

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE )  
ADMINISTRATION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-3001MPI  
 )  
GRAND PHARMACY DISCOUNT, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on August 5, 2009, in Tallahassee, Florida, with the Respondent appearing by telephone, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Daniel Lake, Esquire  
Agency for Health Care Administration  
2727 Mahan Drive, Suite 3431  
Tallahassee, Florida 32308

For Respondent: Dino H. Mohebbi, former owner  
Grand Pharmacy Discount  
Post Office Box 266695  
Weston, Florida 33326

STATEMENT OF THE ISSUE

Whether the Petitioner must reimburse the Respondent for Medicaid overpayments as set out in the Final Agency Audit

Report dated January 24, 2008, and pay an administrative fine, and, if so, the amount of the fine and the amount to be repaid.

PRELIMINARY STATEMENT

In a Final Audit Report ("FAR") dated January 24, 2008, the Agency for Health Care Administration ("AHCA") notified Hamid D. Mohebbi, in his capacity as owner of Grand Pharmacy Discount, that it had determined that Grand Pharmacy Discount had been overpaid \$10,655.44 for services that were, in whole or in part, not covered by Medicaid during the audit period extending from April 19, 2007, through June 5, 2007 ("Audit Period"). In addition, AHCA indicated that it intended to impose an administrative fine in the amount of \$1,000.00 in connection with the alleged overpayment. AHCA's rationale for determining that Grand Pharmacy Discount had been overpaid during the Audit Period was stated in the FAR as follows:

The audit included a review, of paid claims with dates of service during the audit period. The audit period for this review was from April 19, 2007, through June 5, 2007. Grand Pharmacy Discount, Florida Pharmacy license number PH0021403, located at 2140 N.W. 36th Street, Miami, Florida 33142 was issued Medicaid provider number 030940100 effective July 25, 2005. The Department of Health, due to a change of owners, issued Florida Pharmacy license number PH0022661 for Grand Pharmacy Discount at the same address effective April 19, 2007, which closed the previous license number, PH0021403. Medicaid requires an active pharmacy license for your Medicaid provider number to be valid. Additionally,

Medicaid requires providers to notify the Agency of any proposed change of ownership 60 days prior to the date on which that ownership change will occur, per Section 409.907(6), F.S. Paid claims to your provider number were found with dates of service after April 19, 2007, when your pharmacy license number was closed. The paid claims identified for the period when your provider number was invalid due to the closed pharmacy license number and ownership change resulted in an overpayment of \$10,655.44. . . .

Grand Pharmacy Discount timely requested a formal administrative hearing, but the request was dismissed by AHCA as insufficient in a final order entered by AHCA on February 27, 2008. As permitted by the final order, Mr. Mohebbi, on behalf of Grand Pharmacy Discount, filed an amended request, which was transmitted to the Division of Administrative Hearings for assignment of an administrative law judge. The case was assigned DOAH Case No. 08-1448MPI.

The final hearing in DOAH Case No. 08-1448MPI was convened on August 13, 2008. At that time, the parties announced that they had reached a settlement agreement resolving the issues presented in the FAR, which they intended to reduce to writing. Based on this representation, the file of the Division of Administrative Hearings was closed and jurisdiction of the matter was relinquished to AHCA.

On May 22, 2009, AHCA filed a Motion to Re-Open Formal Administrative Proceeding, in which it represented that the

parties had reached an impasse in settlement negotiations and were not able to resolve the issues presented in the FAR. Grand Pharmacy Discount did not respond to the motion within the time specified in Florida Administrative Code Rule 28-106.204(1), and an Order Re-Opening the File as DOAH Case No. 09-3001MPI was entered on June 2, 2009. A Notice of Hearing was issued on June 18, 2008, and the final hearing was conducted on August 5, 2009.

At the hearing, the undersigned took up the Petitioner's Motion to Deem 1st and 2nd Request for Admissions Admitted and its Objection to Respondent's List of Exhibits; Notice of Failure to Comply with Court's Pre-Hearing Order & Notice of Compliance with Chapter 409.913(22), F.S. After argument, the motion was denied, as was the Petitioner's request in the objection that all of the Respondent's exhibits be stricken. AHCA then presented the testimony of Ramona Stewart and Kathryn Holland, and Petitioner's Exhibits 1 through 10 and 23 were offered and received into evidence. Grand Pharmacy Discount presented the testimony of Mr. Mohebbi, and Respondent's Exhibits 1 through 4, 6, and 18 were offered and received into evidence. Respondent's Exhibits 7 and 9 were offered into evidence but rejected as not relevant to the issues presented in the FAR. Official recognition was granted to Section 409.907(3)(a), (4), and (6), Florida Statutes (2007)<sup>1</sup>;

Section 409.913, Florida Statutes; Florida Administrative Code Rules 59G-4.250, 5.020, and 9.070; Florida Administrative Code Rules 64B16-28.2021 and 28.113; Medicaid Provider Handbook (June 2006), page 1-10; Medicaid Provider Handbook, (October 2003), pages 2-2 and 3, 2-13, 2-36 and 37, and 5-5; and Medicaid Provider Handbook (January 2007), pages 2-3, 2-14, 2-41 and 42, and 5-5.

The two-volume transcript of the proceedings was filed with the Division of Administrative Hearings on August 18, 2009. AHCA timely filed its proposed findings of fact and conclusions of law; Grand Pharmacy Discount filed its proposed findings of fact and conclusions of law, together with a Motion for Extension of Proposed Recommended Order, two days late. AHCA did not respond to the motion, and, upon consideration, the motion is granted, and Grand Pharmacy Discount's proposed findings of fact and conclusions of law are accepted.

#### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. AHCA is the state agency charged with responsibility for overseeing the Florida Medicaid system, including the recovery of overpayments to Medicaid providers. § 409.913, Fla. Stat.

2. Grand Pharmacy Discount was first issued a pharmacy license by the Department of Health on June 3, 2004; the license number was PH20078, and the owner of Grand Pharmacy Discount was Ana M. Grajales.

3. On or about May 19, 2005, Mr. Mohebbi purchased Grand Pharmacy Discount from Ms. Grajales. At that time and at all times material to this proceeding, Mr. Mohebbi was a licensed pharmacist, license number PS33552. On July 6, 2005, Mr. Mohebbi applied to the Department of Health, Board of Pharmacy, for a new pharmacy license for Grand Pharmacy Discount, based on a change of ownership. A new pharmacy license, number PH21403, was issued.

4. On July 10, 2005, Grand Pharmacy Discount, through Mr. Mohebbi, submitted a Florida Medicaid Provider Enrollment Application to AHCA, together with a signed Non-Institutional Medicaid Provider Agreement ("Provider Agreement"). The Florida Medicaid Provider Enrollment Application was submitted by Mr. Mohebbi because of a change in ownership, and the Grand Pharmacy Discount pharmacy license referenced in the application was numbered PH21403.

5. Among the provisions of the Provider Agreement were the following:

(5) Provider Responsibilities. The Medicaid provider shall

(1) Possess at the time of the signing of the provider agreement, and maintain in good standing throughout the period of the agreement's effectiveness, a valid professional, occupational, facility or other license appropriate to the services or goods being provided, as required by law.

\* \* \*

(8) Ownership. The provider agrees to give AHCA sixty (60) days written notice before making any change in ownership of the entity named in the provider agreement as the provider.

6. Grand Pharmacy Discount was assigned Medicaid provider numbers 0309401-00 and 0309401-01.

7. At the times material to this proceeding, Mr. Mohebbi was the pharmacy manager for Grand Pharmacy Discount and dispensed all medications.<sup>2</sup>

8. On March 30, 2007, David Santiago filed papers with the Florida Department of State incorporating Grand Pharmacy Discount as a limited liability company. Mr. Santiago and Mr. Mohebbi entered into negotiations for Mr. Santiago to purchase Grand Pharmacy Discount, and Mr. Santiago and Mr. Mohebbi had a verbal agreement that Mr. Santiago would pay Mr. Mohebbi a deposit on the business, with the balance due at the time of the sale.

9. In furtherance of his intention to purchase Grand Pharmacy Discount, Mr. Santiago, with the assistance of Mr. Mohebbi, prepared and signed an Application for Pharmacy

requesting a new pharmacy license for Grand Pharmacy Discount. It was indicated on the Application for Pharmacy that the application was based on a change of ownership from Mr. Mohebbi to Mr. Santiago, and Mr. Santiago filed the application with the Department of Health on April 2, 2007. A new pharmacy license, license number PH22661, was issued to Grand Pharmacy Discount on April 19, 2007.

10. Mr. Santiago did not fulfill his promise to pay Mr. Mohebbi a deposit on the purchase of Grand Pharmacy Discount, and the negotiations for the purchase and sale terminated.

11. Mr. Santiago and Mr. Mohebbi did not enter into a purchase and sale agreement, and Mr. Mohebbi at no time relinquished ownership or control of Grand Pharmacy Discount, its assets or liabilities, to Mr. Santiago.

12. On June 5, 2007, Mr. Mohebbi submitted an Application for Pharmacy to the Department of Health, Board of Pharmacy, requesting that a new permit be issued to Grand Pharmacy Discount based on a change of ownership; Mr. Mohebbi was listed as the owner. On August 2, 2007, Grand Pharmacy Discount was issued a new pharmacy license, number PH22843.

13. In a letter dated June 13, 2007, AHCA notified Grand Pharmacy Discount that its Medicaid provider numbers had been terminated effective April 19, 2007, because it had been



notified that Grand Pharmacy Discount's license number PH21403 had been "closed."

14. AHCA conducted a review of the claims for Medicaid reimbursement submitted by Grand Pharmacy Discount from April 19, 2007, through September 30, 2007. In a Preliminary Audit Report dated October 30, 2007, AHCA notified Grand Pharmacy Discount that it found that Grand Pharmacy Discount was overpaid \$10,655.44.

15. On January 24, 2008, AHCA issued the FAR, in which it notified Grand Pharmacy Discount that it owed AHCA a total of \$11,655.44, which included the previously-identified overpayment of \$10,655.44 and a penalty in the amount of \$1,000.00.

16. The reasoning for finding an overpayment was stated as follows:

The audit period for this review was from April 19, 2007, through June 5, 2007. Grand Pharmacy Discount, Florida Pharmacy license number PH0021403, located at 2140 N.W. 36th Street, Miami, Florida 33142 was issued Medicaid provider number 030940100 effective July 25, 2005. The Department of Health, due to a change of owners, issued Florida Pharmacy license number PH0022661 for Grand Pharmacy Discount at the same address effective April 19, 2007, which closed the previous license number, PH0021403. Medicaid requires an active pharmacy license for your Medicaid provider number to be valid. Additionally, Medicaid requires providers to notify the Agency of any proposed change of ownership 60 days prior to the date on which that ownership change will occur, per Section 409.907(6), F.S.

Paid claims to your provider number were found with dates of service after April 19, 2007, when your pharmacy license was closed. The paid claims identified for the period when your provider number was invalid due to the closed pharmacy license number and ownership change resulted in an overpayment of \$10,655.44.

17. The termination date of the Audit Period was changed in the FAR from September 30, 2007, to June 5, 2007. The Audit Period was changed to June 5, 2007, because no Medicaid claims were submitted by Grand Pharmacy Discount after that date.

18. According to AHCA's Documentation Worksheet for Imposing Administrative Sanctions, the \$1,000.00 sanction was imposed because of Grand Pharmacy Discount's alleged failure "to report CHOW [Change of Ownership] & allowed unauthorized use of provider # to submit Rx claims."

19. Grand Pharmacy Discount has never been disciplined by AHCA, and AHCA has never sought to recoup any Medicaid overpayments from Grand Pharmacy Discount.

#### CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2009).

21. AHCA bears the burden of establishing a Medicaid overpayment by a preponderance of the evidence. South Medical

Services, Inc. v. Agency for Health Care Administration,  
653 So. 2d 440, 441 (Fla. 3d DCA 1995); Southpointe Pharmacy v.  
Department of Health and Rehabilitative Services,  
596 So. 2d 106, 109 (Fla. 1st DCA 1992); see also  
Section 120.57(1)(j), Florida Statutes (2002)("Findings of fact  
shall be based on a preponderance of the evidence, except in  
penal or licensure disciplinary proceedings or except as  
otherwise provided by statute . . . ."). In this case, however,  
AHCA is also seeking to impose an administrative fine for the  
acts underlying the finding of an alleged overpayment.  
Accordingly, AHCA bears the burden of proving by clear and  
convincing evidence that Grand Pharmacy Discount committed the  
violations identified in the FAR to support the overpayment and  
its decision to impose of a \$1,000.00 administrative fine.  
Department of Banking & Finance, Division of Securities &  
Investor Protection v. Osborne Stern & Co., 670 So. 2d 932 (Fla.  
1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

22. Section 409.907, Florida Statutes, provides in  
pertinent part:

The agency may make payments for medical  
assistance and related services rendered to  
Medicaid recipients only to an individual or  
entity who has a provider agreement in  
effect with the agency, who is performing  
services or supplying goods in accordance  
with federal, state, and local law, . . . .

1) Each provider agreement shall require the provider to comply fully with all state and federal laws pertaining to the Medicaid program, as well as all federal, state, and local laws pertaining to licensure, if required, and the practice of any of the healing arts, and shall require the provider to provide services or goods of not less than the scope and quality it provides to the general public

(2) Each provider agreement shall be a voluntary contract between the agency and the provider, in which the provider agrees to comply with all laws and rules pertaining to the Medicaid program when furnishing a service or goods to a Medicaid recipient and the agency agrees to pay a sum, determined by fee schedule, payment methodology, or other manner, for the service or goods provided to the Medicaid recipient. Each provider agreement shall be effective for a stipulated period of time, shall be terminable by either party after reasonable notice, and shall be renewable by mutual agreement.

(3) The provider agreement developed by the agency, in addition to the requirements specified in subsections (1) and (2), shall require the provider to:

(a) Have in its possession at the time of signing the provider agreement, and maintain in good standing throughout the period of the agreement's effectiveness, a valid professional or facility license pertinent to the services or goods being provided, as required by the state or locality in which the provider is located, and the Federal Government, if applicable.

\* \* \*

(6) A Medicaid provider agreement may be revoked, at the option of the agency, as the result of a change of ownership of any

facility, association, partnership, or other entity named as the provider in the provider agreement. A provider shall give the agency 60 days' notice before making any change in ownership of the entity named in the provider agreement as the provider.

(7) The agency may require, as a condition of participating in the Medicaid program and before entering into the provider agreement, that the provider submit information, in an initial and any required renewal applications, including the professional, business, and personal background of the provider and permit an onsite inspection of the provider's service location by agency staff or other personnel designated by the agency to perform this function. . . . The information must include:

(a) Proof of holding a valid license or operating certificate, as applicable, if required by the state or local jurisdiction in which the provider is located or if required by the Federal Government.

23. Florida Administrative Code Rule 59G-5.020, as adopted on January 15, 2005, provides that "[a]ll Medicaid providers enrolled in the Medicaid program and billing agents who submit claims to Medicaid on behalf of an enrolled Medicaid provider must comply with the provisions of the Florida Medicaid Provider General Handbook, October 2003, updated January 2004, which is incorporated by reference and available from the fiscal agent."<sup>3</sup>

24. The pertinent provisions of the Florida Medicaid Provider General Handbook are as follows:

**Ongoing Eligibility** Providers must continue to meet all the provider qualifications to remain enrolled in Medicaid. Medicaid will

terminate a provider who no longer meets a provider qualification.

If a provider continues to receive payment for services rendered after it no longer meets the provider qualifications, the payments will be subject to recoupment; and, if applicable, the provider will be referred to the Attorney General, Medicaid Fraud Control Unit.<sup>[4]</sup>

\* \* \*

**Professional Licenses** Health care practitioners must be actively licensed to practice as required in the applicable Coverage and Limitations Handbook to enroll as Medicaid providers and to remain enrolled.

The Department of Health, Division of Medical Quality Assurance, Licensing Boards issue health care practitioner license. Providers must renew their professional licenses when the Department of Health, Licensing Board requires renewal. Medicaid will terminate providers who fail to maintain professional licensure effective the date that the license was terminated.

If a provider continues to receive payment for services rendered after his license has expired, the payments will be subject to recoupment; and, if applicable, the provider will be referred to the Attorney General, Medicaid Fraud Control Unit.<sup>[5]</sup>

**Medicaid Provider Identifier** When providers are enrolled in Florida Medicaid they are assigned a unique nine-digit number that identifies the provider to Medicaid. . . .<sup>[6]</sup>

**Transfer of Medicaid Provider Identification (ID) Number** The Medicaid provider ID number is assigned to the individual or entity that signed the agreement and cannot be

transferred or used by any other individual or entity.<sup>[7]</sup>

**Notification** Providers are required by law to notify AHCA of any proposed change of ownership 60 days prior to the date on which that ownership change will occur, per Section 409.907(6), Florida Statutes.

If the provider has not notified Medicaid of a change of ownership, the new provider may not be eligible for Medicaid payment between the date the change of ownership occurred and the date that such notification is finally received. All reimbursements received by the prior owner between the date the change of ownership occurred and the date that such notification is finally received may be subject to recoupment.<sup>[8]</sup>

**What constitutes a Change of Ownership** A change of ownership occurs whenever the stock or assets and liabilities of a business are purchased or transferred by the existing owners to new owners. . . .<sup>[9]</sup>

**The Change of Ownership Process** The change of ownership procedures are as follows:

1. At least sixty (60) days before a change of ownership is scheduled to occur, the provider (owner who is transferring the business) must send a letter indicating that the change will occur and the proposed date of the change to the fiscal agent or AHCA. . . .<sup>[10]</sup>

25. The Department of Health, Board of Pharmacy, is the state agency that approves applications for licensure of pharmacies. § 465.022(8), Fla. Stat. Section 465.018, Florida Statutes, provides:

Any person desiring a permit to operate a community pharmacy shall apply to the

department. If the board office certifies that the application complies with the laws of the state and the rules of the board governing pharmacies, the department shall issue the permit. No permit shall be issued unless a licensed pharmacist is designated as the prescription department manager responsible for maintaining all drug records, providing for the security of the prescription department, and following such other rules as relate to the practice of the profession of pharmacy. The permittee and the newly designated prescription department manager shall notify the department within 10 days of any change in prescription department manager.

Section 465.022(7), Florida Statutes, provides: "Permits issued by the department are not transferable," and Florida Administrative Code Rule 64.B16-28.2021(1) provides in pertinent part: "A pharmacy permit is not transferable. Upon the sale of an existing pharmacy, a new application must be filed."

#### Overpayment

26. AHCA is seeking to recover an alleged overpayment of \$10,655.44 because (1) Grand Pharmacy Discount failed to maintain an active pharmacy license for its Medicaid number, and (2) Grand Pharmacy Discount failed to provide notice of a proposed change in ownership.

27. Based on the findings of fact herein, the uncontroverted evidence establishes that the ownership of Grand Pharmacy Discount did not change at any time pertinent to this proceeding; Mr. Mohebbi was the only owner of Grand Pharmacy



Discount between May 2005 and June 5, 2007, the end of the Audit Period. At some point, Mr. Santiago apparently intended to purchase Grand Pharmacy Discount, since he registered "Grand Pharmacy Discount LLC" with the Department of State on March 30, 2007, and signed and submitted an Application for Pharmacy to the Department of Health, Board of Pharmacy in April 2007. At some point, Mr. Mohebbi apparently intended to sell Grand Pharmacy Discount to Mr. Santiago, since he completed the Application for Pharmacy for Mr. Santiago's signature.

28. An application for a new community pharmacy license is, however, to be filed only upon the sale of an existing pharmacy. See Fla. Admin. Code R. 64B16-28.2021. Because he never had an ownership interest in Grand Pharmacy Discount, Mr. Santiago had no legal basis for filing the Application for Pharmacy based on a change of ownership. Nonetheless, on April 19, 2007, the Department of Health, Board of Pharmacy, issued a new license, number PH22661, to Grand Pharmacy Discount pursuant to Mr. Santiago's application, and the previous license, number PH21403, was superseded by the new one. Even so Grand Pharmacy Discount had an active license to operate as a community pharmacy at all times pertinent to this proceeding, since license number PH21403 was not closed until license number PH22661 was issued.

29. Clearly, Mr. Santiago's submission of the application for a new pharmacy license for Grand Pharmacy Discount due to a change in ownership was improper,<sup>11</sup> and the Department of Health, Board of Pharmacy, was not authorized to issue a new license when there was no change in the ownership of Grand Pharmacy Discount. See Fla. Admin. Code R. 64B16-28.2021. Yet AHCA is attempting to collect \$10,655.44 in alleged Medicaid overpayments based solely on AHCA's decision to terminate the Medicaid provider number associated with Grand Pharmacy Discount's license number PH21403, which decision was, in turn, based solely on the erroneous issuance of the new license and the closure of the former license by the Department of Health, Board of Pharmacy.<sup>12</sup>

30. AHCA's decision to terminate Grand Pharmacy Discount's Medicaid provider number associated with pharmacy license number PH21403 was purely discretionary. Section 409.907, Florida Statutes, allows AHCA to "make payments for medical assistance and related services rendered to Medicaid recipients only to an individual or entity who has a provider agreement in effect with the agency." Although the Provider Agreement between Grand Pharmacy Discount and AHCA referenced pharmacy license number PH21403, which was closed effective April 19, 2007, upon issuance of the new license, Section 409.907(6), Florida Statutes, expressly allows AHCA the "option" of revoking

a Medicaid provider agreement even when the ownership of a facility has, in fact, changed. Moreover, the Florida Medicaid Provider General Handbook provides that AHCA may seek to recoup Medicaid payments made to a previous owner when there has been no timely notification of a change in ownership that has, in fact, occurred.

31. Under the circumstances of this case, AHCA should opt not to revoke Grand Pharmacy Discount's Medicaid Provider Agreement during the period of time covered by the Audit Period and should exercise its discretion not to recoup Medicaid payments paid to Grand Pharmacy Discount by withdrawing the January 24, 2008, FAR. There was no transfer of ownership of Grand Pharmacy Discount, and Grand Pharmacy Discount's dispensing medications under the Medicaid program presented no danger of harm to the public since Grand Pharmacy Discount was, at all pertinent times, a duly-licensed community pharmacy and Mr. Mohebbi was a duly-licensed pharmacist. In addition, AHCA has made no allegations that Grand Pharmacy Discount committed a substantive violation of the statutes and rules applicable to Medicaid payments during the Audit Period or that any of the Medicaid claims submitted by Grand Pharmacy Discount for reimbursement were improper. Rather, the FAR seeking recoupment of \$10,655.44 is based on a technical violation caused by the

improper submission of an application for pharmacy license by Mr. Santiago.

Sanctions

32. AHCA's decision to impose a \$1,000.00 administrative fine was based on the following grounds: "Failed to report CHOW [change of ownership] and allowed unauthorized use of provider # to submit Rx claims."

33. Section 409.913(15), Florida Statutes, provides in pertinent part:

The agency shall seek a remedy provided by law, including, but not limited to, any remedy provided in subsections (13) and (16) and s. 812.035, if:

\* \* \*

(e) The provider is not in compliance with provisions of Medicaid provider publications that have been adopted by reference as rules in the Florida Administrative Code; with provisions of state or federal laws, rules, or regulations; with provisions of the provider agreement between the agency and the provider; or with certifications found on claim forms or on transmittal forms for electronically submitted claims that are submitted by the provider or authorized representative, as such provisions apply to the Medicaid program;

\* \* \*

(o) The provider has failed to comply with the notice and reporting requirements of s. 409.907.

\* \* \*

A provider is subject to sanctions for violations of this subsection as the result of actions or inactions of the provider, or actions or inactions of any principal, officer, director, agent, managing employee, or affiliated person of the provider, or any partner or shareholder having an ownership interest in the provider equal to 5 percent or greater, in which the provider participated or acquiesced.

34. Based on the findings of fact herein, there was no sales agreement between Mr. Mohebbi and Mr. Santiago, and no evidence was presented to establish a specific date on which Mr. Mohebbi was to transfer ownership of Grand Pharmacy Discount to Mr. Santiago. Consequently, there is no way to calculate the date on which Mr. Mohebbi was required to give AHCA notice of the proposed change of ownership to Mr. Santiago. Therefore, AHCA has failed to prove by clear and convincing evidence that Grand Pharmacy Discount violated the requirements in Section 409.907(6), Florida Statutes, and the Florida Medicaid Provider General Handbook by failing to notify AHCA of a proposed change of ownership at least 60 days prior to the proposed change. AHCA cannot impose sanctions on Grand Pharmacy Discount for failure "to report CHOW."

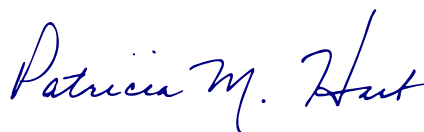
35. In addition, for the reasons stated above, AHCA should not impose sanctions on Grand Pharmacy Discount for its submission of Medicaid claims under its Medicaid provider number associated with pharmacy license number PH21403 because a new

pharmacy license should not have been issued to Mr. Santiago. Had this new license not been improperly applied for and issued, Grand Pharmacy Discount's pharmacy license number PH21403 would not have been closed and Grand Pharmacy Discount's Medicaid Provider Agreement would have been valid during the Audit Period.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Health Care Administration enter a final order withdrawing the Final Audit Report issued January 24, 2008, with respect to both the \$10,655.44 overpayment and the \$1,000.00 administrative fine.

DONE AND ENTERED this 21st day of December, 2009, in Tallahassee, Leon County, Florida.



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PATRICIA M. HART  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 21st day of December, 2009.

ENDNOTES

<sup>1/</sup> All references to the Florida Statutes are to the 2007 edition unless otherwise indicated.

<sup>2/</sup> In an application submitted to the Board of Pharmacy and dated June 5, 2007, Edward Vince was identified as the pharmacy manager, but the date he assumed the position was listed as June 20, 2007. See Petitioner's Exhibit 5 at page 41.

<sup>3/</sup> It is noted that Florida Administrative Code Rule 59G-5.020 was updated on May 24, 2007, apparently to incorporate the January 2007 edition of the Medicaid Provider General Handbook. Some of the pertinent provisions of the January 2007 edition of the publication differ from the provisions of the October 2003 edition, and the differences are noted in the endnotes below.

<sup>4/</sup> Petitioner's Exhibit 15 at 2-3, page 134, January 2007; Petitioner's Exhibit 15 at 2-2, page 128, October 2003.

<sup>5/</sup> Id.

<sup>6/</sup> Petitioner's Exhibit 15 at 2-14, page 135, January 2007. The October 2003 edition provides:

**Assignment of Unique Provider Number** When a provider is enrolled, the provider is assigned a nine-digit provider number to identify the provider on the Florida Medicaid Management Information System (FMMIS). . . .

Petitioner's Exhibit 15 at 2-2, page 130, October 2003.

<sup>7/</sup> Petitioner's Exhibit 15 at 2-14, page 135, January 2007. The October 2003 edition provides:

**Non-Transfer Of Provider Numbers** The provider number is assigned to the entity that signed the agreement and cannot be transferred to or used by any other person or entity. The provider number entered on a claim form must identify the provider who actually performed the service.

Petitioner's Exhibit 15 at 2-2, page 130, October 2003.

<sup>8</sup>/ Petitioner's Exhibit 15 at 2-41, page 136, January 2007;  
Petitioner's Exhibit 15 at 2-36, page 131, October 2003.

<sup>9</sup>/ Id.

<sup>10</sup>/ Petitioner's Exhibit 15 at 2-42, page 137, January 2007;  
Petitioner's Exhibit 15 at 2-37, page 132, October 2003.

<sup>11</sup>/ AHCA did not present any evidence regarding the validity of the April 19, 2007, license pursuant to the provisions of Chapter 465, Florida Statutes, nor did it present any evidence regarding the effect of the new license on Grand Pharmacy Discount's existing license, number PH21403, when Mr. Santiago had no ownership interest in Grand Pharmacy Discount.

<sup>12</sup>/ AHCA has made no allegations that the claims for reimbursement made between April 19, 2007, and June 5, 2007, were substantively unsupported.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.