

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

S. Phillip Lenski Administrative Law Judge

Case No.: 16-ALJ-11-0230-AP

Appellate Case No.: 2017-001339

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SC Court of Appeals

Cyril J. Okadigwe,..... Appellant,

vs.

South Carolina Department of Labor, Licensing and
Regulation, State Board of Pharmacy,..... Respondent.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Cyril J. Okadigwe,)
)
 Appellant,)
)
 v.) **ORDER**
)
 South Carolina Department of Labor,)
 Licensing and Regulation, State Board of)
 Pharmacy,)
)
 Respondent.)

RECEIVED FILED
JUN 14 2017 MAY 12 2017
SC Court of Appeals SC ADMIN. LAW COURT

STATEMENT OF THE CASE

The Appellant was licensed as a pharmacist with the South Carolina Board of Pharmacy from 1998 until April 21, 2014, when the State Board of Pharmacy (Board) indefinitely suspended his license under the provisions of Section 40-1-120. The Board properly determined that the Appellant violated S.C. Code Ann. §§ 40-1-110(1)(f) and 40-43-86 (1976 as amended), in that the Appellant committed misconduct by wrongfully taking over \$14,000 of prescription drugs from his employer.¹

On appeal, this court found that the Board acted within its scope of authority in disciplining the Appellant and also that its findings were supported by substantial evidence in the record, however, it remanded the matter for the Board to consider a very narrow issue. Namely, this court found that the Board abused its discretion by imposing an indefinite suspension of the Appellant's license without prescribing conditions to be met during the suspension, as required under Section 40-1-120(A)(3). S.C. Code Ann. § 40-1-120(A)(2011). This court issued an Order of Remand

¹ During the Department investigation, the Appellant "admitted the conduct inasmuch as he stole drugs from his employer...." The Appellant "told [the investigator] that he removed the drugs to take on a mission trip to Honduras. [The Appellant] also believed there was potential thefts occurring at CVS and believed his actions could compel CVS to investigate the potential thefts." (R. at 22).

on February 4, 2016.

On remand, the Board held a hearing on March 16, 2016, and a quorum of the Board membership was present. The Appellant appeared and was represented by his attorney, and the Department counsel appeared for the Department. By way of background, the Board's previous order found that on multiple occasions, the Appellant diverted non-controlled drugs from his employer valued at \$14,535.54. The Board further found that the Appellant transported the drugs to Honduras, where he dispensed the drugs without proper authorization. Finally, the Board found the Appellant admitted that there was no physician involved in distributing the stolen drugs in Honduras. The Appellant's counsel argued that the Board should consider the Appellant had already been suspended for a significant period of time, and that while he was charged criminally, he enrolled in pre-trial intervention, paid full restitution to his former employer, and that the charges had been expunged. The Department argued that the Appellant engaged in very serious misconduct, and that the Board should consider that when determining conditions.

The Appellant also testified that he is currently a pharmacist at the Veterans Administration (VA) in Asheville, North Carolina. He testified his original pharmacy license is with South Carolina, and that he has reciprocated in no other state besides Georgia. (R. at 178).² He testified that he did not have a federal license, and that in order to be a practicing pharmacist in the military (the Appellant is a reservist in the U.S. Army) or at the VA he is required to have one state license in good standing. He testified that he "presented the facts" surrounding his indefinite suspension in South Carolina to Georgia and "they renewed my license." (R. at 177). The Appellant testified that his reciprocal license was still in good standing in the state of Georgia as of the hearing date on March 16, 2016. (R. at 178).

The Board considered the arguments of counsel and the Appellant's statements, and had grave concerns about the serious nature of the Appellant's misconduct. The Board concluded that "in order to ensure that the public interest is protected, [the Appellant's] license shall remain suspended for an indefinite period until such time as he complied with the following conditions:

- 1) Retake and successfully complete the North American Pharmacist Licensure Examination (NAPLX) and Multistate Pharmacy Jurisprudence Examination (MPJE).

² The Appellant testified that he tried to reciprocate in another state, but that he was not allowed to because of South Carolina. (R. at 179).

- 2) Successfully complete the Medication Safety Course offered by the University of Oregon;
- 3) Demonstrate completion of thirty (30) hours of ACPE (not CME) accredited continuing education courses, with at least twelve (12) hours to be obtained through attendance at lectures, seminars, or workshops, and at least fifteen (15) hours in drug therapy or patient management, in addition to regular courses necessary for licensure in South Carolina;
- 4) Provide documentation that he has paid restitution to his former employer for the diverted drugs and that he has successfully completed the pre-trial intervention program, which resulted in the dismissal of the underlying charges;
- 5) Undergo a psychometric evaluation by a Board-approved psychiatrist or psychologist and provide a written report from the evaluator demonstrating that he is qualified to safely practice pharmacy in South Carolina, and
- 6) Reappear at the Board to demonstrate that he is qualified to safely and competently practice pharmacy in South Carolina.

On June 3, 2016, the Board issued its written Order on Remand that provided for the above-listed conditions. On July 11, 2016, the Appellant filed a Notice of Appeal with this court.

STANDARD OF REVIEW

Section 40-1-150 allows a “person aggrieved by a final action of a board” to “appeal the decision to the Administrative Law Court in accordance with the Administrative Procedures Act and the rules of the Administrative Law Court.” See S.C. Code Ann. § 40-1-160 (2011). A final action “disposes of the whole subject matter of the action or terminates the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined.” See *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep’t of Health & Env’tl Control*, 287 S.C. 265, 267, 692 S.E. 2d 894, 895 (2010). The Department is an “agency” under the Administrative Procedures Act (APA). Accordingly, the APA’s standard of review governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380, 1-23-600(D) (Supp. 2012); *McEachern v. S.C. Employment Sec. Comm’n*, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006).

Under the APA the reviewing court may not substitute its judgment for that to the agency

on questions of fact, but may reverse the agency's decision if the decision is clearly erroneous in view of the substantial evidence. Section 1-23-380(5) states:

The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1-23-380(5).

A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 466 S.E.2d 357 (1996). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 467 S.E.2d at 917.

If substantial evidence exists for a certain agency decision, that decision may not be disturbed unless there is an abuse of discretion evidenced by a showing that the action of the agency was arbitrary or unlawful. S.C. Code Ann. § 1-23-600(A) (Supp. 2015). "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of

reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.” *Deese v. South Carolina State Bd. Of Dentistry*, 286 S.C. 182, 184-5, 332, S.E.2d 539, 541 (Ct.App. 1985).

DISCUSSION

The Appellant was a pharmacist licensed by the Board of Pharmacy to practice pharmacy in South Carolina. The Board is tasked with regulating the practice of pharmacy in order to protect the public’s health, safety, and welfare. As part of these duties, the Board has the authority to regulate pharmacists in this state for the public’s protection and to impose sanctions for misconduct. Section 40-1-120(A) states that:

- (A) Upon a determination by a board that one or more of the grounds for discipline exists, in addition to the actions the board is authorized to take...the board **may**:
- (1) issue a public reprimand;
 - (2) impose a fine not to exceed five hundred dollars unless otherwise specified by statute or regulation of the board;
 - (3) place a licensee on probation or restrict or suspend the individual’s license for a definite or indefinite time and prescribe condition to be met during probation, restriction, or suspension including, but not limited to, satisfactory completion of additional education, or a supervisory period, or of continuing education programs;
 - (4) permanently revoke the license.

On remand, the Board complied with this court’s Order, and ultimately listed specific conditions for the Appellant to meet, under the provisions of S.C. Code Ann. § 40-1-120(A)(3). The conditions were based upon the admitted actions of the Appellant. The Appellant admitted that he used “poor judgment” when he decided to steal over \$14,000 worth of legend drugs from his employer and dispense those drugs without prescriptions to individuals in Honduras. As part of his mitigation evidence, the Appellant stated that some of the drugs he took were generic drugs, and that he “had already obtained the prescriptions for those patients from [a] Honduran doctor. When I got back to CVS...it was an effort to satisfy those prescriptions that I took those medications. Again, I admit looking at everything now, it was a poor judgment.” (R. at 174). The Appellant testified that he was able to get the drugs through US Customs because he had the prescriptions for the drugs from a “doctor in Honduras.” (R. at 175).

The Appellant now argues that the Board’s action was arbitrary and capricious and an abuse of discretion because the conditions were “clearly meted out as punishment” rather than an

appropriate exercise of the Board's discretion. He also argues that he was denied substantive due process and equal protection because there "was no rational relationship between the facts and the punishment meted out by the Board."

The Appellant has submitted to this court, along with his brief, an affidavit (and curriculum vitae or CV) from Dr. John C. Rouff. Dr. Rouff holds advanced degrees in history, and wrote that he examined "all public orders of the Board of Pharmacy...for the period of 2009 through August 22, 2016...." and he concluded that the conditions the Board imposed in the Appellant's case "were more severe than have been imposed on any other licensee disciplined in the Public Orders of the Board." Neither this court nor the Appellant can presume to know all the facts involving each of the pharmacist's cases involved in those Board orders, and it is absurd to suggest this. Additionally, for this court to begin to delve into the innumerable files and individual cases of each disciplined pharmacist would be both improper and impossible, considering that this court cannot substitute its judgment that of the agency. Lastly, not only is this information irrelevant, it is also not part of the Record on Appeal in this case, as defined in SCALC Rule 36.³

Likewise, the Appellant's argument that the sanctions imposed upon him are much different from those imposed on others is of no import and is not a basis for reversal of the Board's sanctions. "[A]n agency need not exercise its discretion identically in every case and a penalty within statutory authority is not unwarranted simply because it is more severe than sanctions imposed in other cases." *See Osman v. South Carolina Dept. of Labor*, 382 S.C. 244, 676 S.E. 2d 672 (2009). Additionally, as stated already, this court may not consider the affidavit of Dr. Rouff, because it is not properly part of the Record on Appeal in this case.

This court finds a review of the record reveals that the Board's conditions are supported by the evidence and are within the scope of the Board's conferred authority. The Board's conditions very closely follow the Legislature's list of suggested conditions it provided in S.C. Code Ann. § 40-1-120, and include, but are not limited to, additional education, a supervisory period, and continuing education programs. *See State v. Allen*, 370 S.C. 88, 94, 634 S.E. 2d 653, 656 (2006) (a decision may potentially be arbitrary and capricious if it "does not fall within the range of

³ The Respondent filed a Motion to Strike Appellant's Exhibit from Appellant's Brief on December 30, 2016. The Respondent argued that SCALC Rule 36, which provides that an Administrative Law Judge "will not consider any fact which does not appear in the Record." The Record on Appeal is defined in SCALC Rule 36B, and this court agrees with the Respondent and finds that Dr. Rouff's affidavit is not properly before this court.

permissible decisions 'applicable in a particular case.'"). In order to be deemed safe to practice pharmacy in this State, the Board also included the condition that the Appellant retake the NAPLEX and the MPJE. While the Appellant did pass both tests over twenty (20) years ago, evidence in the record indicates the Board had serious questions about the Appellant's competency and training, based upon the Appellant's statements before the Board during his hearing, and based upon the Board's findings that the Appellant engaged in conduct that demonstrates either a lack of knowledge of rules governing his profession or a wholesale disregard of such rules (the Appellant diverted non-controlled drugs without proper authorization from a physician and without certainty of a long-term supply). (R. at 15).

As stated previously, "[w]hile this court may not necessarily agree with the Board's sanctions, it may not substitute its judgment for that of the Board..." *Id.* at 184. Section 40-1-120(A) of the South Carolina Code of Laws clearly authorizes the Board to revoke or suspend the Appellant's pharmacy license, reprimand him, or take any other lesser reasonable action. Since the conditions the Board imposed were within those established by law, the Appellant's contention that they were arbitrary and capricious is without merit. The record also reveals that the Board's decision was rationally based on the evidence presented and the seriousness of the Appellant's misconduct, and was therefore not arbitrary or capricious or an abuse of discretion. Given that the purpose of the Board "is to protect the people of South Carolina" and its "purpose is monitoring and regulating the practice of pharmacy in a way that [it] can provide healthcare services and protect the people of South Carolina" this court finds that the Board had authority to prescribe the conditions for reinstatement of the license. ⁴

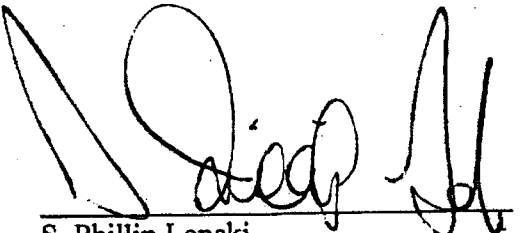
⁴ This court finds that the Appellant's arguments concerning alleged violations of his substantive due process rights and equal protection rights were issues that he did not properly preserve, since they were not raised and ruled upon before the Board. *Smith v. Phillips*, 318 S.C. 453, 455, 458 S.E. 2d 427, 429 (1995). Even if these issues were properly preserved, however, the Board has not denied the Appellant his due process or equal protection rights. A license to practice pharmacy by properly licensed individuals is a property interest founded in state law. Once a license is issued, however, the continued possession of that license is not an absolute right. "A state may...under its police power, regulate, within reasonable bounds, for the protection of the public health...by defining the qualifications which one must possess before being permitted to practice...." See *Dantzler v. Callison*, 230 S.C. 75, 92-93, S.E. 2d 177, 186-187 (1956).

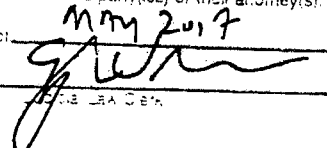
The Appellant indicated at the Board hearing that he currently practices as a pharmacist at the VA in Asheville, North Carolina, using his Georgia pharmacy license, which he obtained based upon his license in South Carolina. Despite his assertions that he has already been punished enough by having his State license suspended for the past two (2) years, it appears (curiously) that the Board's decision has in no way prevented the Appellant from practicing his profession in North Carolina.

THEREFORE, IT IS HEREBY ORDERED that the decision of the Board appealed from is **AFFIRMED** and the Respondent's Motion to Strike Appellant's Exhibit From Appellant's Brief is **GRANTED**.

AND IT IS SO ORDERED.

May 12, 2017
Columbia, South Carolina


S. Phillip Lenski
Administrative Law Judge

CERTIFICATE OF SERVICE
I hereby certify that the undersigned has this date
served this notice order in the above entitled action upon all
parties to this cause by depositing a copy hereof,
in the United States mail, postage paid, or in the interagency
mail. Service addressed to the party(ies) or their attorney(s).
The 12th day of May 2017
By: 
S. Phillip Lenski, Administrative Law Judge

With regard to allegation that his equal protection rights have been violated, it is "well settled than an agency need not exercise discretion identically in every case." *See Deese* at 185.

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE STATE BOARD OF PHARMACY OF SOUTH CAROLINA**

IN THE MATTER OF:

CYRIL J. OKADIGWE,
License No. R.Ph. 8738

OIE #2014-49

Respondent.

ORDER ON REMAND
(PUBLIC)

This matter came before the State Board of Pharmacy (the "Board") for a hearing on March 16, 2016. The Board previously issued a Final Order in this matter on April 21, 2014. This Order suspended the Respondent's license to practice pharmacy for an indefinite period without prescribing conditions to be met during the indefinite suspension. The Respondent timely appealed the Order to the South Carolina Administrative Law Court. On February 4, 2016, the Honorable Phillip Lenski issued an Order of Remand. In the Order of Remand, Judge Lenski concluded that the Board acted within its scope of authority in disciplining the Respondent and that the Board's findings were supported by substantial evidence in the record; however, Judge Lenski also found that the Board abused its discretion by imposing an indefinite suspension of Respondent's license without prescribing conditions to be met during the suspension. As such, Judge Lenski remanded this matter to the Board so that it could review the prior decision and prescribe conditions to be met during the indefinite suspension.

As set forth above, the hearing was conducted on March 16, 2016. A quorum of Board members was present. Patrick Hanks, Esquire, Chief Disciplinary Counsel, represented the State. The Respondent appeared and was represented by Herbert Buhl, Esquire. The State offered a copy of the Notice of Hearing and the Order of Remand dated February 4, 2016 as its Exhibits 1 and 2, respectively. After considering the facts underlying its previous Order, as well as the arguments of counsel, the Board voted to impose the conditions set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By way of background, in its previous Order, the Board found that on multiple occasions, Respondent diverted non-controlled drugs from his employer, including, but not limited to, the following: Plavix 75 mg, Lipitor 10 mg, Lipitor 20 mg, Nexium 40 mg, and Crestor 10 mg. The approximate value of the drugs was \$14,535.54. The Board further found that Respondent

transported the diverted drugs to Honduras, where he dispensed the drugs without proper authorization. Finally, the Board found that Respondent admitted that there was no physician involved in distributing the stolen drugs in Honduras.

Based on the above, the Board concluded that Respondent violated S.C. Code Ann. §§ 40-43-86(DD)(5) and 40-1-110(1)(f) and suspended his license indefinitely. As set forth above, the Administrative Law Court upheld the prior findings of fact and conclusions of law; however, it remanded the case for the Board to impose conditions for reinstatement as required by S.C. Code Ann. § 40-1-120(A)(3). Thus, the only issue before the Board at the hearing was what conditions should be imposed on Respondent in accordance with the Administrative Law Court's directive.

The State argued that it had serious concerns about the Respondent's conduct. Respondent argued that he has already been suspended for a significant period of time and that while he was charged criminally, he enrolled in pre-trial intervention, paid full restitution to his former employer, and the charges have been expunged.

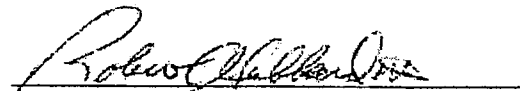
After considering the arguments of counsel, the Board has serious concerns about the serious nature of Respondent's actions. Therefore, the Board concludes that in order to ensure that the public interest is protected, Respondent's license shall remain suspended for an indefinite period until such time as he: 1) retakes, and successfully completes, the North American Pharmacist Licensure Examination ("NAPLX") and Multistate Pharmacy Jurisprudence Examination ("MPJE"); 2) successfully completes the Medication Safety Course offered by the University of Oregon; 3) demonstrates that he has completed 30 hours of ACPE (not CME) accredited continuing education courses, with at least 12 hours to be obtained through attendance at lectures, seminars, or workshops, and at least 15 hours to be obtained in drug therapy or patient management, in addition to the regular continuing education courses required for licensure in South Carolina (i.e., the 30 hours described herein shall not count towards the CE hours necessary for the maintenance of licensure); 4) provides documentation that he has paid restitution to his former employer for the diverted drugs and that he successfully completed the pre-trial intervention program, which resulted in the dismissal of the underlying criminal charges; 5) complies with other conditions known by the Board and the Respondent; and 6) reappears before the Board. These conditions are not designed to punish Respondent; rather, they are imposed to protect the public interest by demonstrating that Respondent is qualified to safely and competently practice pharmacy in South Carolina.

NOW THEREFORE, IT IS ORDERED that Respondent's license shall be, and hereby is, indefinitely suspended until such time as Respondent:

1. Retakes, and successfully completes, the North American Pharmacist Licensure Examination ("NAPLX") and Multistate Pharmacy Jurisprudence Examination ("MPJE");
2. Successfully completes the Medication Safety Course offered by the University of Oregon;
3. Demonstrates that he has completed 30 hours of ACPE (not CME) accredited continuing education courses, with at least 12 hours to be obtained through attendance at lectures, seminars, or workshops, and at least 15 hours in drug therapy or patient management, in addition to the regular continuing education courses necessary for licensure in South Carolina (i.e., the 30 hours described herein shall not count towards the CE hours required for the maintenance of licensure);
4. Provides documentation that he has paid restitution to his former employer for the diverted drugs and that he successfully completed the pre-trial intervention program, which resulted in the dismissal of the underlying criminal charges;
5. Complies with other conditions known to the Board and Respondent; and
6. Reappears before the Board to demonstrate that he is qualified to safely and competently practice pharmacy in South Carolina.

AND IT IS SO ORDERED.

STATE BOARD OF PHARMACY



ROBERT C. HUBBARD, III, R.Ph.
Chairman of the Board

June 3, 2016.

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE STATE BOARD OF PHARMACY OF SOUTH CAROLINA**

IN THE MATTER OF:

CYRIL J. OKADIGWE,
License No. R.Ph. 8738

OIE #2014-49

Respondent.

ORDER ON REMAND
(PRIVATE)

This matter came before the State Board of Pharmacy (the "Board") for a hearing on March 16, 2016. The Board previously issued a Final Order in this matter on April 21, 2014. This Order suspended the Respondent's license to practice pharmacy for an indefinite period without prescribing conditions to be met during the indefinite suspension. The Respondent timely appealed the Order to the South Carolina Administrative Law Court. On February 4, 2016, the Honorable Phillip Lenski issued an Order of Remand. In the Order of Remand, Judge Lenski concluded that the Board acted within its scope of authority in disciplining the Respondent and that the Board's findings were supported by substantial evidence in the record; however, Judge Lenski also found that the Board abused its discretion by imposing an indefinite suspension of Respondent's license without prescribing conditions to be met during the suspension. As such, Judge Lenski remanded this matter to the Board so that it could review the prior decision and prescribe conditions to be met during the indefinite suspension.

As set forth above, the hearing was conducted on March 16, 2016. A quorum of Board members was present. Patrick Hanks, Esquire, Chief Disciplinary Counsel, represented the State. The Respondent appeared and was represented by Herbert Buhl, Esquire. The State offered a copy of the Notice of Hearing and the Order of Remand dated February 4, 2016 as its Exhibits 1 and 2, respectively. After considering the facts underlying its previous Order, as well as the arguments of counsel, the Board voted to impose the conditions set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By way of background, in its previous Order, the Board found that on multiple occasions, Respondent diverted non-controlled drugs from his employer, including but not limited to the following: Plavix 75 mg, Lipitor 10 mg, Lipitor 20 mg, Nexium 40 mg, and Crestor 10 mg. The approximate value of the drugs was \$14,535.54. The Board further found that Respondent transported the diverted drugs to Honduras, where he dispensed the drugs without proper authorization. Further, the Board found that an LLR investigator observed Respondent crying during an interview. Finally, the Board found that Respondent admitted that there was no physician involved in distributing the stolen drugs in Honduras.

Based on the above, the Board concluded that Respondent violated S.C. Code Ann. §§

40-43-86(DD)(5) and 40-1-110(1)(f) and suspended his license indefinitely. As set forth above, the Administrative Law Court upheld the prior findings of fact and conclusions of law; however, it remanded the case for the Board to impose conditions for reinstatement as required by S.C. Code Ann. § 40-1-120(A)(3). Thus, the only issue before the Board at the hearing was what conditions should be imposed on Respondent in accordance with the Administrative Law Court's directive.

The State argued that it had serious concerns about the Respondent's conduct. Further, the State indicated that Respondent suffered from fear and anxiety surrounding his diversion. Respondent argued that he has already been suspended for a significant period of time and that although he was charged criminally, he enrolled in pre-trial intervention, paid full restitution to his former employer, and the charges have been expunged.

After considering the arguments of counsel, the Board has serious concerns about the Respondent's ability to safely practice. The Board has concerns both about the serious nature of Respondent's actions and his psychological state of mind. Therefore, the Board concludes that in order to ensure that the public interest is protected, Respondent's license shall remain suspended for an indefinite period until such time as he: 1) retakes, and successfully completes, the North American Pharmacist Licensure Examination ("NAPLX") and Multistate Pharmacy Jurisprudence Examination ("MPJE"); 2) successfully completes the Medication Safety Course offered by the University of Oregon; 3) demonstrates that he has completed 30 hours of ACPE (not CME) accredited continuing education courses, with at least 12 hours to be obtained through attendance at lectures, seminars, or workshops, and at least 15 hours to be obtained in drug therapy or patient management, in addition to the regular continuing education courses required for licensure in South Carolina (i.e., the 30 hours described herein shall not count towards the CE hours necessary for the maintenance of licensure); 4) provides documentation that he has paid restitution to his former employer for the diverted drugs and that he successfully completed the pre-trial intervention program, which resulted in the dismissal of the underlying criminal charges; 5) undergoes a psychometric evaluation by a board-approved psychiatrist or psychologist and provides a written report from the evaluator demonstrating that he is qualified to safely practice pharmacy in South Carolina; and 6) reappears before the Board. These conditions are not designed to punish Respondent; rather, they are imposed to protect the public interest by demonstrating that Respondent is qualified to safely and competently practice pharmacy in South Carolina.

NOW THEREFORE, IT IS ORDERED that Respondent's license shall be, and hereby is, indefinitely suspended until such time as Respondent:

1. Retakes, and successfully completes, the North American Pharmacist Licensure Examination ("NAPLX") and Multistate Pharmacy Jurisprudence Examination ("MPJE");
2. Successfully completes the Medication Safety Course offered by the University of Oregon;
3. Demonstrates that he has completed 30 hours of ACPE (not CME) accredited continuing education courses, with at least 12 hours to be obtained through attendance at

lectures, seminars, or workshops, and at least 15 hours in drug therapy or patient management, in addition to the regular continuing education courses necessary for licensure in South Carolina (i.e., the 30 hours described herein shall not count towards the CE hours required for the maintenance of licensure);

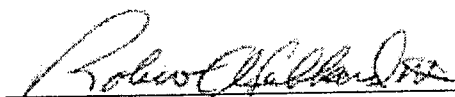
4. Provides documentation that he has paid restitution to his former employer for the diverted drugs and that he successfully completed the pre-trial intervention program, which resulted in the dismissal of the underlying criminal charges;

5. Undergoes a psychometric evaluation by a board-approved psychiatrist or psychologist and provides a written report from the evaluator demonstrating that he is qualified to safely practice pharmacy in South Carolina; and

6. Reappears before the Board to demonstrate that he is qualified to safely and competently practice pharmacy in South Carolina.

AND IT IS SO ORDERED.

STATE BOARD OF PHARMACY



ROBERT C. HUBBARD, III, R.Ph.
Chairman of the Board

June 3, 2016.

agency with the South Carolina Court of Appeals. On May 8, 2015, the Court of Appeals issued a Deficiency Letter, informing the Appellant's counsel that he had ten (10) days to file the lower court's final order and to indicate the respondent party. On May 16, 2014, the Appellant's attorney filed a Motion to be Relieved as Counsel, and on October 2, 2014, the Court of Appeals granted the motion and gave the Appellant thirty (30) days to obtain new counsel. On November 4, 2014, the Court of Appeals transferred the file and remitted the case to the Administrative Law Court, citing Rule 204(a), SCACR. This court issues an Order Governing Procedure on December 4, 2014. The Record on Appeal was filed on March 13, 2015, and the Appellant filed a brief on May 14, 2015, and the Respondent filed a brief on June 15, 2015.

Meanwhile, in late March 2014, the Appellant returned from active duty, shortly after the first Board hearing, and requested the Board reconsider its Final Order, and allow him to personally appear. The Board granted the Appellant's request, and allowed the Appellant to appear at a hearing for reconsideration on June 19, 2014. The Appellant appeared *pro se*, and requested reinstatement of his license, arguing that he had been on military orders that prevented him from appearing at the first Board hearing, held on March 20, 2014. The Board considered the Appellant's testimony, and denied his request for reinstatement of his license in an Order, dated July 18, 2014. The Board issued a Corrected Final Order on July 18, 2014, and listed an effective date for that Order of April 21, 2014. In the Corrected Final Order, the Board deleted one Finding of Fact, but the Corrected Final Order otherwise was identical to the original Final Order. (R. at 2 and 8-10).

Background

The Appellant has been licensed with the South Carolina Board of Pharmacy continuously since 1998 until the State Board of Pharmacy indefinitely suspended his license on April 21, 2014. The Appellant was employed at CVS Pharmacy in South Carolina, from 2001 until 2010. On April 20, 2010, he was arrested on a charge involving misappropriation of prescription drugs from CVS Pharmacy.

On March 24, 2011, the Board filed a formal accusation alleging that the Appellant diverted non-controlled prescription drugs from his employer. The drugs he diverted included Plavix, Lipitor, Nexium, and Crestor. The approximate value of the drugs was \$14,536.00. The Appellant allegedly diverted the drugs to Honduras and dispensed them without proper authorization from a

practitioner. The Appellant admitted he kept no record of who received the drugs.

Though the Board issued an initial Notice of Hearing to the Appellant on March 29, 2011, the Appellant obtained at least three (3) continuances because of his military service as a mobilized reservist in the United States Army. The Board ultimately held a hearing on March 20, 2014, nearly three (3) years after it issued its formal accusation. On that date, the Appellant's counsel requested yet another continuance and informed the Board that he could not locate his client, and that the Appellant had not communicated with him for at least six (6) months. The Board denied this request, and held the hearing without the Appellant, over counsel's objection.¹

On April 21, 2014, the Board issued a Final Order, indefinitely suspending the Appellant's license under the provisions of S.C. Code Ann. § 40-1-120, but did not prescribe any conditions for the Appellant to meet during the suspension. S.C. Code Ann. § 40-1-120 (2011). The Appellant's counsel then timely filed a Notice of Appeal in the incorrect court. The Appellant received notice of the Final Order, and, after relieving his counsel, requested the Board reconsider the matter and reinstate his license.

The Appellant appeared pro se before the Board on June 19, 2014, and testified extensively about his military status, to include explaining that he was mobilized on military orders and out of the United States at the time of the hearing on March 20, 2014, and that he did not return to the United States until March 25, 2014. The Appellant testified that he sent all of his military orders to his former attorney. The Board received and took notice of the Appellant's military orders and testimony. The Appellant admitted to the wrongdoing that formed the basis for the suspension, but requested that the Board reinstate his license.

The Board reviewed the evidence and denied the Appellant's request for reinstatement of his license in an Order dated July 18, 2014. The Board issued a Corrected Final Order, dated July

¹ The Appellant is a reservist in the U.S. Army Reserves. The Appellant apparently failed to inform his attorney of his whereabouts when he returned from his mobilization. The Board's attorney noted that the only evidence of the Appellant's active duty would have been August 2011, for a period of only eighty-eight (88) days. (R. at 87). The Appellant's attorney, Mr. Warder, told the Board that the Appellant may have had another mobilization, but the Appellant told his attorney he was returning and would be looking for employment. (R. at 48).

At the March 2014 hearing, an investigator for the Department testified that the Appellant admitted that he had stolen prescription drugs from his employer that included Lipitor, Plavix, and Crestor, and also admitted that there was no physician involved in the dispensing of the drugs.

18, 2014, but provided that the effective date of the Corrected Final Order was April 21, 2014, the date of the original Final Order from the first hearing. (R. at 10).

Standard of Review

Section 40-1-150 allows a “person aggrieved by a final action of a board” to “appeal the decision to the Administrative Law Court in accordance with the Administrative Procedures Act and the rules of the Administrative Law Court.” See S.C. Code Ann. § 40-1-160 (2011). A final action “disposes of the whole subject matter of the action or terminates the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined.” See *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep’t of Health & Env’tl Control*, 287 S.C. 265, 267, 692 S.E.2d 894, 895 (2010). The Department is an “agency” under the Administrative Procedures Act (APA). Accordingly, the APA’s standard of review governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380, 1-23-600(D) (Supp. 2012); *McEachern v. S.C. Employment Sec. Comm’n*, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). Section 1-23-380(5) of the South Carolina Code (Supp. 2014) provides the standard used by appellate bodies to review agency decisions. See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section states:

The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1-23-380(5).

A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub. Serv. Comm’n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when

considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 466 S.E.2d 357 (1996). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 467 S.E.2d at 917.

Conclusions of Law

The Respondent posited in the opening paragraph of its brief that "[t]he procedural history of this case is not readily apparent to Respondent at this time." While the court agrees that the procedural history of this case is somewhat convoluted, the above recitation appears to capture the relevant moments. The court is confused by the Department's decision to back date the effective date of its Corrected Final Order to the April 21, 2014. The Final Order and the Corrected Final Order are identical, except for a single deleted Finding of Fact. Though the Department, in its brief, claims that the Appellant "informed counsel for the Board that [the Appellant] informed his counsel, Richard Warder, to drop all appeals so the Board would have jurisdiction to rehear the matter in June of 2014...." there is no evidence in the Record to support this assertion. Therefore, though the Appellant's original counsel filed the appeal of the Final Order in the incorrect court where the appeal resided for approximately six (6) months until the Court of Appeals transferred jurisdiction to this court under Rule 204(a), it appears that this court has jurisdiction in this matter with regard to the Final Order of April 21, 2014, as well as the Corrected Final Order. The ultimate outcome of both of those orders was that the Board suspended the Appellant's license indefinitely, and did not set forth any conditions to be met in order for the Appellant to regain his license.

Due Process

“When the State seeks to revoke a professional license, procedural due process rights must be met.” *South Carolina Department of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998) (quoting *Zaman v. South Carolina Bd. of Medical Examiners*, 305 S.C. 281, 284, 408 S.E.3d 213, 215 (1991)). “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* (quoting *South Carolina Dep’t of Soc. Servs. V. Holden*, 319 S.C. 72,78, 459 S.E.2d 846,849 (1986)). No particular form of procedure is required to satisfy due process. *Id.* However, the following minimum elements must be present to satisfy due process: (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross examine witnesses.

In this case, the Appellant had over 900 days to prepare for this matter, but he now argues on appeal that he was denied a full and fair hearing, and that the Board abused its discretion in denying his Motion for Continuance on March 20, 2014. This court finds that this argument is without merit. At the hearing on March 20, 2014, counsel for the Appellant admitted that it had been three (3) years since the initial notification to his client, and that his client had made at least three (3) prior requests for continuances, which the Board had granted. Furthermore, counsel was unable to establish that his client had been on continuous active duty during the three years, and at that time did not know the whereabouts of his client. The Board allowed the Appellant’s counsel a full opportunity to argue and present a case before the Board on March 20, 2014, and subsequently, the Board allowed the Appellant to request reconsideration shortly thereafter, and to appear, albeit *pro se*, and present his case before the Board on June 19, 2014. The Board permitted the Appellant to add to the record evidence of his prior military service and explain why he could not be present at the previous hearing, and allowed the Appellant to testify at length concerning his conduct that was the subject of the disciplinary action and his rationale for his behavior. Even after considering this additional evidence, however, the Board reaffirmed its findings² and disciplinary sanction in its Corrected Final Order of July 18, 2014 (dated with an effective date of April 21, 2014).

² The Board deleted a single finding of fact of fact in its Corrected Final Order.

Substantial Evidence

In this case, the record revealed that the Appellant never denied the underlying misconduct, and admitted to the Department investigator that he stole drugs from his employer, valued at \$14,535, and diverted those drugs without authorization from a practitioner. When the Appellant appeared at his hearing for reconsideration in June, 2014, he also testified and admitted to the underlying misconduct. Based on the foregoing, this court finds that there is substantial evidence in the record to support the Board's findings of facts in both of its Final Orders, which are dated April 21, 2014. In applying the substantial evidence rule, this court "will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 466 S.E.2d 357 (1996). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. S.C. Coastal Council*, 319 S.C 348, 461 S.E.2d 388 (1995).

Sanctions Imposed

In this case, though the Board chose to issue an indefinite suspension of the Appellant's license, it did not prescribe conditions to be met during the period of suspension in order for the Appellant to regain the license. Section 40-1-120(A) states that:

- (A) Upon a determination by a board that one or more of the grounds for discipline exists, in addition to the actions the board is authorized to take...the board may:
- (1) issue a public reprimand;
 - (2) impose a fine not to exceed five hundred dollars unless otherwise specified by statute or regulation of the board;
 - (3) place a licensee on probation or restrict or suspend the individual's license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension including, but not limited to, satisfactory completion of additional education, or a supervisory period, or of continuing education programs;
 - (4) permanently revoke the license. (Emphasis Added).

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the

legislature.” *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). “When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” *Id.* In interpreting a statute, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.” *Id.* at 499, 640 S.E.2d at 459. Further, “the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.” *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

Section 40-1-120(A)(3) provides that the Board may place the licensee on probation, or restrict or suspend the individual's license for either a definite or an indefinite period, but if the Board chooses to do so, the statute is clear that the board must also prescribe conditions to be met during that probation, restriction or suspension. The statute then provides a non-exhaustive list of conditions the Board may impose, such as providing for a supervisory period of observation, continuing education, or additional education. Here, the statute is clear and unambiguous. The Board's issuance of an indefinite suspension without providing the individual a way to ever lift the sanction is equivalent to a permanent revocation. Though a permanent revocation is a permissible sanction for the Board under the statute, in this case, the Board chose to impose the lesser sanction of indefinite suspension. A suspension, unlike a permanent revocation, contemplates that the licensee may, at some time in the future, be permitted to gain reinstatement of his license. Therefore, it follows that if a professional licensing board decides to suspend the license of an individual, either indefinitely or for a given period, the Board must provide conditions the individual must comply with in order to seek reinstatement of his license. Section 40-1-120(A)(3) mandates this. Therefore, because the Board elected to indefinitely suspend the Appellant's license, it was required to impose conditions for the Appellant to meet if he desires to gain reinstatement of his license at some future time. In sum, the Board's imposition of such a sanction, absent the setting of conditions, was an abuse of discretion, and warrants a remand of this case on this very narrow issue.

Conclusion

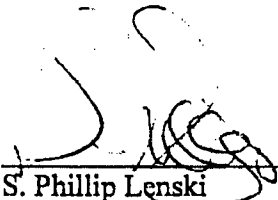
This court finds that the Board acted within its scope of authority in disciplining the Appellant for his violation of S.C. Code Ann. §§ 40-43-86 and 40-1-110(1)(f), in that he committed

misconduct by wrongfully taking over \$14,000 of prescription drugs from his employer. This court also finds that the Board's findings were supported by substantial evidence in the record. However, this court finds that the Board abused its discretion by imposing an indefinite suspension of the Appellant's license without prescribing conditions to be met during the suspension, as required under Section 40-1-120(A)(3). S.C. Code Ann. § 40-1-120(A)(2011). ACCORDINGLY,

IT IS ORDERED that this matter is **REMANDED** to the Board, so that it may review its decision and prescribe conditions to be met during the indefinite suspension in accordance with S.C. Code Ann. § 40-1-129(A)(3).

AND IT IS SO ORDERED.

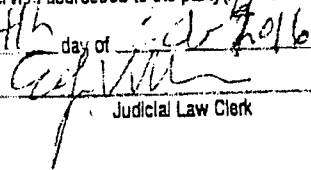
February 4, 2016
Columbia, South Carolina



S. Phillip Lenski
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 4th day of Feb 2016
By: 

Judicial Law Clerk

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION BEFORE
THE STATE BOARD OF PHARMACY OF SOUTH CAROLINA**

IN THE MATTER OF:

CYRIL J. OKADIGWE,
License No. R.Ph. 8738

OIE #2010-70

Respondent.

**CORRECTED
FINAL ORDER**

This matter came before the State Board of Pharmacy (the "Board") for a hearing on June 19, 2014, to modify April 21, 2014, Final Order to delete a paragraph containing erroneous information. A quorum of Board members was present. Patrick Hanks, Chief Disciplinary Counsel, represented the State. The Respondent appeared *pro se*. The facts as accepted by the Board in the June 19, 2014, hearing support amendment of the original order with the following order, retroactive to April 21, 2014.

This matter came before the State Board of Pharmacy (the "Board") for a hearing on March 20, 2014, as a result of the Formal Accusation dated March 24, 2011, and Notice of Hearing dated February 7, 2014, served on the above captioned Respondent which were exhibits to the hearing. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §§; 40-43-150; 40-1-80, -90, -120, and -170, (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10, *et seq.* (1976), as amended. Patrick Hanks, Assistant General Counsel, represented the State. The Respondent, though properly noticed, did not appear. Richard Warder, Esquire, appeared on behalf of Respondent.

STATE'S EXHIBITS

1. Notice of Hearing with Certificate of Service
2. Formal Accusation with Certificate of Service
3. Renewal form for 2011-12
4. Certificate of Service with Receipt Attached
5. Order of Temporary Suspension (TSO)

STATE'S WITNESSES

1. Ray Trotter, RPh, Investigator, Department of Labor, Licensing, and Regulation

PRE-HEARING MOTION

At the beginning of the proceeding, Mr. Warder moved on behalf of his client for a continuance of the hearing. Mr. Warder asked for the continuance because he was unable to locate his client; Respondent's last known number was disconnected, and Mr. Warder was unable to reach Respondent at his last known address. Mr. Warder has not spoken to Respondent in 6 months.

The State opposed the continuance. The State entered the Certificate of Service as State's Exhibit #1; the receipt of the Certificate was signed by Bertha Okadigwe.

Mr. Warder explained to the Board that there has been military duty for Respondent. The State argued there was only military duty to the State's knowledge in August 2011 for 88 days.

After hearing argument, the Chairman denied the motion for continuance.

FINDINGS OF FACT

1. Respondent was duly licensed at all times relevant to this matter. The Board has jurisdiction over Respondent.
2. On multiple occasions before March 25, 2010, while employed at CVS Pharmacy in Duncan, South Carolina, Respondent diverted non-controlled drugs from his employer, including but not limited to the following: Plavix 75 mg, Lipitor 10 mg, Lipitor 20 mg, Nexium 40 mg, and Crestor 10 mg. The approximate value of the drugs was \$14,535.54.
3. Evidence and testimony shows Respondent represented that he transported the diverted drugs to Honduras and dispensed without proper authorization from the practitioner. Respondent did not keep a record of who received the drugs.
4. Ray Trotter, Investigator, conducted the investigation. Trotter interviewed the Respondent, and Respondent admitted the conduct inasmuch as he stole drugs from his employer, including Lipitor, Crestor, Plavix, and others. Respondent told Trotter that he removed the drugs to take on a mission trip to Honduras. Respondent also believed there were potential thefts occurring at CVS, and believed his actions could compel CVS to investigate the potential thefts.

5. Trotter testified he observed Respondent cry during the interview, and he appeared stressed out. Respondent was very straightforward as to his actions. Respondent told Trotter there was no physician involved in distributing the stolen drugs in Honduras.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this matter, the Board finds and concludes as a matter of law the following:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of the provisions of S.C. Code Ann. §§ 40-1-110 or 40-43-10 *et seq.*, has the authority to issue a public reprimand, impose a fine not to exceed \$500.00 per violation, place a licensee on probation or restrict the individual's license, suspend the license for a definite or indefinite time, prescribe conditions to be met during probation, restriction, or suspension including but not limited to completion of additional education, a supervisory period, continuing education programs, or permanently revoke the individual's license to practice pharmacy or registration as a pharmacy technician in this State.
2. Respondent violated S.C. Code Ann §§ 40-43-86(DD)(5) and 40-1-110(1)(f), in that he committed misconduct by stealing over \$14,000.00 worth of drugs.
3. The sanction imposed is designed not to punish the Respondent but to protect the life, health and welfare of the people at large.

THEREFORE, IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT the Respondent's pharmacist license is hereby indefinitely suspended in South Carolina.

STATE BOARD OF PHARMACY


J. ADDISON LIVINGSTON, R.Ph., PharmD
Chairman

July 18, 2014 (effective April 21, 2014).

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE STATE BOARD OF PHARMACY OF SOUTH CAROLINA**

IN THE MATTER OF:

CYRIL J. OKADIGWE,
License No. R.Ph. 8738

OIE #2010-70

Respondent.

ORDER

This matter came before the State Board of Pharmacy ("Board") for a hearing on June 19, 2014, to consider the request of the above named respondent ("Respondent") for reinstatement following an indefinite suspension imposed by the April 21, 2014, Final Order. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §§; 40-1-80, -90, -120, and -170, (2011), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10, *et seq.* (1976, as amended). Patrick Hanks, Chief Disciplinary Counsel, represented the State. The Respondent appeared *pro se*. Board member David Banks recused himself because of prior knowledge of the situation.

FINDINGS OF FACT

1. Respondent's license was indefinitely suspended by a Final Order dated April 21, 2014, issued after the March 20, 2014, hearing held on the formal accusation served on Respondent on February 7, 2014. Respondent did not appear at the March 20, 2014 hearing. However, Respondent's counsel appeared at the March 20, 2014, hearing and requested a continuance because he could not contact Respondent, and was unable to locate Respondent or reach him at his last known address. The motion for continuance was denied.

2. The Final Order found that in 2010, Respondent took non-controlled drugs including Lipitor, Crestor, Plavix, and others from his employer.

3. Respondent testified he was willing to buy these maintenance drugs, but could not because he did not have a pharmacy permit or an account.

4. Respondent admitted that he removed the drugs to take on a mission trip to Honduras and dispensed them to needy persons without proper authorization from a practitioner.

5. Respondent testified he was in the military and under orders preventing him from coming to South Carolina for the March 20, 2014 hearing. Respondent received an order in December 2012 to report to Fort Belfort, Virginia, followed by another order to go to Germany. He was shipped in August, 2013, due back on March 28, 2014.

6. Respondent testified he actually arrived to the United States on March 25, 2014, and got back to his family on March 29, 2014. At that time, Respondent contacted his attorney, who told him the hearing had already been held. Respondent testified he sent all the orders to the attorney.

7. The Board was not presented with the orders by Respondent's previous counsel at the March 20, 2014, hearing.

8. Respondent testified the suspension will adversely affect his duty in the military and his licensure in Georgia, and make him unemployable.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this matter, the Board finds and concludes as a matter of law the following:

In a hearing for reconsideration of a prior order of the Board or for reinstatement, the burden of proof is on the Petitioner to provide new or additional evidence that a release or modification from the previous judgment by the Board is appropriate. While the Board does receive and take notice of Respondent's military orders and testimony, the underlying facts of the case remain unchanged, and thus the sanction remains appropriate. Therefore, this Board finds that Respondent did not provide persuasive evidence sufficient to justify reinstatement at this time.

THEREFORE, IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT the Respondent's request for reinstatement of his pharmacist license is hereby DENIED.

STATE BOARD OF PHARMACY



J. ADDISON LIVINGSTON, R.Ph., PharmD
Chairman

July 18, 2014.

Page 2 of 2

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION BEFORE
THE STATE BOARD OF PHARMACY OF SOUTH CAROLINA**

IN THE MATTER OF:

CYRIL J. OKADIGWE,
License No. R.Ph. 8738

OIE #2010-70

Respondent.

FINAL ORDER

This matter came before the State Board of Pharmacy (the "Board") for a hearing on March 20, 2014, as a result of the Formal Accusation dated March 24, 2011, and Notice of Hearing dated February 7, 2014, served on the above captioned Respondent which were exhibits to the hearing. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §§; 40-43-150; 40-1-80, -90, -120, and -170, (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10, *et seq.* (1976), as amended. Patrick Hanks, Assistant General Counsel, represented the State. The Respondent, though properly noticed, did not appear. Richard Warder, Esquire, appeared on behalf of Respondent.

STATE'S EXHIBITS

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2. Formal Accusation with Certificate of Service
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5. Order of Temporary Suspension (TSO)

STATE'S WITNESSES

1. Ray Trotter, RPh, Investigator, Department of Labor, Licensing, and Regulation

PRE-HEARING MOTION

At the beginning of the proceeding, Mr. Warder moved on behalf of his client for a continuance of the hearing. Mr. Warder asked for the continuance because he was unable to locate his client; Respondent's last known number was disconnected, and Mr. Warder was unable to reach Respondent at his last known address. Mr. Warder has not spoken to Respondent in 6 months.

The State opposed the continuance. The State entered the Certificate of Service as State's Exhibit #1; the receipt of the Certificate was signed by Bertha Okadigwe.

Mr. Warder explained to the Board that there has been military duty for Respondent. The State argued there was only military duty to the State's knowledge in August 2011 for 88 days.

After hearing argument, the Chairman denied the motion for continuance.

FINDINGS OF FACT

1. Respondent was duly licensed at all times relevant to this matter. The Board has jurisdiction over Respondent.
2. On multiple occasions before March 25, 2010, while employed at CVS Pharmacy in Duncan, South Carolina, Respondent diverted non-controlled drugs from his employer, including but not limited to the following: Plavix 75 mg, Lipitor 10 mg, Lipitor 20 mg, Nexium 40 mg, and Crestor 10 mg. The approximate value of the drugs was \$14,535.54.
3. Respondent was arrested by the Duncan Police Department and charged with Grand Larceny over \$5,000.00.
4. Evidence and testimony shows Respondent represented that he transported the diverted drugs to Honduras and dispensed without proper authorization from the practitioner. Respondent did not keep a record of who received the drugs.
5. Ray Trotter, Investigator, conducted the investigation. Trotter interviewed the Respondent, and Respondent admitted the conduct inasmuch as he stole drugs from his employer, including Lipitor, Crestor, Plavix, and others. Respondent told Trotter that he removed the drugs to take on a mission trip to Honduras. Respondent also believed there were potential thefts occurring at CVS, and believed his actions could compel CVS to investigate the potential thefts.
6. Trotter testified he observed Respondent cry during the interview, and he appeared stressed out. Respondent was very straightforward as to his actions. Respondent told Trotter there was no physician involved in distributing the stolen drugs in Honduras.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this matter, the Board finds and concludes as a matter of law the following:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of the provisions of S.C. Code Ann. §§ 40-1-110 or 40-43-10 *et seq.*, has the authority to issue a public reprimand, impose a fine not to exceed \$500.00 per violation, place a licensee on probation or restrict the individual's license, suspend the license for a definite or indefinite time, prescribe conditions to be met during probation, restriction, or suspension including but not limited to completion of additional education, a supervisory period, continuing education programs, or permanently revoke the individual's license to practice pharmacy or registration as a pharmacy technician in this State.
2. Respondent violated S.C. Code Ann §§ 40-43-86(DD)(5) and 40-1-110(1)(f), in that he committed misconduct by stealing over \$14,000.00 worth of drugs.
3. The sanction imposed is designed not to punish the Respondent but to protect the life, health and welfare of the people at large.

THEREFORE, IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT the Respondent's pharmacist license is hereby indefinitely suspended in South Carolina.

**SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING & REGULATION**

STATE BOARD OF PHARMACY



J. ADDISON LIVINGSTON, R.Ph., PharmD
Chairman

April 21, 2014.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

S. Phillip Lenski Administrative Law Judge

Case No.: 16-ALJ-11-0230-AP

RECEIVED

JUN 14 2017

SC Court of Appeals

Cyril J. Okadigwe,..... Appellant,

vs.

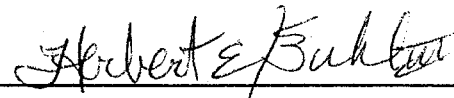
South Carolina Department of Labor, Licensing and
Regulation, State Board of Pharmacy,..... Respondent.

NOTICE OF APPEAL

Cyril J. Okadigwe, appeals the order of the Honorable S. Phillip Lenski, dated May 12, 2017.
Appellant received written notice of entry of this order on May 15, 2017.

Other Counsel of Record:

T. Kyle Tennis, Esquire
Assistant Disciplinary Counsel
SC Department of Labor, Licensing and
Regulation
P.O. Box 11329
Columbia, SC 29211-1329



Herbert E. Buhl, III
2204 Devine Street
Columbia, SC 29205
(803) 799-3767
ATTORNEY FOR APPELLANT

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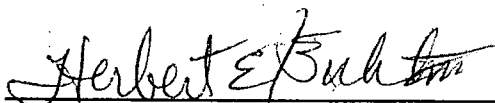
JUN 14 2017

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on T. Kyle Tennis, Esquire, by depositing a copy of it in the United States Mail, postage prepaid on June 14, 2017, addressed to the attorney of record.

T. Kyle Tennis, Esquire
Assistant Disciplinary Counsel
SC Department of Labor, Licensing
and Regulation
P.O. Box 11329
Columbia, SC 29211-1329



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2204 Devine Street
Columbia, SC 29205
(803) 799-3767
ATTORNEY FOR APPELLANT

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE SOUTH CAROLINA STATE BOARD OF PHARMACY**

In the Matter of:

CYRIL J. OKADIGWE
License No.: PH.8738 (SUSPENDED)

OIE #2014-49 Respondent.

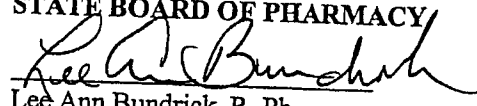
NOTICE OF HEARING

TO THE RESPONDENT NAMED ABOVE:

YOU ARE HEREBY NOTIFIED that the South Carolina Board of Pharmacy ("Board") will conduct a hearing on **Wednesday, March 16, 2016, at 2:00 pm**, Room 108 at the Kingstree Building located at 110 Centerview Drive, Columbia, South Carolina. The hearing has been set pursuant to the Administrative Law Court's Order of Remand, a copy of which is attached hereto and served upon you. The hearing is held pursuant to the authority of § S.C. Code Ann. §§ 40-43-140 and 150 and 40-1-120 (Supp. 2006). **IF YOU DO NOT APPEAR OR REQUEST AND RECEIVE A CONTINUANCE, YOU WILL BE HELD IN DEFAULT AND THE BOARD OF PHARMACY WILL RENDER DISCIPLINARY ACTION AS APPROPRIATE FOR THE CHARGES DESCRIBED ABOVE.**

FURTHER, you are notified that you may appear and present evidence on your behalf and confront, and cross-examine witnesses against you. In addition, you have the right to be represented by legal counsel. The hearing will be conducted in accordance with the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310, *et. seq.*, (Supp. 2006).

STATE BOARD OF PHARMACY


Lee Ann Bundrick, R. Ph.
Board Administrator

Columbia, South Carolina
February 8, 2016.

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE STATE BOARD OF PHARMACY OF SOUTH CAROLINA**

IN THE MATTER OF:

CYRIL J. OKADIGWE
License No. PH.8738

OIE #2010-70

Respondent.

FORMAL ACCUSATION

IT IS HEREBY ALLEGED:

I.

Respondent is a Pharmacist, duly licensed by the South Carolina Board of Pharmacy (the Board) to practice pharmacy in this State, and was so licensed at all times relevant to the matters asserted herein. This Board has jurisdiction over this matter

II.

That upon information and belief, Respondent has committed misconduct in violation of S.C. Code Ann. §§40-43-86(DD)(5) and 40-1-110(f)(1976, as amended).

III.

1. On various occasions before March 25, 2010, while employed at the CVS Pharmacy in Duncan, South Carolina, Respondent diverted a quantity of prescription (non-controlled) drugs from his employer. The drugs diverted include, but are not limited to, Plavix 75mg, Lipitor 10mg, Lipitor 20mg, Nexium 40mg, and Crestor 10mg. The approximate value of the drugs approximates \$14,535.54. Respondent was arrested by the Duncan Police Department and charged with Grand Larceny over \$5,000.00.
2. Respondent transported the diverted drugs to Honduras and dispensed the without proper authorization from a practitioner. Respondent did not keep a record of who received the drugs.

IV.

PURSUANT to S.C. Code Ann. §§ 40-43-150(C), 40-43-140, and 40-1-120 (1976, as amended), if you are found guilty of such violations, the Board has the power to suspend or revoke


1 of 2

your registration, or take any action short of a revocation or suspension. Additionally, the Board may require the payment of a civil penalty of up to five hundred dollars (\$500.00) per violation. **TAKE NOTICE** that:

1. You are entitled to an opportunity to be heard with respect to these charges.
2. Hearings are held in accordance with the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-310 through 1-23-400, which describes your procedural rights including, but not limited to, the right to respond and present evidence and argument on all issues involved. You may wish to retain legal counsel to represent you in this matter so as to more fully understand, protect and assert your legal rights.

WHEREFORE, the Board will consider these allegations and make such disposition as may be appropriate.

STATE BOARD OF PHARMACY

BY: 
PATRICK D. HANKS, FOR
LEE ANN F. BUNDRICK, R.Ph.
Administrator

Columbia, South Carolina
3/24, 2011

1 South Carolina Department of Labor, Licensing and
2 Regulation

3 Before the South Carolina Board of Pharmacy

4 March 16, 2016

5 In the Matter of:)
6 Cyril J. Okadigwe)

7
8 This meeting is being held in accordance with Section
9 30-4-80 of the South Carolina Freedom of Information Act
10 by notice mailed to the State Newspaper, Associated Press,
11 WIS-TV and all other requesting persons, organizations or
12 news media. In addition, notice was posted on the
13 bulletin boards at the two main entrances of the Kingstree
14 Building, Columbia, South Carolina.

15 **Board Members:**

16 Robert C. "Rob" Hubbard, Chairman
17 Carole S. Russell, Vice Chair
18 J. Addison Livingston
19 Eric J. Strauss
20 Rebecca Long Gillespie
21 Terry A. Blackmon
22 Spencer A. Morris
23 Marvin Hyatt, Sr.
24 Dr. Leo Richardson

25 Adam Russell, Advice Counsel

Lee Ann Bundrick, Administrator

Pat Hanks, Disciplinary Counsel

Herbert E. Buhl, Counsel for Cyril Okadigwe

Hearing Reported by Kathryn J. Lindler

Kathryn J. Lindler
(803) 206-0920

1 MR. HUBBARD: For those of you who were not in
2 here this morning I want to go over how we are going to
3 proceed this afternoon. We are going to hear a number of
4 matters this afternoon. Some of these will be hearings,
5 others will be requests to reconsider previous Board
6 decisions by consent agreement or final order. I'm going
7 to go through some preliminary information on how hearings
8 will proceed. Each respondent has the opportunity to have
9 an attorney present. If you do not have an attorney
10 present, at any time you can stop the hearing and ask for
11 legal counsel. Certainly do not have to have an attorney
12 to proceed. If you have an attorney present, please
13 introduce your attorney. You will be called up
14 individually. You will be asked to state your name for the
15 record. You will be sworn in by the court reporter. This
16 is a formal hearing so we expect truthful answers to
17 questions you are asked. You should have been given
18 30-days notice of these proceedings. If you were not given
19 30-days notice, you can waive that right and we can
20 proceed, but if you would like to wait and exercise your
21 30-day right, you have that right. These meetings will be
22 conducted as informally as is compatible with an equitable
23 presentation of both sides of the case and in compliance
24 with the provisions of the Administrative Procedures Act,
25 the Practice Act, regulations and policies of the Board.

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1 What this mean is that there are some laws we must comply
2 with in order to make sure this process is fair. We will
3 ask why you are here. We will let you present your case.
4 Tell us why you should be licensed or why you would like us
5 to reconsider our action. We will ask you a few questions.
6 These questions will be related to your application,
7 request or your qualifications. For pharmacy permits,
8 we'll ask you a very specific set of questions. Please
9 know that we ask these of all pharmacy permit applicants.
10 If at any time you are confused or do not understand
11 something, please ask. If you have additional materials
12 you will need to provide them to our attorney and as long
13 as they are appropriate, we will consider those items and
14 we will mark them as exhibits to your hearing.

15 Our afternoon session we will begin with new business
16 continued in the matter of Cyril Okadigwe. Mr. Hanks,
17 will you please proceed.

18 MR. HANKS: Yes, sir. Mr. Chairman, out of the
19 abundance of caution I ask that the hearing be closed.

20 MR. HUBBARD: We will honor the request to close
21 this hearing. If the gallery would please clear the room.

22 (Closed Session.)

23 MR. HUBBARD: Mr. Hanks.

24 MR. HANKS: Mr. Chairman and Members of the
25 Board, this matter was argued before the Honorable S. Phil

1 Lenski January 16 and he issued his order on February 4 and
2 he asked that the Board review its prior decision and
3 prescribe conditions for the Respondent to meet during his
4 period of his indefinite suspension. I just want to back
5 up a little bit and give you some background by which you
6 would make your decision. On various occasions before
7 March of 2010 while the Respondent was employed at CVS, he
8 diverted a quantity of drugs. Those drugs included Plavix,
9 Lipitor, Nexium, and Crestor at an approximate value of
10 \$14,500. He was arrested by the city police and it's also
11 important to know that during the proceeding the Respondent
12 admitted that he also diverted some medications that were
13 involved with treating hypertension. The Respondent worked
14 at CVS for approximately 13 years. He was licensed in the
15 state in 1998. The Respondent's testimony to our
16 investigator was that he met a female from Honduras with
17 two children. He considered adopting the two children and
18 he said he was generally concerned about the health care
19 situation in Honduras. All this, of course, is in the
20 record. The Respondent also said he went on three mission
21 trips during 2000 to 2010. It wasn't clear whether or not
22 the incident that he was involved with where the drugs were
23 distributed was indeed a mission trip. When the Respondent
24 was interviewed by Ray Trotter he said that he diverted the
25 drugs to help indigents in Honduras. He also stated that

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1 he wanted to give the store a shrink or bring some
2 awareness to a security issue that existed at the CVS
3 location in Duncan, South Carolina.

4 It's my estimation that this trip was not an official
5 mission trip. The Respondent transported and diverted
6 drugs to Honduras and he dispensed them without proper
7 authorization from practitioners. The Respondent also did
8 not keep a record of the drugs that he diverted.

9 This case initially originated in 2011. The
10 Respondent was served with a formal complaint in 2011. He
11 was basically granted three continuances. The case came
12 before the Board in March of 2014. The Respondent was not
13 present at that hearing as you recall. Testimony and
14 documentary evidence conclusively demonstrated the
15 Respondent never denied that he engaged in a pattern of
16 misconduct by diverting drugs and dispensing them incident
17 to a trip that he took without proper authorization. That
18 was the findings in that order. That order was issued in
19 April 2014.

20 This Board allowed the Respondent to reappear. As I
21 said the Respondent was not present, but his counsel was
22 present during the initial hearing. The Board admitted
23 him to appear in June for a possibility of reinstating his
24 license. The Respondent took that opportunity. Stated
25 that he had terminated his services of his counsel because

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1 of communication issues, but he admitted to all misconduct
2 listed in the formal accusation and at the conclusion of
3 that hearing, the Board decided to reaffirm its prior
4 decision.

5 Now I'll just wind up here today by stating these
6 things. It's my estimation, and I'm not going to make a
7 specific recommendation in this case, but the Respondent,
8 he obviously took medications to a foreign country to be
9 dispensed to his testimony on the order of a foreign
10 physician. In that regard I'm asking this Board to
11 consider that there is a need to educate, to rehabilitate
12 and to deter this individual. I also am concerned when
13 Ray Trotter testified about the Respondent's conduct, he
14 noted and he emphasized the Respondents was very emotional
15 during his interview, that he cried. Respondent told you
16 during the hearings that he acted with a dual purpose. He
17 said he was in fear and he had anxieties about what was
18 occurring at that CVS location where the diversion
19 occurred. In that regard I'm asking this Board to
20 consider a period or some type of evaluation and some type
21 of monitoring for a specified period based on those
22 issues. The Respondent also came before you and he said
23 he did not feel that his conduct was criminal and that he
24 said this course of conduct was caused by mental
25 confusion, stress and poor judgment. And what we were

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1 hoping was that the Respondent would demonstrate some
2 degree of remorse or acknowledge his true culpability for
3 the misconduct and state that it was misconduct and it is
4 a violation of law and it is inappropriate and that he
5 would not consider engaging in such a course of conduct in
6 the future, but we didn't get that. And so I ask this
7 Board to also consider that the Respondent has not
8 expressed remorse or acknowledged a possibility that his
9 course of conduct could have caused harm to someone if in
10 fact it did not. Finally I ask the Board to consider the
11 fact that your original sanction was not reversed. The
12 ALJ did not reverse the indefinite suspension. He
13 remanded this case back to you all stating that your
14 sanction is appropriate. He remanded it back only for you
15 all to add conditions to the existing sanction and I ask
16 that you take the judge's advice and set out terms and
17 conditions that the Respondent should overcome prior to
18 his reinstatement. Finally whether or not you find his
19 conduct was negligent or intentional, I suggest that you
20 add a substantial fine that the Respondent should remit as
21 a condition to his reinstatement. The only other thing
22 that I would add is that I added a copy of the notice of
23 this proceeding as State's Exhibit Number 1 and a copy of
24 the Remand Order as State's Exhibit Number 2 and I've
25 provided those to counsel for the Respondent, Mr. Buhl,

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1 for his inspection and possible objection.

2 MR. BUHL: No objection.

3 (WHEREUPON, State's Exhibits No. 1

4 AND 2 were marked for

5 identification only.)

6 DR. RICHARDSON: Are we in order?

7 MR. HUBBARD: Yes. Go ahead.

8 DR. RICHARDSON: Last thing he was not here, did
9 you get an explanation as to why he wasn't here the last
10 time?

11 MR. HANKS: I believe the last hearing he did
12 appear. The first hearing he did not appear.

13 DR. RICHARDSON: The last hearing he did not
14 appear? I thought it was the last one he did appear?

15 MR. HANKS: The last hearing he did appear, yes,
16 sir.

17 DR. RICHARDSON: You mentioned some dates.
18 You're talking about January and February the date this
19 decision was made by?

20 MR. HANKS: The decisions by the Board were in
21 April of 2014.

22 DR. RICHARDSON: I'm talking about you mentioned
23 January and February.

24 MR. HANKS: The court system.

25 DR. RICHARDSON: This year?

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1 MR. HANKS: Yes, sir.
2 MR. HUBBARD: Thank you, Mr. Hanks.
3 Mr. Okadigwe, would you stand and state your name for the
4 record and be sworn in please.
5 MR. OKADIGWE: Cyril Okadigwe.
6 Thereupon,
7 CYRIL OKADIGWE,
8 being first duly sworn to tell the truth, the whole truth
9 and nothing but the truth, as hereinafter certified,
10 testified as follows:
11 MR. HUBBARD: You have an attorney present?
12 A. Yes, I do.
13 MR. HUBBARD: Would you state your name please.
14 MR. BUHL: Mr. Chairman and Members of the Board,
15 my name is Herbert Buhl. I'm representing Mr. Okadigwe.
16 Do you want to hear from me or do you want to continue
17 hearing from him?
18 MR. HANKS: Mr. Chairman, just to be clear. It's
19 my understanding at this point on the remand that we have
20 an established record, but I believe that if the Board so
21 choose to indulge the Respondent to the extent of questions
22 that relate to your formulation of an appropriate sanction,
23 I believe those questions will be in order, but I don't
24 think we can go much outside of that record.
25 MR. RUSSELL: Just to be clear.

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1 MR. HUBBARD: You may be seated and I'm just
2 going to ask the Board what is your pleasure. Do you all
3 have some questions? How do you want to proceed?

4 MS. GILLESPIE: If I'm looking at this, just for
5 information on how to proceed, it says that we have like
6 four options, issue a public reprimand, impose a fine,
7 place on probation definite or indefinite and prescribe
8 conditions or permanently revoke. That's what we're here
9 to decide?

10 MR. RUSSELL: What the Administrative Law Court
11 order says they upheld everything, the findings of fact and
12 conclusions of law, all that stuff. All that's off the
13 table. The only thing we're here for today and the court
14 sent it back to us for was to issue a different sanction.
15 Essentially the original sanction was an indefinite
16 suspension with no conditions imposed that would allow the
17 Respondent to come off the indefinite suspension. So
18 that's why it's back before us to present conditions of the
19 indefinite suspension.

20 MR. LIVINGSTON: But it's not being presented to
21 us to change the indefinite suspension to revocation or
22 anything like that. It's just to give parameters around
23 how this Respondent could potentially get his license back,
24 because it's an indefinite suspension without parameters.
25 So we need to give those parameters. It's not changing the

1 ruling that we have already issued, because the court
2 upheld that ruling. So it's just simply we need to put
3 some conditions on how he could potentially at some point
4 go through certain steps that we lay out to get his license
5 back. If it's okay I would actually like to hear from
6 Mr. Buhl and give him an opportunity to have a statement
7 and maybe give any suggestions of how he thinks this board
8 needs to handle this and then maybe potentially ask some
9 questions.

10 MR. HUBBARD: Mr. Buhl.

11 MR. BUHL: In 36 days from now it will be two
12 years that he's been on indefinite suspension. It's two
13 years April 21 of 2016. I would ask the board members to
14 consider what that effect has had to be out of work and
15 unable to practice your profession for 23 months and we're
16 still not done with this case yet. I think that is plenty
17 punishment. If he wasn't deployed in the military
18 overseas, he'd probably be working in a Walmart or Lowe's
19 or Home Depot trying to support his family and that is a
20 major punishment. I think he understands that. He's lived
21 through it. I think the Board needs to take that into
22 consideration when they put whatever conditions they decide
23 to put on this case. Remember in looking back at the facts
24 this didn't involve unlawful controlled substances or
25 drugs. This was not non-controlled, non-narcotic drugs.

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1 He wasn't convicted of anything. He went through the
2 pre-trial intervention program, the charges were expunged
3 from his record. He made full restitution to CVS in excess
4 of \$14,000. To say that he has not admitted anything or
5 shown any remorse is just not accurate. You don't get into
6 PTI unless you're qualified to do so. It's got to be a
7 first offense, a non-violent crime. You have to go through
8 the program and you have to pay restitution. He did all of
9 those things. And this again did not involve controlled
10 narcotic drugs.

11 If you look at your own decisions that -- cases
12 involving controlled narcotic drugs, all of those people
13 have been referred to legal refresher, quality assurance,
14 RPP. Those kind of programs you have ongoing. I think
15 that plus a fine would be appropriate. I just don't think
16 that you can underestimate what 23 months out of your
17 profession can do and financially to his family and
18 everybody associated with him. We would ask that you
19 consider that it wasn't controlled narcotic drugs.
20 There's no conviction. He's made full restitution. He
21 suffered through 23 months of not having a license, not
22 being able to practice his profession and we think that
23 you need to take that into serious consideration when you
24 decide what you are going to do. That's all I have.

25 MR. LIVINGSTON: Can I make some points? This is

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1 a question for our attorney. Without it being as if we are
2 deliberating the case again, can I make some refresher
3 points?

4 MR. RUSSELL: I think in determining appropriate
5 sanctions or the appropriate conditions that can be met,
6 you can certainly discuss the underlying facts.

7 MR. LIVINGSTON: As was stated by Mr. Hanks in
8 this particular case there are a number of prescription
9 medications that totaled over \$14,000 that were supposedly
10 going to a mission trip. I would implore each of you to
11 take a look at that list of medications and think of the
12 destination of those medications and they were supposedly
13 going on a mission trip to a third world country. I can
14 tell you I have been involved in a number of different
15 mission trips and medical mission trips and I never really
16 had anyone ask me for things like name brand Prilosec or
17 name brand Lipitor, because it doesn't appear to me that
18 people in third world countries have a problem with
19 hyperlipidemia or acid reflux or things of that nature. So
20 the facts around this case seem to be a little -- things
21 don't add up appropriately I guess is what I'm saying. One
22 of the things -- I've heard this same argument from the
23 Respondent whenever he came back the second time, this is
24 what it's going to do to my family if you take me out of
25 work. And quite frankly I want to remind everyone here we

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1 are here to protect the public of South Carolina, the
2 citizens of South Carolina, and not necessarily ensure
3 someone has a job and the choices, bad choices they make is
4 you have to suffer the consequences. I don't think that's
5 something that we need to necessarily consider. I will
6 tell you there was another alternative that I strongly
7 considered and voiced my opinion for on the deliberation of
8 this case and it would not have brought us back to this
9 point and it's called revocation and unfortunately today we
10 can't change that decision that we made. So I think that
11 the fortunate part is that my opinion never carried forward
12 back when we heard this case originally or it would not be
13 a need for this case. You can count that just as a little
14 bounce of the ball in your favor that you do have this
15 opportunity that the administrative law judge has remanded
16 us to put some parameters around the possibility of
17 retaining a license here in South Carolina again.

18 MS. GILLESPIE: When was the last time you
19 actually practiced pharmacy?

20 A. With the Georgia license, I still practice with
21 Georgia license.

22 MR. LIVINGSTON: Have you reported to Georgia
23 that you had some discipline in South Carolina?

24 A. As matter of fact Georgia license I reported to
25 them about this case. I gave them the facts and can I

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1 explain something? Can you allow me to explain something?

2 Am I allowed to explain something?

3 MR. HUBBARD: Go ahead.

4 A. Thanks a lot. I have to apologize. When I first
5 got here last time the idea that when I told my lawyer that
6 I was deployed and for whatever reason he felt like he
7 didn't know where I was, I was very very upset, okay. But
8 that's my doing. Mr. Livingston, what actually happened I
9 don't think I've ever had an opportunity to explain what
10 happened. The medication that you're talking about most of
11 them were generic drugs. I had already obtained the
12 prescriptions for those patients from Honduran doctor.
13 When I got back to CVS, when I got back to CVS, it was an
14 effort to satisfy those prescriptions that I took those
15 medications. Again I admit looking at everything now, it
16 was a poor judgment. It was a poor judgment. Mr. Trotter,
17 when I talked to you I never told you that I don't know --
18 I don't keep records. When you asked me, I told you I said
19 when I give those prescriptions back to those people, when
20 I give them the drugs, I give them their prescriptions
21 back. You asked me you wanted to see my travel record and
22 I gave you my travel records and it shows the time that I
23 went to Honduras. You asked me about my connection with
24 Honduras and I told you that I had somebody down there,
25 that we met and we were going to marry, but unfortunately

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1 she passed away. I had a daughter with her and she also
2 have two daughters that I told you I said my plan is to
3 adopt those two girls so that they can live with my
4 daughter. It just so painful the way she passed away that
5 it has to be used here. She died of cancer, and I know
6 that I went to. So I told you this. It really really
7 hurts me that the whole thing is twisted. I didn't tell
8 you that I don't have the record. What I told you was that
9 I said I gave them -- when I give them the prescription
10 that the doctor, local doctor in Honduras, looked for that.
11 I also give them back the written prescription. I told you
12 I have it because when I was going through custom I had to
13 use it to clear the custom paper in Honduras. That's what
14 I told you. You asked me how did I go to the US custom. I
15 told I said I had it in Ziplock bag and had the
16 prescriptions there in there and the amounts. Those are
17 the things that I told you.

18 MR. HANKS: Okay.

19 MR. HUBBARD: Thank you. The court states we
20 have to provide conditions to be met during this
21 suspension. And so the court has already upheld the
22 findings of fact. So our charge to this board is to put
23 conditions on this suspension. I think that's the only
24 thing we need to be concerned about right now. What is
25 your pleasure? How do you want to handle this?

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1 MR. BLACKMON: Addison, I think you asked Mr.
2 Hanks if he had some suggestions, didn't you, as to the
3 conditions?

4 MR. LIVINGSTON: He said he didn't want to give
5 any specifics, but he gave us a general list of things that
6 he would suggest and let me just, if you don't mind, I'm
7 going to read what I wrote down. We need to make sure that
8 he is educated appropriately, rehabilitated appropriately,
9 have some type of deterrence so that it doesn't happen
10 again. Possibly some type of fine and because there was
11 some self admitting, there may be some poor judgment,
12 mental decisions, we're not clear, maybe some type of
13 evaluation and continue monitor is basically what Mr. Hanks
14 suggested that we consider whenever we make our final
15 ruling.

16 MR. HUBBARD: Do you want to handle this in
17 Executive Session for legal advice?

18 MR. LIVINGSTON: I think just to be fair here
19 since I read that, and correct me if I'm wrong, you're
20 basically suggesting that since he's been out of practice
21 for two years that's been punishment enough and we
22 should --

23 MR. BUHL: That's our position. If the board
24 wants to impose a fine or other conditions, we will have to
25 take a look at it to see if we can comply.

1 MS. GILLESPIE: Just for clarification. He is
2 practicing in Georgia or not practicing in Georgia?

3 MR. BUHL: No, he's not.

4 MS. GILLESPIE: When was the last time you
5 practiced pharmacy?

6 A. I said currently practice pharmacy at VA with
7 Georgia license, because I -- when I was deployed, they had
8 my license under active and pending, pending on your
9 decision. When I came back, I wrote to them, I presented
10 them the facts what happened, and they renewed my license.
11 So I'm practicing pharmacy now with Georgia license. The
12 same facts, everything. They asked me what happened. I
13 explained to them everything that happened.

14 MR. LIVINGSTON: Are you still in the military?

15 A. Yes, I am in the military. That's correct.

16 MR. LIVINGSTON: Do you practice pharmacy in the
17 military?

18 A. When I was deployed, remember I came back from
19 Germany, yeah. When I was deployed, I was called to go
20 down there, yes.

21 MR. LIVINGSTON: Correct me if I'm wrong. You
22 have to have -- you don't have a federal license. So you
23 just have to have the one state license somewhere to be a
24 practicing pharmacist in the military, is that correct?

25 A. That's correct.

1 MR. LIVINGSTON: You have to have an active
2 license somewhere to be able to practice?

3 A. That's correct.

4 MR. LIVINGSTON: You're telling us that your
5 Georgia license is in good standing?

6 A. As we speak now, that's correct.

7 MR. HANKS: I just want to get one piece
8 straight. My recollection was we temporarily suspended the
9 Respondent's license in this state. In the midst of our
10 investigation, and I just need to clarify that information
11 was reported to the State of Georgia.

12 A. Yes. When I came back --

13 MR. HANKS: I'm just asking you whether or not
14 your initial temporary suspension was reported to the State
15 of Georgia.

16 A. Indefinitely suspended, that's correct. I put
17 all those orders to the State of Georgia, that's correct.

18 DR. RICHARDSON: Rebecca, was your question
19 answered?

20 MS. GILLESPIE: Where is your original pharmacy
21 license?

22 A. South Carolina here.

23 MS. GILLESPIE: You reciprocated to Georgia?

24 A. That's correct.

25 MS. GILLESPIE: Have you reciprocated in any

1 other state?

2 A. No., At this point I tried to, but they could not
3 allow me because of South Carolina.

4 MS. GILLESPIE: You're practicing in Georgia, in
5 the State of Georgia?

6 A. No. I practice with the VA in Asheville.

7 MS. GILLESPIE: In North Carolina?

8 A. That's correct.

9 MS. GILLESPIE: You're not licensed in North
10 Carolina, you're just practicing at the VA?

11 A. That's correct.

12 MR. LIVINGSTON: Do you have to have a state
13 license to work for the VA? I understand you do when
14 you're in the military, but does the VA require a license?

15 MS. RUSSELL: Just in one state. It doesn't have
16 to be the state you're practicing in.

17 MR. MORRIS: It's all federal pharmacy. It falls
18 under the federal system, military, Veterans Affairs,
19 medical center, et cetera.

20 MR. LIVINGSTON: Just a licensed pharmacist only?

21 MS. RUSSELL: Yes.

22 MR. LIVINGSTON: I would actually like to discuss
23 this with our attorney in Executive Session, and since this
24 is something I'm sure they want to handle quickly, I would
25 actually like to entertain a motion we go into Executive

Kathryn J. Lindler
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20

1 Session now.

2 DR. RICHARDSON: I don't think that's fair to our
3 agenda to go into Executive Session now because of the long
4 agenda and to go into Executive Session will delay part of
5 the agenda with the other people that have been waiting. I
6 don't think it's fair to them to go into Executive Session
7 now. Executive Session after our other meeting would be
8 appropriate as I see it.

9 MR. LIVINGSTON: I'm fine either way.

10 MR. HUBBARD: I have to have a motion and a
11 second and a vote.

12 MR. MORRIS: I make a motion we go into Executive
13 Session to discuss this matter after we've heard all the
14 other remaining agenda items at the end of the day.

15 DR. RICHARDSON: Yes.

16 MR. BLACKMON: Second.

17 MR. HUBBARD: And a second. All those in favor
18 aye.

19 BOARD MEMBERS: Aye.

20 MR. HUBBARD: Opposed? We will take this up in
21 Executive Session at the end of the day. Thank you.

22 (Executive Session.)

23 MR. LIVINGSTON: Mr. Chairman, I think we have
24 one item that we have not taken care of and that was in the
25 matter of Mr. Cyril Okadigwe, item O on our agenda.

1 Because the court mandated that we give him a pathway to
2 get his license out of indefinite suspension status, I make
3 a motion for Mr. Okadigwe to reinstate his license he will
4 need to retake and successfully pass the NAPLEX and the
5 MPJE, he'll need to complete University of Oregon
6 medication safety course, he'll need to keep up with his
7 required hours of continuing education to meet South
8 Carolina licensure and in addition he will need to complete
9 30 additional hours of ACPE continuing education, he will
10 need to show proof of restitution being made to CVS, he'll
11 need to show verification of completion of the PTI program
12 that he mentioned in his testimony, and he will also need
13 to have a psychometric evaluation to show that he is
14 competent to practice the profession of pharmacy.

15 MR. HYATT: I second.

16 MR. RUSSELL: Come before the board after the
17 completion?

18 MR. LIVINGSTON: Once he has completed these
19 requirements, he will need to reappear before the Board of
20 Pharmacy before that license is granted.

21 MR. HUBBARD: Motion and a second. Any further
22 discussion? All in favor of the motion aye?

23 BOARD MEMBERS: Aye.

24 MR. HUBBARD: Opposed? The motion is carried.
25

**THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

APPEAL FROM THE DEPARTMENT OF LABOR, LICENSING AND REGULATION,
STATE BOARD OF PHARMACY

Docket No. 16-AJ-11-0230-AP

Cyril J. Okadigwe,
Appellant,

Vs.

South Carolina Department of Labor, Licensing and
Regulation, State Board of Pharmacy,
Respondent.

AFFIDAVIT OF JOHN C. RUOFF, PH.D.

My name is John C. Ruoff. I live at 6170 Crabtree Road, Columbia, South Carolina. I am the Principal of The Ruoff Group, a research and policy analysis firm, located at the same address. I hold an M.A. and a Ph.D. in History from the University of Illinois at Urbana-Champaign. I have appeared in state and federal courts as an expert in statistics, demography, Southern politics and southern history. I have testified and provided research in support of litigation to include preparation of large databases, compilations of legislative activity, examination of public records and compilation of statistics from those and analysis of hospital surgical records. For the past thirty-five years, my job responsibilities have included research and policy analysis, including testimony to committees of the South Carolina General Assembly on a variety of issues including health care access and affordability and patient safety. I serve as a Consumer Representative on the S.C. Department of Health and Environmental Control's Hospital Acquired Infections Disclosure Advisory Committee. My *vita* is attached hereto as Attachment JCR-1.

At the request of counsel for the Appellant, I have examined all public orders of the Board of Pharmacy for pharmacists for the period 2009 through August 22, 2016, provided in response

(EXHIBIT ONE)

The Board provided 166 unduplicated orders regarding licensed pharmacists, not including the June 3, 2016, public Order on Remand for the Appellant. Twenty-two (22) of those orders were in response to petitions to be released from or have modifications made to license conditions. Ten (10) entailed voluntary surrenders or relinquishments without a hearing. I am being paid \$200 per hour for my services in this case.

Six (6) of these orders impose license revocations. Four (4) failed to appear at a hearing. Their charges included: 1) Hydrocodone diversion, relapse in the Recovering Professionals Program (RPP) and failure to communicate in RPP, 2) Fioricet diversion, fraudulent prescriptions and failure to supervise a pharmacy technician, 3) testing positive for hydromorphone and marijuana, missing Meperidene 75 mg from expired stock tray and reports of erratic behavior and signs of impairment, and 4) repeated relapses while in RPP, lapsed license and terminating relationship with RPP. The two license revocations in which the licensee appeared at the hearing involved: 1) Leon G. Thomas, Jr., whose case is detailed below and 2) a licensee with two relapses while on probation, including drinking on the job.

Seventeen (17) of these orders relate to erroneous dispensing of medication. Six (6) of those pharmacists received a public reprimand. Five (5) were suspended with those suspensions stayed and a probationary period of one to two years imposed. Fines of \$500 were imposed on four (4) with one being paid to New York regulators. These pharmacists were all required to take and successfully complete either a Medication Errors class or the Quality Assurance and Law refresher course.

Forty-one (41) of these orders relate to a variety of violations not entailing diversion or unauthorized consumption of medications by the licensee. Those include dispensing prescriptions without proper authorization, failure to supervise pharmacy technicians, employing uncertified or registered pharmacy technicians to carry out duties, failure to keep records appropriately, failure to deal with expired medications properly, inadequate inspections, and diversion of non-drug merchandise. There are two (2) cases of Medicaid fraud. Sixteen (16) of these licenses were suspended for periods ranging from one (1) year to five

(years). Those license suspensions are stayed with an equivalent length of probation imposed. The Board imposed fines of \$250 to \$5,000 on licensees with these type violations. Eight (8) licensees were restricted from serving as a Pharmacist-in-Charge or a permit holder during the terms of their probations. The Board frequently required additional education, including completion and passage of the Quality Assurance and Law refresher (7), a Legal course (3), and Medical Errors course (3). Two licensees were required to take and pass the Multistate Pharmacy Jurisprudence Examination. The Board issued six (6) public reprimands in this group. The largest number, seventy-six (76) involved diversion of legend and controlled substances, fraudulent prescriptions or other illegal sales, and/or consumption or abuse of those or other controlled substances or alcohol. These include four (4) licensees whose licenses were revoked and Findings of Fact in these orders indicate that the licensee consumed diverted drugs. Appellant falls into this overall category.

Forty-seven (48) of the public orders outlined consumption or abuse of controlled substances or alcohol, thirty-seven (38) of which outlined diversion of drugs. These orders typically present a relatively common set of requirements. The licensee is suspended for one-half year (1/2) to five (5) years with that suspension stayed and equivalent probationary period imposed. The licensee is required during that probation to enter and comply with a contract with RPP, to pay a fine of \$500, to abstain from mood-altering substances and submit to drug testing, and not to serve as either a Pharmacist in Charge or a permit holder. A minority of license suspensions were stayed after a year. The bulk of the others were immediately stayed subject to and accompanied by probation. Not uncommonly, the licensee had voluntarily surrendered their license upon discovery so that some time had passed while unable to practice.

Indefinite suspensions such as that levied on Appellant that are unaccompanied by a stay and probationary period or a specified time to reapply are rare. There was one in addition to the Appellant. Jacob McElveen (License Ph. 11956) "diverted a quantity of Hydrocodone (Lortab)" and "ingested said substance without a prescription from a practitioner; and continued to ingest drugs subsequent to his arrest and rehabilitative efforts." He was publicly reprimanded

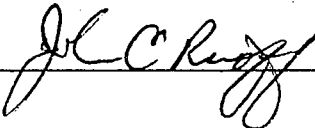
and subjected to the typical conditions for a pharmacist who had drug or alcohol abuse issues: to enter into and comply with a contract with RPP for at least 5 years and to abstain from mood-altering substances and submit to drug testing. His recovery program was more specific than most and he was specifically required to show at least one year of compliance with the terms of his RPP contract, to take required and an additional 30 hours of continuing education and to take and pass the Multistate Pharmacy Jurisprudence Examination. The Board presented a clear pathway to reinstatement.

The Board revoked the license (Ph. 4356) of Leon G. Thomas, Jr. Investigations had revealed "that many drugs had been ordered that were not used by the McLeod Dillon facility, including Cocaine USP powder, Cocaine HCl powder, various Class II narcotics, various lifestyle/legend drugs, condoms and lubricants" paid for by McLeod Dillon Hospital. Investigators found "an inventory of drugs under his desk and in a black attaché belonging to the respondent" with a value of \$8,000. Investigators found "possession, by way of drugs kept in his office and not in the regular inventory of the facility's pharmacy, various strengths of Oxycodone tablets, Methyphenidate 10mg, Hydromorphone tablets, Morphine sulfate tablets, Cocaine HCl Powder." The Board's findings of fact in Case 2007-127, signed by the Board Chair on September 17, 2009, further indicates consumption of controlled substances but not cocaine and no prescriptions for the various lifestyle drugs consumed.

Among licensees who had diverted drugs, one was required to take a Medical Errors course, two (2) were required to take a legal and an ethics course and one was required successfully to complete the Multistate Pharmacy Jurisprudence Examination. The licensee required to take the Multistate Pharmacy Jurisprudence Examination was also required to take an additional 30 hours of continuing education courses. One licensee seeking reinstatement eight years after suspension for diversions was required to take an additional 60 hours of continuing education and 1,000 hours of practice under on-site supervision under a Pharmacy Intern license. Additional continuing education is more commonly required in cases not involving diversions.

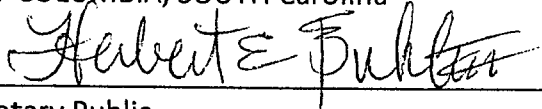
Upon remand, the Appellant' license (R.Ph. 8738) was indefinitely suspended without a stay, an accompanying probationary period or a time to reapply. Since there is no drug or alcohol abuse involved, he was not required to enter into a contract with RPP, abstain from mood altering

substances or submit to drug testing. Appellant's conditions for lifting his suspension include that he retake and successfully complete the North American Pharmacist Licensure Exam and Multistate Pharmacy Jurisprudence Examination. No other licensee in this study was required to retake the North American Pharmacist Licensure Exam, although successful completion of the Multistate Pharmacy Jurisprudence Examination is not infrequently required. Unlike any other licensee, he is required to successfully complete the Medication Safety Course offered by the University of Oregon. Unlike any other licensee, Appellant is required to take 30 hours of ACPE (Accreditation Council for Pharmacy Education) continuing education credits rather than CME (Continuing Medical Education) in addition to his normally required continuing education courses. Clearly, the requirements for lifting the suspension for Mr. Okadigwe are very different from the requirements for any other licensee.



John C. Ruoff

AFFIRMED BEFORE ME THIS
26th DAY OF October 2016
AT COLUMBIA, SOUTH Carolina



Notary Public

My commission expires: 2/8/22

VITA

JOHN C. RUOFF
BUSINESS ADDRESS:

September 2016

6170 Crabtree Road
Columbia, South Carolina 29206
803-782-5401

EDUCATION

Ph.D. (History), University of Illinois at Urbana-Champaign, 1976

Research specialty: social and cultural history of the 19th Century American South with special emphasis on women, the family, demography and the religious basis of behavior. Dissertation: "Southern Womanhood, 1865 - 1920: An Intellectual and Cultural Study."

A.M. (History), University of Illinois at Urbana-Champaign, 1971

B.A. (History), Seattle (WA) University, 1969

EMPLOYMENT

2011 – present: The Ruoff Group. Principal. Provide expert statistical and demographic analyses, mapping, policy research and analyses. South Carolina legislative monitoring and tracking.

1987 - 2011: South Carolina Fair Share. Responsibilities included research and policy analysis and testimony to committees of the South Carolina General Assembly on: income and poverty, consumer finance (small loans, payday loans and title loans), mortgage lending, welfare reform, food stamps, health care access and affordability, auto insurance, health insurance, public utilities, tax policy, budget policy and consumer protection. (Executive Director, 1987-1995; Interim Executive Director, 2000-2001, 2008-2009; Research Director, 1995-2009; Program Director, 2009-2011).

1995 - 2011: Independent consultant. Provide expert statistical and demographic analyses especially with respect to elections and voting systems. Provide policy analysis with respect to state budgets and taxes and health care.

1980 - 1986: Fairfield United Action. Staff member of community organization. Responsible for research on issues affecting community. Staff Director, 1982 - 1986.

1979 - 1986: Independent consultant.

Consultations with a variety of non-profit organizations with financial management, long-range planning and priority setting, evaluation, board development, grant writing and fundraising, and organizational development, as well as statistics and demography and community history.

1979 - Palmetto Legal Services, Columbia, SC. Management consultant with additional responsibility for statistical research in support of litigation.

1978 - 1979: South Carolina Legal Services Coalition. Training Coordinator. Responsible for training needs assessment, training design and implementation.

1975 - 1978: Illinois Conference, American Association of University Professors, Urbana, IL. Executive Secretary.

CONSULTANCIES AND EXPERT TESTIMONY IN STATISTICS, DEMOGRAPHY AND VOTING

Assisted community groups, council members, school boards, county councils, legislators and special redistricting committees to prepare and evaluate districting proposals in South Carolina for: South Carolina House of Representatives, South Carolina Senate, United States Congress, Abbeville County Board of Education, Aiken City Council, Aiken County Council, Aiken County School Board, Bamberg School Dist. 1, Barnwell County Council, Calhoun County Council, Camden City Council, Charleston City Council, Charleston County Council, Cheraw Town Council, Cherokee County Council, Cherokee County School District 1, Chester County Council, Chesterfield County Council, Clarendon County Council, Clinton City Council, Clover School District, Colleton County Council, Colleton County School Board, Columbia City Council, Cowpens Town Council, Darlington County Council, Dorchester County Council, Dorchester School District 2, Dorchester School District 4, Eutawville Town Council, Fairfield County School Board, Fairfield County Council, Fountain Inn Town Council, Florence County Council, Florence County School District 1, Ft. Mill Town Council, Gaffney Board of Public Works, Gaffney City Council, Georgetown City Council, Greenville City Council, Greenville County Council, Greenwood City Council, Greenwood County Council, Greenwood County School Districts 50 and 52, Greer Town Council, Hartsville City Council, Hilton Head Island Town Council, Horry County Council, Jasper County Council, Jasper County School Board, Kershaw County School Board, Kershaw County Council, Lancaster City Council, Lancaster County Council, Lancaster County School Board, Laurens County Council, Laurens School Districts 55 and 56, Laurens Commissioners of Public Works, Laurens Town Council, Lee County Council, Marion County Council, Marion Town Council, Marlboro County Council, McCormick County Council, Mullins Town Council, North Charleston City Council, Norway Town Council, Oconee County Council, Orangeburg County Council, Orangeburg City Council, Richland County Council, Richland County School District 1, Ridgeville Town Council, Rock Hill City Council, Saluda County Council, Saluda County School Board, Saluda City Council, Summerton Town Council, Sumter County Council, Sumter City Council, Sumter School District, Sumter School Dist. 17, Sumter School Dist. 2 and Union County School Dist. 1991 - 2015.

Richland County School District 1, 2015-2016. Advised School Commissioners on redistricting of single-member districts. Prepared districting alternative adopted by the S.C. General Assembly.

Fraser et al. v Jasper County School Dist. et al., United States District Court for the District of South Carolina, CA14-2578, 2014-2015. Expert consultant. Assisted counsel for Defendant-Intervenor by analyzing and preparing proposed districting plans.

City of Walterboro et al. v. Pinckney et al., United States District Court for the District of South Carolina, CA14-3231, 2014. Expert consultant. Advised counsel for defendant on redistricting practices.

Veasey et al. v. Abbot et al., United States District Court for the Southern District of Texas, CA13-193, 2013-2014. Expert consultant. Assisted counsel for Veasey Plaintiffs by providing demographic and voting analyses and advising on database matching.

Report (with Judy L. Smith) on *Why Filling the Health Coverage Gap Matters to Older South Carolinians* (November 2014) for Close the Gap South Carolina and AARP South Carolina.

South Carolina v. United States, United States District Court for the District of Columbia. CA12-203, 2012. Expert consultant. Assisted counsel for Defendant-Intervenors with database preparation, preparation of exhibit maps reflecting public transit systems in South Carolina, guidance on legislative procedure and other research tasks.

Fairfield County School District v. Chester County School District, et al., 5th Judicial Circuit of South Carolina, 2010-CP-40-4017, 2011-12. Expert consultant. Assist counsel by mapping Fairfield students attending Chester schools and analyzing tax and budget issues related to the litigation.

Report on racially disparate effects of 2011 S.C. Act 27 (Photo Voter Identification) for use in submissions to Voting Rights Section, Department of Justice, regarding preclearance consideration, 2011-12.

South Carolina House of Representatives Democratic Caucus, 2011. Assist counsel in preparation and evaluation of House and Congressional redistricting plans.

South Carolina Senate Democratic Caucus, 2011. Assist counsel in preparation and evaluation of Senate and Congressional redistricting plans.

Board of Trustees of School District of Fairfield County v. State of South Carolina et al. Op. No. 27035 South Carolina Supreme Court (29 August 2011) 2010. Analysis of votes on veto overrides of local legislation, 1903-1910, relied upon by S.C. Supreme Court in its decision.

Analyses of elections and electoral participation for use in submissions to Voting Rights Section, Department of Justice, regarding preclearance consideration of 2010 S.C. Acts 308 and 309, on behalf of Fairfield County (South Carolina) Board of School Trustees, 2010.

Levy et al. v. Lexington County, South Carolina, School District Three et al. United States District Court for the District of South Carolina, 2004 - 2012. Racial polarization in voting, electoral mobilization, proposed districting maps and socio-economic disparities in income, education, employment, housing, communications and transportation. Expert reports and testimony.

Glover et al. v. S.C. Democratic Party et al., United States District Court for the District of South Carolina, 2004. Racial polarization in voting, electoral mobilization and socio-economic disparities in income, education, employment, housing, communications and transportation. Expert report and testimony.

Proceeding to Address Public Interest Pay Telephones in S.C., South Carolina Public Service Commission, Docket No. 2003-358-C, 2004 - 2005. Need for public pay phones in South Carolina. Telephone availability and spatial relationship of pay phones and low-income persons. Expert testimony.

Colleton County Council et al. v. McConnell et al.; Leatherman et al. v. McConnell et al.; and Marcharia et al. v. Hodges et al., United States District Court for the District of South Carolina, 2001-2002. Racial polarization in voting, electoral mobilization and evaluation of proposed districting plans for United States Congress, South Carolina Senate and South Carolina House of Representatives. Expert report and testimony.

South Carolina Conference of Branches, NAACP. Retained to assist branches with evaluating and proposing districting plan for local jurisdictions. 2001 – 2005, 2011 – 2013.

South Carolina Legislative Black Caucus. Provide technical assistance with respect to reapportionment especially regarding the South Carolina House of Representatives. 2001.

Moultrie v. Charleston County Council and United States v. Charleston County, United States District Court for the District of South Carolina, 2000-2003. Racial polarization in voting, electoral mobilization and proposed districting maps. Expert report and testimony.

Edisto Surgery Center v. S.C. Dept. of Health and Environmental Control and The Regional Medical Center of Orangeburg and Calhoun Counties, South Carolina Administrative Law Judge Division, 1998. Analysis and evaluation of surgery utilization data and evaluation of public opinion poll. Expert report and testimony.

Smith, et al. v. Beasley, et al. and Able, et al. v. Wilkins, et al., United States District Court for the District of South Carolina, 1995 - 1996. Racial polarization in voting, differential voter participation, and socio-economic disparities in income, education, employment, housing, communications and transportation in challenged South Carolina House of Representatives and Senate districts. Expert report and testimony.

NAACP, et al. v. Truitt, et al., United States District Court for the District of South Carolina, 1995 - 1997. Racial polarization in voting in Florence School District 1. Prepare proposed redistricting maps. Expert report and testimony.

Franklin, et al. v. Campbell, et al. and NAACP, et al. v. Town of Hemingway, et al., United States District Court for the District of South Carolina, 1994. Prepare demographic and voting analyses with respect to attempted secession from one county and annexation to another on behalf of Williamsburg County School Board. Expert affidavit.

Richland County (South Carolina) Council, 1994, 1996-1997. Prepare demographic and voting analyses regarding preclearance filing with Justice Department under Voting Rights Act for County Council districts.

NAACP, et al. v. Spartanburg County Board of Education, et al., United States District Court for the District of South Carolina, 1992 - 1993. Analyze proposed districting proposals and prepare alternative proposals for Spartanburg County Board of Education, Spartanburg School District 5 and Spartanburg School District 7.

NAACP, et al. v. Holly Hill Town Council, et al., United States District Court for the District of South Carolina, 1992. Analyze proposed districting proposals and prepare alternative proposal. Expert testimony.

NAACP, et al. v. Kershaw County, South Carolina, et al., United States District Court for the District of South Carolina, 1990 - 1993. Racial polarization in voting, differential voter registration and turnout, and disparities in income, housing, employment, education, communications and transportation. Prepare proposed redistricting maps and evaluate proposed plans. Expert reports and testimony.

Prescott, et al. v. Riley, et al., United States District Court for the District of South Carolina, 1992. Prepare proposed redistricting map for City of Charleston and evaluate city proposal.

NAACP, et al. v. Rowan-Salisbury Board of Education and Rowan County Board of Elections, United States District Court for the Middle District of North Carolina, 1992. Racial polarization in voting, differential voter registration and turnout, and lingering effects. Expert report.

NAACP, et al. v. City of Reidsville, et al., United States District Court for the Middle District of North Carolina, 1992. Racial polarization in voting, differential voter registration and turnout, and lingering effects. Expert report.

Burton, et al. v. Sheheen, et al. and Statewide Reapportionment Advisory Committee, et al. v. Campbell, et al., United States District Court for the District of South Carolina, 1991 - 1995. Prepare proposed district maps for U.S. Congress and South Carolina General Assembly. Monitor legislative process. Expert testimony.

NAACP, et al. v. Manning (SC) City Council, United States District Court for the District of South Carolina, 1991. Prepare proposed district maps.

NAACP, et al. v. City of Columbia, et al., United States District Court for the District of South Carolina, 1991 - 1993. Socio-economic disparities in income, education, employment, housing, communications and transportation. Prepare proposed district maps. Expert report and testimony.

Charleston County Branch NAACP, et al. v. Charleston (SC) County Council, United States District Court for the District of South Carolina, 1991. Racial polarization in voting, differential voter registration and turnout, and lingering effects. Expert report.

U.S. v. Simmons, United States District Court for the District of South Carolina, 1990. Representativeness of jury venire and racial polarization in voting. Expert testimony.

Walker, et al. v. Fairfield County Council, et al., United States District Court for District of South Carolina, 1989 - 1990. Prepare proposed single-member district lines for plaintiffs.

NAACP, et al. v. City of Lancaster, et al., United States District Court for District of South Carolina, 1989. Racial polarization in voting, differential voter registration and turnout, and lingering effects. Expert report.

NAACP, et al. v. City of Kingstree, et al., United States District Court for District of South Carolina, 1989 - 1991. Racial polarization in voting, differential voter registration and turnout, and lingering effects. Prepare proposed district maps. Expert report.

NAACP, et al. v. City of Gaffney, et al., United States District Court for District of South Carolina, 1989. Racial polarization in voting, differential voter registration and turnout, and lingering effects. Expert report.

NAACP, et al. v. City of Union, et al., United States District Court for District of South Carolina, 1989. Racial polarization in voting, differential voter registration and turnout, and lingering effects. Expert report.

NAACP, et al. v. Town of Saluda, et al., United States District Court for District of South Carolina, 1989. Racial polarization in voting, differential voter registration and turnout, and lingering effects. Expert report.

NAACP, et al. v. South Carolina Democratic Party Executive Committee, et al., United States District Court for District of South Carolina, 1988. Racially differential effects of primary timing on turnout, racial polarization in voting, and socio-economy of South Carolina Senate District 32. Expert report and testimony.

NAACP, et al. v. Richland County Council, et al., United States District Court for District of South Carolina, 1988. Racial polarization in voting. Expert report and testimony.

Blackwater Associates, Columbia, South Carolina, 1988. Analysis of electoral polling data.

Fairfield United Action, 1986, 1989, 1991 and 1993 conducted statewide analyses of bank mortgage lending patterns in support of challenges to bank expansion under Community Reinvestment Act. Evaluated bank community needs assessments, including public opinion polling.

Smalls, et al. v. Fairfield County Council, et al., United States District Court for District of South Carolina, 1986. Political history, voting and turnout patterns, and socio-economy of Fairfield County, South Carolina. Expert report and testimony.

Fairfield County, South Carolina, 1986, directed, evaluated and certified results to Farmers Home Administration of door to door income survey on behalf of Mid County Water Company and Fairfield County Council.

U.S. v. Hamilton, United States District Court for the District of South Carolina, 1985. Statistical representativeness of jury venire. Expert testimony.

Waller v. Butkovich, United States District Court for the Middle District of North Carolina, 1984. Statistical representativeness of jury venire. Expert report.

State v. Vanderhall, 6th Judicial Circuit of South Carolina, 1983. Statistical representativeness of Grand Juries. Expert testimony.

State v. Fields, 14th Judicial Circuit of South Carolina, 1979. Statistical representativeness of Grand Juries. Expert testimony.

THE SOUTH CAROLINA COURT of APPEALS

Cyril J. Okadigwe, Appellant,

v.

South Carolina Department of Labor, Licensing, and
Regulation, State Board of Pharmacy, Respondent.

Appellate Case No.: 2017-001339

The Honorable S. Phillip Lenski
Trial Court Case No.: 2016ALJ110230AP

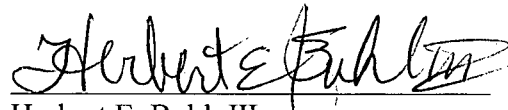
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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Columbia, South Carolina

December 1, 2017


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ATTORNEY FOR APPELLANT