

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BRUCE BARRY FIGOTEN
19812 Turtle Springs Way
Northridge, California 91326

Pharmacy License No. RPH 27285

Respondent.

Case No. 2446

OAH No. L2001100484

PROPOSED DECISION

Administrative Law Judge Karl S. Engeman, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California, on February 5, 2002.

Stephen S. Handin, Deputy Attorney General, represented complainant Patricia F. Harris, the Executive Officer of the Board of Pharmacy.

Respondent Bruce Barry Figoten represented himself.

The matter was submitted on February 5, 2002.

FACTUAL FINDINGS

1. On August 5, 1971, the Board of Pharmacy (the "Board") issued Pharmacist License Number RPH 27285 to Bruce Barry Figoten ("respondent"). This license is in full force and effect until September 30, 2002.

2. On November 29, 1999, in the United States District Court, Central District of California (Western Division), respondent was convicted upon a plea of guilty of one count

of violating Title 18, United States Code, section 371¹, Conspiracy to Commit Mail Fraud, a felony. Following the preparation of a probation report, respondent was sentenced on April 25, 2001, to three years probation one condition of which is the payment of \$54,000 in restitution to the insurance company defrauded in the manner described below.

3. The facts and circumstances are taken from the plea agreement which was the basis for respondent's conviction. Sometime prior to March 1988² and continuing until at least August 1994, respondent and his former spouse, Gail Marlis, agreed to defraud Provident Life and Accident Insurance Company which had issued Marlis a disability policy. Marlis asked friends to falsely verify that she had been employed by their company Optimism, Inc. so she could maintain eligibility for disability benefits under the Provident policy. In connection with disability claims made under the policy on or about May 25, 1989, January 10, 1991, and March 20, 1993, respondent and Marlis submitted forms to Provident using the United States mails which falsely represented that Marlis had worked at Optimism, Inc. including a false job description, W-2 forms, and tax returns. Respondent and Marlis prepared these documents. In addition to falsely representing that Marlis had worked at Optimism, Inc., in order to maintain Marlis' disability benefits, respondent and Marlis also agreed to falsely represent to Provident that Marlis was disabled and unable to return to work. Marlis signed monthly supplemental statement of claim forms. Respondent would type out the diagnoses himself and ask doctors who were friends to sign them without examining Marlis. One doctor signed more than 20 claim forms at respondent's request. After the forms were signed, respondent would mail them to Provident. As a result of respondent's and Marlis' fraudulent submission of Marlis' claims and monthly supplemental claims forms, Provident paid Marlis benefits totaling \$294,745.47.

4. As a result of the conviction set out above, respondent's chiropractic license was revoked following a hearing in April 2001. Respondent appealed and the revocation was stayed pending the outcome of the appeal. On or about January 23, 2002, respondent's appeal was denied. He is in the process of selling his chiropractic practice and exploring what role, if any, he can legally perform in the practice. He has done physical therapy work and helped another chiropractor organize his practice. He intends to seek reinstatement of his chiropractic license as soon as the law permits.

5. Respondent is required to perform three years or 300 hours of community service. He has been working at least 8 hours per week at the Meet Each Need with Dignity free clinic in Pacoima, California. He serves as one of approximately five volunteer pharmacists in the clinic's pharmacy. He helped set-up a computer program to track medications and their expiration dates. The clinic has only one paid staff member, a manager, who testified in respondent's behalf at the administrative hearing. She is generally aware of respondent's conviction, as are approximately five other volunteers who work with

¹ The accusation erroneously alleges a violation of section 1341. However, the documents including the court records and a related action against respondent's chiropractor's license establish the violation to be of section 371, Conspiracy to Commit Mail Fraud. Such documents were received without objection and respondent presented his defense as if the accusation had been properly pled so no prejudice was apparent.

² The accusation was amended to strike the year "1999" on page 3, line 28 and to insert the year "1988."

respondent. She described the critical need for pharmacists at the free clinic and respondent's valuable contributions since in or about August of 2000 when he began work there.

6. Respondent is remorseful about his actions and acknowledges that his fraudulent conduct was not a single event but a pattern persisting over several years. He and Marlis are no longer married and he is engaged to a woman who is aware of his past. Respondent has five children, three of whom he supports. Respondent underwent quadruple bypass surgery on an emergency basis on October 31, 2000, and suffered a mild heart attack on February 3, 2001. He attributes his hypertension and related cardiac problems to the stress caused by his legal problems. He has attended group therapy once a week since 1993 which has provided valuable insight into his character and the weaknesses that led to his participation in the fraudulent schemes. He realizes that he cannot work as a pharmacist in a conventional setting for the foreseeable future and seeks only the ability to continue as a pharmacist in the free clinic where he now volunteers.

7. The Board incurred actual and reasonable costs of investigation and prosecution of \$965.50.

LEGAL CONCLUSIONS

1. California Business and Professions Code section 490 provides as follows:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

2. California Business and Professions Code section 4301 provides in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

3. Respondent was convicted of an offense substantially related to the qualifications, functions and duties of a licensed pharmacist. The offense involved knowingly making certificates and other documents that falsely represented the existence of facts. The offense involved moral turpitude, dishonesty, fraud, deceit and corruption. Respondent is thereby subject to discipline in accordance with Business and Professions Code sections 490 and 4301, subsections (f), (g), and (l).

4. The Board is entitled to recover its reasonable investigation and enforcement costs under Business and Professions Code section 125.3.

5. Respondent acknowledged that his conduct warrants significant discipline against his pharmacist's license. His only request is to be placed on probation which would allow him to continue to work in the free clinic on a part-time basis, and no other place. However the clinic, while licensed by the Department of Health Services as a free clinic, by its nature provides even less structure and oversight than would a conventional hospital or pharmacy in which respondent might work under the direct supervision of a pharmacist

aware of his past. Thus, revocation of respondent's pharmacist's license is the appropriate sanction in this matter.

ORDER

1. Pharmacist License No. RPH 27285 issued to respondent Bruce Barry Figoten is REVOKED.

2. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$965.50. Respondent shall make such payments in accordance with a schedule determined by the Board.

DATED:

February 14, 2002



KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BRUCE BARRY FIGOTEN
19812 Turtle Springs Way
Northridge, California 91326

Case No. 2446

OAH No. L2001100484

Pharmacy License No. RPH 27285

Respondent.

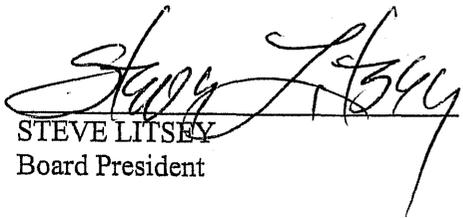
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This Decision shall become effective on April 28, 2002.

IT IS SO ORDERED March 29, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By: 
STEVE LITSEY
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 STEPHEN S. HANDIN, State Bar No. 71100
Supervising Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2538
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant

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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:	Case No.
12 BRUCE BARRY FIGOTEN	A C C U S A T I O N
13 19812 Turtle Springs Way	
14 Northridge, California 91326	
15 Pharmacist License No. RPH 27285	
16 Respondent.	

17 Complainant alleges:

18 **PARTIES**

- 19 1. Patricia F. Harris ("Complainant") brings this Accusation solely in
20 her official capacity as the Executive Officer of the Board of Pharmacy, Department of
21 Consumer Affairs.
- 22 2. On or about August 5, 1971, the Board of Pharmacy issued
23 Pharmacist License Number RPH 27285 to Bruce Barry Figoten ("Respondent"). The
24 Pharmacist license was in full force and effect at all times relevant to the charges
25 brought herein and will expire on September 30, 2002, unless renewed.

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JURISDICTION

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2 3. This Accusation is brought before the Board of Pharmacy
3 ("Board"), under the authority of the following sections of the Business and Professions
4 Code ("Code").

5 4. Section 4300 permits the Board to take disciplinary action to
6 suspend or revoke a license or permit.

7 5. Section 118(b) of the Code states the suspension, expiration, or
8 forfeiture by operation of law of a license issued by a Board in the department, or its
9 suspension, forfeiture, or cancellation by order of the Board or by order of a court of
10 law, or its surrender without the written consent of the Board, shall not, during any
11 period in which it may be renewed, restored, reissued, or reinstated, deprive the Board
12 of its authority to institute or continue a disciplinary proceeding against the licensee.

13 6. Section 4301 states that the Board shall take action against any
14 holder of a license who is guilty of unprofessional conduct or whose license has been
15 procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct
16 shall include, but is not limited to, any of the following:

17 (f) The commission of any act involving moral turpitude, dishonesty,
18 fraud, deceit, or corruption, whether the act is committed in the course of relations as a
19 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

20 (g) Knowingly making or signing any certificate or other document that
21 falsely represents the existence or nonexistence of a state of facts.

22 (l) The conviction of a crime substantially related to the qualifications,
23 functions, and duties of a licensee.

24 (o) Violating or attempting to violate, directly or indirectly, or assisting
25 in or abetting the violation of or conspiring to violate any provision or term of Chapter 9
26 (commencing with Section 4000) of the Business and Professions Code or of the
27 applicable federal and state laws and regulations governing pharmacy, including
28 regulations established by the board.

1 ("the insured") willfully and knowingly combined, conspired and agreed with other
2 persons to commit mail fraud by knowingly devising and participating in a scheme to
3 defraud and to obtain money and property by means of false and fraudulent pretense,
4 representations and promises by the following ways:

5 i. Respondent falsified documents showing that the insured was
6 employed by Optimism, Inc. as a financial controller, and had received income from
7 Optimism, Inc. prior to the insured's disability claim. Respondent and the insured
8 provided Provident with these false documents.

9 ii. Respondent and the insured made claims under the Policy for
10 benefits, falsely claiming that the insured was employed by Optimism, Inc. Respondent
11 falsified monthly supplemental claim forms certifying that the insured was disabled and
12 unable to return to work or work on a full-time basis.

13 iii. Respondent asked another chiropractor to falsely certify that the
14 insured was disabled by signing the monthly supplemental claim forms.

15 iv. Respondent forged the signature of other chiropractors on the
16 monthly supplemental claim forms.

17 v. Respondent billed the insured's health insurance carrier for
18 chiropractic treatments and examinations of the insured that had not occurred.

19 vi. Respondent created false tax return and false Internal Revenue
20 Service W-2 forms for calendar years 1986, 1988 and 1989 which falsely stated and
21 represented that the insured received income from Optimism, Inc. The insured
22 provided Provident with these false documents which were created by Respondent.
23 Subsequently, at Respondent's direction, the insured signed numerous disability claims
24 that were received by Provident, falsely stating that at the time of her disability she was
25 employed by Optimism, Inc. Additionally, Respondent falsified a job description of the
26 insured on Optimism, Inc. stationary that was received by Provident.

27 vii. Respondent forged a chiropractor's signature on several
28 supplementary statement of claim forms and stated that the chiropractor had examined

