

**State of New Hampshire
Office of Professional Licensure & Certification
Board of Pharmacy
Concord, New Hampshire**

In the Matter of:

Dyana Figueroa, CPhT
License No: CPhT-00028
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2020-001

FINAL DECISION AND ORDER

This is a Final Decision and Order issued by New Hampshire Office of Professional Licensure & Certification, Board of Pharmacy (“Board”) following an adjudicatory/disciplinary proceeding in the Matter of Dyana Figueroa (“Respondent”) in Docket Number 2020-001 held on June 17, 2020.

BACKGROUND INFORMATION

This matter was heard by the Board of Pharmacy (“Board”) on June 17, 2020 via electronic means, specifically, Zoom. The Notice of Hearing, Continuances, and subsequent final Scheduling Order were properly issued by the Board to the Respondent on May 28, 2020. Notice was provided to the Respondent that a hearing was scheduled to determine whether Respondent, a licensed New Hampshire Certified Pharmacy Technician was in violation of statutory law and rules governing Certified Pharmacy Technicians in the State of New Hampshire in place during the period in which the violation took place (August 2018) as follows: Ph 806.04 “Continuing Education Requirements for Certified Pharmacy Technicians”; whether the Respondent engaged in Unprofessional Conduct as cited in NH RSA 318:29 resulting in the Respondent being subjected to sanctions and disciplinary action pursuant to NH RSA 318:55 and the New Hampshire Code of Administrative Rules Chapter Ph 800.

The matter aforesaid was attended and prosecuted by Michael W. Porter, Esq., (via Zoom), for the Office of Professional Licensure (“OPLC”). Respondent attended (via Zoom), Pro Se.

During the proceedings the following Board members were present and participated in this hearing via Zoom:¹

Helen Pervanas, PharmD, R.Ph., President

John Genovese, R.Ph., Vice President

David Rochefort, R.Ph., Secretary

Candace Bouchard, Public Member

Nicole Harrington, R.Ph., Member

Lindsey Laliberte, R.Ph., Member

Karl Peicker, R.Ph., Member

COMPLAINANT’S EXHIBITS:

The following exhibits were introduced into evidence and accepted into the record:

1. Order of Show Cause signed by Respondent
2. Letter to Respondent
3. Communication from Respondent
4. Notice of Hearing for 2/19/2020
5. Order on Continuance of 2/19/2020 hearing
6. Notice of Hearing for 3/18/2020

¹ The same Commission members also deliberated and voted on this Final Decision and Order.

RESPONDENT'S EXHIBITS.

- A. Email to Board staff from Respondent received 6/12/2020, documenting 2 hours of Live continuing education earned on 12/2/2019

FINDING OF FACTS

1. The Respondent is a New Hampshire Certified Pharmacy Technician bound by NH RSA Chapter 318 and Administrative Rules Ph 100-2200.
2. The Respondent failed to respond to multiple requests from the Board regarding a 2018 Continuing Education Audit, and its request for information, in a timely manner in violation of Ph 806.04, "Continuing Education Requirements for Certified Pharmacy Technicians."
3. The Respondent was contacted by electronic mail on or about August 16, 2018 concerning the 2018 Continuing Education Audit to request documentation to support her Certified Pharmacy Technician status.
4. A second attempt to contact the Respondent, by certified mail, was made on or about September 28, 2018.
5. A third attempt to contact the Respondent, by e-mail, was done on or about January 25, 2019 with instructions to respond no later than February 1, 2019. No response was received from the Respondent on any of these previous attempts.
6. On February 11, 2019 an e-mail was sent to Respondent's place of employment, PillPack Pharmacy, and was addressed to the Pharmacist-In-Charge to request her employment status.
7. A response was received providing a work email for the Respondent.

8. On February 13, 2019 an e-mail was sent to the Respondent's work e-mail address. A response was received in the mail on February 15, 2019 with only four (4) out of the ten (10) required continuing education credit hours. None were in a didactic (live) setting.
9. A Show Cause Hearing was held on March 27, 2019 concerning the violation of Ph 806.04, "Continuing Education Requirements for Certified Pharmacy Technicians".
10. On March 30, 2019, following the above Show Cause Hearing, the Board imposed disciplinary action of a reprimand and ordered that the Respondent to complete the missing 0.6 CEU's (6 hours), of which 0.1 CEU (1 hour) shall be in didactic (live) setting pursuant to the original audit request and 2019 license requirement, and an additional requirement of 0.5 CEU's (5 hours) of continuing education in addition to normal continuing education requirements. The 5 additional hours cannot be used towards the 2021 license renewal.
11. The Board ordered that all continuing education hours (10 hours total, 1-hour of which must be in a didactic/ live setting) shall be completed and certificates sent to the Board office no later than October 1, 2019.
12. As of October 1, 2019, the Respondent failed to comply with the Board Order issued March 30, 2019.
13. At the Board meeting of October 16, 2019 the board reviewed the Board Order of March 30, 2019 as the requested credits had not been provided to the Board by the requested date. A letter was send via certified and first class mail requesting the additional credits be supplied to the Board office no later than November 4, 2019.
14. The Respondent responded on November 4, 2019 via e-mail with CPE monitor activity transcripts that showed 10.5 hours of home study credit had been completed in response to the board order. The Respondent was still responsible to provide 1-hour of live study credit to complete the terms of the board order.

15. An e-mail was sent to the Respondent at dyana@pillpack.com stating the requirements of the disciplinary action had not been met and requested that the additional credit be provided to the Board by November 30, 2019. The additional 1 hour of live CE was not provided by the date requested.
16. On January 17, 2020 a Notice of Hearing was sent to Respondent by Certified Mail. This Notice of Hearing was scheduled to be heard February 19, 2020. Upon Respondent receiving this notice, the Respondent still failed to provide verification of the 1 hour didactic (live) CEU still outstanding.
17. On February 11, 2020, the Board continued the February 19, 2020 hearing until March 18, 2020.
18. On March 12, 2020, a Notice of Hearing was sent to Respondent by Certified Mail for the March 18, 2020 scheduled hearing. The Respondent still failed to provide verification of the 1 hour didactic (live) CEU still outstanding.
19. On March 13, 2020, the Governor of New Hampshire signed an Executive Order declaring a State of Emergency due to the Novel Coronavirus. The March 18, 2020 hearing was continued until June 17, 2020.
20. On Friday, June 12, 2020, Respondent provided verification she completed the required didactic (live) CEU on December 2, 2019.

The evidence and testimony established that the Respondent violated the following rules in place during the audit request (August 2018): Ph 806.04.

DISCUSSION

The Board reviewed testimony and exhibits from both Hearing Counsel, Michael Porter, Esq. and the Respondent, Dyana Figueroa. Both parties were allowed to make

opening and closing statements, ask and respond to questions, make rebuttals, and examine all exhibits.

During live testimony, the Respondent admitted to receiving the audit notices and further admitted to attending the Show Cause hearing March 27, 2019 concerning the violation of Ph 806.04, "Continuing Education Requirements for Certified Pharmacy Technicians". Following the Show Cause Hearing, the Board issued an Order imposing disciplinary action of a reprimand and ordered that the Respondent complete the missing 0.6 CEU's (6 hours), of which 0.1 CEU (1 hour) shall be in didactic (live) setting pursuant to the original audit request and 2019 license requirement, and an additional requirement of 0.5 CEU's (5 hours) of continuing education in addition to normal continuing education requirements. The 5 additional hours cannot be used towards the 2021 license renewal. The Respondent admitted during testimony she received the order, signed the order, and returned the order to the Board.

During testimony, the Respondent admitted she failed to fully comply with the Order issued by the Board as a result of the March 27, 2019 Show Cause Hearing. The Respondent did provide evidence she partially complied with the order. The Respondent offered little by way of defense with regard to the reasoning behind her failure to comply with the Order issued by the Board in March, 2019. The Respondent admitted she received communication from the Board in October 2019 granting additional time to complete the required CEU's. The Respondent further admitted correspondence from the Board offered an invitation to contact the Board should she have any questions, which she failed to do.

The Respondent came into full compliance with the March 2019 Order on or about December 2, 2019, but failed to provide that documentation to the Board in

fulfillment of the March 2019 order. Even after at least two separate hearing notices were sent to the Respondent, the Respondent still failed to provide evidence of fulfillment of the March 2019 order. It wasn't until days before this hearing the Respondent provided verification of fulfillment of the March 2019 order.

CONCLUSIONS OF LAW

The burden of proof rests on the prosecution to prove, by a preponderance of the evidence, Respondent's actions constitute a violation of statute or rule as set forth in this matter. Evidence in this matter has established; by a preponderance of the evidence, that Respondent's actions constitute a violation of Administrative Rule Ph 806.04 (now Ph 810.02 effective 11-17-18) governing New Hampshire Certified Pharmacy Technicians and continuing education requirements for renewal.

Respondent failed to comply with Administrative Rule Ph 806.04 (now Ph 810.02 effective 11-17-18) when she failed to complete the required CEU's for renewal of her certification as a New Hampshire Certified Pharmacy Technician. Respondent then failed to respond to an audit letter mailed to her on August 16, 2018, along with subsequent letters and emails sent to the physical and email address on file.

On March 27, 2019, Respondent appeared for a Show Cause Hearing. On March 30, 2019, the Board issued an Order on the Show Cause Hearing, received and signed for by Respondent on April 1, 2019. The Order specified Respondent received a reprimand and the Respondent was to complete the 6 CEU's missing from the audit (1 hour to be didactic/live), and 5 additional CEU's, all due on or before October 1, 2019. The Respondent failed to complete any

of the ordered CEU's prior to October 1, 2019. The testimony from the Respondent, coupled with the evidence stipulated to, demonstrates the Respondent completed 10.5 of the CEU's between October 23, 2019 and October 29, 2019, well after the October 1, 2019 deadline. Additionally, the evidence and testimony provided by the Respondent at the hearing June 17, 2020 demonstrates the 1 hour live course required in the March 30, 2019 order was not completed until December 2, 2019, long after the October 1, 2019 deadline.

Respondent's failure to abide by the numerous audit letters and a Board Order dated March 30, 2019, demonstrates willfull and repeated violations of a substantive rule (Ph 806.04). Pursuant to NH RSA 318:29, II. *Misconduct sufficient to support disciplinary proceedings under this section shall include: (g) Willful or repeated violation of any provision of this chapter, any substantive rule of the board, or any other federal, state, or local drug or pharmacy-related law, rule, or regulation.* Pursuant to NH RSA 318: 55 the Board may impose civil penalties "not to exceed \$5,000 per violation upon a person who willfully or repeatedly violates any provision of this chapter."

After taking the matter under advisement following the close of the Hearing, the Board found by a preponderance of the evidence, that the Respondent willfully and repeatedly violated Administrative Rule Ph 806.04 and is therefore subject to disciplinary sanctions as set forth by RSA 318:29 and RSA 318:55.

THEREFOR, IT IS ORDERED that the Respondent be issued a **fine of \$250 which shall be paid no later than 30 days following the date of this Order** by submitting a check or money order for said amount payable to "Treasurer, State of New Hampshire" to the Board Office at: Office of Professional Licensure & Certification, Attention: Pharmacy Board, 7 Eagle Square, Suite 300, Concord, NH 03301; and

IT IS FURTHER ORDERED that the Respondent **must obtain and submit documentation to the Board of 5-hours of continuing education (CE) no later than October 30, 2020.** These 5-hours are in addition to the regular continuing education required of all Certified Pharmacy Technicians and these hours may not be used to meet the CE requirements for the March 2021 renewal of her Certified Pharmacy Technician License; and

IT IS FURTHER ORDERED that the Board shall provide a copy of this Order to the Respondent's employer to ensure they are aware of the requirements of this Order; and

IT IS FURTHER ORDERED that due to the Respondent's failure to comply with the terms of the Board's previous Order from March 30, 2019, that should the Respondent fail to meet any of the conditions of this Order by the dates noted above, that the Respondent's Certified Pharmacy Technician License shall be subject to immediate suspension.

IT IS FURTHER ORDERED that this Final Decision and Order shall become a permanent part of the Respondent's disciplinary file, which is maintained by the Board as a public document.

IT IS FURTHER ORDERED that if this decision is not appealed within 30 days of the effective date it shall become final. See Ph 205.01.

IT IS FURTHER ORDERED that the effective date of this Final Decision of the Board is the date the Board representative signs this Order as set forth below.

By Order of the Board,



Helen Pervanas, PharmD, R.Ph.
President
Board of Pharmacy

July 17, 2020

Date