

Final Order No. AHCA-96-00188 Date 2-19-96
FILED

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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

BOARD: Medicine
CASE NUMBER: 92-03673
COMPLAINT MADE BY: DPR
DATE COMPLAINT RECEIVED: March 19, 1992
COMPLAINT MADE AGAINST: Irving D. Royce, M.D.
17122 W. Dixie Hwy.
N. Miami Beach, FL 33160
REVIEWED BY: Monica Felder
Senior Attorney
STAFF RECOMMENDATION: Dismiss (PL-82)

CLOSING ORDER

COMPLAINT: It is alleged that Subject violated two counts of 458.331(1)(g), failure to perform any statutory of legal obligation placed upon a licensed physician, specifically; Rule 21S-28.110, F.A.C., failure to remove pharmaceuticals that have expired; and Section 893.07(3)(b), F.S., failure to keep complete and accurate records documenting the address of patients to whom controlled substances are dispensed.

THE FACTS: Respondent is a registered dispensing physician, and must comply with all the laws and rules applicable to pharmacists and pharmacies. On or about July 11, 1991, a Dispensing Practitioner's Inspection was conducted of Respondent's office by Department of Professional Regulation Investigator, George Headley. The investigator found that Respondent maintained the following controlled substances at his office past their expiration: Doriden, Phenobarbital, and Talwin. Respondent was instructed by the investigator to forward those substances to the Drug Enforcement Agency's (DEA) Miami Field Division office for destruction. However, the Agency has no record of that inspection or the inspection report. Subsequently, the Respondent received a letter from the DEA stating that they had received and destroyed some Doriden and Phenobarbital that he sent. The DEA had no record of receipt of the expired Talwin.

The DEA was contacted regarding their correspondence with the Respondent and whether they maintained any records regarding destroyed controlled substances, and they indicated they have no records of and no knowledge of destruction of these substances from the Respondent.

On or about March 11, 1992, Investigator Headley conducted a follow-up inspection of the Respondent's office. The inspection report indicates that Respondent did not have the patients' names and addresses on prescriptions for controlled substances. The investigator also alleged that the Respondent continued to maintain expired controlled and non-controlled substances at his office, and that the Respondent did not have proof of destruction of a large amount of non-controlled items, however, this information is not included on the inspection report.

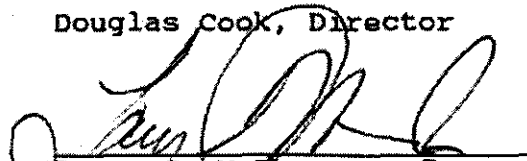
The investigator who performed the inspections of the Respondent's office has been terminated from the Agency and cannot be located. The investigator's testimony would be crucial in proving the violations indicated on the inspection reports and alleged in the complaint. Without the testimony of the investigator, the Agency has no admissible evidence that the Respondent kept expired controlled substances. The Agency feels that due to the unavailability of the investigator, the lack of admissible evidence available in this case, the nature of the violations, and the amount of time elapsed since the initial investigation, further prosecution of the matter would be unsuccessful.

THE LAW: There is sufficient evidence for the Panel to have found probable cause in the case. However, based upon the additional circumstances set forth above, the Agency has determined that the case should be dismissed. Therefore, pursuant to Section 455.225(2), Florida Statutes, and Rule 21-31.001, Florida Administrative Code, this case is hereby DISMISSED.

It is therefore, ORDERED that this matter should be and the same is hereby DISMISSED.

DONE AND ORDERED this 16 day of February, 1996.

Douglas Cook, Director



Larry G. McPherson, Jr.
Chief Medical Attorney

MLF/kjh
PCP: February 15, 1996