

BEFORE THE SECRETARY OF STATE

**DELAWARE DEPARTMENT OF STATE
OFFICE OF CONTROLLED SUBSTANCES**

IN THE MATTER OF:)
) **Case Nos. 38-05-12**
) **38-15-12**
PATRICK A. TITUS, M.D.)
Controlled Substance)
Registration No.: MD3949) **FINAL ORDER**

WHEREAS, the Secretary of the Department of State (“the Secretary”) is in receipt of the attached recommendation filed by the State of Delaware Controlled Substance Advisory Committee (“the Committee”) regarding the controlled substance registration (“CSR”) of Patrick A. Titus, M.D., Registration No. MD 3949; and

WHEREAS, the Committee reviewed and deliberated on the hearing officer recommendation in the above matter, and considered written exceptions filed by the parties, and comments made to the Committee by counsel for the parties; and

WHEREAS, after a hearing on the merits, the hearing officer found that Dr. Titus’s CSR was suspended during the period December 9, 2011 until May 23, 2012; and

WHEREAS, the hearing officer found that, during this period of suspension, Dr. Titus continued to write prescriptions for controlled substances and permitted his employees to write prescriptions for controlled substances under his suspended CSR, and Dr. Titus failed to maintain effective controls against diversion of controlled substances; and

WHEREAS, the Committee adopted the hearing officer’s recommended conclusions of law that Dr. Titus’s conduct violated: 16 *Del. C.* 4757(a)(2), in that Dr. Titus used a suspended

registration number to prescribe controlled substances; and 16 *Del. C.* 4734(a)(1) and (4)¹, in that Dr. Titus failed to maintain effective controls against diversion and acted contrary to the public health and safety; and

WHEREAS, the hearing officer recommended that Dr. Titus's CSR be suspended for one year, to be immediately stayed in favor of a two year period of probation; and

WHEREAS, the Committee concluded that Dr. Titus's conduct mandated a higher level of discipline, specifically, Dr. Titus continued his pain management practice under a suspended CSR; misled nurse practitioners into prescribing controlled substances without meeting face to face with patients; and failed to supervise the medical practice he was supposed to be managing; and

WHEREAS, the Committee further concluded that, as a physician, Dr. Titus should have known and complied with the procedures and guidelines pertaining to the prescribing of controlled substances, and his failure to do so poses a threat to the public health safety and welfare; and

WHEREAS, the Committee has recommended modification of the hearing officer's recommendation to include a one year period of suspension to be followed by a three year period of probation; and

WHEREAS, pursuant to 16 *Del. C.* § 4733(a)(8)², the Secretary may consider any factor relevant to and consistent with the public interest in determining whether continued registration is in the public interest; and

WHEREAS, Dr. Titus's continuation of his pain practice under a suspended CSR, including prescribing controlled substances himself and allowing employees to prescribe,

¹ The hearing officer recommendation references prior citations to the Uniform Controlled Substances Act in effect at the time of the underlying conduct.

² Formerly 16 *Del. C.* § 4734(a)(7).

coupled with his failure to maintain effective controls against diversion, demonstrates a complete failure to comply with standards and guidelines for prescribing controlled substances and demonstrates a threat to the public safety; and

WHEREAS, the Secretary is authorized pursuant to 16 *Del. C.* § 4734 to suspend a CSR where the Secretary finds continued registration is inconsistent with the public interest; and

WHEREAS, the Secretary finds that the continued registration of Dr. Titus is inconsistent with the public interest due to his complete disregard for the suspension of his license to the extent that he continued his pain practice.

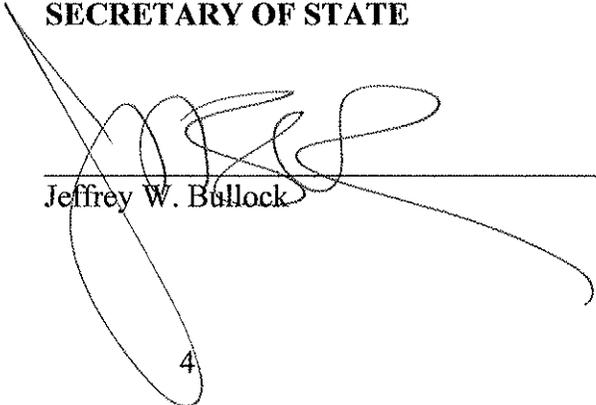
NOW, THEREFORE, IT IS ORDERED THAT:

1. The controlled substance registration of Patrick A. Titus, M. D., is hereby suspended for a period of one year pursuant to 16 *Del. C.* § 4734 as the Secretary finds that the continued registration of Dr. Titus is inconsistent with the public interest.
2. The suspension of Dr. Titus's registration shall be followed by a three year period of probation.
3. Within 45 days of the date of this Final Order, Dr. Titus shall make a full and candid showing of the following to the Committee:
 - a. That he has fully and timely complied with all terms and conditions of the Consent Agreement in this case between himself and the State on March 22, 2012 and so ordered by the Secretary on April 10, 2012.
 - b. That he has fully and timely complied or is complying with all terms and conditions of the order of the Board of Medical Licensure and Discipline entered on January 7, 2014 in Case No. 10-53-10, *et al.*

4. At his own expense, Dr. Titus shall retain an independent auditor to conduct random audits of his medical practice during his periods of suspension and probation, and such auditor shall provide the Committee with audit reports.
5. Dr. Titus shall obtain additional educational training in pain management practice.
6. During the periods of suspension and probation, any further violation of 16 *Del. C.* § 4733(a) and any violation of the Delaware Medical Practice Act, 24 *Del. C.* Ch. 17, which is related to Dr. Titus's pain management practice, after notice and hearing, shall result in further discipline of Dr. Titus's CSR, up to and including revocation;
7. In accordance with the provisions of 16 *Del. C.* § 4735(e), all controlled substances owned by or in the possession of Patrick A. Titus, M. D., are to be placed under seal by the Director of the Office of Controlled Substances.
8. Pursuant to 16 *Del. C.* § 4735(f), the Drug Enforcement Administration shall be notified of this suspension and provided with a copy of this Final Order.
9. A copy of this Final Order is to be personally served upon Patrick A. Titus, M.D. This Final Order shall constitute a public disciplinary action reportable to public practitioner databases and will be made a part of Dr. Titus's permanent registration file.

SO ORDERED this 5th day of November, 2014.

SECRETARY OF STATE



Jeffrey W. Bullock

**BEFORE THE DELAWARE CONTROLLED SUBSTANCE
ADVISORY COMMITTEE**

IN THE MATTER OF:)	Case Nos.	38-05-12
PATRICK A. TITUS, M.D.)		38-15-12
CSR No. MD3949)		

ORDER

Pursuant to 29 *Del. C.* § 8735(v)(1)d, a properly noticed hearing was conducted before a hearing officer to consider the above referenced complaints filed by the State of Delaware (“the State”) against Patrick A. Titus, M.D. with the Controlled Substance Advisory Committee (“the Committee”). The hearing officer has submitted the attached recommendation in which the hearing officer found as a matter of fact and recommended the Committee conclude as a matter of law that the above-captioned complaint numbers have been shown by a preponderance of the evidence presented to establish that, pursuant to the Delaware Uniform Controlled Substances Act (“the Act”), discipline against Dr. Titus’s controlled substance registration (“CSR”) is warranted. The Committee is bound by the findings of fact made by the hearing officer. 29 *Del. C.* § 8735(v)(1)d. However, the Committee may affirm or modify the hearing officer’s conclusions of law and recommended penalty.

The parties were given 20 days from the date of the hearing officer’s proposed order to submit written exceptions, comments and arguments concerning the conclusions of law and recommended penalty. By letter dated August 13, 2014, the State submitted exceptions to the Committee. Dr. Titus submitted exceptions by letter dated August 18, 2014. In addition, Stacey X. Stewart, Deputy Attorney General, representing the State, and James E. Liguori, Esquire, representing Dr. Titus, appeared before the Committee to

present argument. The Committee deliberated on the hearing officer's conclusions of law and recommendations, and the State's and Dr. Titus's exceptions to the same, on August 27, 2014, and moved to affirm the conclusions of law and implement the recommended penalty findings, with modification.

Pursuant to the Act, the Secretary of State ("the Secretary") is vested with the authority to issue discipline against a CSR. In determining whether a CSR should be disciplined, the Secretary considers the factors set forth in 16 *Del. C.* § 4734(a).¹ As part of that list, the Secretary is given broad authority to consider "factors relevant to and consistent with the public health and safety." 16 *Del. C.* § 4734(a)(7).

In this case, the hearing officer found that Dr. Titus continued to write prescriptions for some controlled substances during the period when his CSR was suspended. Further, Dr. Titus permitted his employees to write prescriptions for controlled substances under his suspended CSR. The hearing officer recommended that the Committee find as a matter of law that this behavior constitutes the use of a suspended registration number to prescribe a controlled substance, in violation of 16 *Del. C.* § 4757(a)(2). The hearing officer also recommended that the Committee find as a matter of law that this use of Dr. Titus's suspended CSR was a factor relevant to public health and safety, pursuant to 16 *Del. C.* § 4734(a)(7). The Committee accepts and adopts this recommended conclusion of law.

The hearing officer next found that Dr. Titus failed to maintain effective controls against diversion of controlled substances. In particular, there were deficiencies in the

¹ The hearing officer's recommendation references the statutory provisions in effect at the time of the underlying conduct.

charting of Dr. Titus's pain patients. The hearing officer recommended that the Committee find as a matter of law that the failure to maintain effective controls against diversion was a factor relevant to public health and safety, pursuant to 16 *Del. C.* §§ 4734(a)(1) and (4). The Committee accepts and adopts this recommended conclusion of law.

Finally, the hearing officer found that the State did not meet its burden of proof in showing violation of Committee Regulation 4.3. Regulation 4.3 provides that prescriptions may only be issued for legitimate medical purposes; the responsibility of proper prescribing rests with the prescriber; and a prescription may not be issued for the purpose of dispensing narcotics to a drug-dependent person. The hearing officer recommended that the Committee find as a matter of law that Regulation 4.3 did not serve as a factor informing the Secretary's discretion under 16 *Del. C.* § 4734(a)(7). The Committee accepts and adopts this recommended conclusion of law.

The hearing officer recommended that Dr. Titus's CSR be suspended for a period of one year, to be stayed immediately in favor of a two year period of probation, on the condition that, within 45 days of the Secretary's Final Order, Dr. Titus make a showing that he has complied with all terms and conditions of his Consent Agreement with the State in this matter, and that he has complied with all terms and conditions of the January 7, 2014 order of the Board of Medical Licensure and Discipline; if Dr. Titus fails to comply with these conditions, his CSR shall be immediately suspended for the one year period; if Dr. Titus's CSR is suspended, he may petition to have his CSR reissued for the remaining period of his probation if he can show compliance with the Consent Agreement and the order of the Board of Medical Licensure and Discipline, noted herein;

and, if during any period of suspension or probation, Dr. Titus violates the Act or the Medical Practice Act, his CSR shall be further disciplined.

In their submitted written exceptions and comments to the Committee, counsel for the State and counsel for Dr. Titus both argued against the hearing officer's recommended discipline

In correspondence dated August 13, 2014, Ms. Stewart argued for the State that the recommended discipline was inconsistent with the findings of fact and conclusions of law and that Dr. Titus's CSR should be revoked. Ms. Stewart asserted that Dr. Titus ignored his prior suspension order by manipulating two nurse practitioners with prescriptive authority by convincing them that they could write prescriptions during his suspension without having seen the patients. Further, Ms. Stewart stated in her letter that Dr. Titus continued to prescribe controlled substances, and permitted physician assistants to continue to prescribe under his CSR, despite his suspension. Finally, Ms. Stewart pointed to certain factual findings by the hearing officer pertaining to Dr. Titus's "deceit" during the hearing. Specifically, Dr. Titus attempted to justify his prescription writing by stating that a Division of Professional Regulation investigator, Anthony Kemmerlin, told him that it was permissible to have nurse practitioners write prescriptions for controlled substances if Dr. Titus saw the patients and authorized the prescriptions. At the hearing, Mr. Kemmerlin denied this statement by Dr. Titus, and the hearing officer found Mr. Kemmerlin to be more credible than Dr. Titus. Ms. Stewart's letter concluded that the prior suspension of Dr. Titus's CSR had not served as a deterrent to his illegal conduct and permitting Dr. Titus to retain a CSR was contrary to the public interest.

In his August 18, 2014 correspondence, counsel for Dr. Titus, Mr. Liguori, offered that the underlying factual circumstances occurred in 2012; credibility was an issue in the case; Dr. Titus has been compliant with this April 2, 2012 Consent Agreement; and Dr. Titus has had no new inquiries. Mr. Liguori argued that the recommended one year suspension stayed for probation was not necessary and would have a chilling effect on the ability of Dr. Titus to perform adequate patient care.

Counsel for the State and Dr. Titus appeared at the Committee's August 27, 2014 meeting to offer comments and argument. In addition to presenting the substance of her correspondence, Ms. Stewart addressed Mr. Liguori's argument that the underlying conduct occurred in 2012. Ms. Stewart argued that Dr. Titus should not benefit from the passing of time. She urged that the Committee recommend revocation of Dr. Titus's CSR or at least recommend a period of suspension. Ms. Stewart requested that, if the Committee accepted the recommended discipline, a requirement should be added that an outside auditor conduct a review of Dr. Titus's practice.

In his comments to the Committee, Mr. Liguori asserted that there was no lack of candor by Dr. Titus in his testimony before the hearing officer. Mr. Liguori stated that Dr. Titus had a special relationship with Division investigator Anthony Kimmerlin, and Mr. Kimmerlin gave Dr. Titus advice as to the practices of the two nurses who prescribed under Dr. Titus's suspended CSR. Mr. Liguori further stated that Dr. Titus "corrected his ways" when he was told he was wrong. According to Mr. Liguori, Dr. Titus is in compliance with the Consent Agreement and he has new practices in place, including pill counts and drug testing.

In response to Mr. Liguori's presentation, Ms. Stewart argued that there was no evidence in the record concerning Dr. Titus's practices since 2012.

As set forth in the hearing officer's recommendation, pursuant to 16 *Del. C.* § 4734(a)(7), a CSR may be suspended or revoked by the Secretary upon a finding that continued registration would be inconsistent with the public interest.

The Committee finds that Dr. Titus continued his pain management practice under a suspended CSR. As a physician, Dr. Titus should have known the procedures and guidelines pertaining to the prescribing of controlled substances. What Mr. Kemmerlin did or did not tell him did not relieve Dr. Titus of his responsibilities. Dr. Titus misled nurse practitioners into prescribing without meeting face to face with patients. Dr. Titus failed to supervise the medical practice he was supposed to be managing. His numerous mistakes, including lack of documentation, showed, at the very least, inattention and carelessness. In short, the egregious nature of Dr. Titus's conduct poses a threat to the public health and safety.

The Committee, therefore, recommends modification of the hearing officer's recommended discipline to include a one year period of suspension, to be followed by three years probation, educational training in pain management, and appointment of an independent auditor who, at Dr. Titus's expense, will conduct random audits of Dr. Titus's practice.

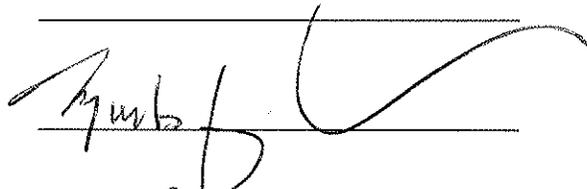
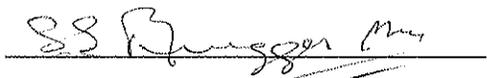
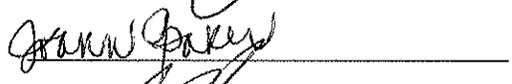
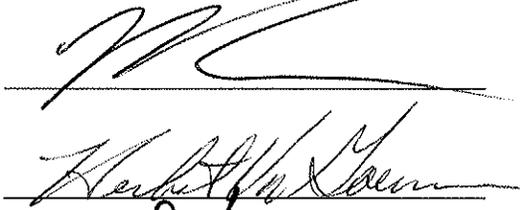
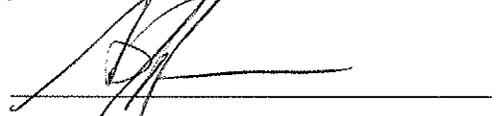
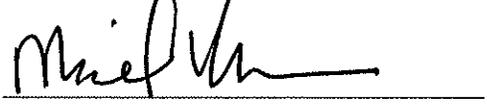
RECOMMENDATION

By unanimous vote of the members of the Committee hearing this matter, the Committee recommends that the Secretary take the following disciplinary action:

1. Dr. Patrick A. Titus's CSR shall be suspended for a period of one year, commencing on the date of issuance of a Final Order by the Secretary of State;
2. The suspension of Dr. Titus's CSR shall be followed by a three year period of probation;
3. Within 45 days of the date of the Secretary's Final Order, Dr. Titus shall make a full and candid showing of the following to the Committee:
 - a. That he has fully and timely complied with all terms and conditions of the Consent Agreement in this case between himself and the State on March 22, 2012 and so ordered by the Secretary on April 10, 2012;
 - b. That he has fully and timely complied or is complying with all terms and conditions of the order of the Board of Medical Licensure and Discipline entered on January 7, 2014 in Case No. 10-53-10, *et al*;
4. At his own expense, Dr. Titus shall retain an independent auditor to conduct random audits of his medical practice during his periods of suspension and probation, and such auditor shall provide the Committee with audit reports;
5. Dr. Titus shall obtain additional educational training in pain management practice;
6. During the period of suspension and probation, any further violation of 16 *Del. C.* 4734(a) and any violation of the Delaware Medical Practice Act, 24 *Del. C.* Ch. 17, which is related to Dr. Titus's pain management practice, after notice and hearing, shall result in further discipline of Dr. Titus's CSR, up to and including revocation;

7. In accordance with the provisions of 16 *Del. C.* § 4735(e), during the period of suspension, any and all controlled substances owned by or in the possession of Dr. Titus are to be placed under seal by the Director of the Office of Controlled Substances;
8. Pursuant to 16 *Del. C.* § 4735(f), the Drug Enforcement Administration shall be notified of the suspension of Dr. Titus's CSR and provided with a copy of the Secretary's Final Order;
9. A copy of this Order is to be personally served upon Patrick A. Titus, M. D.;
10. The Final Order of the Secretary shall constitute a public disciplinary action reportable to public practitioner databases and will be made part of Dr. Titus's permanent CSR file. A copy of the Hearing Officer's recommendation is attached hereto and incorporated herein.

IT IS SO RECOMMENDED this 5th day of November, 2014.

cc: Dr. Patrick A. Titus
James E. Liguori, Esquire
Stacey X. Stewart, Deputy Attorney General
Roger A. Akin, Chief Hearing Officer

Date mailed: November 6, 2014

APPEAL RIGHTS

29 *Del. C.* § 10142 provides:

- (a) Any party against whom a case decision has been decided may appeal such decision to the Court.
- (b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.
- (c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.
- (d) The court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Date Mailed: November 6, 2014

cc: Patrick A. Titus, M.D.
James E. Liguori, Esquire
Stacey X. Stewart, Deputy Attorney General