



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

December 4, 2015

VIA FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7015 1660 0001 1911 0144

Robert H. D'Auria, Esq.
Law Office of Robert H. D'Auria, P.C.
41 North Rd. Suite 205
Bedford, MA 01730

RE: In the Matter of Steven R. Petrillo, R.Ph., PH License No. 23960
Board of Registration in Pharmacy Docket No. PHA-2011-0340

Dear Attorney D'Auria:

Enclosed is the *Final Decision and Order* ("Final Order"), Ruling on Respondent's Objections to Tentative Decision and the Tentative Decision 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 4 of the *Final Order* ("Date Issued"). Your appeal rights are noted on page 4 of the *Final Order*.

Sincerely,

David Sencabaugh, R. Ph.
Executive Director

Enc.

cc: Eugene Langner, Prosecuting Counsel
Vivian Bendix, Hearings Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
Steven R. Petrillo, R.Ph.)
PH License No. 23960)
PH License Exp. Date 12/31/12)

Docket No. PHA-2011-0340

FINAL DECISION AND ORDER

FINAL DECISION

On November 6, 2013, November 22, 2013, and December 4, 2013, the Board of Registration in Pharmacy ("Board") held a formal adjudicatory hearing in this matter before Administrative Hearings Counsel ("AHC") Maimoona Sahi Ahmad. On June 25, 2015, the AHC Vivian Bendix issued a Tentative Decision containing findings of fact, credibility determinations, and conclusions of law. On July 25, 2015, the Board received Respondent Steven Petrillo's Objections to the Tentative Decision. Prosecuting Counsel did not file objections. On August 14, 2015, Prosecuting Counsel filed Responses to Respondent's Objections.

The Board hereby adopts the Tentative Decision including all findings of fact, credibility determinations, conclusions of law, and discussion contained therein as the Board's Final Decision, with one correction. Specifically, the Board strikes Footnote 22 in Finding of Fact ¶ 34 because, as written, it is unclear. The Board rejects the Respondent's objections for the reasons set forth in the Board's Ruling on Respondent's Objections to the Tentative Decision, issued concurrently with this Final Decision and Order.

Although the Board has declined to set aside, and has thus adopted, findings that the Respondent acted deceptively and findings related to events that occurred on October 17, 2011, the Board does not base the sanction ordered below on these facts. The Board bases the sanction exclusively on findings that on October 12, 2011, the Respondent presented separate copies of the same prescription for Vicodin at two separate pharmacies on the same day and informed the pharmacist at the second pharmacy that he would pay cash rather than pay through insurance.

Steven Petrillo
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ORDER

Based on its Final Decision, the Board **suspends** Respondent's license to practice as a pharmacist in the Commonwealth, license No. PH23960. The Respondent may petition the Board for reinstatement on or after January 4, 2016. Any petition for reinstatement shall include the following:

1. A report from a treating physician indicating that Respondent is safe and healthy enough to practice pharmacy. The report shall include, but may not be limited to, whether Respondent continues to suffer from redacted or problems with redacted as a result of his September 2011 redacted
2. All documentation required pursuant to Board's policy 2011-02 "License Reinstatement following Surrender, Suspension, or Revocation".
3. A performance evaluation sent directly to the Board from each of the Respondent's employers, prepared on official letterhead that reviews the Respondent's attendance, general reliability, and specific job performance during the year immediately prior to the date on which the Respondent submits his petition ("petition date")¹.
4. Authorization for the Board to obtain a Criminal Offender Record Information ("CORI") report of the Respondent conducted by the Massachusetts Criminal History Systems Board.
5. 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.
6. Documentation demonstrating successful completion of all continuing education requirements.

¹ If the Respondent has not been employed during the year immediately prior to the petition date, she shall submit an affidavit to the Board so attesting.

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 December 1, 2015, by the following vote:

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

The Board voted to adopt the within Final Order at its meeting held on December 1, 2015, by the following vote:

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

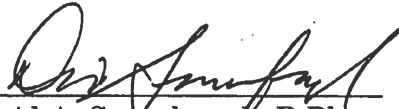
EFFECTIVE DATE OF ORDER

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: 12-4-15

Notified:

VIA FIRST CLASS AND CERTIFIED MAIL RETURN **RECEIPT REQUESTED NO.**

Robert H. D'Auria, Esq.
Law Offices of Robert H. D'Auria, P.C.
41 North Road, Suite 205
Bedford, MA 01730-1037

BY HAND DELIVERY

Eugene Langner, Esq
Office of Prosecution
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street, Suite 500
Boston, MA 02114

Steven Petrillo
PH23960
PHA-2011-0340

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
Steven R. Petrillo, R.Ph.)
PH License No. 23960)
PH License Exp. Date 12/31/12)

Docket No. PHA-2011-0340

Ruling on Respondent's Objections to Tentative Decision

On November 6, 2013, November 22, 2013, and December 4, 2013, the Board of Registration in Pharmacy ("Board") held a formal adjudicatory hearing in this matter before Administrative Hearings Counsel ("AHC") Maimoona Sahi Ahmad. On June 25, 2015, the AHC Vivian Bendix issued a Tentative Decision containing findings of fact, credibility determinations, and conclusions of law. On July 25, 2015, the Board received Respondent Steven Petrillo's Objections to the Tentative Decision. Prosecuting Counsel did not file objections. On August 14, 2015, Prosecuting Counsel filed Responses to Respondent's Objections.

The Board has reviewed and carefully considered the Tentative Decision, Respondent's objections, and Prosecuting Counsel's responses. 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:

Objections to Drafting and Review of Tentative Decision

The Tentative Decision states in Footnote 4 that AHC Maimoona Ahmad presided over the administrative hearing, and subsequently terminated her employment with the Division of Health Professions Licensure in early August 2014, before the Tentative Decision issued. AHC Vivian Bendix was assigned to the matter, and with meaningful input from AHC Ahmad, drafted the Tentative Decision. As Footnote 4 indicates, AHC Ahmad "reviewed a drafted Tentative Decision and concurred with the decision..."

Steven Petrillo;
PH23960
PHA-2011-0340

Respondent objects to the drafting and review of the Tentative Decision, essentially arguing the findings are not supported by substantial evidence and requesting that credibility determinations made by AHC Bendix be stricken. Respondent overlooks 801 CMR 1.01(11)(e), which squarely addresses this issue.

When a Presiding Officer becomes unavailable before completing the preparation of the initial decision, the Agency shall appoint a successor to assume the case and render the initial decision. If the presentation of evidence has been completed and the record is closed, the successor shall decide the case on the basis of the record. Otherwise, the successor may either proceed with evidence or require presentation of evidence again from the beginning... 801 CMR 1.01(11)(e)

In *Fox v Commissioner of Revenue*, 51 Mass. App. Ct. 336, 341 (2001), the Court stated "there is no general requirement under the Commonwealth's Administrative Procedures Act, G.L. c. 30A, §§ 1 *et seq.*, or otherwise that the officer who hears the evidence in a proceeding before an administrative agency must participate in the agency's decision in the matter." "Rather, an individual or group other than the presiding officer may issue the decision and, if requested, the findings of fact and report if either of the following factors is met: (1) the presiding officer 'participated in the board's deliberations in a meaningful manner,' or (2) 'credibility or evidentiary weight determinations are inessential' to the decision." *Bayer Corp. v. Commissioner of Revenue*, 436 Mass. 302 (2002), quoting *Fox*, 51 Mass. App. Ct. at 343-344. See also *Lighthouse Masonry, Inc. v. DALA*, 466 Mass. 692, 704 (2013) (no error where successor hearing officer issued decision following resignation of the hearing officer who presided over the hearing).

In this case, AHC Ahmad resigned her employment with the Division of Health Professions Licensure after the hearing, but prior to issuing the tentative decision. In accordance with 801 CMR 1.01(11)(e), AHC Bendix completed the Tentative Decision. AHC Ahmad reviewed the Tentative Decision and concurred with its findings, specifically as they relate to credibility. Accordingly, AHC Ahmad participated in the drafting of the Tentative Decision in a meaningful manner. . Based on the foregoing, the Board rejects Respondent's objections pertaining to the procedural background.

Objections to Specific Findings of Fact

Respondent objects to several of the AHC's determinations of credibility. However, the Board "may not reject a [hearing officer's] tentative determinations of credibility of witnesses personally appearing." 801 CMR 1.01(11)(c)(2).

Accordingly, the Board finds Respondent's objections to the AHC's determinations of credibility are without merit.

Respondent objects to several Findings of Fact on the grounds that the Board lacks substantial evidence that Respondent acted in a deceptive or deliberate manner to obtain duplicate prescriptions and/or a greater quantity of medication than had been prescribed for him. Respondent highlights evidence indicating there was a mix-up with the prescriptions at the prescriber's office; specifically, that Dr. redacted believed the issuance of duplicate prescriptions was a "misunderstanding" at Family Medicine Associates ("FMA"), as described in Exhibits 15 and 16.

The Board acknowledges the evidence that Respondent acted deceptively or purposefully to obtain duplicate prescriptions and/or pills to which he was not entitled is conflicting. Notably, however, the AHC determined Respondent's explanation as to why he received duplicate prescriptions was not credible. The Board "may not reject a [hearing officer's] tentative determinations of credibility of witnesses personally appearing." 801 CMR 1.01(11)(c)(2). Accordingly, the Board declines to set aside the AHC's findings that Respondent acted deceptively.

Respondent objects to Findings of Fact pertaining to Respondent's attempt to fill the prescription on October 17, 2011 because allegations pertaining to October 17, 2011 were not contained in the Order to Show Cause ("OTSC"). The OTSC does not identify any allegations pertaining to October 17, 2011. Nonetheless, Respondent's attempt, on October 17, 2011, to fill the same prescription described in paragraph 2 of the OTSC is relevant to Respondent's credibility and motive with regard to his actions on October 12. Indeed, Footnote 24 states the events on October 17, 2011 are to be considered solely for the purposes of assessing credibility. Accordingly, the Board declines to set aside any findings pertaining to October 17, 2015.

Respondent objects to Footnote 22 in Finding of Fact ¶ 34. The Board notes the footnote, as written is unclear, and should be removed from the Tentative Decision.

Respondent's Counsel objects to numerous other findings of fact. A reviewing court "must accept the factual determinations made by the agency" if they are supported by substantial evidence." *McGuinness 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. Each of the AHC's Findings of Fact are supported by witness testimony and/or documents in evidence. Respondent's objections are simply a

Steven Petrillo;
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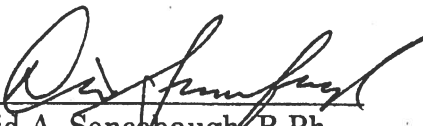
further attempt argue the facts of the case. As such, the Board finds the remaining objections are without merit.

Ruling

The Board voted to adopt this Ruling on Respondent's Objections to Tentative Decision at its meeting held on November 3, 2015 by the following vote:

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

Board of Registration in Pharmacy,


David A. Sencabaugh, R.Ph.
Executive Director

Date Issued: 12-4-15

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
Steven R. Petrillo, R.Ph.)
PH License No. 23960)
PH License Exp. Date 12/31/12¹)

Docket No. PHA-2011-0340

TENTATIVE DECISION²

I. Procedural Background

On March 19, 2012, the Massachusetts Board of Registration in Pharmacy ("Board"), issued a Temporary Order of Summary Suspension ("Temporary Order of SS") to Steven R. Petrillo ("Respondent"), a pharmacist licensed by the Board (PH License No. 23960). The Temporary Order of SS, effective as of March 19, 2012, reflected the Board's determination that as a result of the Respondent's conduct on or about October 12, 2011, the public health, safety and welfare necessitated the summary suspension of the Respondent's registration to practice as a pharmacist in the Commonwealth of Massachusetts

¹ The Board takes administrative notice of the Respondent's current record of standing, which indicates that his license is expired and his license or right to renew his license is subject to "Restriction by Agreement [and/or] Order". When a professional's license to practice his profession in the Commonwealth has expired, the Board retains jurisdiction over the licensee based on his right to renew his license. *Wang v. Board of Registration in Medicine*, 405 Mass. 15, 19-20 (1989)

² Pursuant to 801 CMR 1.01 (11)(c), the Board issues a tentative decision in the first instance. Parties may file objections with Board Counsel Heather Engman ("Ms. Engman") within thirty (30) days of the filing of the decision. Any objections filed must include written argument in support of the objections as the Board will not hold a hearing on the objections. Each party may file a response to opposing counsel's objections with Ms. Engman within twenty (20) days of receipt of those objections.

("Commonwealth") pursuant to M.G.L. ("G.L.") c. 112, §42A and Board regulations at 247 CMR 10.07. Following a hearing on the necessity of continuing the summary suspension, on September 11, 2012, the Board issued a Final Decision and Order on Summary Suspension, ordering the continuation of the suspension of the Respondent's registration pending the issuance of a Final Decision and Order on the merits of the matter currently before the Board.³

On March 23, 2012, the Board issued an Order to Show Cause ("Order") in the instant matter directing the Respondent to show cause why his registration to practice as a pharmacist in the Commonwealth of Massachusetts should not be suspended, revoked, or otherwise disciplined pursuant to Massachusetts General Laws ("G.L.") Chapter 112, §§ 27, 28, 42A, and 61 and Board Regulations 247 CMR 9.01(1) and 247 CMR 10.03(1) (a), (b), (e), (h), (k), (l), (r), (u), (v), and (x). The Order was based on allegations that on or about October 12, 2011, the Respondent presented a prescription for Vicodin to a Rite Aid Pharmacy, which prescription was rejected after it was determined that the Respondent had earlier on the same day filled a prescription for the same medication at a Walgreens Pharmacy. On or about April 18, 2012, the Respondent filed an Answer to the Order.

A formal adjudicatory hearing was held on November 6, 2013, November 22, 2013, and December 4, 2013, before Administrative Hearings Counsel Maimoona Sahi Ahmad ("AHC Ahmad") pursuant to G.L. c. 30A and the

³ The Board takes administrative notice of the procedural record in the Summary Suspension proceeding, noting that by agreement of the parties, the hearing on the necessity of continuing the summary suspension was conducted on April 11, 2012 and that a Tentative Decision was issued on May 14, 2012. Following the expiration of the period for filing objections to the Tentative Decision and responses thereto, a Final Decision and Order on Summary Suspension was issued on September 11, 2012.

Standard Rules of Adjudicatory Practice and Procedure, 801 CMR 1.01 *et seq.*⁴ Attorney Eugene Langner⁵ appeared as Prosecuting Counsel. The Respondent was present and represented by Attorney Robert D'Auria. The administrative record closed on February 5, 2014, after both parties filed Post-Hearing Briefs.

II. Witnesses

The following witnesses testified at the Hearing:

A. Prosecution Witnesses

1. [redacted] M.D., Family Medicine Associates ("FMA") (November 6, 2013)
2. [redacted] FMA (November 6, 2013)
3. [redacted] FMA (November 6, 2013)
4. [redacted] R.Ph., formerly of Rite Aid Pharmacy, North Andover, MA (November 22, 2013)
5. Officer [redacted] North Andover Police Department ("NAPD") (December 4, 2013)

⁴ The Board issued a Final Decision and Order by Default in this matter on January 10, 2013. Pursuant to G.L. c. 112, § 64, on February 11, 2013, the Respondent appealed the Final Decision and Order by Default to the Supreme Judicial Court ("SJC") (Docket SJ-2-13-0057). The parties filed an Agreement for Voluntary Dismissal with the SJC on April 22, 2013, which was allowed without hearing on April 25, 2013. The Board vacated the Final Decision and Order by Default and the case was reassigned to a new Administrative Hearings Counsel, Maimoona Sahi Ahmad. Pursuant to the Agreement for Voluntary Dismissal, the Respondent agreed that no action would be taken on any request for or relative to reinstatement of his ability to practice as a pharmacist in the Commonwealth pending the outcome of the new adjudicatory hearing.

Ms. Ahmad, as Administrative Hearings Counsel, was employed by the Department of Public Health, Division of Health Professions Licensure ("DHPL") Ms. Ahmad terminated her employment with the DHPL in early August 2014, before drafting the Tentative Decision in the instant matter. Therefore, in accordance with pertinent law, including 801 CMR 1.01 (11)(e), the Tentative Decision has been drafted by a successor Administrative Hearings Counsel, Vivian Bendix, with meaningful participation from Ms. Ahmad. Pursuant to a limited contract of employment with the Department of Public Health, Ms. Ahmad reviewed a drafted Tentative Decision and concurred with the decision, including, but not limited to findings related to credibility. Ms. Ahmad's determinations were based on her observations of the witnesses who testified at the hearing, her review and evaluation of the testimonial and documentary evidence presented at the hearing, and her consideration of the post-hearing briefs submitted by the parties.

⁵ Prosecuting Counsel Beth Oldmixon, who was newly hired, observed the hearing.

B. Respondent Witnesses

1. Steven Petrillo, Respondent (November 6, 2013)⁶
2. redacted M.D., Neurologist (November 22, 2013)

III. Documentary Evidence

The following exhibits were entered into the evidence at the hearing:

- Exhibit 1: Respondent's Record of Standing, License No. PH23960, dated October 21, 2013 (2 pages).
- Exhibit 2: Board's Temporary Order of Summary Suspension, dated March 19, 2012 (2 pages).
- Exhibit 3: Affidavit of the Custodian of Records, Walgreens Store #10940, Middleton, MA, dated April 4, 2012 (4 pages with attachments).
- a. FMA prescription for Vicodin (Hydrocodone/Acetaminophen) for Respondent, dated October 12, 2011 (1 page).
 - b. FMA prescription for Vicodin (Hydrocodone/Acetaminophen) for Respondent with Walgreens label, dated October 12, 2011 (1 page).
 - c. Walgreens Store #10940 Electronic Journal Report, dated October 12, 2011 (1 page).
- Exhibit 4: FMA prescription for Vicodin (Hydrocodone/Acetaminophen) for Respondent, dated October 12, 2011 (2 pages with attached Refill History).
- Exhibit 5: NAPD Incident Report, Incident #2011000021357 (5 pages).
- Exhibit 6: NAPD Electronic Recording Interview Form, dated December 29, 2011 (1 page).
- Exhibit 7: NAPD Miranda Rights Form, dated December 29, 2011 (1 page).

⁶ By agreement of the parties, the Respondent testified out of order and before the Prosecution rested.

- Exhibit 8: NAPD Consent for Search, dated December 29, 2011 (1 page).
- Exhibit 9: NAPD Incident Report, Incident #2011000027249, print date April 5, 2012 (1 page).
- Exhibit 10: Records of Respondent's treatment at Northeast Neurology, various dates (8 pages).⁷
- Exhibit 11: Neuropsychological Evaluation of Respondent by [redacted] [redacted] Psy.D., dated November 11, 2011⁸ (8 pages).
- Exhibit 12: Respondent's Patient Chart documenting treatment at Family Medicine Associates, various dates (29 pages).
- Exhibit 13: Curriculum Vitae of [redacted], M.D., undated (3 pages).
- Exhibit 14: Respondent's medical treatment record at Massachusetts General Hospital, dated September 25-26, 2011 (61 pages).
- Exhibit 15: Letter from [redacted] M.D., to Whom it may concern, dated March 23, 2012 (1 page).
- Exhibit 16: Text of electronic mail from [redacted] M.D., undated (1 page).

IV. Findings of Fact

The Board finds the following facts established by a preponderance of the evidence. Matters not specifically addressed in these findings do not justify a change in result.

Preliminary Findings of Fact

1. On or about February 24, 1998, the Board issued to the Respondent a license to engage in the practice of pharmacy in the Commonwealth of

⁷ The medical record indicates that the Respondent was seen at Northeast Neurology, located at Cummings Center in Beverly, MA. However, cover letters attached to the medical record state the name of the practice as North Shore Neurology and EMG, LLC. For purposes of this decision, the practice shall be referenced as Northeast Neurology.

⁸ The report is dated November 11, 2016, which appears to be a typographical error.

Massachusetts, PH License No. 23960. The Respondent's license was summarily suspended effective March 19, 2012, and remains suspended. [Ex. 1; Ex. 2; Board records of which the Board takes administrative notice].

2. In or about 1998, the Respondent earned a bachelor of science degree in pharmacy from the Massachusetts College of Pharmacy. He also has a bachelor of science degree in exercise science from the University of Massachusetts. The Respondent is the father of four (4) children. [Respondent Testimony; Ex. 1]

3. The Respondent's last position of employment as a pharmacist was at the Department of Veteran Affairs in Manchester, New Hampshire. Following an accident on September 25, 2011, the Respondent remained out of work on medical leave for a period of time, including during the month of October 2012. He ultimately resigned from his position as a pharmacist in November 2011. [Respondent Testimony; Ex. 10].

Accident on September 25, 2011 and Events Prior to October 12, 2011

4. On September 25, 2011, the Respondent was injured when he was struck by a motor vehicle while walking his dog.⁹ The Respondent was med-flighted to Massachusetts General Hospital (MGH) for treatment in the Emergency Department ("ED"). [Respondent Testimony; Ex. 14].

5. While at MGH, the Respondent was treated for a number of injuries, including, but not limited to, a redacted

redacted The Respondent also complained of redacted He received narcotic pain

⁹ The Respondent testified that upon being struck by a car, he was catapulted into the air and landed on his head in the opposing lane of traffic. The patient care report completed by Boston Med Flight states that "it was reported that the patient was struck at an unknown rate of speed and rolled onto the hood of the car." [Respondent Testimony; Ex. 14]

medication and a knee immobilizer and crutches. Upon his discharge from the ED, the Respondent was still in significant pain. He received a prescription for Oxycodone to control his pain. [Respondent Testimony; Ex. 14].

6. The Respondent obtained follow-up treatment on an outpatient basis with his primary care physician, Dr. [redacted] Dr. [redacted] a physician with Family Medicine Associates ("FMA") in Middleton, MA, had been the Respondent's primary care physician for approximately ten (10) years. [redacted] Testimony; Respondent Testimony].

7. Dr. [redacted] testified that on September 28, 2011, the Respondent presented to his office with injuries to his [redacted] consistent with someone who had been in a pretty serious accident." Dr. [redacted] also observed that the Respondent had suffered a [redacted], and Dr. [redacted] record for the Respondent's September 28, 2011 visit indicates that the Respondent complained of [redacted]. During this visit, the Respondent did not receive a prescription for pain medication because he still had Oxycodone from the prescription given to him at MGH. [redacted] Testimony; Respondent Testimony; Ex.12].

8. The Respondent visited Dr. [redacted] again on October 5, 2011, and was given a prescription for 30 tablets of Vicodin (5 mg. Hydrocodone/500 mg. Acetaminophen) with no refills and instructions to take 1-2 tablets every 4-6 hours for pain. The Respondent's medical record indicated that his [redacted] was [redacted], and that the Respondent had "[redacted] [redacted] but [redacted] and was having [redacted] since accident." Dr. [redacted] also referred the Respondent to a neurologist, Dr. [redacted]

redacted of Northeast Neurology for evaluation of redacted

Dr. redacted testified that during the October 5, 2011 visit, it was his opinion that the Respondent "had had a redacted ...and was recovering slowly. [redacted Testimony; Respondent Testimony; Ex. 12].

9. The Respondent was seen at Northeast Neurology on October 6, 2011.

The Respondent testified that at that time he suffered from redacted redacted [Respondent Testimony].

The Respondent's medical records from Northeast Neurology, which identify Nurse Practitioner redacted ("Ms. redacted") as the "provider",¹⁰ indicate that on October 6, 2011, the Respondent complained of redacted redacted

redacted¹¹ The record states that the Respondent had recently used Vicodin. The medical records indicate that the Respondent was diagnosed with a redacted and that upon examination, he was redacted had redacted noted in his redacted Ms. redacted directed the Respondent to remain out of work and to avoid tasks involving calculations or the administration of medication. [Respondent Testimony; Ex. 10].

October 12, 2011 visit to FMA

¹⁰ The record is unclear as to whether the Respondent was seen by Dr. redacted. The testimonial record indicates that the Respondent was seen by Dr. redacted or Ms. redacted, while the medical record indicates that he was seen by Ms. redacted [Respondent Testimony; Ex. 10]

¹¹ The Respondent complained that he had redacted and redacted associated with his redacted [Ex. 10].

10. The Respondent visited Dr. redacted again on October 12, 2011. The Respondent continued to redacted Dr. redacted testified that during this visit he noted that Dr. redacted discovered some "memory issues new since the accident",¹² and that the Respondent's symptoms, as the Respondent reported them to Northeast Neurology, would be consistent with a post-concussive syndrome. [redacted Testimony; Respondent Testimony; Ex. 12].

11. On October 12, 2011, Dr. redacted wrote a prescription for thirty (30) tablets of Vicodin without a refill. He entered the prescription into his office's computer system so that it could be sent electronically to the pharmacy. [redacted Testimony]

12. The Respondent testified that during this visit, he and Dr. redacted discussed the aforementioned prescription for Vicodin. According to the Respondent, Dr. redacted "possibly" recommended that he receive a single prescription for Vicodin that called for the dispensing of thirty (30) tablets with a refill because Dr. redacted wanted to "keep the prescription consistent" and a single prescription would last for only two and a half of the seven days until the Respondent's next appointment with Dr. redacted.¹³ The Respondent testified he understood that he would receive a single prescription with a refill that would contain a total of sixty (60) tablets, the same amount of pills that would be contained in two separate prescriptions. [Respondent testimony].

¹² Dr. redacted did not describe the memory issues he referenced in his note or identify the specific source of the information. [redacted Testimony. Ex. 12]

¹³ The Respondent's testimony was based on the premise that he required the maximum prescribed dose around the clock, i.e. 2 pills every 4 hours. The prescription was written for 1-2 tablets every 4-6 hours, as needed. On cross-examination, the Respondent testified that he was not taking the maximum dose of Vicodin and that 30 pills would have lasted him about five (5) days, which was less time than the week between his appointments with Dr. redacted [Respondent Testimony; Exs. 3, 4, 12]

13. Dr. ^{redacted}_d also testified about the conversation regarding this Vicodin prescription. Dr. ^{redacted}_{ed} lacked a specific memory of the conversation. However, he testified with certainty that he intended to write the Respondent one prescription, and that although he and the Respondent seemed to have discussed the possibility of a refill, he never intended to designate a refill on this prescription.¹⁴ [^{redacted}_{ed} testimony].

14. The Board credits Dr. ^{redacted}_s testimony and in accordance with Finding of Fact, ¶ 13, above, finds that Dr. ^{redacted}_{ed} intended to write the prescription without a refill. Dr. ^{redacted}_d testified in a clear, candid, and concise manner that left no doubt that he did not intend to write the prescription with a refill.

15. After his appointment with Dr. ^{redacted}_{ed}, the Respondent spoke with ^{redacted}_d, a FMA secretary¹⁵, at the checkout desk. The Respondent asked Ms. ^{redacted}_d about scheduling his next appointment and asked for a copy of the prescription for Vicodin that Dr. ^{redacted}_d had entered into the computer for

¹⁴ Dr. ^{redacted}_d testified that despite any confusion on the part of the Respondent, and despite any way that Exhibits 15 and 16 could be interpreted to the contrary, he always intended to write the Vicodin prescription without a refill. (Exhibit 15 is a letter dated March 23, 2012 written by Dr. ^{redacted}_d that stated that on October 12, 2012, he and the Respondent discussed "giving him a prescription with a single refill for Vicodin", but that Dr. ^{redacted}_d "...printed a single copy of the prescription without a refill", and the second copy [also without a refill] was "inadvertently printed." Dr. ^{redacted}_d testified that the printing of a second copy was inadvertent, but responsive to the Respondent's request, which may not have been inadvertent. Exhibit 16 is an undated copy of text from an e-mail from Dr. ^{redacted}_d to the Respondent in which Dr. ^{redacted}_d refers to the events surrounding the prescription he wrote for the Respondent on October 12, 2011 and to a conversation with DEA agents regarding those events. Dr. ^{redacted}_d states in multiple instances that he did not intend to give the Respondent two prescriptions^d and notes that he would not have written two (2) identical prescriptions. Dr. ^{redacted}_d also observes that the Respondent "had never had any issues with prescription medication in our office..." He goes on to write that, "...I would not have had a problem putting a refill on the single script", but also states in response to the Respondent's or a third party's suggestion, that he did not think that the absence of a refill of the single Vicodin prescription would be "...a reason you might have interpreted the presence of a second script as the refill." The letter concludes with a reference to a "misunderstanding" that occurred on October 12, 2011.) [^{redacted}_d Testimony; Exs. 15, 16]

¹⁵ Prior to working for FMA, Ms. ^{redacted}_d was a police officer for fifteen (15) years in Middleton, Massachusetts. [^{redacted}_d Testimony]

electronic transmission to a pharmacy. Ms. redacted asked the Respondent to take a seat in the waiting area while she went to the back of the office to speak with Dr. redacted about scheduling the follow-up appointment and to retrieve the copy of the prescription.¹⁶ [redacted testimony; Respondent Testimony].

16. Ms. redacted testified that the process described in Finding of Fact, ¶15 above, took approximately five (5) minutes, and that during their conversations, the Respondent said that he was in pain, but had a pleasant demeanor. [redacted Testimony].

17. The Respondent testified that while he was sitting in the waiting area, Ms. redacted ("Ms. redacted"), a FMA receptionist, asked him if he needed assistance.¹⁷ The Respondent, who was on crutches with a knee brace, walked over to Ms. redacted and explained that he was waiting for a prescription and follow-up appointment information. The Respondent testified that Ms. redacted then printed and handed him his prescription and he continued to wait in the waiting area for his appointment card from Ms. redacted. The Respondent testified that while he was waiting for Ms. redacted to return, he noticed that the prescription that Ms. redacted handed him did not designate a refill. [Respondent Testimony]

¹⁶ Ms. redacted testified that sometimes patients request a paper copy of a prescription despite it being sent electronically to the pharmacy. Ms. redacted also testified at multiple points throughout the hearing that when patients ask for a copy of a prescription, "I always ask the provider if it's ok, because if I see that they've already had one sent, I want to make sure it's okay...." Expounding further on her practice of seeking Dr. redacted's permission before handing patients copies of their prescriptions, Ms. redacted explained, "I'm a secretary, so I don't take any responsibility for making decisions." redacted Testimony]

¹⁷ Ms. redacted was seated at the front desk, where the Respondent had checked-in for his appointment. The front desk was "across the room" and "a little more" than 10' away from the check-out desk where Ms. redacted worked. [redacted Testimony]

18. Regarding the facts as described in Finding of Fact, ¶ 17 above, Ms. redact testified that the Respondent approached her at the front desk and asked her to print a copy of the prescription that he could take with him. She printed a copy of the prescription using the printer at her desk, stamped the prescription with Dr. redacted's name,¹⁸ and handed the stamped copy of the prescription to the Respondent. Unbeknownst to Ms. redact, Ms. redact was already in the process of obtaining another copy of the prescription for the Respondent at the printer in the rear of the office. [redact Testimony; Ex. 3.]

19. The Board credits Ms. redact's testimony; she was clear and forthcoming about her involvement in the events of October 12, 2011. Her testimony that the Respondent approached her to request a printed copy of his prescription was not challenged at any point during her testimony and she consistently maintained that when she provided the Respondent with a copy of his prescription, she was unaware that Ms. redacted was in the process of obtaining a copy of the same prescription for the Respondent to take with him.

20. Shortly thereafter, Ms. redacted returned to the front-desk area, telling the Respondent that she had his appointment card and prescription. The Respondent approached Ms. redacted took the appointment card and prescription signed by Dr. redact, and then left the office. Ms. redacted testified that she did not see a second prescription or any other documentation that the Respondent had in his possession during this exchange. [redact testimony].

¹⁸ Dr. redact testified that while certain prescriptions at that time could have been stamped, a prescription for Vicodin was not one of them, and that he never would have authorized the stamping of a Vicodin prescription. Ms. redact testified that FMA policy has since changed such that office staff are no longer able to print and stamp prescriptions. Regardless, the Board finds the policy-issue immaterial to the outcome of this case. [redact Testimony; redact Testimony]

21. The Respondent, however, testified that when Ms. [redacted] returned to the front of the office, she handed him his appointment card and he told Ms. [redacted] that he received a prescription from Ms. [redacted] in the interim, but that it failed to have a refill on it; after which Ms. [redacted] then handed him a second prescription.¹⁹ [Respondent testimony].

22. The Board credits Ms. [redacted] testimony regarding this exchange and does not credit the Respondent's implausible assertion that he told Ms. [redacted] that he had, in the interim, received a printed prescription from Ms. [redacted]. Like the Respondent's description of his interaction with Ms. [redacted] the Respondent's alternative version of the events involving Ms. [redacted] was self-serving and spurious. In contrast, Ms. [redacted], who, like Ms. [redacted] had no stake in the outcome of this matter, testified in a clear and candid manner, and was consistent and definite about the procedures she meticulously followed each time a patient requested a copy of a prescription that FMA had electronically sent to a pharmacy. The Board credits her testimony that whenever a patient asked for a copy of a prescription sent to a pharmacy, she always asked the provider whether she could provide that copy. The Board concludes that if the

¹⁹ According to the Respondent, Dr. [redacted], who was about 5 or 6 feet away, handed Ms. [redacted] the prescription, which she then handed to the Respondent. However, Ms. [redacted] testified that Dr. [redacted] signed the prescription in the rear of the office and gave her an appointment date for the Respondent; that she returned to the front check-out area of the office, wrote out an appointment card, and held up the appointment card so the Respondent could see it and stated to the Respondent that she had his prescription and appointment card; and that the Respondent walked over from the waiting area and took the prescription and appointment card. According to Ms. [redacted] Dr. [redacted] would not come to the front office area because patients would approach him and "talk to him too much." While Dr. [redacted] lacked a specific memory of the events that transpired after he signed the printed prescription Ms. [redacted] handed to the Respondent, he testified that he did not speak with the Respondent at the front desk area or after he wrote the prescription for Vicodin. Dr. [redacted]'s best memory was that he signed the copy of the prescription the Respondent had requested at the printer in the rear of the office and handed it to Ms. [redacted] who "brought it out to him". [redacted Testimony; redacted Testimony; Respondent Testimony] t d

Respondent had indeed informed her that Ms. redacted had provided him with a copy of the prescription, Ms. redacted would not have simply handed the Respondent an additional copy without checking with Dr. redacted.

23. The Respondent testified that he left the office assuming that Dr. redacted wrote a second prescription in lieu of a refill on the first prescription, and that ultimately this was "one and the same". [Respondent testimony].

24. The Board does not credit the Respondent's testimony that he left FMA under the assumption that the two copies of the same prescription were the same as a single prescription with a refill. The Respondent's actions in procuring in a deceptive manner two copies of his prescription from Ms. redacted and Ms. redacted as well as the Respondent's conduct as described in Findings of Fact, ¶¶ 25-46, below, are indicative that he knew he was not entitled to fill both copies of the prescription.

Respondent's Attempt to Fill Multiple Prescriptions

25. Shortly after he left FMA, the Respondent visited Walgreens Store #10940, in Middleton, Massachusetts, and presented the copy of the prescription identified at Exhibit 3, where it was filled at 9:35 a.m. The prescription was processed through the Respondent's medical insurance. [Respondent testimony; Ex. 3].

26. The Respondent testified that while he was at Walgreens, he did not think of filling the second copy of the prescription. He testified that it was only after he left Walgreens and had been driving for 8-10 miles, when he realized that it would be easier for him to fill the second copy of the prescription while he was

out because the pills dispensed from the first copy would last only about three-four days and his immobilized leg and crutches made using his car and getting around difficult.²⁰ The Respondent ultimately drove to a Rite Aid pharmacy several miles away in North Andover, Massachusetts to fill the second copy of his prescription. [Respondent Testimony; Ex.5].

27. [redacted] ("Ms. [redacted]") is a registered pharmacist in the Commonwealth of Massachusetts. On October 12, 2011, she was the pharmacy manager at the Rite Aid pharmacy in North Andover, Massachusetts. Ms. [redacted] testified that she has more than twenty (20) years experience practicing as a registered pharmacist. [redacted] testimony].

28. According to Ms. [redacted], when the Respondent presented the second copy of the prescription to her at Rite Aid, he asked her not to process the prescription through his insurance. Ms. [redacted] also testified that the Respondent never told her that he had filled the first copy of the prescription at Walgreens earlier that morning. [redacted] Testimony].

29. The Respondent, however, testified that when he presented the prescription to Ms. [redacted], he told her that he had received two prescriptions from his physician; that he had just filled one prescription at Walgreens; that his insurance would probably deny payment for the prescription he presented at Rite Aid; but, based on his "condition," he was willing to pay cash for the medication. [Respondent testimony].

²⁰ Although the Respondent was driving himself on October 12, 2011, he testified that his mother drove him to his appointment at Northeast Neurology on October 6, 2011. [Respondent Testimony]

30. Ms. [redacted] testified that despite the Respondent's instructions not to do so, she told a pharmacy technician to run the prescription through the Respondent's insurance coverage in accordance with her customary practice. She specifically testified that "[w]hen someone present[s] a prescription for a narcotic prescription and says they don't want it filled with insurance, in my experience there's usually a reason why and it's my job to determine what that reason is." [redacted] Testimony]

31. Ms. [redacted] learned that the insurance company rejected coverage of the prescription. She then spoke with the insurance company, Walgreens pharmacy in Middleton, and FMA. During her call with FMA she was advised that the copy of the prescription presented at Rite Aid should be cancelled and not filled. [redacted] Testimony]

32. Ms. [redacted] testified that when she informed the Respondent that she could neither fill the prescription nor return the prescription to him, he became upset and threatened to call his attorney. Ms. [redacted] also testified that the Respondent did not appear to have any difficulty understanding what was occurring and seemed quite aware of what Ms. [redacted] was telling him. [redacted] Testimony].

33. At no time during his visit to Rite Aid did the Respondent call FMA.²¹ Ms. [redacted] called the North Andover Police Department (NAPD) once she determined that the Respondent had a duplicate prescription. [redacted] Testimony]

²¹ The Respondent testified that when Ms. [redacted] told him that his insurer had denied coverage for the prescription and she would have to contact the prescribing physician, he asked her to contact the physician and stated that he would also do so himself. [Respondent Testimony]

34. The Board credits the testimony of Ms. [redacted]. She testified in a clear, candid, and forthright manner. The Board credits that the Respondent told Ms. [redacted] he would pay cash for the prescription, but does not credit his testimony that he informed her that he had received two prescriptions from his physician and that he had filled one prescription at Walgreens earlier that morning. Had the Respondent done so and had Ms. [redacted] understood that she was being asked to provide a refill of a prescription that had only just been filled, it follows that Ms. [redacted] would have called FMA for clarification and direction.²² Rather, Ms. [redacted] had to inquire with the Respondent's medical insurance to learn that the prescription had already been filled that morning. Had the Respondent informed her of this fact, she would not have learned the information from the insurer and likely would not have run the prescription through insurance in the first instance.

35. Based on the findings of facts above relative to the events that transpired at FMA and at Rite Aid, the Board finds that the Respondent was not credible in describing his decision to fill the second copy of his prescription at Rite Aid after picking up his medication at Walgreens. Rather, the Board finds that the Respondent knew that Walgreens could not and would not fill both copies of the prescription and as a result of this knowledge, went to Rite Aid to try to have the second copy of the prescription filled. The Respondent acknowledged as much to Officer [redacted] of the NAPD. (See Findings of Fact, ¶¶ 37 and 43, below).

²² A refill of a prescription is intended to provide an additional supply of medication when the original supply is exhausted. It is not within a pharmacist's discretion to provide double the quantity of medication prescribed by an authorized prescriber simply because the prescriber has authorized a refill.

The Board, therefore, discredits the Respondent's testimony that he did not think of filling both copies of the prescription at Walgreens and that while driving home from Walgreens, he suddenly decided to stop at Rite Aid to fill the second prescription because he realized the medication from Walgreens would last only 3-4 days and he did not know when he would "get out again".²³

Police Investigation

36. Officer [redacted], who has served as a patrolman for the NAPD since 2005, responded to the call from Ms. [redacted] described in Finding of Fact, ¶ 33, above. While at Rite Aid, Officer [redacted] met with Ms. [redacted], and took the second copy of the prescription into evidence. Later that day, he called the Respondent and spoke with him by telephone. [redacted Testimony].
37. Officer [redacted] testified that during their phone call, the Respondent explained to him that he believed he was handed the second copy of the prescription *in lieu* of a refill on the first prescription. Officer [redacted] also testified that the Respondent told him that he proceeded to the Rite Aid pharmacy to fill the second prescription because, as a pharmacist, he knew that Walgreens would not fill the second prescription. [redacted Testimony]
38. Officer [redacted] testified that he told the Respondent that he would follow-up with FMA. Later in the afternoon, he called Dr. [redacted] s office and spoke with a [redacted]

²³ The Respondent testified that if his purpose had been deceit regarding the already filled prescription at Walgreens, he would have presented the second prescription at a pharmacy that unlike Rite Aid, did not already have his insurance information in its computer system. However, Ms. [redacted] s testimony established that as a responsible pharmacist, her practice would have been to run the prescription through the Respondent's insurance regardless of whether his insurance information was already available to Rite Aid. (Respondent Testimony; [redacted Testimony])

FMA agent who told him that the Respondent was inadvertently handed two copies of the prescriptions even though he was only entitled to one copy of the prescription. [redacted Testimony; Ex.5].

39. Officer [redacted] also testified that during the October 12, 2011 telephone call, he told the Respondent that he would notify him when and if the second copy of the prescription could be filled. Officer [redacted] never subsequently communicated with the Respondent about whether or not that prescription could be filled. [redacted Testimony]

40. Nonetheless, Officer [redacted] noted in the Police Incident Report that Ms. [redacted] reported that on October 17, 2011, the Respondent called the Rite Aid in North Andover and told a pharmacist that everything was sorted out and he was cleared by the NAPD and Dr. [redacted] to have the prescription filled. The NAPD never advised the Respondent that he could fill the second prescription, and the pharmacy advised the Respondent that the prescription could not be filled. Ms. [redacted] also testified that a few days after October 12, 2011, she learned that the Respondent spoke with her pharmacist partner about the prescription, seeking to have his prescription filled and stating that he had spoken to the police and that it was okay to fill the prescription. [redacted Testimony; redacted Testimony; Ex. 5]

41. Based on the credible testimony of Ms. [redacted] and Officer [redacted] as well as the Police Incident Report, the Board finds that on October 17, 2011, the Respondent called Rite Aid and attempted to fill the second copy of the

prescription, despite his not being informed that he was able to do so by Officer [redacted] and the NAPD.²⁴

42. On November 22, 2011, the NAPD interviewed Dr. [redacted] and Ms. [redacted] about the prescriptions the Respondent received and presented at Walgreens and Rite Aid. The NAPD investigation continued into December 2011 and on December 29, 2011, the Respondent was arrested on the charge of fraudulently obtaining a controlled substance.²⁵ At this time, the Respondent consented to a search of his vehicle and a recorded interview, and waived his Miranda rights. [redacted] testimony; Exs. 5-8].

43. Officer [redacted] testified that during the interview, the Respondent discussed that he had the first copy of the prescription filled through his insurance at Walgreens, but did not have the second copy filled there because, being a pharmacist, he knew that Walgreens would not fill a second prescription. [redacted] Testimony; Ex. 5]²⁶

44. Officer [redacted] s testimony and the Police Incident Report also indicated that during the interview, the Respondent represented that Dr. [redacted] and a secretary in Dr. [redacted] s office each handed him a prescription for Vicodin without

²⁴ With regard to Officer [redacted] s instruction to the Respondent that the Respondent was not to fill the prescription until Officer [redacted] notified him that he could do so and with regard to Respondent's attempt to fill the prescription at Rite Aid despite not having been told by Officer [redacted] of the NAPD that he could do so, the Board notes that a police officer lacks the authority to allow an individual to fill an invalid prescription. The Board considers these events solely for purposes of assessing credibility.

²⁵ In his opening statement, counsel for the Respondent represented that the charges against the Respondent were dismissed prior to trial. The record contains no evidence on this point.

²⁶ The incident report notes that during the interview on December 29, 2011, the Respondent indicated that he did not attempt to fill the second prescription at Walgreens because as a Pharmacist, he knew that Walgreens would not fill both copies of the same prescription. He also stated that he took the second copy to Rite Aid because he was unsure when he would be able to transport himself to the pharmacy again because of mobility issues. [Ex.5].

a refill and the prescriptions were identical. The Respondent represented that he believed that the second prescription was in lieu of a refill order on the first prescription. The Police Incident Report and Officer [redacted] further indicated that the Respondent initially remarked that he had spoken with Dr. [redacted] about his receipt of two identical prescriptions, but that subsequently, the Respondent stated that he "wished" he had spoken with Dr. [redacted] about the two identical prescriptions. [Testimony Sewade; Ex. 5]

45. Officer [redacted] testified that throughout his dealings with the Respondent, the Respondent was polite and indicated that he felt that he did nothing wrong. [redacted] testimony].

46. The Board finds that Officer [redacted] was a credible witness and credits his testimony. He testified in a clear and concise manner, provided forthright answers throughout his examination, acknowledged his lack of recall in reply to a limited number of questions, and had no motivation to speak anything but truthfully.

Respondent's Ongoing Medical Treatment

47. After the incident on October 12, 2011, and throughout the NAPD investigation in October and November 2011, the Respondent continued with his follow-up medical treatments with Dr. [redacted] and received additional prescriptions for Vicodin.²⁷ Dr. [redacted] testified that throughout the Respondent's medical treatment, he never saw any physical signs or symptoms that the

²⁷ Dr. [redacted]'s medical record for the Respondent indicates that the Respondent saw Dr. [redacted] for a follow-up appointment related to his accident on December 1, 2011 and next saw Dr. [redacted] for an annual physical on January 19, 2012. (Exhibit 12)

Respondent was trying to abuse Vicodin. [redacted] testimony; Respondent testimony; Ex. 12].

Expert Testimony

48. Dr. [redacted] ("Dr. [redacted]") appeared as an expert on behalf of the Respondent. Without objection, Dr. [redacted] was qualified as an expert in the field of neurology. Dr. [redacted] is board certified in neurology and has practiced as a neurologist for over thirty (30) years. He has seen hundreds of patients with concussions and for seven (7) years, served as director of neurology at a head injury rehabilitation facility. Currently, Dr. [redacted] is a staff neurologist at Cambridge Health Alliance and a clinical instructor in neurology at Harvard Medical School, a position he has held since 1985. Dr. Cranberg has served as President and Secretary of the Boston Society of Neurology and Psychiatry. [redacted] testimony; Ex. 13].

49. In preparation for his testimony, Dr. [redacted] reviewed the Respondent's medical records from MGH, from Dr. [redacted]'s office, from Northeast Neurology, and from [redacted], Psy. D, who performed a neuro-psychological evaluation on November 11, 2011. Dr. [redacted] also reviewed the Police Incident Report. Dr. [redacted] customarily reviews medical records in forming opinions. [redacted] Testimony; Exs. 9-12, 14]

50. Dr. [redacted] neither physically examined the Respondent nor spoke with any of the medical professionals involved in the Respondent's care or treatment. [redacted] Testimony]

51. Dr. [redacted] testified that in his opinion, the Respondent suffered a [redacted] on September 25, 2011, and that on October 12, 2011, he was suffering from [redacted]. He explained that someone who is suffering from [redacted] may have physical symptoms such as [redacted]. Dr. [redacted] stated that references to such symptoms were reflected in the Respondent's medical records; however, Dr. [redacted] did not specify to which symptoms he was referring.²⁸ Relative to the neuro-psychological testing and evaluation the Respondent underwent on November 11, 2011, Dr. [redacted] observed that the positive findings were primarily attributed to [redacted] that preceded the Respondent's accident and some emotional reactions associated with [redacted]. [redacted] Testimony]

52. Dr. [redacted] also testified that it would be consistent with [redacted] to have the type of confusion that would lead to a misunderstanding about whether or not Dr. [redacted] intended to prescribe one or two prescriptions. Dr. [redacted] did not think that the Respondent's [redacted] would have played any role in such a misunderstanding or confusion. [redacted] Testimony]

53. Dr. [redacted] testified that someone suffering from [redacted] could exhibit some but not all of the symptoms associated with the syndrome—for example, one could have [redacted] but not [redacted]. [redacted] Testimony]

²⁸ Subsequently, upon re-direct examination, Dr. [redacted] noted that Dr. [redacted]'s record for the Respondent's October 12, 2011 visit referenced [redacted]. Dr. [redacted] further reiterated that Nurse Practitioner [redacted] directed that the Respondent continue his medical leave from work because of her concern over the Respondent's [redacted], including the Respondent's ability to manage tasks involving calculations and medication administration. [Testimony of [redacted]; Exs. 10, 12]

54. Dr. [redacted] testified that even if Dr. [redacted]'s staff and Ms. [redacted] reported that the Respondent appeared to be acting normal, it would not change his opinion that the Respondent was suffering from [redacted] as the symptoms may not appear during a brief conversation or exchange. [redacted] Testimony]

55. Dr. [redacted] also testified that [redacted] eventually resolves, and typically lasts a matter of days or weeks, and occasionally months. Further, he testified that generically and without reference to the Respondent, it is possible for symptoms of [redacted] to resolve within a two – three (2–3) week period, such as the interval of time between the Respondent's accident on September 25, 2011 and the incident at Dr. [redacted]'s office on October 12, 2011. Similarly, Dr. [redacted] testified that the Respondent was "probably" more [redacted] on October 12, 2011 than on November 16, 2011, the date of the Respondent's neuropsychological evaluation.²⁹ [(redacted] Testimony]

²⁹ Upon examination by Prosecuting Counsel, Dr. [redacted] was asked about certain aspects of the report of the November 16, 2011 neuro-psychological evaluation conducted by Dr. [redacted]. Dr. [redacted] affirmed that the report stated that the Respondent was [redacted] [redacted] and [redacted] the assessment." Dr. [redacted] also agreed that the report further noted that the Respondent [redacted] "redacted" (i.e., redacted, [redacted])," and [redacted] "As Dr. [redacted] confirmed, Dr. [redacted] observed that the Respondent's neuropsychological functioning and history appeared [redacted] [redacted] ('redacted'). He noted further that the Respondent presented with "redacted" and that testing "suggest[s] some compromise in executive functioning typical of individuals with [redacted] as well as from [redacted] Some [redacted] [redacted] which, in turn, can adversely impact some of those resources. "Yet," the Respondent [redacted] [redacted] " On re-direct examination, Dr. [redacted] testified that some [redacted] [redacted] could be subtle and may not be detected during a neuro-psychological evaluation. [redacted] Testimony; Ex.11]

56. The Board credits Dr. [redacted]'s testimony that the Respondent did suffer from [redacted] as a result of the accident that occurred on September 25, 2011. The Board also credits both Dr. [redacted] and Dr. [redacted]'s testimony that the Respondent was suffering some symptoms of [redacted] on October 12, 2011.

57. The Board, however, finds that despite suffering from some symptoms of [redacted], the Respondent's conduct on October 12, 2011 and the Respondent's statements relative to the events that transpired on that day demonstrate that he was highly aware of his actions involving both copies of the prescription he obtained from Dr. [redacted]'s office.

58. More specifically, the Board finds that the Respondent deliberately set out to get an extra copy of his prescription for Vicodin so that he could obtain double the amount of Vicodin prescribed for him. The Respondent made two such attempts, the first on October 12, 2011 and the latter on or about October 17, 2011. Leaving FMA with two (2) copies of the same prescription on October 12, 2011, without having clarified the status of the prescription with Dr. [redacted], the Respondent attempted to fill both copies at two separate pharmacies within a short period of time. As a pharmacist, the Respondent knew that Walgreens would not fill the second copy of the prescription and had the presence of mind to recall that information. Therefore, he attempted to fill the second copy of the prescription at a different pharmacy, Rite Aid, with instructions to the pharmacy staff not to run the prescription through his insurance. Again reflecting the Respondent's presence of mind, those instructions were calculated to deceive

the Rite Aid staff by averting circumstances that would have alerted them to the prescription that the Respondent had already filled at Walgreens. When told that Rite Aid would be unable to fill the prescription or return it to him, the Respondent became angry and threatened to call his attorney. The Respondent exhibited no detectable signs of confusion³⁰ and at no time during this incident did he make any attempt to clarify any purported confusion regarding the prescriptions with FMA or Dr. redact.

59. On October 17, 2011, the Respondent made another attempt to fill the second copy of the prescription in direct contravention of Officer redacted's instructions. The Respondent again tried to deceive the Rite Aid staff, this time by falsely representing to staff that the issue concerning the two prescriptions had been resolved and he was cleared by the NAPD and Dr. redact to fill the prescription he had presented at Rite Aid.

60. The Board's findings set forth in Findings of Fact, ¶¶ 57-59 above, are well supported by the record and the findings above. The Board notes that the Respondent's testimony regarding the events of October 12, 2012 and their aftermath was in clear conflict with the testimony of four other witnesses who testified credibly before the Board and had no discernable stake in the outcome of this matter. Additionally, the Respondent failed to clarify with Dr. redact any purported confusion regarding a refill of his Vicodin prescription despite Respondent's background and experience as a pharmacist. The Respondent

³⁰ Ms. redact testified that the Respondent appeared to have no difficulty understanding anything she said to him, that he never asked her to repeat anything, and never repeated himself or his questions to her. Ms. redact observed that the Respondent seemed clear and normal and "was quite aware of what I was saying to him." Likewise, Ms. redact stated that the Respondent showed no confusion over what he was asking her for and Ms. redact testified that the Respondent was "very pleasant" and his "normal" self.

made contradictory statements to the NAPD to the effect that he had spoken with Dr. redacted to clarify the status of the two identical prescriptions and that he "wished" he had such a conversation with Dr. redacted. Moreover, Ms. redacted testimony established that she would have never given the Respondent the second copy of his prescription without checking with Dr. redacted had she been told that the Respondent had already received a copy of the prescription from Ms. redacted. Such conduct would have been wholly out of step with Ms. redacted regular and consistent practice at FMA. Additionally, the Respondent admitted to Officer redacted that as a pharmacist, he knew Walgreens would not fill both prescriptions he had obtained from FMA. Likewise, the Respondent knew that his insurance provider would reject coverage to fill the same prescription twice and therefore directed Rite Aid staff not to run the medication through his insurance. Although the Respondent purportedly told Ms. redacted that he, himself, would call Dr. redacted's office to clear up the purported confusion surrounding the two identical prescriptions, he never placed such a call. Rather, he simply displayed anger and issued threats. The Respondent's subsequent attempt to fill the prescription several days later in direct contravention of Officer redacted's instructions and by deceptive means also reflects his deliberateness in attempting to surreptitiously obtain double the amount of Vicodin Dr. redacted prescribed. Finally, the Board notes that while Dr. redacted testified to the possible effects of redacted on the Respondent on October 12, 2011, he did not address or take into account what effects, if any, the Respondent's background, education, training, and experience as a pharmacist

may have had on the potential effects of the Respondent's redacted condition on the particular circumstances at issue in this matter, including the Respondent's understanding of the two prescriptions he obtained at FMA and the Respondent's actions in attempting to fill the two (2) prescriptions on October 12 and 17, 2011.³¹

61. The Respondent's behavior was antithetical to the tenets of his own profession; exhibited a lack of the virtues generally regarded as beneficial to the public health, safety, and welfare; and reflected a risk to the public health, safety and welfare. Such conduct runs counter to the type of honorable and responsible behavior that the public expects of pharmacists in whom they place their confidence and trust.

Rulings of Law³²

³¹ The Board does not mean to imply that the absence of such testimony serves as the foundation of our finding that the Respondent acted with intent and full awareness of what he was doing in obtaining the two (2) prescriptions and attempting to fill the second at Rite Aid after having filled the first at Walgreens. Rather, Dr. redacted's failure to address this point was simply one of a multitude of factors the Board considered.

³² The Order to Show Cause in this matter contained an extensive list of alleged violations of statutory and regulatory law. Given the Board's ample Rulings of Law below, we conclude that it is unnecessary for the Board to reach all the alleged violations of law. Therefore, the Board dismisses without prejudice the allegations related to 247 CMR 10.03 (1)(e), (v), and (x) and limits its ruling relative to G.L. c. 112, § 61 to the Respondent's deceptive behavior.

The Board explicitly declines to rule that the Respondent engaged in the abuse or illegal use of prescription drugs or controlled substances. The Respondent's unsuccessful attempt to fill the second prescription he deceptively obtained from FMA on October 12, 2011 does not constitute sufficient evidence that he himself abused or illegally ingested prescription drugs or controlled substances. Nor does it establish that the Respondent engaged in any other unlawful use of prescription drugs or controlled substances. The record contains no evidence that the Respondent ever abused or illegally used prescription drugs or controlled substances (Dr. redacted testified and wrote [Exs. 15, 16] that he saw no such signs) and is inadequate for purposes of attributing such conduct or motives to him by virtue of his conduct in October 2011. Hence, the Board dismisses with prejudice the allegation that the Respondent is subject to discipline pursuant to 247 CMR 10.03 (1)(h).

1. Based upon Finding of Fact ¶ 1, above, the Board has jurisdiction to hear this disciplinary matter involving Respondent Steven R. Petrillo, Registration No. 23960.
2. Respondent's deceitful conduct as set forth in Findings of Fact in ¶¶ 4-11, 13-16, 18-20, 22, 24, 25, 27, 28, and 30-60, above, constitutes grounds for discipline pursuant to G.L. c.112, §61.
3. Respondent's conduct as set forth in Findings of Fact in ¶¶ 4-11, 13-16, 18-20, 22, 24, 25, 27, 28, and 30-60, above, constitutes conduct that had the capacity or potential to place the public health, safety, or welfare at risk, constituting grounds for discipline pursuant to 247 CMR 10.03 (1)(k)
4. Respondent's conduct as set forth in Findings of Fact in ¶¶ 4-11, 13-16, 18-20, 22, 24, 25, 27, 28, and 30-60, above, constitutes conduct that had the capacity or potential to deceive or defraud, constituting grounds for discipline pursuant to 247 CMR 10.03 (1)(l).
5. Respondent's conduct as set forth in Findings of Fact in ¶¶ 4-11, 13-16, 18-20, 22, 24, 25, 27, 28, and 30-60, above, demonstrates a lack of good moral character as defined by 247 CMR 2.00, constituting grounds for discipline pursuant to 247 CMR 10.03 (1)(r).
6. Respondent's conduct as set forth in Findings of Fact in ¶¶ 4-11, 13-16, 18-20, 22, 24, 25, 27, 28, and 30-60, above, constitutes conduct that undermines public confidence in the integrity of the profession, constituting grounds for discipline pursuant to 247 CMR 10.03 (1)(u).

7. Respondent's conduct in violation of the Board's regulations at 247 CMR 10.03 (1)(k),(l),(r),(u), as set forth in Rulings of Law ¶¶ 3-6, above, constitutes grounds for discipline pursuant to G.L. c.112, §§ 42A and 61 and 247 CMR 10.03 (1)(a) and (b).

V. Discussion

Professional boards have broad authority to regulate the conduct of their respective professions. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996). More specifically, the Supreme Judicial Court has stated that Massachusetts General Laws Chapter 112, §§ 42A and 61 ("G.L. c.112") constitute "broad statutory grants of power" to the Board of Registration in Pharmacy for the purpose of promoting the public, health, safety and welfare. *Strasnick v. Board of Registration in Pharmacy*, 408 Mass. 654, 658-660 (1990). Pursuant to G.L. c. 112, § 42A, the Board is authorized to promulgate rules and regulations so as to give effect to laws relating to the retail drug business and pharmacy and other matters within its jurisdiction. Under the statute, the Board may suspend or revoke any license to practice pharmacy for violation of such rules and regulations. G.L. c. 112, §61, authorizes the Board to discipline the license of a pharmacist for among other types of conduct, deceit and offenses against the laws of the commonwealth relating to the practice of the pharmacy profession. Such laws include pertinent statutes enacted by the legislature as well as regulations promulgated by the Board to ensure that the conduct of its licensees comports with professional and ethical standards and fosters the

health, safety, and welfare of the public the Board is charged with protecting. *Giroux v. Board of Dental Examiners*, 322 Mass. 251, 252 (1948).

Moreover, consistent with its mandate to promote the public health, safety, and welfare, the Supreme Judicial Court has consistently held that the Board also has broad authority to discipline pharmacists for conduct undermining public confidence in the profession and to protect the image of the pharmacy profession. (*Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990) ("The Board has the authority to protect the image of the profession."); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982); *Reed v. Board of Registration of Psychologists*, Suffolk Superior Court, No. 96-5242-B, August 19, 1997 (Memorandum of Decision and Order) at p. 15 (board has authority to sanction licensee for conduct which it finds to be unprofessional or unethical); *aff'd*, *Reed v. Board of Registration of Psychologists*, Massachusetts Court of Appeals, No. 97-P-2137, April 12, 1999, citing *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996) ("the board has broad authority to regulate the conduct of the...profession,... [which] includes its ability to sanction [professionals] for conduct which undermines public confidence in the integrity of the...profession.") Additionally, Board regulation 247 CMR 10.03(1)(u) provides that the Board may impose disciplinary action against a licensee for "[e]ngaging in conduct which undermines public confidence in the integrity of the profession."

In this case, the record shows that the Respondent, a licensed pharmacist, engaged in deceit and conduct antithetical to the practice of

pharmacy, even though he was not actually engaged in the practice of pharmacy at the time the conduct occurred.³³ The Respondent surreptitiously obtained two paper copies of a prescription for Vicodin, a controlled substance, from FMA and then attempted to fill both copies, knowing that he was only entitled to fill one. He admitted during his telephone call with Officer [redacted] on October 12, 2011, and then later during his in-person interview on December 29, 2011, that, because he is a licensed pharmacist, he knew that Walgreens would not fill both prescriptions. As a result of this knowledge, the Respondent filled one copy of the prescription at Walgreens through his medical insurance, and then immediately traveled to a different pharmacy in an attempt to fill the second prescription at the Rite Aid in North Andover. When he arrived at Rite Aid, instead of explaining the situation as he claims he understood it to the pharmacy

³³ In *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), a physician's license was revoked by the Board of Registration in Medicine for conviction of the crime of knowingly possessing two unregistered automatic submachine guns. The Supreme Judicial Court ("SJC") held that the board correctly found that the physician's conviction called into question his ability to practice medicine. Citing the importance of an upright character and adherence to "fundamental virtues", the SJC found that the mentality demonstrated by the physician in knowingly possessing the unregistered guns was antithetical to the practice of medicine, the purpose of which is "to preserve life, restore health, and alleviate suffering." *Raymond v. Board of Registration in Medicine*, *supra* at 713, citing *Lawrence v. Board of Registration in Medicine*, 239 Mass. 424, 428-429 (1921). Addressing the essential element of patient trust and confidence in the professional judgment of a physician, the SJC has noted the need for "good character," honesty and "the highest degree of integrity" among physicians, as well as the Board's authority to preserve "public esteem" for members of the profession who possess such integrity. *Levy v. Board of Registration in Medicine*, 378 Mass. 519, 528 (1979).

That the Respondent's conduct did not occur while he was engaged in the practice of his profession does not preclude disciplinary action by the Board for conduct that was antithetical to the practice of the pharmacy profession. The Board's authority to discipline a licensee is not restricted to such acts as those that are directly related to serving patients seeking to fill prescriptions, or that involve operating a pharmacy and maintaining its drug supply, or that constitute criminal behavior. *Sugarman v. Board of Registration in Medicine*, 442 Mass. 338, 343 (1996), citing *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982). "To be sure, the conviction did not arise out of [the physician's] practice of medicine. That is not essential however." *Raymond v. Board of Registration in Medicine*, *supra* at 713. In knowingly attempting to procure and fill two (2) prescriptions, the Respondent acted deceitfully to circumvent the laws that govern his own profession, which would have precluded him from obtaining twice the amount of a controlled substance prescribed for him by his physician.

staff, i.e., Dr. [redacted] gave him multiple copies of the same prescription *in lieu* of one prescription with a refill, he specifically instructed the Rite Aid pharmacist not to run the prescription through his insurance. Knowing that his insurance would reject coverage for the prescription at Rite Aid as it quite literally had just been filled, the Respondent acted to prevent the Rite Aid pharmacy staff from learning he had filled the prescription at Walgreens.

When Ms. [redacted], in accordance with her pharmacy practice, attempted to fill the prescription through the Respondent's insurance, she realized that he had filled the same prescription earlier that morning. When confronted with this information, the Respondent did not attempt to clarify any purported confusion surrounding the prescription, and he did not attempt to call FMA to speak with Dr. [redacted] or his staff. Instead, the Respondent became angry and threatened to call his attorney. Although he purportedly told Ms. [redacted] that he, himself, would call FMA, he never did. Finally, the record reflects that after specifically being told by Officer [redacted] that he could not attempt to fill the second copy until notified by the police, the Respondent called Rite Aid a few days later and misrepresented to the pharmacist on duty that with the approval of the NAPD and FMA, it was now okay to fill the second copy of the prescription.

The Respondent argues that he was suffering from [redacted] [redacted] during the time period in which these events occurred, and as a result of the [redacted] he was experiencing [redacted] [redacted]. As a witness, the Respondent lacked credibility and the Board has rejected the explanation he proffered to justify his conduct. In addition to the flaws in the

Respondent's own testimony and the incongruity between his actions and his statements before the Board, the Respondent's testimony was undermined by his repeatedly providing testimony that conflicted with the testimony of four (4) credible witnesses, Ms. [redacted] Ms. [redacted], Ms. [redacted], and Officer [redacted], on various salient points.

While the record reflects that the Respondent was suffering after-effects of the accident, including some symptoms of [redacted], the record also reflects that the Respondent was lucid and clearly understood: 1) that he would obtain two copies of the same prescription only by concealing from Ms. [redacted] that Ms. [redacted] was already in the process of providing him with a copy of the prescription and by concealing from Ms. [redacted] that he had already obtained a copy of his prescription from Ms. [redacted]; 2) that Walgreens would not fill both copies of the same prescription; and, 3) that his medical insurance would reject the second copy at Rite Aid as the prescription had just been filled at Walgreens. For these reasons, the Respondent instructed the pharmacy staff at Rite Aid not to run the second copy through his medical insurance. Further, the record reflects that in order to retrieve his prescription from Ms. [redacted] and to thwart a further investigation concerning the two prescriptions he had presented to her, the Respondent was lucid enough to argue with Ms. [redacted] and threaten to call his attorney once she refused to fill and return the prescription. Despite purportedly representing to Ms. [redacted] that he would do so, the Respondent never called FMA or Dr. [redacted] to clarify the status of the two identical prescriptions; rather, he resorted to anger and threats. The record also reflects

that the Respondent was lucid enough to tell Officer [redacted] later that same day, October 12, 2011, (and confirm this statement to the NAPD several months later, in-person) that he knew Walgreens would not fill the second copy, and that he had this knowledge because he was a pharmacist. Furthermore, the deliberate and lucid nature of the Respondent's conduct was underscored by his repeated attempt to fill the second prescription a few days later, misrepresenting that he had permission from Dr. [redacted] and the NAPD to do so.

The Board does not take issue with Dr. [redacted]'s testimony that an individual suffering from [redacted] might experience lack of [redacted]

about medication prescriptions. However, based on the foregoing, the Board concludes that such was not the case in the instant matter. Rather, even if the Respondent was experiencing some [redacted], there is ample and substantial evidence, and certainly more than a preponderance of the evidence, indicating that these were not factors in the Respondent's conduct. Rather, the evidence supports the conclusion that the Respondent acted with lucidity in a deliberately deceptive manner.

The proper and lawful handling of controlled substances is a fundamental tenet of pharmacy practice. Narcotics and other controlled substances pose potentially serious risk to the public health, safety, and well being, and therefore, are scrupulously regulated. On both the federal and state levels, strict procedures and protocols exist to insure that such drugs are properly dispensed to prevent such drugs from being procured by unlawful means. Pharmacists are

the gatekeepers to these narcotics, they are entrusted with the handling and dispensing of controlled substances, and they have a solemn responsibility to do so in compliance with federal and state law and in a manner that maintains public confidence in the pharmacy profession. The Respondent is a licensed pharmacist who knew that he was not entitled to two copies of a single prescription in order to obtain twice the amount of Vicodin prescribed for him and who knew that a pharmacy would not fill both copies of the prescription. Yet, despite this knowledge, he deceived Ms. [redacted] and Ms. [redacted] and traveled to multiple pharmacies in a short period of time, in an attempt to do just that. Then, when the Respondent could not fill the second copy of the prescription at Rite Aid, and was specifically told by Officer [redacted] not to attempt to fill the prescription until Officer [redacted] gave him the approval to do so, the Respondent called Rite Aid a few days later attempting to once again fill the second prescription.

The record reflects that the Respondent deliberately set out to get a second copy of his prescription to obtain extra medication and knowingly tried to fill the second copy of the prescription at Rite Aid because he knew that Walgreens would not fill it. This knowledge stems directly from his training and experience as a licensed pharmacist. The Respondent's attempted procurement of a controlled substance in this manner, even off-duty as the ultimate user, constitutes a breach of the trust and responsibility placed on him as a member of the pharmacy profession.³⁴ His attempt to fill the second copy of the prescription

³⁴ The Board makes no findings and need not make any findings regarding the Respondent's reasons for attempting to obtain twice the amount of Vicodin prescribed by Dr.

in this manner and his disregard of the proper practices for obtaining controlled substances have the capacity or potential to place the public health, safety, or welfare at risk, and thus, his conduct constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(k).

Board regulation 247 CMR 10.03(1)(l) provides that the Board may impose disciplinary action against a licensee for "[e]ngaging in conduct that has the capacity or potential to deceive or defraud." Respondent's conduct as described above, and particularly as described in Findings of Fact, ¶¶ 24, 34, 35, 41, and 57-60, had the capacity to deceive the FMA staff and, on two occasions, the pharmacy staff at Rite Aid, and thus, constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(l).

Board regulation 247 CMR 10.03(1)(u) provides that the Board may impose disciplinary action against a licensee for "[e]ngaging in conduct which undermines public confidence in the integrity of the profession." As previously discussed, the SJC has repeatedly upheld the Board's authority to sanction its licensees on such grounds. In *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), the SJC held that the mentality demonstrated by a physician in knowingly possessing unregistered handguns was antithetical to the practice of medicine and that the board correctly found that the physician's

redacted We have declined to rule that the Respondent engaged in the abuse or illegal use of prescription drugs or controlled substances. While the Board is aware of the difficulties the Respondent faced in using his car and getting around following his accident, such an inconvenience would not justify an unlawful attempt to obtain extra medication in order to avoid having to pick up from a pharmacy a refill prescription requested from and ordered by an authorized prescriber.

conviction called into question his ability to practice medicine.³⁵ The Board in this case finds that the Respondent's mentality as evidenced by his deliberate attempts to fill multiple copies of the same prescription through deceptive means, as described in the findings of fact above, was antithetical to the tenets of pharmacy practice. Such conduct is of the nature that undermines public confidence in the integrity of the profession of pharmacy and therefore constitutes grounds for discipline pursuant to Board regulation 247 CMR 10.03(1)(u).

Board regulation 247 CMR 10.03(1)(r) provides that the Board may impose disciplinary action against a licensee for engaging in conduct that demonstrates a lack of good moral character." Pursuant to regulation 247 CMR 2.00, the Board defines the standard "Good Moral Character" as "those virtues of a person, which are generally recognized as beneficial to the public health, safety, and welfare." The SJC has held that a licensee's bad moral character may reflect on the licensee's ability to practice his profession. See *Raymond*, 387 Mass. at 713 ("A physician's bad moral character may reasonably call into question his ability to practice medicine."). In this case, the record reflects that the Respondent's conduct constituted a lack of good moral character. His attempts to obtain and fill multiple copies of the same prescription for a controlled narcotic in a manner that had the capacity to deceive the FMA and pharmacy

³⁵ In his Post-Hearing Brief, the Respondent argues that his defense is clearly distinguishable from that of the plaintiff in *Raymond v. Board of Registration in Medicine*, 387 Mass.708 (1982) because the Respondent in the case before the Board was not convicted of a crime. However, the SJC recognized in *Aronoff v. Board of Registration in Medicine* that the holding in *Raymond* was not limited solely to issues involving criminal conduct. 420 Mass 830, 833 n. 4 (1995). ("Nothing in *Raymond* suggests that its principles are limited solely to criminal conduct.")

staffs cannot be said to meet the Board's definition of "good moral character." See *Raymond, supra* at 713 (possession of unregistered machine guns demonstrated lack of good moral character); *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, 142 (1990) (writing fraudulent prescriptions for controlled substances demonstrated lack of good moral character). The Board finds that the Respondent's actions do not demonstrate the virtues of good moral character that are imposed on members of the pharmacy profession. For these same reasons, the Respondent is subject to discipline under 247 CMR 10.03(1)(r) for "engaging in conduct that demonstrates a lack of good moral character".

In that the Respondent is subject to discipline under Board Regulations 10.03 (1)(k),(l),(r)(u), the Respondent is also subject to discipline pursuant to 247 CMR 10.03 (1)(a); which provides that the Board may impose disciplinary action against a licensee for "[v]iolating any of the duties and standards set out in Board regulations 247 CMR 2:00" and "any rule or written policy adopted by the Board."

Finally, Board regulation 247 CMR 10.03(1)(b) provides that the Board may impose disciplinary action against a licensed individual for violating any provision of G.L. c, 112, §§24-42A, or any provision of state or federal statutes, rules, or regulations promulgated thereunder related to the practice of the profession. Thus, by violating any one of the regulations promulgated by the Board, including 247 CMR 10.03(1)(a), (k), (l), (r), and (u), as described above, the Respondent has, by consequence, violated 247 CMR 10.03(1)(b).

This Board has the statutory mandate and authority to discipline and impose an appropriate sanction on the Respondent's license in order to protect the public health, safety, and welfare. *Strasnick v. Board of Registration in Pharmacy*, 408 Mass. 654, 659-660 (1990). The Board and the public place a high level of trust in registered pharmacists with the expectation that they will exercise sound professional judgment; comport themselves in an honest, upright, and responsible fashion; and handle drugs with which they are entrusted in accordance with the requirements of the law and the standards of the pharmacy profession. The Board, therefore, has a compelling interest in ensuring that its licensees are competent and trustworthy. In this case, the Respondent, engaged in deceitful conduct aimed at circumventing the laws and established practices associated with the prescription and dispensing of controlled substances so as to garner a greater quantity of Vicodin than that prescribed for him. As such, the Respondent's conduct reflects a concerning lack of trustworthiness and calls into question his fitness to continue in the practice of pharmacy. Moreover, the Respondent's acts have impugned the integrity of the pharmacy profession in a manner that undermines public confidence in the profession. Accordingly, the Respondent's conduct warrants discipline of his license to practice as a pharmacist pursuant to the Board's regulations at 247 CMR 10.03 and G.L. c. 112, §§ 42A and 61. Therefore, the Board enters the following Order:

[order to be entered by the Board]

Date issued: June 25, 2015

Board of Registration in Pharmacy

By: Vivian Bendix
Vivian Bendix
Administrative Hearings Counsel

Notice to: Richard D'Auria, Esq.
Eugene Langner, Esq.

Via First Class Mail and Certified Mail
No. 7010 1870 0002 2380 8012
Robert H. D'Auria, Esq.
Law Offices of Robert H. D'Auria, P.C.
41 North Road, Suite 205
Bedford, MA 01730-1037

Via Hand Delivery
Eugene Langner, Prosecuting Counsel
Department of Public Health
Office of General Counsel
239 Causeway Street
Boston, MA 02114



DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD
SECRETARY

JOHN AUERBACH
COMMISSIONER

RULA HARB
EXECUTIVE DIRECTOR

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

Board of Registration in Pharmacy
239 Causeway Street, Suite 500, 5th Floor, Boston,
MA 02114
617-973-0960

April 25, 2013

BY FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7010 2780 0001 8675 9722

Robert D'Auria, Esq.
41 North Road, Suite 205
Bedford, MA 01730

RE: In the Matter of Stephen Petrillo, R.Ph. License No. PH23960
Board of Registration in Pharmacy Docket No. PHA-2011-0340

Dear Atty. D'Auria:

Enclosed is the *Order Vacating Final Decision and Order by Default* ("Final Decision") 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 April 25, 2013.

Sincerely,

A handwritten signature in cursive script, reading "Margaret Cittadino".

Margaret Cittadino
Associate Director
Board of Registration in
Pharmacy

Enc.

cc: James Lavery, Prosecuting Counsel
Maimoona Ahmad, Administrative Hearings Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN PHARMACY

In the Matter of)
Steven R. Petrillo, R.Ph)
Reg. No. PH 23960)
Reg. Expired: 12/31/12)

Docket No. PHA-2011-0340

ORDER VACATING FINAL DECISION AND ORDER BY DEFAULT

The Board of Registration in Pharmacy ("Board") hereby vacates its prior Final Decision and Order by Default, issued on January 10, 2013 in the above-captioned matter and reopens the adjudicatory proceeding based on the Board's Order to Show Cause issued on March 23, 2012.

The Board's actions are taken in accordance with the terms of the Agreement entered into on April 9, 2013 in resolution of the Petition for Judicial Review pursuant to M.G.L. ch. 112, § 64, pending before the Supreme Judicial Court, Docket No. SJ-13-0057. A copy of the Agreement is attached to this Order and incorporated by reference.

Per the terms of the agreement, the Board refers this proceeding for hearing, to be scheduled as soon as reasonably practicable.

Board of Registration in Pharmacy

Date: 4/25/2013

BY: 

Margaret Cittadino
Associate Director

Notice to:

**BY FIRST CLASS MAIL AND
CERTIFIED MAIL
RETURN RECEIPT REQUESTED:**

Robert D'Auria, Esq.
41 North Road, Suite 205
Bedford, MA 01730

BY HAND:

James Lavery, Esq.
Office of Prosecutions
Division of Health Professions Licensure
Department of Public Health
239 Causeway Street
Boston, MA 02114

AGREEMENT

Steven R. Petrillo, an individual who resides at redacted
redacted ("Petrillo") and the Massachusetts Board of Registration in Pharmacy ("Board")
enter into this Agreement this 9th day of APRIL, 2013.

WHEREAS, Petrillo was formerly registered to practice as a pharmacist in the Commonwealth
of Massachusetts, Registration No. PH23960, ("Registration");

WHEREAS, Petrillo has filed in the Massachusetts Supreme Judicial Court a Petition for Judicial
Review Pursuant to G. L. c. 112, § 64, bearing docket number SJ-13-0057 ("Litigation");

WHEREAS, the Litigation seeks judicial review of a Board decision entitled Final Decision and
Order by Default issued on January 10, 2013 ("Order of Default") in a Board proceeding entitled
In the Matter of Steven R. Petrillo, R.Ph and bearing Docket No. PHA-2011-0340, which
proceeding involved an Order to Show Cause issued by the Board on or about March 23, 2012
("Order to Show Cause"), was presided over by Administrative Hearings Counsel Stephanie
Carey, and resulted in the revocation of Petrillo's Registration;

WHEREAS, the parties wish to settle the Litigation on the terms set forth herein;

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and
sufficiency of which are hereby acknowledged, and without admitting any claim or defense
asserted in the Litigation, agree as follows:

1. The Board shall forthwith vacate its Order by Default and grant Petrillo a new adjudicatory hearing on the Board's Order to Show Cause, to be scheduled as soon as reasonably practicable before an Administrative Hearings Counsel other than Stephanie Carey.
2. Petrillo understands and agrees that no action will be taken on any request for or relative to reinstatement of his ability to practice as a pharmacist in Massachusetts pending the outcome of the new adjudicatory hearing.
3. Simultaneously with execution of this Agreement, the parties shall execute an Agreement for Voluntary Dismissal of the Litigation in the form attached hereto as Exhibit A.
4. Notwithstanding the foregoing, the parties agree that Petrillo reserves all of his appellate rights from any finding by the Board following the adjudicatory hearing described in paragraph 1. above.
5. The parties acknowledge that they have had the opportunity to review the terms and conditions of this Agreement with counsel and enter into the Agreement voluntarily and willingly.
6. This Agreement constitutes the final and entire agreement between the parties regarding the matters addressed herein and shall be governed by the laws of the Commonwealth of Massachusetts.

STEVEN R. PETRILLO

BOARD OF REGISTRATION IN PHARMACY

Steven R. Petrillo 4-9-2013

Margaret C. Attardo

DATED: 4-9-2013

CERTIFICATION OF BOARD ACTION

I, Vita Palazzolo Berg, certify that on April 2, 2013 the Board of Registration in Pharmacy ("Board") held its regularly scheduled meeting. During that meeting the Board considered a proposed settlement of Steven R. Petrillo's pending Petition for Judicial Review Pursuant to G. L. c. 112, § 64, filed with the Massachusetts Supreme Judicial Court and bearing docket number SJ-13-0057, ("Appeal") which Appeal seeks judicial review of the Board's Final Decision and Order by Default dated January 10, 2013. At the meeting, Board member Joanne Trifone, R.Ph. moved that the Board take the following actions:

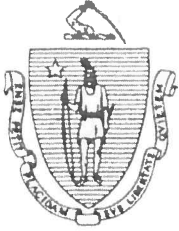
- (1) Accept the terms of the proposed settlement agreement;
- (2) Authorize Associate Director Margaret Cittadine to execute the settlement agreement on the Board's behalf and to take all necessary administrative actions to prevent the renewal or reinstatement of Mr. Petrillo's registration to practice as a pharmacist in Massachusetts pending the outcome of a new hearing in accordance with the proposed agreement; and
- (3) Authorize the Assistant Attorney General to enter into the proposed Agreement for Voluntary Dismissal of the Appeal on the Board's behalf.

This motion was seconded by Board member Patrick Gannon, R.Ph., MS and passed unanimously by roll call vote of the following members: James T. DeVita, R.Ph., Karen Ryle, R. Ph., MS, Joanne Trifone, R.Ph., Anita Young, R.Ph., ED, Edmund Taglieri, R.Ph., MSM, NHA, and Patrick Gannon, R.Ph., MS.

April 3, 2013



Vita Palazzolo Berg



DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD
SECRETARY

LAUREN A. SMITH, MD, MPH
INTERIM COMMISSIONER

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

Board of Registration in Pharmacy
239 Causeway Street, Suite 500, 5th Floor
Boston, MA 02114
617-973-0954

January 10, 2013

VIA FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7012 0470 0001 3611 6384

Robert D'Auria, Esq.
41 North Road, Suite 205
Bedford, MA 01730

RE: In the Matter of Steven R. Petrillo, R.Ph. License No. PH23960
Board of Registration in Pharmacy Docket No. PHA-2011-0340

Dear Attorney D'Auria:

Enclosed is the *Final Decision and Order by Default* ("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 8 of the *Final Order* ("Date Issued"). Your appeal rights are noted on page 8 of the *Final Order*.

Sincerely,

A handwritten signature in cursive script, reading "Margaret Cittadino".

Margaret Cittadino
Assistant Executive Director
Board of Registration in Pharmacy

Enc.

cc: James Lavery, Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN PHARMACY

In the Matter of)
Steven R. Petrillo, R.Ph)
Reg. No. PH 23960)
Reg. Expires: 12/31/12¹)
Reg. Summarily Suspended 3/19/12²)

Docket No. PHA-2011-0340

FINAL DECISION AND ORDER BY DEFAULT

Pursuant to Massachusetts General Laws Chapter 30A, § 10(2), 801 CMR 1.01 (7)(g) (2), the failure of Steven R. Petrillo ("Respondent"), after due notice, to appear and defend in this matter, the Board of Registration in Pharmacy ("Board") issues this Final Decision and Order by Default.

PROCEDURAL BACKGROUND

On March 23, 2012, the Board issued an Order to Show Cause ("OTSC")³ ordering Respondent to show cause why the Board should not suspend, revoke, or otherwise take action against his registration to practice as a pharmacist in the

¹ To date, Respondent has failed to renew his license.

² Pursuant to G.L. c. 112, § 42A and Board regulations at 247 CMR 10.07 on March 19, 2012, the Board issued an Order of Summary Suspension to Respondent suspending his pharmacy registration (PH 23960). On April 11, 2012, the Board held a hearing on the necessity of the continuation of the Summary Suspension. On September 11, 2012, the Board issued a Final Decision and Order on Summary Suspension finding that Respondent's conduct posed a threat to the public health, safety, and welfare necessitating the continued summary suspension of Respondent's registration to engage in the practice of pharmacy.

³ Sent by First Class and Certified Mail No. 77011157000081803183 to Counsel for Respondent, Robert H. D'Auria Esq.

Commonwealth of Massachusetts (“Commonwealth”) based on the allegations⁴ in the OTSC. In the OTSC, Respondent was advised: “Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or failure to otherwise defend this action shall result in the entry of default”. On April 19, 2012, Respondent, through his attorney, filed an Answer to the Order to Show Cause⁵.

By letter dated May 21, 2012, the Administrative Hearings Counsel (“AHC”) issued a Scheduling Order notifying Counsel for Respondent and Prosecuting Counsel of the following scheduled conferences and hearing dates: a formal adjudicatory hearing scheduled for December 4 and 6, 2012 and a pre-hearing conference scheduled for November 14, 2012. In that letter, the AHC reminded Counsel for Respondent that a “failure to appear at any scheduled conference or hearing shall result in the entry of default at which time the Board may issue a Final Decision and Order by Default with appropriate sanctions” (standard default warning). By letter dated September 17, 2012, Counsel for Respondent filed a Motion to Withdraw as Counsel. On September 24, 2012, the AHC granted Counsel’s motion.⁶ On October 2, 2012, the AHC sent Respondent a letter indicating that The United States Postal Service (“USPS”) had returned the September 24, 2012 letter as “undeliverable”, and that the USPS had

⁴ In the OTSC, the Board alleged that on October 12, 2011, Respondent presented a prescription for Vicodin at Rite Aid Pharmacy # 10117 in North Andover, Massachusetts for filling that was rejected after it was determined that Respondent had filled a prescription for the same medication earlier on the same day at Walgreens Pharmacy # 10940 in Middleton, Massachusetts.

⁵ At this time, Respondent was represented by Paul M. Garbarini, Esq., who filed the above-referenced Answer.

⁶ A copy of the ruling was also sent to Respondent by First Class Mail to his address of record in Atkinson, New Hampshire (“NH”) and pursuant to the cover letter, Respondent was directed to confirm by October 4, 2012 that he was now representing himself during the proceedings.

included Respondent's forwarding address.⁷ On October 2, 2012, the AHC sent Respondent a letter⁸ reminding Respondent of his obligation to keep the Board and the AHC informed of any change of address and again directing Respondent to confirm by October 10, 2012 that he was representing himself in this matter. Respondent failed to file a response to this directive. By letter dated October 5, 2012, Respondent's former Counsel confirmed that he had mailed Respondent his entire file related to this matter. On October 9, 2012, the AHC mailed a Notice of Pre-Hearing Conference to Respondent at the Pelham, NH address⁹ notifying Respondent that the pre-hearing conference remained scheduled for November 14, 2012. In that Notice of Pre-Hearing Conference, Respondent was provided with the standard default warning. In addition, the Notice of Pre-Hearing Conference provided the following:

"Those matters agreed upon by the parties at the Pre-Hearing Conference shall constitute part of the record. Only witnesses or exhibits listed in the Memoranda submitted by the parties shall be taken into evidence by the Board except upon motion, or as otherwise ordered by the Board. The Board shall not take evidence on and consider any defenses and responses to the Order to Show Cause that have not been asserted in the Answer or Pre-Hearing Memorandum."

By letter dated October 16, 2012, the AHC advised Respondent that the pre-hearing conference would be held in Room 515 rather than Room 418. In that letter, the AHC again provided Respondent with the standard default warning. Respondent failed to attend the pre-hearing conference on November 14, 2012 and failed to request a

⁷ The USPS listed that forwarding address as follows: **redacted** Pelham, NH ("Pelham NH address").

⁸ Sent to Respondent's Pelham, NH address by First Class Mail.

⁹ Sent to Respondent at his Pelham, NH address by First Class Mail. As the Notice of Pre-Hearing Conference was never returned by the USPS as undeliverable, it is presumed received by Respondent.

continuance of the pre-hearing conference. By letter dated November 14, 2012, the AHC informed Respondent that based on his failure to attend the pre-hearing conference, default had been entered against him and that he could file a motion to remove the default. Respondent was further informed that he was required to file a motion to remove the default by November 21, 2012, and in that motion he was required to demonstrate good cause for his failure to appear. On November 21, 2012, by hand-delivery, Attorney Robert H. D'Auria filed a Notice of Appearance, a Motion to Remove the Entry of Default and an Affidavit¹⁰ from Respondent in Support of the Motion to Remove the Entry of Default ("Motion to Remove"). On November 26, 2012, Prosecuting Counsel filed an Opposition to Respondent's Motion to Remove ("Opposition"). On November 28, 2012, the AHC issued a ruling denying Respondent's Motion to Remove. On December 5, 2012, Respondent filed a Motion to Reconsider Denial of Motion to Remove Entry of Default and Motion for Hearing on Sanctions that was denied by the AHC on January 3, 2013. The Board now issues this Final Decision and Order by Default.

EXHIBITS

1. Order to Show Cause, March 23, 2012
2. Answer to Order to Show Cause, filed April 19, 2012
3. Scheduling Order, May 21, 2012
4. Motion to Withdraw as Counsel, dated September 17, 2012

¹⁰ In his Affidavit signed under the penalties of perjury, Respondent claimed that he did not receive the October 9, and 16, 2012 notices but also claimed that he received the default notice dated November 14, 2012, despite the fact that all three notices were sent to the same address. Respondent also asserted that after receiving the default notice, he hired Attorney D'Auria on or about November 20, 2012.

5. Ruling on Motion to Withdraw as Counsel and cover letter, September 24, 2012
6. Letter re: change of address obligations, October 2, 2012
7. Letter re: file provided to Respondent by previous Counsel, October 5, 2012
8. Notice of Pre-Hearing Conference, October 9, 2012
9. Letter re: pre-hearing conference room change, October 16, 2012
10. Entry of Default, November 14, 2012
11. Motion to Remove the Default, November 21, 2012
12. Opposition to Motion to Remove the Default, November 26, 2012
13. Administrative Hearing Counsel Ruling on Respondent's Motion to Remove Entry of Default, November 28, 2012¹¹
14. Respondent's Motion to Reconsider Denial of Motion to Remove Entry of Default and Motion for Hearing on Sanctions, December 5, 2012
15. Ruling on Respondent's Motion to Reconsider Denial of Motion to Remove Entry of Default and Motion for Hearing on Sanctions, January 3, 2013

DISCUSSION

Pursuant to the Administrative Hearings Counsel's ("AHC") November 28, 2012 Ruling on Respondent's Motion to Remove Entry of Default, the AHC found that despite Respondent's receipt of numerous notices of the pre-hearing conference and the

¹¹ On November 29, 2012, the AHC received Respondent's late and improperly-filed pre-hearing materials as well as Respondent's Reply to Prosecuting Counsel Opposition to the Motion to Remove Entry of Default ("Reply"). Respondent's Reply was filed subsequent to the AHC's Ruling on the Motion to Remove that was faxed and received at Counsel's office at 12 noon on November 28, 2012. As those submissions were untimely, they were neither considered nor addressed by the AHC.

consequences of failing to attend the pre-hearing conference, Respondent failed to attend the pre-hearing conference and failed to adequately support his Motion to Remove the Entry of Default by demonstrating good cause for his absence.

By reason of Respondent's failure to appear and defend as required by the Board and his failure to respond to notices and directives, the Board enters default against Respondent and issues this Final Decision and Order. University Hospital v. MCAD, 396 Mass. 533, 539 (1986)(approving administrative agency's imposition of default where it provided reasonable procedural safeguards for notice of consequences of failure to answer and opportunity to object and where judicial review of entire proceeding was available if sought); Wang v. Board of Registration in Medicine, 405 Mass. 15, 19-20 (1989) (where professional lacked current license to practice in the Commonwealth, board had jurisdiction based on professional's inchoate right to renew license).

The Board finds that the allegations in the OTSC and the violations of statutes and regulations stated therein are deemed admitted and established. Productora e Importadora de Papel S. A. de C.V. v. Fleming, 376 Mass. 826, 833-835 (1978)(default establishes truth of allegations; Danca Corp. v. Raytheon Co., 28 Mass. App. Ct. 942, 943(1990)(upon default, allegations of complaint are accepted as true); Respondent was afforded an opportunity for a full and fair hearing as required by G.L. c. 30A, §§ 10 and 11 (1), G.L. c. 112, § 62, and 801 CMR 1.01 (4) (c). Wherefore, in accordance with the Board's authority and statutory mandate, the Board orders as follows:¹²

¹² In that the evidence in this default proceeding, consisting of the above-referenced exhibits, was before the Board no tentative decision is required. 801 CMR 1.01 (11).

ORDER BY DEFAULT

On January 8, 2013, in accordance with the Board's authority and statutory mandate, the Board voted to issue this Final Decision and Order by Default and to REVOKE Respondent's Pharmacist registration (No. 23960; suspended by the Board effective March 19, 2012), effective as of the date issued (see below), by the following roll call vote: In favor: James T. DeVita, R.Ph.; Karen M. Ryle, R.Ph.; Anita Young, R.Ph., Ed.D.; Stanley B. Walczyk, R.Ph.; Kathy J. Fabiszewski, Ph.D., N.P.; Joanne M. Trifone, R.Ph.; Patrick Gannon, R.Ph, MS; and Edmund Taglieri, R.Ph., MSM, NHA. Opposed: None. Recused: None. Absent: Donald D. Accetta, M.D.; Jayne Franke, RN, MHA and Steven Budish, Public Member

The Respondent is advised that the Board will consider a written request for the determination of terms for the reinstatement of pharmacist licensure in the Commonwealth not sooner than the date the Respondent is able to provide satisfactory documentation to the Board of his completion of two (2) years (24 contiguous months) of Board-approved: (a) random monitoring screens; and (b) regularly scheduled counseling by a licensed health care provider. Respondent is advised that should he seek pharmacist licensure in the Commonwealth in the future, reinstatement terms may include, but not be limited to, re-examination, re-training, continuing education, moral character qualifications (including consideration of any convictions or unlawful activity), comprehensive health evaluation(s), participation in Board approved monitoring program (MPRS), and probationary status (five year period) with terms as the Board may deem necessary and appropriate.

EFFECTIVE DATE OF ORDER BY DEFAULT

This Final Decision and Order by Default becomes effective upon the tenth (10th) day from the date it is issued (see "Date Issued" below).

RIGHT TO APPEAL

Respondent is hereby notified of his right to appeal this Final Decision and Order 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.

Board of Registration in Pharmacy

Date: January 10, 2013

BY: James T. DeVita

Notice to:

BY FIRST CLASS MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED 7012 0470 0001 3611 6384

Robert D'Auria, Esq.
41 North Road, Suite 205
Bedford, MA 01730

BY HAND

James Lavery, Esq.
Office of Prosecutions
Division of Health Professions Licensure
Department of Public Health
239 Causeway Street
Boston, MA 02114