

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

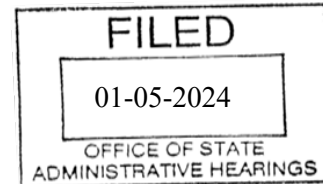
**GEORGIA STATE BOARD OF  
PHARMACY,**  
                    **Petitioner,**

v.

**MOSES KIRIGWI,**  
                    **Respondent.**

**Docket No.: 2402086  
2402086-OSAH-PLBD-PHAR-33-Barnes**

**Agency Reference No.: RPH031167**



**INITIAL DECISION**

Petitioner, the Georgia Board of Pharmacy (“Board” or “Petitioner”), brought this action seeking the revocation of the Respondent Moses Kirigwi (“Respondent”)’s license to practice pharmacy in the State of Georgia. The evidentiary hearing took place on December 5, 2023, at the Office of State Administrative Hearings before the undersigned administrative law judge. The Board was represented by Elizabeth Simpson, Esq. Respondent was represented by William Tiku, Esq. For the reasons indicated below, the Board’s decision to sanction Respondent’s pharmacy license is **AFFIRMED AND MODIFIED**.

**I. FINDINGS OF FACT**

1. Respondent holds a license to practice as a pharmacist in the State of Georgia, and he has held such license at all times relevant to the issues presented for hearing. Respondent’s license was originally issued on February 12, 2019, and its current status is “Active – Renewal Pending.” (Statement of Matters Asserted; Petitioner’s Exhibit 1).
2. On August 18, 2022, Respondent entered a guilty plea in the United States District Court for the Northern District of Georgia to one count of Conspiracy to Unlawfully Dispense and Distribute Controlled Substances, in violation of 21 U.S.C. §§ 846 and 843(b). *United States of America v. Moses Kirigwi*, Case No. 1:22-CR-289-WMR. He was sentenced to 90 days of

imprisonment and nine months parole. (Petitioner's Exhibits 3, 3A, and 5; Testimony of Eric Durham<sup>1</sup>; Statement of Matters Asserted).

3. In his guilty plea, Respondent admitted to the factual basis underlying the charges against him. From May 2019 through September 2020, Respondent worked as a pharmacist at Evansmill Pharmacy and Retox Pharmacy, both of which were owned by Rafael Ogunsusi. At the time, most of the controlled substance prescriptions dispensed at those two pharmacies were being written by Dr. Anthony Mills, who was operating a "pill mill" out of his personal residence. Respondent, at Ogunsusi's direction, accepted large cash payments in exchange for dispensing controlled substances pursuant to illegal prescriptions. Respondent falsified pharmacy records to give the appearance that he had charged market prices for the controlled substance prescriptions. All of the actions Respondent took as part of the scheme were at Ogunsusi's direction. (Petitioner's Exhibit 3; Testimony of Eric Durham; Testimony of Respondent).
4. All of Respondent's co-defendants, who included Ogunsusi, Mills, and several "sponsors" (individuals who obtain prescriptions in the names of others), were given significantly harsher sentences than Respondent. While Respondent was sentenced to 90 days imprisonment, his co-defendants' sentences ranged from three to eleven years. (Petitioner's Exhibit 2; Respondent's Exhibits 1-8).
5. Respondent graduated with his Doctor of Pharmacy degree from South College in 2019 and obtained his Georgia pharmacist license on February 12, 2019. He started his first job as a pharmacist in June of that year, working at Ogunsusi's pharmacies. At the time, he was 26 years old.<sup>2</sup> Respondent recalled that in his job interview, Ogunsusi asked Respondent to describe the job of a pharmacist. When Respondent replied that it was to dispense medications

---

<sup>1</sup> Eric Durham is a special agent with the Georgia Drugs and Narcotics Agency.

<sup>2</sup> Respondent was born on September 1, 1992. (Testimony of Respondent).

in a way that ensures patient safety, Ogunsusi interrupted him to say something along the lines of, “No, your job is to dispense medications, it’s not your job to question what you’re dispensing or what the doctor prescribes.” Respondent thought this seemed like an unusual thing to say, but assumed Ogunsusi knew more than he did. After Respondent began working at the pharmacy, he pointed out that some patients were being prescribed an unusually large amount of narcotics by Dr. Mills, but was told that was normal. Respondent was being paid \$30 an hour by Ogunsusi, even though the average compensation for pharmacists at the time was around \$55 to \$60 an hour. He did not personally profit from any of the illegal activities taking place at Ogunsusi’s pharmacies. (Petitioner’s Exhibit 1; Testimony of Respondent).

6. Since working for Ogunsusi, Respondent has worked at CVS Pharmacy and another independent pharmacy. (Testimony of Respondent).
7. Dr. Paul Muchene, a pharmacist who has been practicing for around ten years, testified on behalf of Respondent. Dr. Muchene has known Respondent for twenty years, having served as his youth leader at church. He said that Respondent was a “person of integrity” but was “groomed,” by Ogunsusi, who took advantage of Respondent’s lack of knowledge of pharmacy practice. (Testimony of Dr. Paul Muchene).
8. Karumba Kiroko also testified on Respondent’s behalf. He has been Respondent’s pastor since 2001, when Respondent and his parents moved to the United States and joined his church. Mr. Kiroko was “shocked” when he learned of Respondent’s situation, and said his actions were out of character for him. (Testimony of Karumba Kiroko).

## **II. CONCLUSIONS OF LAW**

1. Petitioner bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. *Id.* at 616-1-2-.21(4).

2. When a contested case is referred to the Office of State Administrative Hearings, the administrative law judge assigned to the case has “all the powers of the ultimate decision maker in the agency.” O.C.G.A. § 50-13-41(b). The evidentiary hearing is de novo, and the administrative law judge “shall make an independent determination on the basis of the competent evidence presented at the hearing.” Ga. Comp. R. & Regs. 616-1-2-.21(1).
3. The Board is authorized to sanction a pharmacist who has violated the statutes and rules governing the profession as set forth in the Georgia Pharmacy Practice Act, O.C.G.A. T. 26, Ch. 4; the rules of the Georgia Board of Pharmacy, Ga. Comp. R. & Regs. 480-1-.01 to -.02; and the general statutory provisions regarding disciplinary actions by professional licensing boards, found at O.C.G.A. § 43-1-19.
4. Georgia Code Section 26-4-60(a) provides that the Board of Pharmacy may refuse to issue or renew, or may suspend, revoke, or restrict the licenses of, or fine any person pursuant to the procedures set forth in this Code section, upon one or more of the following grounds:
  - (1) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice pharmacy or another business or profession licensed under this chapter, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of pharmacy or another licensed business or profession, but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practices of the business or profession licensed under this Chapter;
  - (2) Being:
    - (A) Convicted of a felony;
    - (B) Convicted of any crime involving moral turpitude;
    - (C) Convicted or guilty of violations of the pharmacy or drug laws of this state, or rules and regulations pertaining thereto, or of laws, rules, and regulations of any other state, or of the federal government.

Georgia Code Section 26-4-60(g) provides that for purposes of Code Section 26-4-60, a conviction shall include a finding or verdict of guilty, a plea of guilty, or a plea or nolo contendere in a criminal proceeding, regardless of whether an adjudication of guilt or sentence is withheld or not entered thereon.

5. Similarly, O.C.G.A. § 43-1-19(a) provides that a professional licensing board may sanction a licensee should the majority of the board find that the licensee has done any of the following:

- (2) Knowingly made misleading, deceptive, untrue, or fraudulent misrepresentations in the practice of a business or profession licensed under this title or on any document connected therewith; practice fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;
- (3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States . . . the term “felony” shall include any offense, which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term “conviction” shall include a finding or verdict of guilty or plea of guilty, regardless of whether an appeal of the conviction has been sought.
- (6) Engaged in any unprofessional, immoral, unethical, deceptive or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title;
- (8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement.

6. If the Board finds that any person should be disciplined pursuant to the general provisions governing professional licensing boards or the provisions relating the practice of pharmacy, Georgia Code Section 43-1-19(d) allows the Board to do any of the following:

- (1) Refuse to grant or renew a license to an applicant;
- (2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;
- (3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of such license;
- (4) Limit or restrict any license as the board deems necessary for the protection of the public;
- (5) Revoke any license;
- (6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;
- (7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the licensed business or profession; or
- (8) Impose on a licensee or applicant fees or charges in an amount necessary to reimburse the professional licensing board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding.

7. However, O.C.G.A. § 43-1-19(q) provides that:

(1) “[n]otwithstanding paragraphs (3) and (4) of subsection (a) of this Code section or any other provision of law, and unless a felony or crime involving moral turpitude directly relates to the occupation for which the license is sought or held, no professional licensing board shall refuse to grant a license to an applicant therefor or shall revoke the license of an individual licensed by that board due solely or in part to such applicant's or licensee's:

- (A) Conviction of any felony or any crime involving moral turpitude, whether it occurred in the courts of this state or any other state, territory, or country or in the courts of the United States;
- (B) Arrest, charge, and sentence for the commission of such offense;
- (C) Sentence for such offense pursuant to Article 3 of Chapter 8 of Title 42 or another state's first offender laws;
- (D) Sentence for such offense pursuant to subsection (a) or (c) of Code Section 16-13-2;

(E) Sentence for such offense as a result of a plea of nolo contendere; or

(F) Adjudication of guilt or sentence was otherwise withheld or not entered.

(2) In determining if a felony or a crime involving moral turpitude directly relates to the occupation for which the license is sought or held, the professional licensing board shall consider:

(A) The nature and seriousness of such felony or crime involving moral turpitude and the relationship of such felony or crime involving moral turpitude to the occupation for which the license is sought or held;

(B) The age of the individual at the time such felony or crime involving moral turpitude was committed;

(C) The length of time elapsed since such felony or crime involving moral turpitude was committed;

(D) All circumstances relative to such felony or crime involving moral turpitude, including, but not limited to, mitigating circumstances or social conditions surrounding the commission of such felony or crime involving moral turpitude; and

(E) Evidence of rehabilitation and present fitness to perform the duties of the occupation for which the license is sought or held.

8. Balancing the factors listed in Georgia Code Section 43-1-19(q), the undersigned concludes as follows:


- Unlawfully dispensing controlled substances is a very serious offense directly related to the profession and practice of pharmacy.
- Respondent was an adult at the time of the commission of the illegal activity. However, he was a new pharmacy school graduate and working in his first job as a pharmacist.
- Approximately three years have passed since the commission of the crime.
- Mitigating circumstances include Respondent's relatively minor role in Ogunsusi's and Dr. Mills' scheme relative to his other co-defendants' and the fact that all his actions as part of the scheme were at Ogunsusi's direction.

- Evidence of rehabilitation includes Respondent’s experience working at two different pharmacies since working for Ogunsusi, with no reported instances of misconduct.
9. The Board has established, by a preponderance of the evidence, that it has good cause to sanction Respondent’s license. The evidence is undisputed that Respondent pleaded guilty to one count of Conspiracy to Unlawfully Dispense and Distribute Controlled Substances for Respondent’s unlawful dispensation of multiple controlled substances. However, given the balancing of factors in this matter, the undersigned administrative law judge rules it is more appropriate to suspend Respondent’s license for 12 months or until his probation ends, whichever is later.

### III. DECISION

Based on the Findings of Fact and Conclusions of Law, the Board’s decision to sanction Respondent’s license to practice pharmacy in the State of Georgia is **AFFIRMED AND MODIFIED**. Respondent’s license is suspended for **12 months** from the date of this initial decision or **until his probation ends**, whichever is later.

**SO ORDERED**, this 5th day of January, 2024.

  
**Shakara M. Barnes**  
**Administrative Law Judge**

