

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN PHARMACY

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In the Matter of	)	
<b>NEW ENGLAND COMPOUNDING</b>	)	PHA-2012-0204
<b>PHARMACY d/b/a NEW ENGLAND</b>	)	
<b>COMPOUNDING CENTER</b>	)	
Pharmacy Registration No. 2848	)	
Exp. 12-31-13	)	

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**Final Decision and Order**

Procedural History

On November 28, 2012, the Board issued an Order to Show Cause (“OTSC”) to New England Compounding Center (“NECC”), commencing this proceeding. The OTSC alleged misconduct and grounds for discipline based on inspector observations and information gathered as part of the ongoing investigation. NECC responded to the OTSC with a motion to dismiss filed on December 18, 2012 (“2012 MTD”). Prosecuting Counsel filed an Opposition to the 2012 MTD (“PC Opposition”) on March 12, 2013. On March 27, 2013, NECC submitted a reply memorandum (“2013 Reply”). On April 10, 2013, the Administrative Magistrate issued a ruling denying the 2012 MTD.

Thereafter, on August 7, 2013, Prosecuting Counsel filed a motion to stay the proceedings. NECC assented to this motion, which was allowed by the Administrative Magistrate on August 12, 2013. On January 11, 2019, Prosecuting Counsel filed a motion to lift the stay and for leave to file a First Amended Order to Show Cause (“FAOTSC”). On January 24, 2019, the Administrative Magistrate allowed the motion, accepted the FAOTSC, and directed NECC to file an Answer to the FAOTSC. NECC filed an Answer to the FAOSOC on July 12, 2019.<sup>1</sup>

On August 29, 2019, Prosecuting Counsel filed a Motion for Partial Summary Decision asserting that the undisputed facts clearly establish that the Board, as a result of the criminal convictions of NECC pharmacists and pharmacy technicians related to their practice of pharmacy at NECC, is entitled to a decision that NECC’s pharmacy license is subject to discipline at as matter of law. NECC did not oppose Petitioner’s motion. The motion was reviewed by Chief Administrative Magistrate

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<sup>1</sup> On February 22, 2019, NECC filed a motion to dismiss the adjudicatory proceeding. The Board denied that motion on April 5, 2019.

Barshak (“CAM Barshak”) who submitted the Recommended Ruling on Petitioner’s Motion for Partial Summary Decision on or about September 25, 2019.

On December 5, 2019, the Board voted to adopt CAM Barshak’s findings and recommended ruling and granted the Motion for Partial Summary Decision with respect to the violations and grounds for discipline as identified therein.

Respondent did not request a hearing relative to sanctions.

### **Final Decision**

As described in the Board’s ruling on the Motion for Partial Summary Decision, the undisputed facts of constitute violations of M.G.L. c. 94C §§ 17 & 21 and 247 CMR 9.01(3). Respondent’s conduct warrants discipline pursuant to pursuant to M.G.L. c. 112, §§ 40, 42A, and 61 and 247 CMR 10.03(1)(b), (e), (k), (l), (u), (v), (w) & (x). In particular, the Board concurs with CAM Barshak’s analysis that NECC is subject to discipline based on the conduct by the Manager of Record.

Also as described in the Board’s ruling on the Motion for Partial Summary Decision, to the extent the FAOTSC alleged violations and/or grounds for discipline not included CAM Barshak’s recommended ruling, the Board dismissed those allegations without prejudice. The Board does NOT deem the allegations of violations and/or grounds for discipline not included CAM Barshak’s recommended ruling to be of a *de minimis* nature. However, the those allegations are sufficiently similar in nature to those established as a matter of law; as such, findings on those facts are unlikely to result in different or additional action by the Board.

The Board voted to adopt the within Final Decision at its meeting on February 6, 2020, by the following vote:

In favor: Timothy Fensky; Patrick Gannon; Michael Godek; Sebastian Hamilton; Stephanie Hernandez; Carly Jean-Francois; Julie Lanza; Richard Lopez; Andrew Stein; Kim Tanzer  
Opposed: None  
Abstained: None  
Recused: None  
Absent: Susan Cornacchio; Leah Giambarresi; Dawn Perry

**Order**

On February 6, 2020, in accordance with the Board's authority and statutory mandate, the Board voted to issue this Final Decision and Order and **REVOKE** Respondent's pharmacy license, DS2848, effective ten days from the Date Issued, by the following vote:

In favor: Timothy Fensky; Patrick Gannon; Michael Godek; Sebastian Hamilton; Stephanie Hernandez; Carly Jean-Francois; Julie Lanza; Richard Lopez; Andrew Stein; Kim Tanzer  
Opposed: None  
Abstained: None  
Recused: None  
Absent: Susan Cornacchio; Leah Giambarresi; Dawn Perry

**Right to Appeal**

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

BOARD OF REGISTRATION  
IN PHARMACY

\_\_\_\_\_  
David Sencabaugh, R. Ph.  
Executive Director

Date Issued: \_\_\_\_\_

Notice to:

**BY FIRST CLASS & CERTIFIED MAIL NO. 7019 0700 0000 1934 5086,  
RETURN RECEIPT REQUESTED**

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