantial evidence to support the Board's findings and conclusions.

CONCLUSIONS OF LAW

1. The Board adopts the conclusions of law set forth in paragraphs twenty-four (24) through forty-three (43) of the recommended order as the Board's conclusions of law.

2. The Board finds that the Respondent has violated Section 465.016(1)(n), Florida Statutes, as set forth in the administrative complaints filed by the Petitioner.

3. Section 456.072(4), Florida Statutes, provides:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, under this section or discipline imposed through final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is no board, shall assess costs related to the investigation and prosecution of the case. The costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto.

4. The Board is empowered by Section 465.016(2), Florida Statutes, to impose a penalty against the licensee. Therefore it is

ORDERED AND ADJUDGED that:

The penalty recommendation of the administrative law judge is adopted and the following penalty is imposed upon the Respondent:

1. **Current Administrative Costs.** The licensee must pay costs of **\$21,370.75**. This reflects the costs of prosecuting the two administrative complaints addressed by this final order.

2. **Prior Administrative Fine & Costs.** The licensee must pay an amount of **\$16,352.66** to the Department. This reflects the \$12,852.66 imposed by the May 3, 2005, Final Order and an additional fine of \$3,500.00.

3. **Probation.** The Respondent's current probationary period is extended by 18 months, under the same terms and conditions.

4. **Payment of Fine & Costs.** The costs and fine are payable within **18 months** of the date of the filing of this Final Order.

5. **Compliance Address.** The address for submission of documents and/or monetary payments (including fines & costs) to the Compliance Officer for the Pharmacy Board is: DOH/Client Services, Post Office Box 6320, Tallahassee, Florida 32314-6320.

This order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 8 day of November, 2007.

BOARD OF PHARMACY

Rebecca R. Poston

Rebecca R. Poston, R. Ph.
Executive Director
Florida Board of Pharmacy

NOTICE OF RIGHT TO APPEAL

THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY SUBSTANTIALLY AFFECTED PARTY PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(D), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DEPARTMENT'S CLERK OF AGENCY PROCEEDINGS, WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: **DENIS R. BOUSQUET**, 5125 Cedar Springs Deive, Unit 203, Naples, Florida 34110; by interoffice mail to **Reginald D. Dixon**, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; and **Lynne Quimby-Pennock**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265 this BM day of November, 2007.



Deputy Agency Clerk

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