



# The Commonwealth of Massachusetts

Executive Office of Health and Human Services

Department of Public Health

Division of Health Professions Licensure

239 Causeway Street, Suite 200, 2<sup>nd</sup> Floor, Boston, MA 02114

(617) 973-0800

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD  
SECRETARY

JOHN AUERBACH  
COMMISSIONER

March 9, 2011

Peter L. Ettenberg, Esq. by First Class and Certified Mail No. 7009 1680 0000 6389 6517  
Gould & Ettenberg  
370 Main Street  
Worcester, MA 01608

James Lavery, Esq.  
Prosecuting Counsel  
Division of Health Professions Licensure  
239 Causeway Street  
Boston, MA 02114

**RE: In the Matter of Julia L. Herne, PHA 2009-0173**

Dear Mr. Ettenberg and Mr. Lavery:

Enclosed is the Board's Final Decision and Order ("Final Decision") in the above-referenced matter. Please note that Respondent's appeal rights are set forth on page 9 of the Final Decision.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Coffey", written over a horizontal line.

James D. Coffey, R.Ph.  
Director

Massachusetts Board of Registration in Pharmacy



COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Board of Registration in Pharmacy

In the Matter of )  
Julia L. Herne )  
Tech. Reg. No. PT 6950 )  
Reg. Expires: 6/11/12 )  
\_\_\_\_\_ )

Docket No. PHA-2009-0173

FINAL DECISION AND ORDER

Procedural Background

This matter comes before the Board of Registration in Pharmacy ("Board") for a determination of an appropriate sanction and issuance of a Final Decision and Order. On June 8, 2010, the Board issued its Order to Show Cause ("OTSC") in this matter.<sup>1</sup> On June 25, 2010, Respondent filed an Answer to the Order to Show Cause and a Request for Hearing. On January 19, 2011, Prosecuting Counsel and Respondent filed Joint Stipulations ("Stipulations") and a Request for a Sanction Hearing ("request"). On January 19, 2011, the Administrative Hearings Counsel ("AHC") granted that request and scheduled a sanction hearing for February 15, 2011. On February 14, 2011, Respondent filed a Motion for Leave to Waive Appearance of the Respondent and to Submit on Documentation on the Issue of Sanction Recommendation ("motion"). As grounds for the motion, Respondent provided as follows: "[O]n February 10, 2011, [Respondent] was sentenced to one (1) year in the House of Correction and is unable to

<sup>1</sup> The Board's Order to Show Cause is incorporated by reference herein.



physically appear at the Sanction Hearing.” Prosecuting Counsel filed no objection to that motion, and on February 14, 2011, the AHC granted the motion and cancelled the sanction hearing. The Stipulations filed on January 19, 2011 provided as follows:

1. On or about March 6, 2006, the Board issued Licensee a pharmacy technician registration, Registration No. 6950. Licensee’s registration expires on June 11, 2012.
2. On or about April 9, 2008, Licensee was employed as a registered pharmacy technician at Ameridose, LLC, located in Framingham, Massachusetts.
3. On or about April 9, 2008, while employed and working as a registered pharmacy technician at Ameridose, LLC, Licensee assaulted a fellow employee. Licensee was subsequently criminally charged with assault and battery in violation G.L. c. 265, § 13A(a) in the Framingham District Court.
4. On November 3, 2008, Licensee admitted to sufficient facts of guilt to the charge of assault and battery. The case was continued without a finding and Licensee was placed on probation until November 3, 2009. In addition, Licensee was required to take an anger management course, perform 30 hours of community service, and have no contact with the victim. The Licensee successfully completed the probationary term and the case was subsequently dismissed.
5. On March 25, 2010, Licensee pled guilty to Reckless Endangerment of a Child, in violation of G.L. c. 265, § 13L. Licensee was sentenced to five (5) years probation. As a condition of probation Licensee was required to remain drug and alcohol free, remain employed, submit to a substance abuse evaluation, and submit to random drug screens.
6. Licensee admitted under oath to having been addicted to prescription painkillers.
7. Licensee’s conduct as alleged above warrants disciplinary action by the Board against her pharmacy technician registration pursuant to G. L. c. 112, §§ 42A and 61.
8. Licensee’s conduct as described above constitutes failure to conduct professional activities in conformity with federal, state and municipal laws, ordinances and/or regulations, of the Board and therefore warrant (sic) disciplinary action by the Board pursuant to M.G.L. c. 112, § 42A, and 247 CMR 2.00 et seq., specifically:



- a. Licensee's conduct as described above violates 247 CMR 10.03(a),(b), (e), (h), (k), (l), (n), (r), (u), (v), and (x) for violating various provisions elicited in the Board of Registration of Pharmacy grounds for discipline.
9. Licensee's conduct as described above also constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the pharmacy profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); see also, *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982).

In her Memorandum in Support of Sanction Recommendation ("Memorandum"), Respondent included a personal statement and fourteen (14) letters of support. Respondent also provided the following arguments as summarized below:

#### SUMMARY OF ARGUMENTS

In her Memorandum, Respondent requests that the Board, in determining an appropriate sanction for Respondent, consider the general characteristics of Respondent and her acceptance of responsibility for her conduct. Respondent suggests that an appropriate sanction would entail a 2-year suspension followed by a period of probation with a number of conditions.

Respondent is 35 years of age and lives with her husband, [redacted] ("[redacted]"), and Respondent's [redacted] son in [redacted], MA. Although the father of Respondent's son died in a motor vehicle accident in 1996, Respondent encourages his involvement in school and athletic activities and provides for his private school education. Respondent is a graduate of [redacted] High School. Respondent was most recently employed as a pharmacy technician and supervisor for Ameridose Manufacturing ("Ameridose") in Framingham, MA where she has been employed for 3.5 years. Prior to that position, Respondent worked for 3 years at Omnicare



as a data entry technician. Respondent met her husband, [redacted] in 2002. Respondent and [redacted] had a child, [redacted], together in January 2005. Respondent has been described as a good mother to [redacted].

According to Respondent, the 2009 assault and battery charge resulted from an incident instigated by a co-worker who was subsequently fired by the employer. Respondent admitted to sufficient facts of guilt on that charge, completed the terms of probation associated with that charge in November 2009, and the matter was subsequently dismissed.

In 2005, Respondent and [redacted] routinely took medication to sleep at night. Respondent used Benadryl capsules as a sleep aid and admits that while working as a pharmacist technician at Ameridose, she took those Benadryl capsules from her place of employment. Respondent kept the Benadryl capsules at her bedside table that was accessible to Respondent's [redacted] daughter, [redacted]. [redacted] admits to finding Benadryl capsules on the floor of the home at various times a few weeks prior to [redacted]'s death. [redacted], who at that time could crawl but could not walk without assistance, obtained and ingested a quantity of Benadryl greater than one 50 milligram capsule and on December 13, 2005<sup>2</sup>, died as a result. Based on her guilty plea to the charge of Reckless Endangerment relative to the death of her daughter, on March 25, 2010, Respondent was sentenced to 5 years probation and required to remain drug and alcohol free. Respondent complied with the terms of her probation for one year. However, Respondent recently tested positive for cocaine and returned to court on February 10, 2011 for violating the terms of her probation. After a hearing, the court revoked Respondent's probation and sentenced her to 1 year in the House of Correction, with a recommendation that she serve her

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<sup>2</sup> Although [redacted] died in December 2005, her cause of death was not determined until September 2006.



sentence at the Western Mass Alcohol Center ("WMAC") on Howard Street, in Springfield, MA.

According to Respondent, she and her husband have a stable supportive family life. Respondent regularly attends school functions at her son's school. Respondent, [redacted] and Respondent's son have been voluntarily involved with the Department of Children and Families ("DCF"). DCF has designed a service plan for the family and the family has fully complied with that plan. Respondent and [redacted] are also actively involved in the lives of [redacted]'s 2 children from his previous marriage.

At the time of [redacted]'s death in December 2005, Respondent admits that both she and [redacted] were addicted to pain medications. Respondent has since become an active member of Alcoholics Anonymous and recognizes the need to address her substance abuse problem. Respondent remains highly motivated to do so through the program at WMAC, a 6-month program involving intense group and one on one counseling.

In her personal statement written in November 2009, Respondent admits that her guilt, shame, and remorse over the death of [redacted] have affected all aspects of her life. Respondent believes that she will be punished for the rest of her life for the inexcusable mistake of bringing pills into her home and failing to secure them. Respondent requests that the Board consider how deeply her daughter's death has affected her, and allow her to "continue on a sober road".

Comments in Respondent's letters of support include the following: [redacted], Ameridose, October 2009: " Julia is one of our top Pharmacy Technicians"; [redacted] Technician Trainer, Ameridose, October 2009: " At work, Julia is always conscientious, helpful and detail oriented"; and [redacted] AA sponsor, October 2009: " [Respondent] is reliable, dependable, very active in AA, attends meetings on a regular basis, values her sobriety, and is very humble about it".



Prosecuting Counsel filed no written arguments relative to aggravating circumstances or sanctions.

## DISCUSSION

The role of the boards of registration in the over-all statutory scheme is to take primary responsibility in the regulation of the practices of various professions in the Commonwealth in order to promote the public health, welfare, and safety. *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, 143 (1990). The courts have conferred upon boards considerable latitude in shaping appropriate sanctions and the discretion to impose sanctions that will best protect the public. *Levy v. Board of Registration & Discipline in Medicine*, 378 Mass. 519, 525 (1979); *Arthurs v. Board of Registration in Medicine*, 383 Mass. 299 (1981). Moreover, the boards of registration have broad authority to regulate the conduct of professionals including the ability to sanction professionals for conduct that undermines public confidence in the integrity of the profession. *Kvitka, supra* at 142.

The Board, in making its determination on sanctions, must weigh the seriousness of the violation, and its effect on the public's perception of the profession. Respondent's admission to 2 different events resulting in criminal charges, her substance abuse issues, and her inability to address those issues for a sustained period of time, reflect poorly on Respondent and thereby, negatively impact the public's perception of the pharmacy profession.

Despite the personal tragedies, criminal charges, and other repercussions associated with her substance abuse issues, as recently as February 2011, Respondent again resumed her abuse of illicit drugs, specifically cocaine. The Board notes that Respondent's personal statement and her letters of support were written 15 months prior to Respondent's most recent relapse. Although



the authors of those letters of support praise Respondent's skills as a pharmacy technician and commend her commitment to regaining and maintaining sobriety, they do not address her most recent conduct and circumstances including the positive drug test for cocaine use. The Board is cognizant of the lasting and far-reaching consequences of [redacted]'s death to Respondent's emotional well-being. However, because of Respondent's unresolved issues relative to substance abuse, Respondent remains unfit to resume her duties as pharmacy technician.

The Board, by statutory mandate, is charged with the protection of the public health, safety, and welfare. The Board, therefore, has a compelling interest in ensuring that its licensees and registrants conduct themselves in a professional, competent manner. Under the current circumstances, Respondent has demonstrated an inability to resolve her personal issues relative to substance abuse. The Board, therefore, concludes that Respondent is presently unable to perform her duties as a pharmacy technician in a manner that would adequately protect the health, safety, and welfare of the public.



Pursuant to the Board's duty to protect the public health, safety, and welfare, the Board enters the following Order:

### **ORDER**

At its meeting on March 8, 2011, the Board voted to issue this Final Decision and Order **REVOKING** the pharmacy technician registration of Respondent, effective as of the date of this Final Decision and Order, by the following vote: In favor: Stanley B. Walczyk, R.Ph., Pres.; James T. DeVita, R.Ph.; George A. Cayer, R.Ph.; Karen Ryle, R.Ph.; Joel R. Berman, R.Ph.; Kathy J. Fabiszewski, Ph.D., N. P.; Donald D. Accetta, M.D.; and Steven Budish, Public Member. Recused: Sophia Pasedis, R.Ph., Pharm.D. Opposed: None. Absent: None. Abstained: None.

Respondent is directed to immediately return Pharmacy Technician Registration No. 6950 to the Board. The Board will not review any application for licensure or registration sooner than five (5) years from the Effective Date of Final Decision and Order. The Board does not envision any circumstances, terms or conditions pursuant to which the Board would favorably review an application for licensure or registration filed by Registrant.



**EFFECTIVE DATE OF ORDER**

The Order of the Board shall be effective as of the date of this Final Decision and Order.

**RIGHT TO APPEAL**

Respondent is hereby notified of her right to appeal this Final Decision and Order to the Supreme Judicial Court pursuant to G.L. c. 112, § 64 within thirty (30) days of receipt of this Final Decision and Order.

Date Issued: March 9, 2011

Massachusetts Board of Registration in Pharmacy



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Stanley B. Walczyk, R.Ph,  
President

Notices to:

By First Class and Certified Mail # 7009 1680 0000 6389 6517  
Return Receipt Requested

Peter L. Ettenberg, Esq.  
Gould & Ettenberg, P.C.  
370 Main Street  
Worcester, MA 01608

By Hand

James Lavery, Esq.  
Prosecuting Counsel  
Division of Health Professions Licensure  
239 Causeway Street  
Boston, MA 02114