

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,  
BOARD OF PHARMACY,

Petitioner,

vs.

Case No. 14-0883PL

CHRISTOPHER STEPHEN  
SWITLYK, R.PH.,

Respondent.

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RECOMMENDED ORDER

On March 26, 2014, a final administrative hearing in this case was held in Tallahassee, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings (DOAH). The Respondent, who was in prison in Estill, South Carolina, participated in the hearing by telephone.

APPEARANCES

For Petitioner: Yolanda Y. Green, Esquire  
Lucas L. May, Esquire  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265

For Respondent: Christopher S. Switlyk, pro se  
Register No. 53913-018  
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STATEMENT OF THE ISSUE

The issue in this case is whether the Respondent's license to practice pharmacy should be revoked or otherwise disciplined based on conduct that resulted in criminal convictions and his failure to report the convictions to the Board of Pharmacy (Board), as required.

PRELIMINARY STATEMENT

The Petitioner, Department of Health (DOH), filed an Amended Administrative Complaint against the Respondent, Christopher Stephen Switlyk, R.Ph., alleging that he was convicted in federal court of crimes that relate to his practice of, or his ability to practice, his licensed profession and that he failed to report the conviction to the Board, as required. The Respondent requested a hearing, and the matter was referred to DOAH.

At the DOAH hearing, DOH moved Petitioner's Exhibits 1 through 5 into evidence and questioned the Respondent under oath. The Respondent testified in his case-in-chief after DOH rested, and he offered numerous exhibits in evidence. The evidentiary record was left open to allow the Respondent time to file his proposed exhibits, DOH to file an additional exhibit, and for rulings on objections. On April 11, 2014, DOH filed an additional exhibit, Petitioner's Exhibit 6. On April 29 and 30, 2014, the Petitioner's Exhibit 6 and the Respondent's Exhibits 2, 5, and 7 were admitted in evidence; the Respondent's other

exhibits either were not filed, or DOH's objections to them were sustained; and the evidentiary record was closed. The Respondent moved for reconsideration of those rulings, and DOH responded by withdrawing its objections to the untimeliness of Respondent's Exhibits 3 and 8, and those exhibits are admitted in evidence. The Respondent's motion for reconsideration, as well as DOH's response, referenced additional proposed Respondent's Exhibits 9 and 10 (which DOH opposed), but those additional exhibits were not filed at DOAH, and DOH's objections are sustained.

The Transcript of the final hearing was filed on April 7, 2014. The parties were given until May 13, 2014, to file proposed recommended orders, which have been considered.

#### FINDINGS OF FACT

1. The Respondent has been a licensed pharmacist in Florida and held Florida license PS 36908 at all pertinent times, until it expired on September 30, 2013.

2. On December 14, 2010, the Respondent was indicted in federal court in the Middle District of Florida, Case No. 8:10-CR-530-T-33AEP.

3. On September 5, 2012, the Respondent pled guilty to one count of conspiring to violate 21 U.S.C. sections 841(a)(1), 843(a)(2), 843(a)(3), and 856(a)(1), all of which also constituted violations of 21 U.S.C. section 846, and to two counts of knowingly engaging in monetary transactions, in and

affecting interstate and foreign commerce, in property of a value of greater than \$10,000, which was derived from a felonious criminal conspiracy to traffick in controlled substances, in violation of 18 U.S.C. section 1957. The plea also admitted to the factual basis of the charges--namely, that the Respondent conspired to allow the pharmacy he owned and operated in Tampa, Florida, to be used by the criminal conspiracy to fill and dispense forged, and otherwise illegal, prescriptions for over a million doses of Schedule II controlled substances, mostly oxycodone. The cash proceeds of the illegal sales were treated as income of the pharmacy, and the Respondent and others participated in monetary transactions whereby the illegally-obtained cash was used to purchase cashier's checks and other assets and to conceal the illegal source of the money.

4. Based on his guilty pleas, the Respondent was adjudicated guilty and sentenced to 108 months in prison. The special conditions of supervision in the Judgment require the Respondent to "refrain from engaging in any employment related to dispensing prescriptions drugs either in a pharmacy, pain clinic, or other medical environment."

5. The Respondent's convictions clearly were related to his practice of pharmacy.

6. The Respondent now maintains that he should not have pled guilty and would not have done so but for the incompetence

of his attorney, who advised him to enter into the plea agreement. Based on this ground and others, he has been seeking to have his convictions vacated or his sentence reduced. There is no evidence that he has been successful in altering his convictions or sentence in any way, and the evidence does not suggest that it is likely that he will succeed in accomplishing either objective.

7. The Respondent did not report his guilty pleas to the Board in writing within 30 days. The Respondent contends that his incarceration since his arrest made it impossible for him to do so. However, the greater weight of the evidence was to the contrary. More likely, compliance with the technical requirement to report to the Board in writing was not in the forefront of his mind.

8. The Respondent has been licensed since July 31, 2002. This is the first time action has been taken by DOH and the Board to discipline his license.

9. The Respondent's actions had the potential to expose numerous people to harm from the misuse and abuse of oxycodone and other controlled substances. This violated the trust placed in him by the State of Florida when he became licensed as a pharmacist. His violation of the public trust demonstrated unsound judgment and a lack of integrity. As a result, the Respondent's professional standing among his peers was lowered.

(The only direct evidence of this was the testimony of DOH's expert witness, but this fact can be inferred from the nature of his convictions and sentence, as well as the comments of the sentencing federal judge, who viewed the Respondent's actions as an abuse of the public trust and undeserving of a second chance to be a pharmacist.)

10. The Respondent also contends that he should be treated leniently in this case because alcohol abuse and long-standing emotional and psychological problems were primary reasons for his actions. His contention belies the criminal convictions, which were for intentional crimes and based on voluntary guilty pleas. To the extent that these problems were contributory factors, it is commendable that the Respondent is taking them seriously, and he will benefit in the long run from continuing to seek treatment and counseling to address them. Neither the problems, in themselves, nor the start of treatment and counseling warrants lenient license discipline.

11. The Board has guidelines for the imposition of penalties for license violations. DOH submitted Petitioner's Exhibit 4 as evidence of the guidelines in effect at the time of the Respondent's guilty pleas and convictions. However, the exhibit actually purports to certify the guidelines in effect at various times from January 1, 2011, until December 31, 2013. It appears from the exhibit that as of the time of the Respondent's

guilty pleas and convictions, the range of penalties for a first violation of section 456.072(1)(c), Florida Statutes (2012), for a felony conviction or guilty plea was from a year probation and a \$3,000 fine to a year suspension to revocation and a \$5,000 fine. Fla. Admin. Code R. 64B16-30.001(o)3. (revised Nov. 29, 2006). The range of penalties for a first violation of section 456.072(1)(x), Florida Statutes (2012), is from a \$1,000 fine to a \$2,500 fine and a year probation. Fla. Admin. Code R. 64B16-30.001(o)(18) (revised Nov. 29, 2006). The guidelines in effect at that time also included aggravating circumstances that would justify deviating above the guidelines and mitigating circumstances that would justify deviating below the guidelines. The aggravating circumstances included: a history of previous violations; in the case of negligent acts, the magnitude and scope of the damage or potential damage inflicted on a patient or the general public; and violations of professional practice acts in other jurisdictions. The mitigating circumstances included: in the case of negligent acts, the minor nature of the damage or potential damage to the patient's or the general public's health, safety, and welfare; the lack of previous discipline; restitution of monetary damage suffered by the patient; the licensee's professional standing among his peers; the steps taken by the licensee to ensure the non-occurrence of similar violations in

the future, including continuing education; and the degree of financial hardship incurred by the licensee.

12. In this case, there are no aggravating circumstances justifying a deviation above the guidelines. As for mitigating circumstances: the minor nature of the damage or potential damage to the patient's or the general public's health, safety, and welfare from his failure to report his convictions and guilty pleas to the Board might justify a deviation below the guidelines for that violation, but not for the convictions and pleas, themselves; the Respondent's lack of previous discipline is a mitigating circumstance; restitution of monetary damage to the patient is not relevant; the Respondent's professional standing among his peers has suffered and does not justify a deviation below the guidelines in this case; the Respondent forfeited all ill-gotten gains to the federal government and has incurred financial hardship as a result of the forfeitures and his incarceration, but that does not justify a deviation below the guidelines in this case; the Respondent has taken several continuing education courses since he has been incarcerated, but that does not justify a deviation below the guidelines in this case.

#### CONCLUSIONS OF LAW

13. This is a license discipline case, which places the burden on DOH to prove the charges by clear and convincing



evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

14. DOH has charged the Respondent with being convicted or found guilty of, or entering a plea of guilty to, crimes that relate to the practice of, or the ability to practice, the profession of licensed pharmacist. § 456.072(1)(c), Fla. Stat. (2012). See Rush v. Dep't of Bus. & Prof'l Reg., Bd. of Podiatry, 448 So. 2d 26, 27-28 (Fla. 1st DCA 1984) (although not arising in an office setting, crime of conspiracy to possess and import marijuana was a breach of trust and related to the practice of podiatry, which included dispensing drugs); Doll v. Dep't of Health, 969 So. 2d 1103 (Fla. 1st DCA 2007) (a crime that demonstrated a "lack of honesty, integrity, and judgment" related to the practice of chiropractic medicine); Dep't of Health, Bd. of Medicine v. Algirdas Krisciunas, M.D., Case No. 10-10229PL (Fla. DOAH June 27, 2011; Fla. DOH Amended FO, Aug. 17, 2011) (five counts of dispensing oxycodone and one count of conspiring to distribute oxycodone were related to the practice of medicine, in part, because the respondent's medical license was necessary to execute the crime). DOH proved this charge by clear and convincing evidence.

15. DOH also charged that the Respondent failed to report his convictions and guilty pleas to the Board in writing within

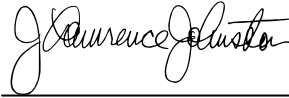
30 days. § 456.072(1)(x), Fla. Stat. (2012). DOH proved this charge by clear and convincing evidence.

16. The Board has guidelines for the imposition of penalties for license violations. Based on a consideration of the Board's penalty guidelines and possible aggravating and mitigating circumstances, the appropriate penalty in this case is revocation. If the Respondent continues to demonstrate his commitment to treatment and counseling for his alcohol abuse and psychological and emotional issues and to continuing education to maintain proficiencies as a pharmacist, he can present those matters to the Board in an application for the issuance of a new license after he is released from prison and has the special condition of supervision in his sentence modified.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Pharmacy enter a final order finding the Respondent guilty as charged and revoking his license to practice pharmacy.

DONE AND ENTERED this 23rd day of June, 2014, in  
Tallahassee, Leon County, Florida.



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J. LAWRENCE JOHNSTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of June, 2014.

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.