The Commonwealth of Massachusetts
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Division of Health Professions Licensure
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April 8, 2016

VIA FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7015 3010 0001 6944 5437
Paul Garbarini, Esq.
Attorney at Law
P.O. Box 1551
Northampton, MA 01061

RE: In the Matter of Christopher R. Rizzo, PH License No. 19665
Board of Registration in Pharmacy Docket No. PHA-2013-0001

Dear Attorney Garbarini:

Enclosed is the *Final Decision and Order ("Final Order")* issued by the Board of Registration in Pharmacy (Board) in connection with the above-referenced matter. The effective date of the Board's Order is ten (10) days from the date appearing on page 3 of the *Final Order* ("Date Issued"). Mr. Rizzo's appeal rights are noted on page 3 of the *Final Order.*

Sincerely,

David Sencabaugh, R. Ph.
Executive Director

Enc.

cc: Anne McLaughlin, Esq.
Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of	)	
Christopher R. Rizzo	)	PHA-2013-0001
Registration No. PH19665	)	

FINAL DECISION AND ORDER

Final Decision

On April 23, 2015, the Board of Registration in Pharmacy ("Board") issued a Ruling on Prosecuting Counsel's Motion for Summary Decision, which included Findings of Fact and Rulings of Law. On June 1, 2015, the Board held a formal sanction hearing in this matter. On October 13, 2015, the Administrative Hearings Counsel ("AHC") issued a Tentative Decision After Sanction Hearing, followed by a Revised Tentative Decision After Sanction Hearing on November 6, 2015. On December 7, 2015, the Board received Respondent Christopher Rizzo's Objections to the Tentative Decision. Prosecuting Counsel did not file objections or a Response to Respondent's objections.

The Board hereby adopts the Revised Tentative Decision after Sanction Hearing including all findings of fact, conclusions of law, and discussion contained therein as the Board's Final Decision. The Board rejects the Respondent's objections for the reasons set forth in the Board's Ruling on Respondent's Objections to the Revised Tentative Decision, issued concurrently with this Final Decision and Order.

ORDER

Based on its Final Decision, the Board **SUSPENDS** Respondent's license to practice as a pharmacist in the Commonwealth, license No. PH19665. The Respondent may petition the Board for reinstatement on or after April 20, 2019. Any petition for reinstatement shall include the following:

1. All documentation required pursuant to Board's policy 2011-02 "License Reinstatement following Surrender, Suspension, or Revocation".

2. Authorization for the Board to obtain a Criminal Offender Record Information ("CORI") report of the Respondent conducted by the Massachusetts Criminal History Systems Board.

3. Certified documentation from the state board of pharmacy of each jurisdiction in which the Respondent has ever been registered to practice as a pharmacist, sent directly to the Massachusetts Board identifying his license status and discipline history, and verifying that his pharmacist license is, or is eligible to be, in good standing and free of any restrictions or conditions.

4. Documentation demonstrating successful completion of all continuing education requirements.

The Board may require the Respondent to submit additional documentation prior to acting on the Respondent's petition for reinstatement.

The Board voted to adopt the within Final Decision at its meeting held on April 5, 2016, by the following vote:

In favor:	Timothy Fensky; Michael Godek; William Cox; Phillippe Bouvier; Garret Cavanaugh
Opposed:	Catherine Basile; Andrew Stein
Abstained:	None
Recused:	Ed Taglieri; Susan Cornacchio
Absent:	Richard Tinsley; Karen Conley; Patrick Gannon; Ali Raja

The Board voted to adopt the within Final Order at its meeting held on April 5, 2016, by the following vote:

In favor:	Timothy Fensky; Michael Godek; William Cox; Phillippe Bouvier; Garret Cavanaugh
Opposed:	Catherine Basile; Andrew Stein
Abstained:	None
Recused:	Ed Taglieri; Susan Cornacchio
Absent:	Richard Tinsley; Karen Conley; Patrick Gannon; Ali Raja

EFFECTIVE DATE OF ORDER

This Final Decision and Order becomes effective upon the tenth (10th) day from the Date Issued below.

RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this Final Decision and Order either to the Supreme Judicial Court pursuant to M.G.L. c. 112, § 64 or to a Superior Court with jurisdiction pursuant to M.G.L. c. 30A, § 14. Respondent must file his appeal within thirty (30) days of receipt of notice of this Final Decision and Order.

Board of Registration in Pharmacy,

David A. Sencabaugh, R.Ph.
Executive Director

Date Issued: 4/8/16

Notified:

VIA FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO.

Paul M. Garbarini
Attorney At Law
P.O. Box 1551
Northampton, MA 01061

BY HAND DELIVERY

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN PHARMACY

In the Matter of **Christopher R. Rizzo** Registration No. PH19665	)))	PHA-2013-0001

Ruling on Respondent's Objections to Revised Tentative Decision

On June 1, 2015, the Board of Registration in Pharmacy ("Board") held a formal sanction hearing in this matter. On October 13, 2015, the Administrative Hearings Counsel ("AHC") issued a Tentative Decision After Sanction Hearing. On November 6, 2015, the AHC issued a Reviewed Tentative Decision After Sanction Hearing. On December 7, 2015, the Board received Respondent Christopher Rizzo's Objections to the Tentative Decision. Prosecuting Counsel did not file objections or a Response to Respondent's objections.

The Board has reviewed and carefully considered the Tentative Decision and Respondent's objections. The Board is not required to address each of Respondent's objections or provide a specific response for rejecting objections. See *Arthurs v. Board of Registration in Medicine*, 383 Mass. 229, 315-316 (2005) and *Weinberg v. Board of Registration in Medicine*, 443 Mass. 679, 687 (2005). While declining to address each of Respondent's objections individually, the Board responds as follows:

Respondent's argument that his discipline in Rhode Island is not sufficient grounds for equivalent discipline in Massachusetts is without merit. *Anusavice v. Board of Registration in Dentistry*, 451 Mass. 786, 795 (2008) unequivocally established that "the imposition of reciprocal discipline based on the fact of discipline in another jurisdiction is a rational means for the board to protect public health and welfare... and does not suffer from any constitutional defect or statutory bar." Moreover, 247 CMR 10.03(1)(t) clearly states that discipline in another jurisdiction is ground for discipline in Massachusetts.

The remainder of Respondent's Objections consists of argument as to why Respondent's Massachusetts pharmacist license should not be suspended, but fail to identify any legal error. A reviewing court "must accept the factual determinations made by the agency" if they are supported by substantial evidence." *McGuiness v. Department of Correction*, 465 Mass. 600, 668 (2013), citing *School Comm. of Boston v. Board of Educ.*, 363 Mass. 125, 128 (1973). "Substantial evidence means such evidence as a reasonable mind might accept as adequate to support a conclusion." M.G.L. c. 30A, § 1(6); *Arthurs*, 383 Mass. at 304. Respondent Counsel's objections

do not identify any legal error; rather, the objections are simply a further attempt argue the facts and mitigating circumstances surrounding Respondent's discipline in Rhode Island. As such, the Board finds the Respondent's Objections are without merit.

The Board voted to adopt this Ruling on Respondent's Objections to Tentative Decision at its meeting held on March 1, 2016 by the following vote:

In favor:	Timothy Fensky; Michael Godek; William Cox; Phillippe Bouvier; Catherine Basile; Andrew Stein; Richard Tinsley; Ali Raja
Opposed:	None
Abstained:	None
Recused:	Ed Taglieri; Susan Cornacchio
Absent:	Garret Cavanaugh; Karen Conley; Patrick Gannon

Board of Registration in Pharmacy,

David A. Sencabaugh, R.Ph.
Executive Director

Date Issued: 4/8/16

Notified:

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY BOARD OF REGISTRATION IN PHARMACY

In the Matter of Christopher R. Rizzo Docket No. PHA-2013-0001

PH Registration No. 19665

REVISED TENTATIVE DECISION AFTER SANCTION HEARING

On October 23, 2013, a tentative decision after sanction hearing was issued. That decision is superseded by this revised decision, which is issued pursuant to 801 CMR 1.01(11)(e). The Board of Registration in Pharmacy ("Board") may discipline Christopher R. Rizzo ("Rizzo") based upon discipline of Rizzo by the State of Rhode Island and Providence Plantations, Department of Health, Health Services Regulation, Board of Pharmacy ("Rhode Island Board").

The Board issued an Order to Show Cause ("OSC") dated December 9, 2013 ordering Rizzo to show cause why the Board should not suspend, revoke or impose other discipline against his registration to practice as a pharmacist. The operative pleadings are the Second Amended OSC dated September 3, 2014 and an answer to that document dated October 1, 2014. The Second Amended OSC is based upon a Consent Order dated January 30, 2013 between Rizzo and the Rhode Island

Board in which Rizzo agreed "upon ratification of the Consent Order, the Summary Suspension [issued October 5, 2012] ...would be vacated, conditioned on [] surrender of his license as a registered pharmacist." In the Consent Order, Rizzo agreed "to not apply for reinstatement of his registered pharmacist license ... for a minimum period of three (3) years, effective upon the date of ratification of this Order." Among other things, the Consent Order stated "[o]n September 6, 2012 the Department conducted an inspection of Respondent's facility, Millennium Pharmacy[1] ... and asserts that it observed the following: Distribution of adulterated and misbranded drugs, Holding for dispensing and sale adulterated and misbranded drugs, Accepting returned controlled substances and legend drugs from end users, ... Dispensing of drugs without receiving a prescription...." The Consent Order stated "[a]cceptance by the Respondent and approval by the Department of this Consent Order do not constitute an admission of the facts asserted or recited herein."

The Second Amended OSC asserted a number of grounds for discipline including: (a) M.G.L. c. 112, § 61; (b) 247 CMR 9.00; (c) 247 CMR 10.03; (d) reciprocal discipline pursuant to Anusavice v. Board of Registration in

[1]The Rhode Island Board found Rizzo "served as the Pharmacist-In-Charge at Millennium ... at all relevant times." At the Massachusetts sanction hearing, Rizzo seemed to testify another person was Pharmacist-In-Charge when the Rhode Island Board inspected Millennium.

Dentistry; and (e) undermining public confidence in the integrity of the profession. On October 3, 2014, prosecuting counsel filed a motion for partial summary decision[2] referencing such grounds. Rizzo did not file an opposition to that motion. On April 23, 2015, the Board issued a decision allowing that motion ("Summary Decision"). On April 28, 2015, Rizzo requested a sanctions hearing. The hearing was held on June 2, 2015 before a former administrative hearing counsel and was audio-recorded.[3]

The Board correctly issued summary decision against Rizzo. In Anusavice v. Board of Registration in Dentistry, 451 Mass. 786, 794 (2008), the Supreme Judicial Court acknowledged the "role of the [dental] board in the over-all statutory scheme is to take primary responsibility in the regulation of the practice of dentistry in order to promote the public health, welfare, and safety", and in

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[2] The motion did not seek summary decision relative to paragraphs 4(d), 4(f), 4(g) or 4(h) of the Second Amended OSC alleging the following: (d) permitting pharmacy technicians to perform final verification of prescription refills; (f) failure to notify of suspected or potential loss of controlled substances within 24 hours of discovery; (g) failure to maintain a mechanism to identify on the prescription label the names of the delivery and central fill pharmacy involved with dispensing prescriptions; and (h) failure to maintain records of completed technician training. During a conference call on October 19, 2015, prosecuting counsel stated those allegations were withdrawn.

[3] At the hearing, 4 documents were entered into evidence: (1) Rizzo's resume; (2) Certificate of Completion, Pharmacy Regulatory Specialist; (3) Pamphlet from EB HOPE; and (4) Record of Standing. Rizzo read a written statement into the record. It was not submitted as an exhibit, but is available for review. Four persons testified at the hearing: Rizzo; Marc DeBenedictis; Paul Medico; and Joann Rizzo.

"carrying out its statutory charge, the board may exercise its authority by formal rule making, or may adopt policies by adjudication." The Court determined "the imposition of reciprocal discipline based on the fact of discipline in another jurisdiction is a rational means for the [dental] board to protect the public health and welfare." Id. at 795. The Court determined the out of state conduct (as opposed to the fact of out of state discipline) need not be established for imposition of reciprocal discipline. Id. at 795-96 ("Where, as here, charges of serious professional misconduct have been brought before the licensing board of a foreign jurisdiction, and the professional is afforded the full opportunity to challenge the truth of those allegations but has chosen to waive that opportunity, and to resolve the complaints by agreeing to discipline, we see no need for the Massachusetts board to take on the burden of conducting an out-of-State investigation, and attempting to prove those allegations in order to impose reciprocal discipline.")[4]

The Board has adopted a policy of reciprocal decision pursuant to adjudication and regulation. See In the Matter of Varkonyi, PHA (2013-0033); 247 CMR 10.03(1)(t) ("[h]aving been disciplined in another jurisdiction in any way for reasons substantially the same as those set forth in 247 CMR 10.03"); 247 CMR 10.06(7) ("Disciplinary action taken against a Massachusetts registrant or

[4] Accordingly, for purposes of reciprocal discipline, it is immaterial Rizzo's alleged conduct in Rhode Island was not established.

licensee by another state or jurisdiction … may be the basis for initiation by the Board of disciplinary action … provided that the conduct disciplined in another state or jurisdiction constitutes a violation of Massachusetts law.")

For the Board to impose reciprocal discipline upon Rizzo, the Rhode Island Consent Order must constitute discipline. It does. A Consent Order with a voluntary surrender of license constitutes discipline. See 247 CMR 10.06(6) ("A resolution of a complaint agreed upon by the Board and the registrant or licensee which may contain conditions placed by the Board on the registrant's or licensee's professional conduct and practice and which may include the voluntary suspension or surrender of a personal registration …") In his answer to the Second Amended OSC, Rizzo admitted his Rhode Island pharmacist license was disciplined by the Rhode Island Board.

For the Board to impose reciprocal discipline upon Rizzo, the reasons for discipline in Rhode Island must be substantially the same as those for which discipline is authorized in Massachusetts. They are. The Board may discipline based on ground(s) within 247 CMR 10.03(1), for deceit and gross misconduct in the practice of the profession, c. 112, § 61, and/or for conduct undermining public confidence in the integrity of the profession. In the Summary Decision, the Board

determined Rizzo's conduct violates provisions within 247 CMR 10.03(1), [5] constitutes deceit and gross misconduct in the practice of the profession, and undermines the public's confidence in the integrity of the profession.

Thus, the Board is authorized to discipline Rizzo based upon reciprocal discipline. As a result, the other alleged grounds for discipline are immaterial. They would not be meritorious because those grounds (unlike reciprocal discipline) require establishment of underlying conduct. To the extent the Summary Decision could be read as supporting those grounds or evidencing establishment of the conduct, it is now clarified.

Having determined the alleged conduct - distribution of adulterated and misbranded drugs; holding for dispensing and sale adulterated and misbranded

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[5] The Board found violation of 247 CMR 10.03 (1)(e) - engaging in misconduct in the practice of the profession; (1)(k) - engaging in conduct that has the capacity or potential to place the public health, safety or welfare at risk; (1)(r) - engaging in conduct that demonstrates a lack of good moral character; (1)(u) - engaging in conduct which undermines public confidence in the integrity of the profession; (1)(v) - committing an act that violates recognized standards of pharmacy practice; and (1)(w) - failing to comply with recognized ethical standards of the profession including but not limited to the standards of practice of pharmacists set forth in 247 CMR 9.01. Further, violation of 247 CMR 9.01 is a basis for discipline pursuant to 247 CMR 10.03(1)(w). The Board determined Rizzo's conduct violated: 247 CMR 9.01(1) - failing to conduct professional activities in conformity with laws; 247 CMR 9.01(2) - dispensing drugs, devices, or other substances in a manner intended to circumvent the law; 247 CMR 9.01(9) – aiding or abetting the unlawful practice of pharmacy; and 247 CMR 9.01(10) - dispensing or distributing expired, outdated or otherwise substandard drugs or devices or counterfeit drugs or devices to person or entity not licensed or legally authorized to received them.

drugs; accepting returned controlled substances and legend drugs from end users; and dispensing of drugs without receiving a prescription – warrants discipline in Massachusetts, the issue is the appropriate sanction. The Board has broad latitude in shaping appropriate sanctions. Anusavice v. Board of Registration in Dentistry, 451 Mass. at 801. But, it is advisable for the sanction to be comparable to that imposed in comparable Massachusetts cases. See Id.; Lankheim v. Board of Registration in Nursing, 458 Mass. 1022, 1025 (2011) (rescript). The remainder of this document presents the parties' factual assertions relative to sanction. This writer does not take a position relative to their accuracy and has not made findings of fact, or credibility or evidentiary weight determinations.

1. Parties' Respective Positions

During the conference call on October 19, 2015, prosecuting counsel confirmed prosecution was not taking a position as to what sanction the Board should impose. During that call, Rizzo's counsel stated Rizzo acknowledges he is subject to discipline and seeks a sanction other than suspension or revocation.

2. Impact on Rizzo of Millennium Incident and of Potential Sanction

Rizzo was unemployed for 5 months after the Millennium Incident. He and his wife testified he has had numerous sleepless nights. A recruiter told him he was damaged goods. He states his personal and professional life has been

drastically altered. He and his wife testified they must make decisions based on an unstable financial situation since they do not know if he will have a license. His wife believes they cannot maintain the home if he loses his career. She says losing his career would be a devastating impact. Rizzo hopes the Board recognizes if his pharmacy career ends, it would be "devastating to my family, myself and the community." He is willing to "do anything to preserve my career."[6]

3. Professional History

Rizzo obtained a B.S. in Pharmacy in 1985. During 1985-2007, he generally was a retail pharmacist. Rizzo worked at long-term care pharmacies servicing skilled nursing facilities as follows: (a) 2007-08 as Director of Pharmacy Operations at West River Pharm, Inc.; and (b) 2009-12 as General Manager of Pharmacy Operations at Millennium. After the Millennium Incident, he eventually became employed as a staff pharmacist at CVS Health, Inc. from 2013 to the time of the hearing.

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[6]Regarding activities, he is a volunteer member of EBHOPE that offers education and resources to the community on drug abuse; is a member of a diversion focus group at CVS Health, Inc.; and is a volunteer for youth sports.

4. Impact on patients' lives as a retail pharmacist

Rizzo states he loves every minute of being a retail pharmacist and having a true impact on patients. He recalls how "a wife contact[ed] me hours after her husband's sudden death as she herself, was battling ovarian cancer" and was "humbled that she felt that strongly about our relationship that she had to reach out to me during that most difficult time." That episode reminded him "of why I became a pharmacist."

5. Practicing pharmacy the right way

Rizzo testified the episode with the woman battling cancer evidences you "don't get this type of reaction from a patient if you don't practice pharmacy the 'right' way." He testified he always keeps patients' safety foremost. He "personally drove a CADD pump to a facility in a hurricane when the delivery company refused." He recalls how he "hung a picture of a resident lying in a LTC bed, by the time clock, to remind the staff of why we were there." He "instill[s] in my colleagues and staff that at the end of every prescription is a patient and family and they deserve our best every time."

6. Teaching others of mistake

Rizzo states he is willing to counsel others about his errors. As a floating pharmacist at CVS, he educates other pharmacists. He tries to explain to not be afraid to pick up the phone and ask for guidance, and to do what feels right.

7. Character references

Two pharmacists testified the profession would be hurt if Rizzo was not allowed to practice. Pharmacist Marc DeBenedictis was a staff pharmacist at Shaws in 1995 where Rizzo was the manager of record. DeBenedictis states the following about Rizzo: great to work under; patients loved him; very organized; followed the law; great pharmacist; and empathetic towards patients.

Regarding the bond between Rizzo and patients, DeBenedictis stated: even today patients remember Rizzo; Rizzo had a big impact; would deliver medication to patients; and treated patients like family. DeBenedictis noted a 'before the times' practice of Rizzo to call patients and see how the antibiotics were working.

Pharmacist Paul Medico noted in 1999, when Rizzo was becoming the district manager at Shaws, he trained Medico to replace him as store manager. Medico stated the training was fabulous with Rizzo accurate and organized. He says he is still using policies and procedures developed by Rizzo. Medico

considers himself a good pharmacist, but considers Rizzo better. He notes Rizzo has a passion for pharmacy and patient care.

8. Millennium Incident

Rizzo states he regrets what happened and would act differently if he had the chance. He says he is a trusting person and found himself in a position where others "swayed my view" as to what is compliant. He brought questions about procedures to his superiors who "assured that they were compliant and to continue to operate as such." He states he was not acting in disregard of regulations or trying to circumvent laws[7].

Rizzo testified he hired people with long term care experience in Rhode Island to use as resources regarding doing the right thing and operating properly. He states while there were some grey areas regarding Millenium operations, he was always assured it was okay. He provided the following example.

Rizzo says Rhode Island regulations say you can't return drugs if delivered. He says there would be times when drugs would be delivered to a long-term care facility, but the patient would have passed away and the facility would not accept them. The Millenium approach was such drugs were not delivered so they could

[7] Rizzo took a course and received a certificate in February, 2015 - Pharmacy Regulatory Specialist. Exhibit 2.

be taken back and placed into inventory. Rizzo thought the approach reasonable, but understands the Rhode Island Board did not.

Rizzo testified when the Rhode Island Board came to inspect Millennium it had a list of things on which it though Millennium was deficient. Rizzo described a conversation with a Millennium employee (who used to be on the Rhode Island Board) regarding that list. Rizzo asked the person what are we doing to fix these things; I did what I could; but some issues are systemic. The person responded, do not worry; this is how things work; Millennium would be formulating a letter to the Rhode Island Board; and you should not do anything because otherwise the Rhode Island Board would know Millennium had identified doing things wrong. Rizzo responded, what are you talking about; things need to be fixed. The person responded, this is how things work.

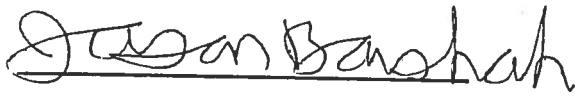
Rizzo's testimony regarding adulterated/misbranded drugs was not clear. Rizzo stated drugs are scanned when they arrive at a facility so the facility would know what it is receiving. He states one time the scanner did not work. The Millennium policy was to override the scanner. The facilit(ies) was concerned about safety and did not accept the drugs. Rizzo redistributed those drugs and brought back others.

CONCLUSION

I recommend the Board impose an appropriate sanction on Rizzo.

NOTICE TO PARTIES

The Parties have 30 days from the filing of this **revised** tentative decision to file written objections. Any objections must include written argument in support of the objections, because the Board will not hear oral argument on such. Parties may file responses to objections within 20 days of receipt of them. Documents should be sent to the attention of Heather Engman, Esq. of the Department of Public Health, 239 Causeway Street, 5th Floor, Boston MA 02114 with copy to this writer.



Jason B. Barshak

Dated: November 6, 2015 Chief Administrative Hearings Counsel

Notice sent to the following:

Anne F. McLaughlin, Esq.
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