

**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL
LICENSURE AND CERTIFICATION**

BOARD OF PHARMACY

**Ashley Ormandy, PhT
License #PhT-129262**

Docket No.: 23-PHARM-018

NOTICE OF DECISION DATED 3/22/2024

Enclosed please find a copy of the Board's Order dated 3/22/2024 relative to:

DISCIPLINARY HEARING FINAL DECISION AND ORDER

PETITIONS FOR REHEARING:

Pursuant to N.H. Code Admin. Rs. Plc 206.31(b), 206.33 ("Rules") and RSA 310:14, II, petitions for rehearing shall be filed within 30 calendar days after service of a final adjudicative order. Pursuant to Rule 206.31(c) and (d), the Petition shall: 1) clearly identify the respondent, by name and license number, and the docket number of the matter for which the petition is being filed, for rehearing in a disciplinary or non-disciplinary remedial proceeding; 2) clearly state whether the petitioner is seeking to have the decision reversed or modified and, if modified, the specific modification(s) sought; 3) clearly identify the specific findings of fact or conclusions of law, or both, that the petitioner asserts are erroneous; 4) contain such argument in support of the petition as the petitioner desires to present, including an explanation of how substantial justice would be done by granting the relief requested; and 5) be served by the petitioner on all other participants in accordance with Plc 206.11. Pursuant to Rule 206.31(e), the petitioner or petitioner's representative shall sign the petition. Pursuant to Rule 206.31(f), such signature shall constitute attestation that: 1) the signer has read the petition for rehearing; 2) the signer is authorized to file the petition for rehearing; 3) to the best of the signer's knowledge, information, and belief, there are good grounds to support the petition for rehearing; and 4) the petition for rehearing has not been filed solely or primarily for purposes of delay or harassment in any pending or contemplated administrative, civil, or criminal proceeding. Pursuant to Rule 206.31(g), no answer to a petition for rehearing shall be required, but any answer or objection filed shall be delivered to the presiding officer's office within 5 working days following receipt of service of the petition for rehearing. Pursuant to RSA 541:5, upon the filing of such petition for rehearing, the Board or Presiding Officer shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the Board or Presiding Officer may prescribe. The Presiding Officer and/or Board shall rule upon a Motion for Rehearing in accordance with Rule 206.32. Pursuant to Rule 206.32(e), a decision on reconsideration shall be issued after fully considering the petition and any responses thereto, which reconsideration shall include a hearing on the factual issues identified in the motion if the board determines a hearing to be necessary to a full consideration of the facts.

RIGHT TO APPEAL:

Pursuant to RSA 310:14, III, appeals from a decision on a petition for rehearing shall be by appeal to the New Hampshire Supreme Court pursuant to RSA 541. Pursuant to RSA 541:6, within 30 days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the New Hampshire Supreme Court. Pursuant to RSA 310:14, III, no sanction shall be stayed by the Board during an appeal. *See also* Rule 206.33.

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FINAL DECISION AND ORDER – 03/20/24

I. PARTICIPANTS:

Board Members and Support Staff and Counsel:

David A. Rochefort, Board President and Member
Lindsey L. Laliberte, Board Vice President and Member
Karl V. Peicker, Board Secretary and Member
Purvi Patel, Board Member

Alexander Fisher, OPLC Board Administrator
Carson Hansford, OPLC Board Administrator

Cassandra Brown, OPLC Board Counsel

Presiding Officer:

Attorney Nikolas Frye, OPLC Administrative Law Judge

Parties:

Marissa Schuetz, Esq., Hearing Counsel
Ashley Ormandy, Licensee (Failed to Appear)

II. CASE SUMMARY/PROCEDURAL HISTORY:

On or about 11/27/2023, the Office of Professional Licensure and Certification, Division of Enforcement (“OPLC Enforcement”) filed a Verified Petition for Emergency Temporary Suspension of Licensure Pursuant to RSA 310:12, IV and N.H. Code Admin.R. Title Plc 206.07 pertaining to Ashley

Ormandy, Pharmacy Technician (“Licensee”). On 11/28/23, the Board voted to suspend the Licensee’s privilege to practice in New Hampshire on an emergency basis pursuant RSA 310:12, IV and N.H. Code Admin. R., Title Plc 206.07 (“Plc”) (“Rules”). The Board upheld that suspension at a hearing held on 12/07/23 and scheduled the matter for a final disciplinary hearing. A final hearing in this matter was held on 03/20/24. This final decision and order follows.

III. SUMMARY OF THE PROPOSED EVIDENCE AND EVIDENTIARY RULINGS:

The Board received the following evidence pursuant to RSA 541-A:33 and Plc Rules 206.22 and 206.18(d):

A. Exhibits were submitted by Hearing Counsel, numbered as follows:

Exhibit 1	October 26, 2023 Initial Drug Loss Form	HC0001
Exhibit 2	November 17, 2023 Final Drug Loss Form and email	HC0003
Exhibit 3	November 20, 2023 Facility Investigation Report	HC0007
Exhibit 4	November 27, 2023 Interview Report of Jessica Gonzales	HC0013
Exhibit 5	Summary Report of Security Video	HC0015
Exhibit 6	Verified petition for emergency suspension	HC0017
Exhibit 7	Interview Report of Nana Frimpong dated December 29, 2023	HC0022
Exhibit 8	Facility Security video from October 16, 2023	

B. Exhibits were submitted by the Licensee and labeled as follows:

None.

C. Sworn testimony was received from:

1. Kaitlyn Simoneau, OPLC – Chief Pharmacy Inspector (via offer of proof)

The Presiding Officer fully admitted Exhibits 1-8 at the prehearing conference held on 03/20/24 at 9:00 AM EST.

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

The Licensee failed to appear for the final hearing in this matter as well as the prehearing conference held on 03/20/24. The record showed OPLC sent a notice of adjudicative hearing to the Licensee on 01/25/24 via certified mail, return receipt requested, first class mail, and email at the respective mailing and email addresses provided by the Licensee. The Notice of Hearing explained that the hearing is on 03/20/24 at 9:30 AM, located at OPLC, 7 Eagle Square, Concord, NH 03301, and contained the information required by RSA 541-A:31 and Plc Rule 206.06(b). The record contained no correspondence from the Licensee in which she indicated an inability to make the hearing or requested a continuance. Hearing Counsel further confirmed that she had received no communication from the Licensee during the 03/20/24 prehearing conference. Additionally, as discussed in the “Order on RSA 310:12, IV Emergency License Suspension Hearing- 12/07/23” in this matter, the Licensee failed to appear for the prehearing conference and emergency license suspension hearing held on 12/07/23 despite having received sufficient notice of both under the relevant statute, rules, and Federal and State Constitutions.

Based upon the foregoing, the Presiding Officer concluded that the Licensee had received notice of the hearing that complies with RSA 310:10, RSA 541-A, and the Federal and State Constitutions. The Presiding Officer additionally found that OPLC had provided “notice reasonably calculated, under all the circumstances, to apprise ... [the Licensee] ... of the pendency of the action and afford ... [her] ... an opportunity to present ... [her] ... objections.” *See, i.e., Jones v. Flowers*, 547 U.S. 220, 225-26 (2006). Although not necessarily required in this situation, the Presiding Officer also found the record

demonstrates that OPLC and the Board took “additional reasonable steps” to provide notice to the Licensee. *See Id.*

The hearing was then held pursuant to RSA 310:10 with the burden of proof, by a preponderance of the evidence, placed upon Hearing Counsel. *See* Rule 206.07(e). The issues before the Board were:

- (1) Whether or not Licensee violated RSA 318-B:2, I RSA 318-B:2, V(a), and/or RSA 318-B:2, V(a) (see Rule Ph 806.01(a)(1)) by allegedly diverting, possessing, or stealing medication from the Rite Aid Pharmacy where she was employed.
- (2) Whether or not the Licensee violated RSA 318:42, XII by possessing prescription drugs outside the scope of practice.
- (3) If a violation is found in relation to issue 1 or 2 above, whether or not the Board should adjust the administrative fine amount on account of any aggravating or mitigating factors pursuant to Ph 2207.02.
- (4) Whether and to what extent the Licensee should be subject to discipline pursuant to RSA 310:12 and/or N.H. Code Admin. R. Ph. 806.01 and/or Ph 2207.01.

NOH at II.(c).

The Board then heard evidence related to these inquiries as summarized below.

HEARING COUNSEL’S CASE-IN-CHIEF:

Offer of Proof from Hearing Counsel (Kaitlyn Simoneau):

Hearing Counsel’s used Exhibits 1-8 to provide an offer of proof to the Board. Kaitly Simoneau testified that she had reviewed the proposed findings of fact filed by Hearing Counsel and stated they were true and accurate to the best of her knowledge and belief. According to the offer of proof, the Licensee diverted two vials of oxycodone while working at a Rite Aid in Nashua, New Hampshire on 10/16/23. Afterward, Rite Aid conducted an internal investigation into the matter, which yielded security camera footage showing the Licensing taking the vials. (Ms. Simoneau was able to confirm the Licensee was the individual in the security footage because store managers at the Nashua Rite Aid had identified the Licensee as the culprit in the footage.) The offer of proof also explained that the Licensee later texted the

Nashua Rite Aid pharmacy that she was resigning from her position because of mental health and other personal struggles. Lastly, the offer of proof revealed that the Licensee had been non-responsive with OPLC Enforcement during the investigation of this matter.

LICENSEE’S CASE-IN-CHIEF:

None.

V. DISCUSSION, FINDINGS OF FACTS, AND CONCLUSIONS OF LAW:

Based upon the evidence that was presented to the Board at the hearing, and considering the presentation and demeanor of all the witness, the Board makes the following findings of facts:

1. On October 16, 2023, the Respondent was working as a Licensed Pharmacy Technician (PhT-129262) at Rite Aid Pharmacy in Nashua, NH #10270.
2. On October 16, 2023, the Respondent diverted two vials of Oxycodone 5mg, Quantity 10 each for a total of 20 Oxycodone pills (RX 10270-2233631 and RX 10270-223808) by removing them from the will call prescription area and placing them into the back of her pants.
3. On October 21, 2023, the Respondent texted Rite Aid store manager, Jessica Gonzales, resigning from her position as a Pharmacy Technician, effective immediately, citing mental health and other personal struggles.
4. Respondent’s license was emergently suspended on November 28, 2023.
5. A hearing on the emergency suspension was held on December 7, 2023 and Respondent failed to appear. The suspension was upheld.
6. Respondent failed to appear at the adjudicatory hearing on March 20, 2024.

Based upon the findings of fact made by the Board, the Presiding Officer makes the following conclusions of law and renders the following legal opinion:

1. Hearing Counsel has established by clear and convincing evidence that the Licensee engaged in professional misconduct as defined at Ph Rule 2201.01(k) and Ph Rule Ph 806.01(a)(1) by violating RSA 318-B:2, I and RSA 318-B:2, V(a) when diverting, possessing, and stealing oxycodone from the Rite Aid Pharmacy where she was employed on 10/16/23.
2. Hearing Counsel has established by clear and convincing evidence that the Licensee engaged in professional misconduct as defined at Ph Rule 2201.01(k) and Ph Rule Ph 806.01(a)(1) by violating RSA 318:42, XII when acting outside her scope of practice as a pharmacy technician

(see Ph Rules 807 et seq and 812 et seq.) when she diverted, possessed, and stole oxycodone from the Rite Aid Pharmacy where she was employed on 10/16/23.

Upon a finding of misconduct made pursuant to Ph Rule 2201.01(k) and Ph Rule Ph 806.01(a)(1), the Board imposes the following disciplinary action against the Licensee:

1. Pursuant to RSA 310:12, I(c) and Plc Rule 206.24(g), Ashley Ormandy's New Hampshire Pharmacy Technician Registration #PhT-129262 is **REVOKED**.

VI. CONCLUSION AND DECISION:

Pursuant to RSA 310:10 and RSA 326-B:37., the Presiding Officer and Board hereby makes the herein findings of professional misconduct and imposes the stated sanction of revocation.

DATED: 3/22/2024

_____/s/ Nikolas K. Frye, Presiding Officer_____
Presiding Officer
New Hampshire Office of
Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301