

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure

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Board of Registration in Pharmacy
239 Causeway Street, Suite 500, 5th Floor
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617-973-0954

November 22, 2013

VIA FIRST CLASS AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED NO. 7012 0470 0001 3611 5653

Melissa Libby

[redacted]

RE: **In the Matter of Melissa Libby, PH License No. 25931**
Board of Registration in Pharmacy Docket No. PHA-2012-0227

Dear Mr. Wukawitz:

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 10 of the *Final Order* ("Date Issued"). Your appeal rights are noted on page 10 of the *Final Order*.

Sincerely,

David Sencabaugh, R.Ph.
Executive Director

Enc.

cc: Eugene Langner, Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN PHARMACY

In the Matter of)
Melissa Libby)
License No. 25931)
License Expires: 12/31/14)
_____)

Docket No. PHA-2012-0227

FINAL DECISION AND ORDER

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 following the Stipulations of Fact ("Stipulations") and Request for a Hearing on Sanctions filed by the parties on September 10, 2013. The Stipulation filed by the parties provided as follows:

1. On or about February 18, 2004, the Board issued to the Respondent a license to practice as a pharmacist in the Commonwealth of Massachusetts, License No. 25931. The Respondent's license is current and expires on December 31, 2014.
2. On numerous occasions between about April 18, 2009, and August 11, 2012, while employed as a pharmacist at the Stop & Shop Pharmacy at 468 Washington Street in Norwell, Massachusetts ("Stop & Shop"), the Respondent forged and filled prescriptions for controlled substances.
3. The Respondent diverted the controlled substances identified in the preceding paragraph for her own use and the use of her children and children's father.
4. The Respondent's conduct warrants disciplinary action by the Board against her license to practice as a pharmacist pursuant to 247 CMR 9.00, for violation of the Code of Professional Conduct and Professional Standards for Registered Pharmacists, Pharmacies and Pharmacy Departments, namely:

- a. 247 CMR 9.01(1) for failing at all times to conduct professional activities in conformity with federal, state and municipal laws, ordinances and/or regulations, including the regulations of the Board; and
- b. 247 CMR 9.01(6) for engaging in any fraudulent or deceptive act.

The Respondent's conduct warrants disciplinary action by the Board against her license to practice as a pharmacist pursuant to 247 CMR 10.03(1) as follows:

- a. 247 CMR 10.03(1)(a) for violating any of the duties and standards set out in Board regulations (247 CMR 2.00 *et seq.*) or any rule or written policy adopted by the Board
 - b. 247 CMR 10.03(1)(b) for violating any provision of M. G.L. c. 112, §§34 through 42A or provision of state or federal statutes or rules or regulations promulgated thereunder related to the practice of the profession;
 - c. 247 CMR 10.03(1)(e) for engaging in misconduct in the practice of the profession;
 - d. 247 CMR 10.03(1)(l) for engaging in conduct that has the capacity or potential to deceive or defraud;
 - e. 247 CMR 10.03 (1)(u) for engaging in conduct which undermines public confidence in the integrity of the profession;
 - f. 247 CMR 10.03(1)(v) for committing an act that violates recognized standards of pharmacy practice; and
 - g. 247 CMR 10.03 (1)(w) for failing to comply with recognized ethical standards of the profession, including, but not limited to, the standards of practice of pharmacists, pharmacy interns, pharmacies, and pharmacy departments set forth in 247 CMR 9.01: *Code of Conduct for Registered Pharmacists, Pharmacies and Pharmacy Departments.*
6. The Respondent's conduct warrants disciplinary action by the Board against her license to practice as a pharmacist pursuant to G.L. c. 112, § 61 for deceit, malpractice, and gross misconduct in the practice of the profession or for any offense against the laws of the Commonwealth relating thereto.
 7. The Respondent's conduct also constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); *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)

On September 11, 2013, the Administrative Hearings Counsel ("AHC") issued a Notice of Hearing scheduling the sanction hearing in this matter for October 1, 2013.

A hearing was convened on October 1, 2013 before the Board of Registration in Pharmacy pursuant to G.L. c. 30A and the Standard Rules of Adjudicatory Practice and Procedure at 801 CMR 1.00 *et seq.* AHC Stephanie Carey presided at the hearing. Respondent was present and represented herself. Prosecuting Counsel was Eugene Langner, Esq.

Exhibits

Neither Respondent nor Prosecuting Counsel submitted exhibits.

Witnesses

Prosecuting Counsel called no witnesses.

Respondent was sworn, issued a statement, responded to questions from Prosecuting Counsel, and called the following witness who testified on Respondent's behalf:

1. [REDACTED]

SUMMARY OF ARGUMENTS

Respondent

Prior to 2004, Respondent commenced a tumultuous relationship with [REDACTED] who ultimately became the father of Respondent's 2 children. Between 2004 and 2010, [REDACTED]

[REDACTED]

she was no longer "thinking clearly". This [REDACTED] continued until [REDACTED] left the home permanently in 2010 at Respondent's request.

Not only was [REDACTED] he would also continue this harassment while Respondent was at work at the Norwell Stop and Shop pharmacy ("pharmacy"). [REDACTED] a pharmacy technician with whom Respondent worked at the pharmacy for six years, described [REDACTED] behavior on those occasions that he appeared at the pharmacy. According to Ms. [REDACTED] was a bully who berated Respondent about bills or other similar complaints whenever he appeared at the pharmacy. On these occasions, Respondent would try to defuse the situation but usually to no avail. [REDACTED] would also call Respondent 3-4 times a day at the pharmacy to taunt or otherwise traumatize her. This [REDACTED] continued until [REDACTED] informed [REDACTED] that he could no longer call Respondent at the pharmacy unless it was an emergency and that she would no longer put his calls through to Respondent. Despite the constant [REDACTED], according to [REDACTED] Respondent was a "great" pharmacist who was very smart, professional, and "people-oriented". [REDACTED] testified that Respondent was exceptionally good with the customers and took time to respond to their questions related to prescriptions or instructions they had received from their physicians. [REDACTED] described Respondent as helpful, compassionate, and efficient. Moreover, [REDACTED] indicated that she would "love" to work with Respondent again. It was obvious to [REDACTED] that Respondent loved her career as a pharmacist and since her departure from the pharmacy [REDACTED] has observed how much Respondent misses her profession. Respondent also assisted [REDACTED]

██████████ in obtaining her registration as a pharmacy technician. ██████████ testified that Respondent has been very forthcoming about her role in the incidents that are the subject of these proceedings.

According to Respondent, not only did she work long hours at the pharmacy to provide for her family but she was also solely responsible for ensuring that the children were taken to their appointments with their physician particularly when they were ill. However, there were occasions when Respondent's work schedule prevented her from transporting the children to the doctor. On those occasions that her children were ill and she could not personally take them to a physician, she wrote penicillin prescriptions for them to alleviate their symptoms until she could take them to a doctor. On one occasion when Respondent was suffering from a stomach virus and could not find coverage for work, she wrote a prescription for penicillin for her own personal use in order to complete her full shift at work.

After 2010, ██████████ behavior became so aggressive that Respondent began to fear for her life. In 2012, ██████████ complained of an infected tooth and asked her to write and fill a penicillin prescription for him. Respondent believed that the safest and most expedient response was to do as he asked. After she provided ██████████ with the penicillin, his ██████████ behavior escalated to the point that she filed for a restraining order against him. In addition to his ██████████ behavior, ██████████ was also an angry, spiteful, and vengeful person whose intent was to "destroy" Respondent. In furtherance of the goal, after Respondent provided ██████████ with the penicillin, ██████████ filed a complaint with the Board on September 21, 2012 citing Respondent's conduct in obtaining the penicillin for him as grounds for the complaint. ██████████ also filed an action in court citing her conduct in filling

the penicillin prescription as evidence for the court to consider relative to Respondent's fitness as a mother.

On September 18, 2012, a judge, finding that [REDACTED] behavior was erratic and of concern to the court, ordered that [REDACTED] could only see the children in supervised visits at a site selected by authorities. In April 2013, Respondent was granted full custody of her children.

Since [REDACTED] has been out of their lives, [REDACTED]

[REDACTED] They are picking up the pieces of their lives and the children are doing much better in school and their personalities are blossoming. Respondent briefly worked in an after-school program that her children attended but after that program ended, she did not seek other employment. Respondent has not worked as a pharmacist since 2012 and has instead spent time with her children and attempted to maintain a secure, safe environment for them.

Respondent has expressed her remorse, embarrassment, and shame in engaging in this behavior. She accepts full responsibility for writing the penicillin prescriptions for herself, her children, and [REDACTED]. She acknowledges that there is no justification or excuse for her behavior. However, she appreciates the opportunity the Board has provided for her to explain herself and her state of mind during this period. [REDACTED]

[REDACTED]

Respondent testified that she worked very hard to obtain her pharmacy license and it is, therefore, unfathomable to her that she would jeopardize her career in this way. She is particularly repentant about the trouble she has caused for the innocent people

affected by her actions including the physician whose name she signed on the prescription, the insurers, and her employer. She acknowledges that she has also tarnished her own professional integrity. Respondent requests that the Board consider that this conduct is not reflective of her general character nor does it represent her love and respect for the profession. Respondent admits that she is "terrified" that she may never work as a pharmacist again. Respondent requests that the Board consider her traumatized state of mind during this period and permit her to again work as a pharmacist.

Prosecuting Counsel

Pursuant to Prosecuting Counsel's inquiries, Respondent agreed that she wrote prescriptions for antibiotics on those occasions that she was unable to take time off from work to accompany her children to the doctor. During the proceedings, Prosecuting Counsel also provided Respondent with an opportunity to review his file related to this matter and agreed to allow Respondent to use the materials if she believed they would assist her in any way during the hearing. Prosecuting Counsel also confirmed with Respondent that she is currently unemployed, in therapy, and attempting to reach some measure of stability and security in her life as well as the lives of her children.

ORDER

Based on its Final Decision, the Board SUSPENDS, for a minimum of one hundred eighty (180) days, Respondent's Massachusetts registration to practice as a Pharmacist in Massachusetts, License No. PH25931. Respondent is hereby ordered to

return any pharmacist registration issued to her by the Board, whether current or expired, to the Board's office at 239 Causeway Street, Boston, Massachusetts 02114, by hand or by certified mail, within five (5) days of the Effective Date set forth below. During the suspension period, Respondent shall not practice as a pharmacist nor shall she attempt to renew her right to practice in Massachusetts on or after the Effective Date of this Order. The Board shall refer any evidence of unlicensed practice to appropriate law enforcement authorities for prosecution as provided by G.L. c. 112, §§ 65.

Reinstatement of Registration: The Board acknowledges that the Licensee has not worked as a pharmacist since 2012. In recognition of this fact, the Board allows a one hundred fifty (150) day credit towards the one hundred eighty (180) day suspension. Accordingly, after thirty (30) days from the Effective Date of this Order, Respondent may petition the Board in writing for termination of her registration suspension at such time as she is able to provide documentation satisfactory to the Board's Executive Director that demonstrates her completion of eight (8) contact hours of continuing education, which may not be counted toward renewal requirements for the 2013-2014 renewal cycle. The eight (8) contact hours must be in pharmacy law, with at least one (1) contact hour in the topic of ethics.

Probation: The Board further imposes PROBATION for one (1) year upon the Respondent's license to commence immediately following reinstatement after the minimum thirty (30) day suspension period. During the Probationary Period, the Respondent shall:

- a. Comply with all laws and regulations governing the practice of pharmacy
- b. Notify the Board in writing within ten (10) days of each change in her name and/or address.

- c. Timely renew her registration.
- d. Not accept employment as a pharmacist in the role of Manager of Record
- e. Obtain and maintain employment as a pharmacist under direct supervision of a Registered Pharmacist for no less than three (3) months, and for a minimum of 300 hours. The Respondent must complete all 300 hours of supervised employment as a pharmacist, in accordance with the requirements set forth below, prior to accepting any other employment as a pharmacist.
 - i. The supervising pharmacist must be registered as a pharmacist in Massachusetts and his or her registration must be in good standing;
 - ii. The Respondent must arrange for the supervising pharmacist to submit a letter directly to the Board prior to starting the 300 hours of supervised employment. The supervising pharmacist's letter must verify that he or she (1) holds a registration as a pharmacist in Massachusetts that is in good standing, (2) that he or she has read this Agreement, and (3) that he or she agrees to supervise the Respondent's practice as specified in this Agreement.
 - iii. The Respondent must arrange for the supervising pharmacist to submit a second letter directly to the Board every 100 days beginning from the date of the first letter and until the Respondent completes all 300 hours. In the subsequent letters, the supervising pharmacist must describe the Registrants' practice during the supervisory period, including any violations of standards of practice that may have occurred during that time.

Termination of Probation. The Respondent may petition the Board for termination of the probation imposed on her license after one (1) year from the date of reinstatement. The Board may terminate the probation, after considering the Respondent's conduct and compliance with this Order during the Probationary period, the Board concludes that it is in the best interest of the public health, safety and welfare to terminate the probation.

On November 5, 2013, in accordance with the Board's authority and statutory mandate, the Board voted to issue this Final Decision and Order (by the following vote, effective as of the date issued: in favor: J. DeVita, Rph; J. Franke, RN, MHA, K. Ryle, RPh, MS, E. Taglieri, RPh, MSM, NHA, J. Trifone, RPh, A. Young, RPh, EdD, P.

Gannon, RPh, MS; A. Perron, MD, MBA, R.Ph.; R. Tinsley, MBA, MEd. opposing:

None; abstaining: None

EFFECTIVE DATE OF ORDER


The Order of the Board shall be effective ten days from the date issued, specified below.

RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this Final Decision and Order by Default to the Supreme Judicial Court, pursuant to G. L. c. 112, § 64 and G. L. c. 30A, §§ 14 and 15, within thirty days of receipt of notice of this Final Decision and Order by Default.

Date Issued: 11/22/13

Board of Registration in Pharmacy



David Sencabaugh, R.Ph.
Executive Director

VIA FIRST CLASS AND CERTIFIED MAIL
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Melissa Libby

[redacted]


BY Hand
Eugene Langner, Esq.
Prosecuting Counsel