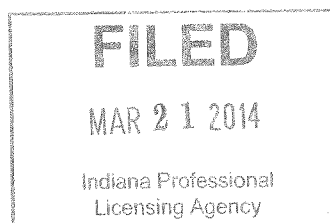


BEFORE THE INDIANA
BOARD OF PHARMACY
2014 IBP 0012

IN THE MATTER OF THE LICENSE OF)
STEPHEN P. DAY, R.PH.)
LICENSE NO. 26013076A (ACTIVE))



COMPLAINT

This complaint is brought against the pharmacist license of Stephen P. Day, R.Ph. (“Respondent”), by the Office of the Attorney General, by counsel, Deputy Attorney General Darren R. Covington, on behalf of the State of Indiana (“Petitioner”) and pursuant to Ind. Code § 25-1-7-7, Ind. Code § 25-1-5-3, Ind. Code ch. 25-26-19, the Administrative Orders and Procedures Act, Ind. Code art. 4-21.5 and Ind. Code ch. 25-1-9 and in support alleges and states:

FACTS

1. Respondent’s address on file with the Indiana Professional Licensing Agency is P.O. Box 61, Tipton, Indiana 46072.
2. Respondent is a licensed pharmacist in the State of Indiana having been issued license number 26013076A on July 8, 1974.
3. At all times relevant herein, Respondent was the owner of The Medicine Shoppe in Tipton, Indiana and Day’s Healthy Living Pharmacy in Cicero, Indiana.
4. In March 2013, Respondent signed a civil settlement with the United States government and the Indiana Medicaid Fraud Control Unit, agreeing to pay \$300,000 as a resolution to an investigation of Respondent’s Indiana Medicaid billings for Activase 50 mg vials. Respondent was also placed on the Federal exclusion list for no less than five years.

5. Activase is a high-end injectable drug and anti-clotting agent used for the treatment of blood clots and improving heart functions immediately after a heart attack.

6. The settlement agreement included the following recital:

“The United States and the State of Indiana contend that they have certain civil claims against Day arising from the submission of claims for payment for the drug Activase that were never dispensed during the period from July 1, 2008, through January 31, 2011.”

7. Beginning in November 2005, Respondent dispensed Activase to Patient A, who was then nine years old. Patient A had a rare clotting disorder that caused his bronchioles to start bleeding at any given time and prevented him from expelling mucus secretions from the lungs, which resulted in hospitalizations. Patient A used Activase with a nebulizer to help liquefy bronchial-secretions.

8. Patient A received ten vials a week from Respondent. Each vial cost close to \$1,900.

9. Respondent only dispensed Activase to Patient A.

10. According to Respondent, there were difficulties in getting reimbursed from the Indiana Medicaid program, and in an effort to improve cash flow, Respondent billed for one month's worth of Activase vials. Respondent continued to dispense the vials on a weekly basis.

11. During the Indiana Medicaid Fraud Control Unit and the United States governments' investigation, it was discovered that Respondent billed the Indiana Medicaid program for 370 vials more than it had purchased for dispensing. This represented a loss of \$693,444.14.

COUNT I

12. Paragraphs 1 through 11 are incorporated by reference herein.

13. Respondent violated Ind. Code § 25-1-9-4(a)(1)(D) in that Respondent has been convicted of a crime or assessed a civil penalty involving fraudulent billing practices, including fraud under:

- (i) Medicaid (42 U.S.C. 1396 et seq.);
- (ii) Medicare (42 U.S.C. 1395 et seq.);
- (iii) The children's health insurance program under IC 12-17.6; or
- (iv) Insurance claims.

This is evidenced by Respondent's civil settlement with the United States government and the Indiana Medicaid Fraud Control Unit, in which Respondent agreed to pay a civil penalty of \$300,000.

COUNT II

14. Paragraphs 1 through 11 are incorporated by reference herein.

15. Respondent violated Ind. Code § 25-1-9-4(a)(1)(B) in that Respondent has engaged in fraud or material deception in the course of professional services or activities, as evidenced by Respondent billing the Indiana Medicaid program for 370 vials of Activase that it did not purchase or dispense.

WHEREFORE, Petitioner demands an order against the Respondent that:

1. Imposes the appropriate disciplinary sanction;
2. Directs Respondent to immediately pay all costs incurred in the prosecution of this case; and,
3. Provides any further relief as the Board deems just and proper.

Respectfully submitted,

Gregory F. Zoeller
Attorney General of Indiana
Atty. No. 1958-98

By:

D-RS


Darren R. Covington
Deputy Attorney General
Attorney No. 28511-16

CERTIFICATE OF SERVICE

I certify that a copy of the "Complaint" has been duly served upon the Respondent, by United States mail, first-class, postage prepaid, on this 21st day of March, 2014.

Stephen Day
P.O. Box 61
Tipton, IN 46072

By:


Darren R. Covington
Deputy Attorney General
Attorney No. 28511-16

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