

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:

**PATRICK WILLIAM SLIFKA
21999 115th Street
Cresco, IA 52136
Pharmacist No. 37647**

Respondent.

Case No. 4622

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 6, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4622 (Accusation) against Patrick William Slifka (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about April 5, 1983, the Board of Pharmacy (Board) issued Pharmacist License No. 37647 (License) to Respondent. The License was in full force and effect at all times relevant to the charges brought in the Accusation and expired on March 31, 2013, and has not been renewed. This lapse in licensure, however, pursuant to Business and Professions Code section

1 118(b) does not deprive the Board of its authority to institute or continue this disciplinary
2 proceeding.

3 3. On or about September 26, 2013, Respondent was served by Certified and First Class
4 Mail copies of the Accusation, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
7 is required to be reported and maintained with the Board. Respondent's address of record was
8 and is: 21999 115th Street, Cresco, IA 52136.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. The aforementioned documents were received by the Respondent as evidence by a
13 U.S. Postal Service Return Receipt bearing Respondent's signature and dated September 30,
14 2013.

15 6. Government Code section 11506 states, in pertinent part:

16 (c) The respondent shall be entitled to a hearing on the merits if the respondent
17 files a notice of defense, and the notice shall be deemed a specific denial of all parts
18 of the accusation not expressly admitted. Failure to file a notice of defense shall
19 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
20 may nevertheless grant a hearing.

21 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
22 of the Accusation, and therefore waived his right to a hearing on the merits of the Accusation.

23 8. Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions
26 or upon other evidence and affidavits may be used as evidence without any notice to
27 respondent.

28 9. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on

1 file at the Board's offices regarding the allegations contained in the Accusation, finds that the
2 charges and allegations in the Accusation are, separately and severally, found to be true and
3 correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$1,462.50 as of December 31, 2013.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Patrick William Slifka has
9 subjected his Pharmacist License No. 37647 to discipline.

10 2. The agency has jurisdiction to adjudicate this case by default.

11 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist based upon
12 the following violations alleged in the Accusation which are supported by the evidence contained
13 in the Default Decision Evidence Packet in this case.:

14 a. Respondent violated Business and Professions Code section 4301, subd. (l), in that
15 Respondent was convicted of a crime substantially related to the practice of pharmacy.

16 b. Respondent violated Business and Professions Code section 4301, subd. (f), in that
17 Respondent engaged in an act of moral turpitude, dishonesty, fraud, deceit, or corruption.

18 c. Respondent violated Business and Professions Code section 4301, subd. (n), in that
19 Respondent was disciplined by the Iowa Board of Pharmacy and the North Dakota Board of
20 Pharmacy.

21 ///

22 ///

23 ///

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

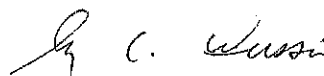
IT IS SO ORDERED that Pharmacist No. 37647, heretofore issued to Respondent Patrick William Slifka, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 7, 2014.

It is so ORDERED ON March 6, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER
Board President

11249855.DOC
DOJ Matter ID:SA2013110879

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN
Deputy Attorney General
4 State Bar No. 193338
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5341
Facsimile: (916) 327-8643
7 E-mail: Geoffrey.Allen@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4622

12 **PATRICK WILLIAM SLIFKA**
13 **21999 115th Street**
14 **Cresco, IA 52136**

ACCUSATION

15 **Pharmacist License No. RPH 37647**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about April 5, 1983, the Board of Pharmacy issued Pharmacist License Number
22 RPH 37647 (License) to Patrick William Slifka (Respondent). The License was in full force and
23 effect at all times relevant to the charges brought herein expired on March 31, 2013, and has not
24 been renewed.

25 ///

26 ///

27 ///

28

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4301 of the Code states:

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.

....

(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.

....

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

....

5. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (Criminal Conviction)

5 6. Respondent is subject to disciplinary action under Code section 4301, subd. (l), in
6 that Respondent was convicted of a crime substantially related to the practice of pharmacy. The
7 circumstances are as follows:

8 7. On or about September 16, 2009, in a criminal proceeding entitled *United States of*
9 *America v. Patrick Slifka* in the United States District Court, Northern District of Iowa, Case
10 Number CR 09-2025LRR, Respondent was convicted by plea of guilty of violating 18 U.S.C.
11 section 1343 [wire fraud] and 18 U.S.C. section 1028A, subd. (a)(1) [aggravated identity theft].
12 The circumstances are as follows:

13 a. From as early as January 2002 and continuing in and through January 2008,
14 Respondent submitted fraudulent claims to his personal family health insurance provider,
15 Wellmark Blue Cross / Blue Shield for payment on prescription medication that were not
16 prescribed by a physician and which oftentimes were not dispensed, The total amount of
17 Respondent's fraudulent claims exceeded \$100,000.00. As a part of his scheme, Respondent
18 utilized a Drug Enforcement Agency number assigned to another health care professional without
19 authorization to do so.

20 b. On or about May 5, 2010, Respondent was sentenced as follows: 48 months
21 imprisonment; 3 years supervised release upon release from imprisonment; \$25,000 fine; and
22 \$135,594.32 in restitution to be paid to Wellmark Blue Cross / Blue Shield.

23 SECOND CAUSE FOR DISCIPLINE

24 (Dishonesty)

25 8. Respondent is subject to disciplinary action under section Code section 4301, subd.
26 (f), in that Respondent engaged in an act of moral turpitude, dishonesty, fraud, deceit, or
27 corruption, as described above in paragraph 7.

28 ///

1 THIRD CAUSE FOR DISCIPLINE

2 (Out of State Discipline)

3 9. Respondent is subject to disciplinary action pursuant to Code section 4301, subd. (n),
4 in that he was disciplined by the Iowa Board of Pharmacy ("Iowa Board"), as follows: On or
5 about December 29, 2009, pursuant to the Findings of Fact, Conclusions of Law, Decision and
6 Order in the disciplinary proceeding entitled "In the Matter of the Pharmacist License of Patrick
7 W. Slifka" Case No. 2007-6, the Iowa Board indefinitely suspended Respondent's license to
8 practice as a pharmacist in the State of Iowa. True and correct copies of the Findings of Fact,
9 Conclusions of Law, and Order and the related document(s) are attached hereto as **Exhibit A** and
10 incorporated herein.

11 10. Respondent is subject to disciplinary action pursuant to Code section 4301, subd. (n),
12 in that he was disciplined by the North Dakota Board of Pharmacy ("North Dakota Board"), as
13 follows: On or about June 23, 2010, pursuant to the Findings of Fact, Conclusions of Law, and
14 Order in the disciplinary proceeding entitled "In the Matter of the Certificate of Registration of
15 Patrick W. Slifka R. Ph. As Licensed Pharmacist Entitled to Practice in the State of North
16 Dakota, Respondent", Case No. 2009-12-14-173, the North Dakota Board indefinitely suspended
17 Respondent's license to practice as a pharmacist in the State of North Dakota. True and correct
18 copies of the Findings of Fact, Conclusions of Law, and Order and the related document(s) are
19 attached hereto as **Exhibit B** and incorporated herein.

20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board of Pharmacy issue a decision:

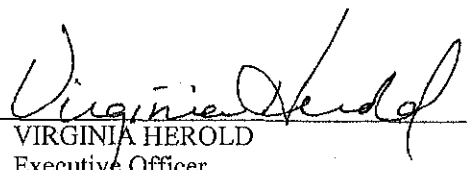
- 23 1. Revoking or suspending Pharmacist License Number RPH 37647, issued to Patrick
24 William Slifka.;
- 25 2. Ordering Patrick William Slifka to pay the Board of Pharmacy the reasonable costs of
26 the investigation and enforcement of this case, pursuant to Business and Professions Code section
27 125.3;

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Taking such other and further action as deemed necessary and proper.

DATED: 9/6/13



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SA2013110879
11156182.doc

EXHIBIT A

BEFORE THE IOWA BOARD OF PHARMACY

IN THE MATTER OF:)	CASE NO: 2007-6
)	DIA NOS. 09PHB036
Pharmacist License of)	
PATRICK W. SLIFKA)	
License No. 17742)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	DECISION AND ORDER

On October 8, 2009, the Iowa Board of Pharmacy (Board) found probable cause to file a Statement of Charges against pharmacist Patrick W. Slifka (Respondent). Respondent was charged with:

- Count I: Lack of Professional Competency
- Count II: Conviction of a Felony Related to Pharmacy
- Count III: Making False and Fraudulent Statements

The Board also filed an Emergency Order, pursuant to Iowa Code section 17A.18A(2009), which immediately suspended Respondent's pharmacist license. A hearing was held on November 18, 2009 at 9:00 a.m. in the Board Conference Room, 400 SW 8th Street, Des Moines, Iowa. The following members of the Board served as presiding officers for the hearing: Vernon H. Benjamin, Chairperson; Susan Frey; Edward L. Maier; Mark Anliker, Margaret Whitworth, and Ann Diehl. Assistant Attorney General Scott Galenbeck represented the state. Respondent was represented by attorney Connie Diekema. The hearing was closed to the public at Respondents' request, pursuant to Iowa Code §272C.6(1). The record was held open for a few hours following the hearing for Respondent to submit witness statements of the physician(s) interviewed by the Federal Bureau of Investigation (FBI). When Respondent's attorney discovered that she did not have these documents in her file, she submitted Respondent's written statement to the FBI as Exhibit B. The state did not object, and Exhibit B was admitted. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was asked to prepare the Board's written Decision and Order for their review, in conformance with their deliberations.

THE RECORD

The record includes the testimony of the witnesses, State Exhibits 1-5 (See Exhibit Index for description) and Respondent Exhibits A and B (Exhibit A includes 50 letters in support of Respondent and Exhibit B is Respondent's Voluntary Written Statement dated 1/8/08)

FINDINGS OF FACT

1. On November 18, 1991, the Board issued Respondent license number 17742, which authorized him to engage in the practice of pharmacy in the state of Iowa, subject to the laws of the state and the rules of the Board. Respondent's pharmacist license is currently suspended, pursuant to the Board's Emergency Order issued on October 8, 2009. (State Exhibits 4, 5)
2. Respondent has been employed as a full-time pharmacist by the Medicap Pharmacy in Cresco, Iowa (hereinafter "Medicap Pharmacy") since 1997. The Medicap Pharmacy is owned by pharmacist Larry Shroyer. Respondent has a small (less than 5%) ownership interest in pharmacy. (Testimony of Respondent; Larry Shroyer)
3. Respondent had a family health insurance policy issued by Wellmark Blue Cross/Blue Shield (hereinafter "Wellmark") at all times relevant to this decision. The policy included a prescription drug benefit. Under the policy's terms, Respondent paid the entire retail cost of prescriptions at the time of purchase and then submitted a claim to Wellmark for reimbursement. The pharmacy that filled the prescription could file an electronic claim on Respondent's behalf directly with Wellmark. Wellmark's pharmacy benefit managers then reimbursed Respondent directly by sending him a check at his home address for the retail cost of the prescription. (Testimony of Respondent; Larry Shroyer; State Exhibit 1)
4. In January 2008, the Federal Bureau of Investigation (FBI) visited the Medicap Pharmacy to question Respondent about fraudulent health insurance claims for prescription drugs that he had filed for himself and his family. A Board compliance officer was also present for the FBI interview. During the interview, Respondent admitted that he had filed false insurance claims and agreed to cooperate with the investigation. On January 8, 2008, Respondent signed a voluntary written statement admitting that:

- He began filing false claims for falsified prescriptions with his Wellmark insurance policy sometime in 2004 and stopped in early 2007;¹
- He filed the false claims knowingly and intentionally and sent them electronically through the Medicap computer system;
- He filed the claims under his own name, his wife's name, and the names of his three children;
- His false claims caused Wellmark to issue checks to him that were mailed to his residence.

Respondent further admitted that his motivation for filing the false claims was "financial" and stated that his family and his business partner had no knowledge of the false claims. He had "no explanation as to why I initiated these criminal activities" but admitted that he knew it was wrong and a criminal offense. Respondent informed his employer, Larry Shroyer, of his illegal and fraudulent prescription claims later that same day. (Testimony of Respondent; Respondent Exhibit B; State Exhibit 1)

5. According to Wellmark's records, Respondent filed 1411 claims for reimbursement for prescriptions for himself and his family between September 2000 and October 2005, and he received \$130,000 in reimbursement for the prescriptions. Wellmark identified three physicians who purportedly wrote the majority of the prescriptions. (State Exhibit 1)

6. The FBI interviewed Larry Shroyer, owner of the Medicap Pharmacy, on January 23, 2008, and a Board compliance officer was present for the interview. Mr. Shroyer reported that he had decided not to fire Respondent because it would be difficult and expensive to replace him. Mr. Shroyer believed that Respondent felt bad about what he had done and would not file any future false prescription claims. Respondent continued to work as a pharmacist at Medicap Pharmacy until the Board suspended his pharmacist license through its Emergency Order issued on October 8, 2009. (Testimony of Respondent; Larry Shroyer; State Exhibits 1, 5)

7. On September 8, 2009, Respondent was charged in the United States District Court for the Northern District of Iowa with one count of Wire Fraud, in

¹ At hearing, however, Respondent testified that he stopped filing false claims in July 2007. (Testimony of Respondent)

violation of 18 U.S.C. § 1343, and one count of Aggravated Identity Theft, in violation of 18 U.S.C. § 1028A(a)(1). The Trial Information alleged, in part:

- From as early as January 2002 and continuing through and about January 2008, Respondent devised a scheme and artifice to defraud and to obtain money and property by means of false pretenses;
- Respondent knowingly submitted claims to his personal family health insurance provider, Wellmark Blue Cross/Blue Shield, for payment on prescription medications that were not prescribed by a licensed physician and which were oftentimes not dispensed;
- Respondent used the unique Drug Enforcement Administration (DEA) number assigned to health care professionals to support his claim that the medication was prescribed to himself and his family when, in truth, no such valid prescription was issued;
- On some occasions Respondent submitted fraudulent claims for prescriptions that were not validly issued by a licensed physician but that Respondent knowingly and unlawfully filled for himself and for other family members;
- On other occasions, Respondent submitted fraudulent claims for prescriptions, purportedly issued to himself or other family members, that were not validly issued by a licensed physician and that were never filled;
- In either case, upon approval by Wellmark of the fraudulently submitted prescription drug claim, Respondent would personally receive reimbursement payment to which he was not entitled.

(State Exhibit 2) On September 16, 2009, Respondent entered voluntary guilty pleas before a United States Magistrate Judge on both counts in the Trial Information. The court recommended that the pleas of guilty be accepted and that Respondent be adjudged guilty and have sentence imposed. Respondent was released pending sentencing. (State Exhibit 3; Testimony of Respondent)

8. The federal court has not yet scheduled a date for Respondent's sentencing because it has not reviewed the records to determine the appropriate amount of restitution. Respondent's probation officer has told him that the federal court is very busy, and his case has been given a lower priority. (Testimony of Respondent)

9. At hearing before the Board, Respondent admitted that he used the Medicap Pharmacy claim processing system to file false claims for reimbursement at a time when he was employed by Medicap as a full-time pharmacist. Respondent admitted that he falsified prescriptions for himself and his family members that were never filled but for which he sought reimbursement from his insurance company.

Respondent denies that the dollar amount of his false insurance claims was as high as the \$130,000 figure suggested by Wellmark. Respondent estimates that the total value of his falsified claims is closer to \$25,000 and that the rest of the claims were for prescriptions that were verbally authorized by physicians and that he actually filled for himself or his family. However, Respondent admits that the Medicap pharmacy records will not include all of the required documentation for these prescriptions. Respondent claimed that prescribers authorized some prescription refills over the phone but that he failed to document the prescriber's authorization in the pharmacy record and may not have created a hard copy for the prescription. Respondent further claimed that on a few occasions physicians have allowed him to select an appropriate medication for a family member without first examining the patient and without providing any written or verbal authorization for Respondent to dispense the drug to his family member. Respondent admits that on these occasions he likely failed to document a prescription in the pharmacy record and further admits that the physicians may not have documentation of the prescriptions in their patient records. (Testimony of Respondent)

10. Respondent submitted fifty letters of support from family members and members of his community, including health care providers. (Testimony of Respondent; Respondent Exhibit 50)

CONCLUSIONS OF LAW

Iowa Code §155A.12(1)(2009) provides, in relevant part, that the Board may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a pharmacist license, or place a license on probation if the Board finds that a licensee has:

1. Violated any provision of this chapter or any rules of the Board adopted under this chapter.

Court I – Lack of Professional Competency

657 IAC 36.1(4)(b) provides that the Board may impose any of the disciplinary sanctions set out in subrule 36.1(2) when it determines that a licensee is guilty of professional incompetency. Professional incompetency includes but is not limited to a willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

The preponderance of the evidence established that Respondent violated Iowa Code §155A.12(1)(2009) and 657 IAC 36.1(4)(b) by his willful and repeated departures from and failures to conform to the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa. Honesty and truthfulness are essential components of competent pharmacy practice. Minimal standards of practice require pharmacists to fill only properly authorized prescriptions, to submit insurance claims only for properly authorized and filled prescriptions, and to maintain proper records of all prescriptions. Respondent has admitted filing insurance claims for himself and his family members for prescriptions that were not properly authorized and which were never in fact filled. Respondent has further admitted filling prescriptions for himself and his family members that were not properly authorized and documented. Respondent has admitted that he did not always make and keep required records for the prescriptions that he filled for himself and his family members.

Count II: Conviction of a Felony Related to Pharmacy

657 IAC 36.1(4)(j) provides that the Board may impose any of the disciplinary sanctions set out in subrule 36.1(2) when it determines that a licensee is guilty of violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy or the distribution of controlled substances, prescription drugs, or nonprescription drugs.

The preponderance of the evidence established that Respondent violated §155A.12(1)(2009) and 657 IAC 36.1(4)(j) when he pled guilty in federal court to the crimes of Wire Fraud and Aggravated Identity Theft. The factual basis for these crimes involved Respondent's scheme and artifice to submit fraudulent claims to his personal family health insurance provider for payment on prescriptions medications that were not prescribed by a licensed physician and

oftentimes were not dispensed. Respondent's convictions clearly relate to the practice of pharmacy because he used his position as a pharmacist at Medicap Pharmacy to falsify prescriptions and to submit false insurance claims using Medicap's electronic claim filing system.

Count III: Making False and Fraudulent Statements

Iowa Code § 155A.21 provides that it is a serious misdemeanor to possess a drug or device limited to dispensation by prescription, unless the drug or device was so lawfully dispensed.

Iowa Code §155A.23 provides, in relevant part, that a person shall not perform or cause the performance of or aid and abet any of the following acts:

...

2. Willfully making a false statement in any prescription, report, or record required by this chapter.

...

4. Making or uttering any false or forged oral, written, electronic, or facsimile prescription or oral, written, electronic or facsimile order.

The preponderance of the evidence established that Respondent violated Iowa Code §155A.12(1), 155A.21, and 155A.23(2) and (4) by making false prescriptions and by making false and fraudulent statements in a prescription, report, or record required by Iowa law.

Sanction

Respondent is asking the Board to lift the suspension of his pharmacist license and allow him to return to the practice of pharmacy pending his sentencing in federal court. In support of this request, Respondent asserts that he stopped submitting false claims for prescriptions six months before he was confronted by the FBI, that he took immediate responsibility for his actions when confronted, that the actual amount of his false claims was only \$25,000 and not the \$130,000 claimed by Wellmark, and that the federal government does not see him as a threat to public safety or welfare because they have released him pending sentencing and have delayed his sentencing until sometime in 2010 or even later. Respondent further asserts that the public can be adequately protected if his pharmacy practice is monitored by the Board.

The Board has considered the factors set out in 657 IAC 36.1(3) and concludes that license suspension is the appropriate sanction in this case. Respondent embarked on an elaborate scheme to defraud his health insurance company, which he executed over an extended period of time. Respondent used his professional position as a Medicap pharmacist to create numerous false prescriptions for both himself and his family members and to electronically file false claims for reimbursement with his insurance company. Respondent's dishonest and unethical actions violated the trust placed in him as a pharmacist and are a discredit to the pharmacy profession. It does not matter if the actual amount of the fraudulent claims is determined to be \$25,000 as Respondent contends or \$130,000 as alleged by Wellmark. In addition, Respondent's actions also harmed the public by contributing to increased costs for all consumers.

Although Respondent admitted his actions when confronted, it does not appear that he appreciates the seriousness of his violations. Respondent provided the Board with no explanation for his actions and revealed no personal insight into why he engaged in this dishonest and deceitful pattern of behavior. The Board is very concerned that Respondent may have an underlying character or personality disorder and believes that Respondent would engage in similar behavior in the future if he believed he could do so without being caught.

DECISION AND ORDER

IT IS THEREFORE ORDERED that License Number 17742, issued to Respondent Patrick W. Slifka, shall be INDEFINITELY SUSPENDED. IT IS FURTHER ORDERED that Respondent may not apply for reinstatement for a minimum period of one year. In addition, the Board will not consider an application for reinstatement until after:

1. Respondent's criminal sentencing has been completed, and
2. Respondent has submitted to a comprehensive physical and mental evaluation from a facility pre-approved by the Board and has provided a written evaluation report which explores whether there is any psychiatric or psychological condition underlying his criminal behavior. Respondent shall comply with any treatment recommendations made as a result of the evaluation.

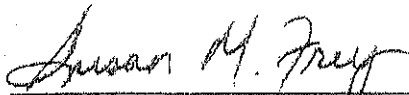
IT IS FURTHER ORDERED, pursuant to Iowa Code §272C.6 and 657 IAC 36.18(2), that Respondent Patrick W. Slifka shall pay \$75.00 for fees associated

Case No. 2007-6

Page 9

with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board shall bill Respondents for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Respondents shall remit for these expenses within thirty (30) days of receipt of the bill.

Dated this 29th day of December, 2009.



Susan M. Frey, Vice-Chair
Iowa Board of Pharmacy

cc: Scott Galenbeck, Assistant Attorney General
Connie Diekema, Respondents' Attorney

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.

Exhibit 5

25 of 25 Pages

EXHIBIT B

BEFORE THE NORTH DAKOTA
STATE BOARD OF PHARMACY

IN THE MATTER OF THE CERTIFICATE)
OF REGISTRATION OF PATRICK W. SLIFKA)
R.Ph. AS A LICENSED PHARMACIST)
ENTITLED TO PRACTICE PHARMACY IN)
THE STATE OF NORTH DAKOTA,)
RESPONDENT.)

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

Administrative No. 2009-12-14-173

On January 14, 2010, a Complaint and Statement of Charges ("Complaint") was filed with the North Dakota State Board of Pharmacy ("Board") by David A. Lindell, Special Assistant Attorney General and Counsel for the Board, and Howard C. Anderson, Jr., R. Ph., Executive Director for the Board and Chairman of the Board's investigating committee, requesting certain administrative action against the certificate and registration ("Certificate No. 4130") of Patrick W. Slifka ("Slifka") as a licensed pharmacist in the State of North Dakota. The Complaint sites as grounds for administrative action a violation of Section 43-15-10(1)(k)(1) and (3) NDCC and ND Admin Code Section 61-04-04-01(1),(3),(8) NDAC as more specifically set forth in Paragraph IV of the Complaint, subsections a, b and c.

On January 14, 2010, the Board issued a Notice of Hearing scheduling a May 20, 2010, hearing on the Complaint. The hearing was held as scheduled in the Board Room of the Candlewood Suites, 1831 NDSU Research Park Drive, Fargo, ND 58102. Mr. Lindell represented the Board at the hearing. He called Howard C. Anderson, Jr. to testify. The Respondent, Slifka, was not present and there were no appearances on his behalf.

The Board being fully informed in the premises and having heard evidence presented by all parties and having discussed the Complaint into evidence, now makes and files herein the following

FINDINGS OF FACTS:

1. Patrick W. Slifka is a licensed pharmacist in North Dakota, and was issued Certificate No. 4130 to certify licensure to practice pharmacy in the State of North Dakota, and whose last known address is 21999 115th St., Cresco, IA 52136.

2. The Executive Director of the State Board of Pharmacy, and Chairman of the Investigating Committee received from the State of Iowa, file materials including Findings of Fact, Conclusions of Law and Board Order dated December 29, 2009, as follows:

- a) On September 16, 2009, Respondent, SCOTT W. SLIFKA, pleaded guilty in U. S. District Court of one count of wire fraud in violation of 18 U.S.C. §1343 and one count of Aggravated Identity Theft, in violation of 18 U.S.C. §1028A(a)(1). The violations involve respondent's Wellmark Blue Cross/Blue Shield health insurance policy and claims made to said policy for respondent and his family while employed as a full time pharmacist at Medicap Pharmacy in Cresco, Iowa.
- b) Respondent admitted to Federal Bureau of Investigation (FBI) investigators:
 1. That he began filing false claims for falsified prescriptions with his Wellmark Insurance Policy sometime in 2004 and stopped in July, 2007.
 2. He filed the false claims knowingly and intentionally and sent them electronically through the Medicap computer system.
 3. He filed the claims under his own name, his wife's name, and the names of his three children.
 4. His false claims caused Wellmark to issue checks to him that were mailed to his residence.
- c) The Trial Information alleged in part:
 1. From as early as January, 2002, and continuing through and about January, 2008, Respondent devised a scheme and artifice to defraud and to obtain money and property by means of false pretenses;

2. Respondent knowingly submitted claims to his personal family health insurance provider, Wellmark Blue Cross/Blue Shield, for payment on prescription medications that were not prescribed by a licensed physician and which were oftentimes not dispensed;
 3. Respondent used the unique Drug Enforcement Administration (DEA) number assigned to health care professionals to support his claim that the medication was prescribed to himself and his family when, in truth, no such valid prescription was issued;
 4. On some occasions Respondent submitted fraudulent claims for prescriptions that were not validly issued by a licensed physician but that Respondent knowingly and unlawfully filled for himself and for other family member.
 5. On other occasions, Respondent submitted fraudulent claims for prescriptions, purportedly issued to himself or other family members, that were not validly issued by a licensed physician and that were never filled.
 6. In either case, upon approval by Wellmark of the fraudulently submitted prescription drug claim, Respondent would personally receive reimbursement payment to which he was not entitled.
- d) The FBI further alleged the Respondent received \$130,000.00 in reimbursement for false prescriptions. Respondent alleged the total value of the falsified claims is closer to \$25,000.00.
- e) The Iowa Board of Pharmacy filed a Complaint against Respondent charging Respondent with one count of lack of professional competency, conviction of a felony related to pharmacy, and making false and fraudulent statements, and filed an emergency order immediately suspending Respondent's pharmacy license. A hearing was held November 18, 2009. At the hearing, the Iowa Board of Pharmacy found Respondent violated the following laws:

1. Iowa Code §155A.12(1)(2009) and 657IAC 36.1(4)(b) by his willful and repeated departures from and failures to conform to the minimal standard or acceptable and prevailing practice of pharmacy in the State of Iowa.
2. Iowa Code §155A.12(1)(2009) and 657IAC 36.1(4)(j) by pleading guilty in Federal Court to the crimes of wire fraud and aggravated identity theft. Both felonies.
3. Iowa Code §155A.12(1), §155A.21 and §155A.23(2) and (4) by making false prescriptions and by making false and fraudulent statements in a prescription report or record required by Iowa law.

f) Based on the Iowa Board's Findings of Fact and Conclusions of Law, the Iowa Board ordered the Respondent's license to practice pharmacy be indefinitely suspended and further ordered the respondent may not apply for reinstatement for a minimum period of one year, and that the Board would not consider an application for reinstatement until after:

1. Respondent's criminal sentencing has been completed; and
2. Respondent has submitted to a comprehensive physical and mental evaluation from a facility pre-approved by the Board and has provided a written evaluation report which explores whether there is psychiatric or psychological condition underlying his criminal behavior. Respondent shall comply with any treatment recommendations made as a result of the evaluation. The Board further ordered Respondent to pay \$75.00 for fees associated with conducting the disciplinary hearing and also for any witness fees and expenses or transcript costs associated with the disciplinary hearing.

SEE EXHIBIT 1

3. The Executive Director also presented previous action by the Iowa Board in 2005.

SEE EXHIBIT 2

CONCLUSIONS OF LAW

1. Slifka is currently a licensed pharmacist in the State of North Dakota licensed by the Board holding Certificate No. 4130.
2. Investigation by the Board's investigating committee shows that Slifka has violated the provisions of law and is subject to disciplinary administrative action by the Board because of his actions in the State of Iowa as follows:
 - a. Was found guilty by a Court of competent jurisdiction of a felony as defined by the statutes in North Dakota. Section 43-15-10 (1)(k)(1) NDCC.
 - b. Has violated the pharmacy or drug laws of another state or federal government. Section 43-15-10(1)(k)(3) NDCC.
 - c. Engaged in unprofessional conduct by violating a provision or term of the North Dakota Century Code Chapter 43-15 and the applicable federal and state laws and rules governing pharmacies and pharmacists; by filing a report or records which a pharmacist or pharmacy knows to be false, intentionally or negligently failing to file a report or record required by federal or state law or rules; and by submitting fraudulent billing or reports to a third party payer of prescription charges. Section 43-15-10(1)(i) NDCC. Chapter 61-04-04-01(1), (3) and (8) ND Admin Code.
3. The Board has the authority in regard to the violations of law and grounds for disciplinary action stated in the above CONCLUSIONS OF LAW, to place on probation, reprimand, or fine any licensed pharmacist or pharmacy, or suspend, revoke, restrict or cancel the license of any licensed pharmacist. Section 43-15-10(1) NDCC.

4. The Board has the authority to direct a pharmacist found not in compliance with the drug laws or rules of the State of North Dakota, to pay to the Board a sum not to exceed the reasonable and actual costs of the investigation and prosecution of the case. Section 43-15-45 NDCC.

From the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, the Board now makes and files herein its

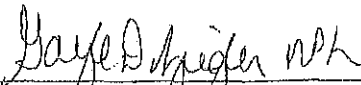
ORDER

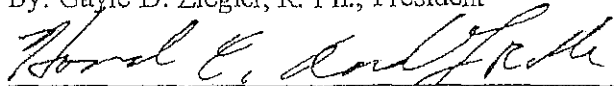
The greater weight of the evidence shows that Respondent violated the provisions of law and engaged in activities and conduct that are grounds for administrative disciplinary action under the provisions of law stated in Conclusions of Law No. 2. Because of the violation and grounds, it is hereby ORDERED:

1. Slifka's license to practice pharmacy shall be indefinitely suspended and further ordered that Slifka may not apply for reinstatement until his Iowa license to practice pharmacy in the State of Iowa has been reinstated by the Iowa Board of Pharmacy.
2. Slifka shall reimburse the Board for the cost of investigation and prosecution incurred by the Board in the amount of \$1,102.59. Payment shall be made by June 1, 2011.

Dated this 23rd day of June, 2010.

NORTH DAKOTA STATE BOARD OF PHARMACY


By: Gayle D. Ziegler, R. Ph., President


Attest: Howard C. Anderson, Jr., R.Ph., Secretary
1906 East Broadway Avenue
PO Box 1354
Bismarck, ND 58502-1354
701-328-9535