

STATE OF RHODE ISLAND
PROVIDENCE, SC.

DEPARTMENT OF HEALTH :
BOARD OF CHIROPRACTIC EXAMINERS :
 :
IN THE MATTER OF: :
ANTHONY DONATELLI, D.C. :

ADMINISTRATIVE DECISION

This matter came on for hearing before a designated Hearing Officer for the Board of Chiropractic Examiners (hereinafter "Board") pursuant to a Statement of Charges dated February 21, 2007. The Statement of Charges followed a Summary Suspension Order that was issued by the Director of Health on February 19, 2007.

The Respondent appeared at the hearing and was represented by counsel throughout the proceedings.

TRAVEL OF THE CASE
AND
FINDINGS OF FACT

The Respondent was summarily suspended from the practice of chiropractic medicine by order of the Director of Health on February 19, 2007 (State's 3).

The Summary Suspension details the reasons for the action taken by the Director. The order specifically states that the Respondent engaged in unprofessional conduct by failing to conform to the terms of his reinstatement from a prior suspension order issued in 2004 and by using the Drug Enforcement Agency (hereinafter "DEA") registration of a former employee to fraudulently obtain controlled substances that are not available to chiropractic physicians without the DEA registration of a medical doctor. Furthermore, the order cites that the Respondent has a history of illicit drug activity, having been

previously jailed in the State of Virginia for his illegal possession and/or use of anabolic steroids.

Pursuant to § 5-37-8, the Board scheduled a hearing within 10 days of the date of the Summary Suspension. The Respondent's counsel requested a delay of the proceedings. Therefore, hearings in this matter commenced on March 2, 2007.

The Statement of Charges issued by the Board is a three count complaint.

Count One of the Statement of Charges alleges that the Respondent engaged in unprofessional conduct in violation of § 5-30-13 when he used the DEA registration of a medical doctor in order to obtain prescription drugs without the doctor's consent. Further, Count One alleges that the Respondent altered the DEA registration and sent the altered certificate to a drug company to facilitate the Respondent's purchases from the drug company. Count Two of the Specification alleges that the Respondent has established a pattern of unprofessional conduct with respect to drug activities that date back to his practice in the State of Virginia. Count Three is an allegation that the Respondent failed to comply with the terms of the Consent Order that he entered into in April 2005.

To substantiate the allegations set forth in Count One, the Board presented several witnesses, the first of whom was A. Vincent DeRobbio, M.D. Dr. DeRobbio testified that he has been a licensed medical doctor practicing in internal and occupational medicine for 43 years. Dr. DeRobbio stated that he became affiliated with the Respondent's chiropractic practice when he went there to work in 2002. The doctor worked in the Respondent's practice until February 29, 2004, at which time the doctor resigned. He testified that he resigned at that time due to an ongoing investigation of the

Respondent that was being conducted by the Department of Health. The investigation related to the Respondent's fraudulent billing practices with respect to third party payers. Because the doctor was an employee of the Respondent, the Board of Medical Licensure and Discipline (hereafter "BMLD") determined to undertake an investigation of Dr. DeRobbio to discover whether he was complicit with the Respondent in his fraudulent billing scheme. Once the Respondent's activities were revealed to him, Dr. DeRobbio tendered his resignation. The BMLD ultimately determined that Dr. DeRobbio had no part in the Respondent's fraudulent third party billing practices.

As a result of the Chiropractic Board's investigation in 2004, the Respondent was summarily suspended from the practice in March of 2004 (State's 5) and eventually entered into a Consent Order with the Board in April 2005 (State's 4).

Dr. DeRobbio testified that he is the holder of a valid state and federal DEA registration that allows him to order prescription drugs. Dr. DeRobbio testified that his DEA registration is renewable every 3 years. He last renewed the registration in 2005, and it will expire on June 30, 2008. Dr. DeRobbio presented a copy of the wallet size card (State's 7).

The DEA registration certificate lists Dr. DeRobbio's home address in Bristol, RI. Both Dr. DeRobbio and a representative from the pharmaceutical supplier testified that a database of DEA registrations is maintained by the drug supplier. If controlled substances were ordered by the doctor, they would, by law, be shipped to the address set forth on the current DEA registration. Notwithstanding his ability to order drugs directly from a distributor, Dr. DeRobbio testified that it has not been his routine practice to stockpile drugs or to dispense them directly to his patients. Rather, his patients are given

prescriptions for drugs that they can purchase at the pharmacy. Dr. DeRobbio testified that his DEA registration has always listed his home address because his office was itinerant.

Dr. DeRobbio stated that he and the Respondent did not part on amicable terms due to the BMLD's investigation that had been precipitated by the Respondent's wrongful activities. Therefore, after he left the office on February 29, 2004, Dr. DeRobbio said that he had no occasion to contact the Respondent.

During the summer of 2006, Dr. DeRobbio received two packages containing prescription drugs that were shipped to his home address by Moore Medical. The packing slip or shipping label indicated that the drugs were sold to the Respondent's firm, R.I. Medical Rehabilitation, Inc. The packing slip also noted that a number of other "narcotics", including vicodin, had been shipped from a different location.

Dr. DeRobbio said he was "flabbergasted" as he had not ordered the drugs, nor had he authorized anyone else to use his DEA registration to order drugs. Dr. DeRobbio testified that the first package he received contained bio-freeze cream. He opened the package thinking it was just a drug company sample. However, then he noted the "sold to" as R.I. Medical Rehabilitation, Inc. The second package that the doctor received was in a plain brown box.¹ He opened it thinking it was a part that he had ordered for his razor. He was surprised to find that the package contained B-12 injectable that was sold to R.I. Medical Rehabilitation. Dr. DeRobbio testified that to the best of his memory, he called the Respondent to tell him that he had the drugs and to inquire why the Respondent was ordering B-12 injectables since he was not permitted to prescribe them. The doctor

¹ The representative of Moore Medical testified that certain drugs are shipped in plain packaging so as to conceal their contents from mail handlers.

testified that the Respondent told him that he ordered the drugs for his personal use. The doctor then reported Respondent's activities to the Department of Health and forwarded correspondence to Moore Medical directing that entity to remove his DEA registration from their database (State's 8). At hearing, the doctor was shown a copy of his DEA registration certificate that purported to list his address as 125 Atwells Avenue in Providence.² It further showed an expiration date of 6-30-2007. Dr. DeRobbio testified that he had not submitted any change of address from his home in Bristol to any other location. Further, he reiterated that his DEA registration is for a period of 3 years expiring on 6-30-08.

On cross-examination, Dr. DeRobbio did acknowledge that while he was employed by the Respondent there was an implicit agreement that the Respondent could order drugs for his patients using the doctor's DEA number provided that the doctor was informed and approved of what drugs were being ordered.

Dr. DeRobbio testified that he did not specifically confront the Respondent when the drugs were delivered to the doctor's home because he was intimidated by the Respondent. He also stated that he wrote to Moore Medical to clear his record. He wanted the company to know that it was not him who ordered the drugs. He did not mention the Respondent in his correspondence to Moore because he did not know whether the Respondent had a new doctor working in his office and the drugs were sent to Dr. DeRobbio in error.

The second witness was Thomas Cook, an employee of the DEA. He testified that DEA registrations are renewed every 3 years pursuant to federal regulation (State's 11). He further testified that, in response to the Board's inquiry, he checked the DEA's

² 125 Atwells Avenue is the address of R.I. Medical Rehabilitation, Inc.

database and ascertained that A. Vincent DeRobbio, M.D. has a valid DEA registration that was renewed on May 19, 2005 and that will expire on June 30, 2008. He also noted that the DEA registration lists an address in Bristol, RI. He stated that, by law, all controlled substances would, of necessity, be shipped to the address set forth on the DEA registration. Upon inquiry, the witness said that he concluded that the DEA registration certificate that purportedly shows an expiration date of June 30, 2007 and an address of 125 Atwells Avenue, Providence (State's 9) is not a valid certificate and that it is not in the DEA database.

The next witness was Patrick Early, Vice President of Operations for Moore Medical. He testified that he controls distribution of products across the country, and that he is responsible for regulatory matters as well. Mr. Early stated that at some time his company did receive a notification of a change of address on the part of R.I. Medical Rehabilitation. However, the drug company did not change the address in their records. Mr. Early stated that in order to do so, the company is required to have a copy of a DEA registration certificate that matches the address. Mr. Early testified that when products are ordered from Moore, their computer identifies whether a DEA registration is required to purchase the drugs. The computer then matches the purchase order information with the DEA registration that is on file.

Mr. Early was also shown a copy of the Prescription Drug Authorization form that was signed by Dr. DeRobbio (State's 14). He stated that the form, when signed by a medical doctor, allows another person to order drugs using the medical doctor's license. In this case, State's 14 was signed by Dr. DeRobbio allowing the Respondent to purchase certain limited drugs. Under no circumstances can the authorization form be used to

purchase DEA controlled substances. Only the medical doctor can order controlled substances.

Mr. Early was then asked to examine the duplicate invoice for the drugs that were sold to the Respondent (State's 15). Mr. Early noted that the products were sold to the Respondent, but the hydrocodone (item #3247) (vicodin) was shipped to Dr. DeRobbio at his Bristol address because hydrocodone is a narcotic. To order hydrocodone, the doctor would have to have a DEA registration on file with the company, and the narcotic would be shipped only to the address on the DEA registration. Additionally, Mr. Early noted that the quantity of hydrocodone ordered by the Respondent was 5 bottles of 500 each. Mr. Early stated that pursuant to Moore's regulatory policies, the company "red flags" narcotic orders when a quantity in excess of 6 bottles is ordered. The Respondent ordered 5.

Mr. Early testified that the Respondent phoned in the drug order to a call center on the West Coast. The person taking the order entered the information into the company's computer system. The computer system tracks to whom the drugs were sold, how payment was made and all shipping particulars, including federal express, UPS, etc. Early was able to confirm that the non-narcotic portion of the Respondent's order was shipped to the Respondent at the Atwells Avenue address. The narcotics were shipped to the DEA registrant (Dr. DeRobbio) at his address in Bristol. The evidence indicates that 12 tubes of biofreeze were delivered via UPS to Dr. DeRobbio at his Bristol address on July 21, 2006 (State's 17). Inferentially, upon receipt, the doctor notified the Respondent that he had his packages. Thereafter, UPS attempted to deliver another shipment to the Bristol address. There was no one home, so the package was retained by UPS. In the

meantime, before the package could be delivered, someone, presumably the Respondent, or someone in his employ, contacted UPS and had the package re-routed to the Respondent's Atwells Avenue address. That package contained the hydrocodone and testosterone. Mr. Early stated that no one from Moore authorized delivery to Atwells Avenue. Someone else contacted UPS to change the shipping instructions. Mr. Early acknowledged that no one from UPS would have knowledge of the contents of the package as narcotics are not identified on the shipping label.

The Respondent was called to testify by the State. In his testimony, the Respondent stated that he graduated from chiropractic college in 1994 and became licensed in the State of Virginia in 1996. Sometime shortly thereafter, the Respondent was arrested and convicted of felony charges related to the illegal possession of anabolic steroids. His chiropractic license was briefly suspended, and he served some time in jail. He then moved to Rhode Island some time in late 1999 or early 2000.

In March of 2004, the Respondent stated that his license was summarily suspended by the then Director of Health, Dr. Nolan. The allegations against the Respondent at that time were that he engaged in fraud by billing 3rd party medical payers for services that were not provided to patients (State's 5). In April 2005, Respondent entered into a Consent Order with the Board (State's 4) whereby his chiropractic license was re-instated upon the condition that he sign an Assessment and Monitoring Contract with Affiliated Monitors, Inc, to provide him with ongoing monitoring and assessment for a period of two years from April 20, 2005. The Respondent acknowledges that he failed to pay for the services of Affiliated Monitors, Inc. as a result of which that company first threatened to discontinue services by letter dated December 29, 2006

(State's 32), then did terminate services on January 9, 2007 (State's 23). The Respondent testified that he notified the Board's Administrator about his difficulties in paying Affiliated Monitoring, Inc., and she authorized him to discontinue the monitoring service. Respondent said he was told that the Board would provide him with monitoring.³

On examination by the Board's attorney, the Respondent did admit that he changed Dr. DeRobbio's DEA registration (State's 9) to reflect his own address and a new expiration date, and that he forwarded the forged registration with a change of address letter to Moore Medical (State's 12).

Further, despite the fact that Dr. DeRobbio resigned from the Respondent's employ in February 2004, the Respondent nevertheless testified that he was still permitted to use Dr. DeRobbio's authorization designation form in July 2006. He said that he deduced this from the fact that Dr. DeRobbio did not specifically tell him not to use the DEA number when he left the practice.

The Respondent also testified that he did not order the hydrocodone and that Moore Medical made a mistake when taking his order. The Respondent said he ordered medication to treat his high blood pressure.

The Respondent disputed Dr. DeRobbio's testimony that receipt of the Respondent's drug order at his home was a surprise to him. The Respondent claims that he called the doctor to advise him that the drugs were coming, and that he spoke to both Dr. DeRobbio and his wife. He admitted that Moore had contacted him to tell him that

³ Contrary to that testimony, the Board's Administrator testified that the Respondent did contact her sometime prior to June 2006 seeking relief from the monitoring requirements. By letter dated June 16, 2006 (Respondent's E), the Board advised Respondent that he could reduce his monitoring service to once every 6 months, the next monitoring report being due November 2006. Respondent did not comply with the November 2006 monitoring. Mrs. Giuliano stated that she did receive an e-mail from the Respondent (after Affiliated Monitoring's termination) requesting that monitoring be discontinued. The Board did not act on that request. She denies ever telling the Respondent that the Board members would provide monitoring.

they had to mail the drugs to the address on the DEA registration. That was why he called Dr. DeRobbio. The next day he altered the DEA registration and sent it to Moore. The Respondent admitted that he did not tell Dr. DeRobbio that he had altered the doctor's DEA registration. He stated that Dr. DeRobbio authorized the drug order, but was upset that B-12 injectable had been ordered since it is not used in chiropractic medicine. Respondent said he told Dr. DeRobbio that the B-12 was for his own use.

Regarding the address change at UPS, Respondent testified that after he was notified that the biofreeze and B-12 were shipped to Dr. DeRobbio, he called UPS to change the shipping address from Bristol to his own Atwells Avenue address, hoping to intercept the other package.⁴ Despite that fact, he denied receiving the package. He stated that it was delivered to the tanning salon next door, and they never gave it to him. He also claimed that the person who signed for the package (Hoag) was no longer employed by the tanning salon and had moved out of state. The State did produce records from Citizens Bank (State's 24) that clearly show that the Respondent paid for the "missing" drugs, including the hydrocodone and testosterone.

The Respondent testified that he ordered a blood pressure cuff and some biofreeze, which he used daily, as well as the B-12. The Respondent testified that those items were for his own use, and that no prescription is necessary to obtain them.⁵ He further stated that he has had a prescription for testosterone for a number of years (Respondent's F). He stated that it was cheaper to order the medication from Moore than

⁴ The package contained the hydrocodone, which by law had to be sent to Dr. DeRobbio, which information was conveyed to Respondent by Moore Medical when the Respondent called to reiterate his Atwells Avenue address after Dr. DeRobbio received the first two packages. The Respondent's actions are curious, since he testified that he did not order the hydrocodone. If that were the case, he would have no reason to think that the shipment would go to Dr. DeRobbio's Bristol address since only narcotics were required to be sent there.

⁵ B-12 injectable is a prescription drug.

to pay for it at CVS or another pharmacy. That is also true of the blood pressure medication that he takes daily. Respondent testified that his blood pressure medication appears on the same page of the Moore medical catalog as does hydrocodone (vicodin). He testified that Moore made a mistake in filling his order.⁶

The Respondent's testimony prompted the Hearing Officer to ask the Respondent whether he thought that he could continue using Dr. DeRobbio's DEA registration despite the fact that Dr. DeRobbio had left the Respondent's practice on a contentious note more than two years previous.

Contrary to his earlier testimony wherein he said he was authorized to use Dr. DeRobbio's DEA registration, the Respondent replied that he did not think that he was relying on Dr. DeRobbio's DEA registration, but rather that he was ordering the drugs from Moore using his own valid prescription. When asked whether he had ever sent his prescriptions to Moore Medical, Respondent replied in the negative.⁷ The Respondent also provided conflicting testimony, first to the effect that prior to ordering his blood pressure medication from Moore in July 2006, he had never filled a prescription for it at the pharmacy, but instead relied on samples that his treating physician had provided to him for a number of years. Subsequently, in response to an inquiry by the State's attorney, the Respondent stated that he paid \$70.00 per prescription for his blood pressure medication at CVS, and that the cost was far less at Moore Medical.

⁶ Respondent would have the Hearing Officer believe that Moore Medical, a nationwide drug distributor, utilizes the pictures in its catalog when filling orders. Whereas, Mr. Early testified that each drug has its own individual product number that follows the product from its compounding to final use. His testimony and the demonstrable evidence clearly and unequivocally establish that orders are taken and filled using product numbers.

⁷ There is no evidence of any kind on the record that would indicate that Moore Medical is in the business of filling individual patient prescriptions. The evidence is that Moore Medical is a drug and medical supplies distributor, not a pharmacy.

CONCLUSIONS

It is clear from the testimony and evidence that the Respondent concocted a scheme to use the DEA registration of a former employee to facilitate his purchase of controlled substances and other pharmacy agents without the permission of the DEA registrant, and in violation of federal law. Further, that in order to facilitate his scheme, he altered the DEA registration of the medical doctor and supplied it to the drug distributor.

The Respondent's testimony that the drug distributor erred in sending him hydrocodone (vicodin) instead of blood pressure medication is not credible. The evidence leads to the inescapable conclusion that the Respondent was ordering hydrocodone and other narcotics for his own use. They are not medications for use in chiropractic practice, nor may a chiropractor prescribe them.

Having determined that the drugs were ordered other than for use in the Respondent's practice, the Hearing Officer finds that the Respondent's current pattern of behavior is not unlike the Respondent's earlier conduct wherein he was convicted of the illegal use or possession of anabolic steroids. He admitted then that the drugs that he obtained illegally were for his own use.

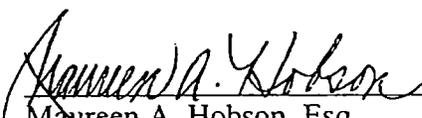
Finally, as to the Respondent's April 2005 Consent Order and the requirement of a monitoring contract, it is clear that the Respondent did not comply with the terms of the Consent Order as discussed within the Findings portion of this decision.

In closing arguments, the Respondent's counsel opined that the Respondent should not be severely punished as the State had not proven any injury to patients. That is to say, the Respondent is free to commit a crime as long as it does not involve his

patients. However, the Department of Health has long held, and the law requires, that good moral character, honesty, and integrity be primary considerations in licensing clinicians. In this case, the Respondent used his position as a chiropractor to gain unauthorized access to prescription narcotics, then lied about the circumstances throughout the Board's investigation and this hearing.

Based upon the foregoing, the Respondent is found to be guilty of gross unprofessional conduct as same is defined in § 5-30-13(b) of the General Laws. Accordingly, the Respondent's license to practice chiropractic medicine in the State of Rhode Island is hereby **REVOKED**.

Entered this 26TH day of April, 2007.


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If you are aggrieved by this final agency order, you may appeal this final order to the Rhode Island Superior Court within thirty (30) days from the date of mailing of this notice of final decision pursuant to the provisions for judicial review established by the Rhode Island Administrative Procedures Act, specifically R.I. Gen. Laws § 42-35-15.

CERTIFICATION

I hereby certify that a copy of the within Administrative Decision was mailed to
Kenneth A. Schreiber, Esquire, SCHREIBER & SCHREIBER, 37 Sockanosset
Crossroad, Cranston, RI 02920 on this 26th day of April 2007.

Carole Allsworth