

**State of New Hampshire  
Board of Pharmacy  
Concord, New Hampshire**

In the Matter of:  
**James T. Nixon, R.Ph.**  
License No. R0953  
(Adjudicatory Proceedings)

**Docket No. 2013-16**

**ORDER OF EMERGENCY LICENSE SUSPENSION  
AND NOTICE OF HEARING**

1. RSA 318:30-a and RSA 541-A:30, III authorize the New Hampshire Board of Pharmacy ("Board") to suspend a license to practice pharmacy for no more than sixty (60) days pending completion of an adjudicatory proceeding, in cases involving imminent danger to life or health. In such cases, the Board must commence a hearing not later than thirty (30) days after the date of the emergency order. If the Board does not commence the hearing within thirty (30) days, the suspension order shall be automatically vacated. *See*, RSA 541-A:30, III. The Board may not continue such a hearing without the consent of the licensee to the continuation of the emergency suspension. *See*, RSA 318:30-a. Postponement of the proceeding is prohibited unless the licensee agrees to continue the suspension pending issuance of the Board's final decision. *See*, RSA 318:30-a.

2. James T. Nixon, R.Ph. ("Mr. Nixon" or "Respondent"), holds an active license, No. R0953, issued on October 26, 1982, to practice pharmacy in the State of New Hampshire.

3. The Board has received information indicating that the continued practice of pharmacy by Respondent poses an imminent threat to life, safety and/or health, which warrants the temporary suspension of Respondent's license to practice pending a hearing on

whether permanent and/or temporary disciplinary sanctions should be imposed. A preliminary investigation was conducted and a Report of Investigation was provided to the Board.

4. In support of this *Order of Emergency License Suspension and Notice of Hearing*, the Board alleges the following facts:

- A. Respondent had been practicing pharmacy as the pharmacist in charge at a rehabilitation facility's pharmacy in Effingham Falls, New Hampshire.
- B. On or about October 20, 2013, Respondent crashed his vehicle into a utility pole in Hollis, Maine. According to the State Trooper on the scene, Respondent stated that he was driving and felt fine, but then became slightly dizzy and crashed into the pole. Emergency personnel transported him to a local hospital for medical treatment. He has since been released from the hospital.
- C. When the Trooper looked inside Respondent's vehicle through the rear driver's side seat, he saw, in plain view, multiple types of pills strewn on the seat and floorboard. A subsequent search of Respondent's vehicle resulted in the Trooper finding multiple prescription pills in a duffel bag in the rear driver's seat, wrapped in a blue cloth and contained a plastic baggie. The Trooper also discovered multiple pills in an eyeglass case on the rear floorboard. A folding container in the glove box also contained multiple pills.

- D. The total amount of pills recovered at the scene were as follows:
- a. 92 ½ Hydrocodone-based pills (generic “Vicodin”);
  - b. 3 ½ Amphetamine-based pills;
  - c. 5 Morphine Sulfate-based pills;
  - d. 9 Oxycodone-based pills;
  - e. 11 Hydromorphone-based pills;
  - f. 112 Tramadol-based pills.
- E. During an interview with Maine State Police, Respondent admitted to possessing the pills, but he stated that he had the pills in his possession because it was time to conduct a transfer of the expiring pills to a location in Texas for destruction.
- F. During an interview conducted by D.E.A. agents on October 26, 2013, Respondent confessed to diverting controlled drugs from his employer’s pharmacy. Respondent stated that he began diverting controlled drugs approximately four (4) to five (5) months ago and ultimately became addicted to them. Respondent told the agents that he was diverting, in particular, Vicodin and Morphine from the pharmacy. Respondent admitted to taking five (5) to six (6) pills a day from either the stock bottles or from expired drugs slated for destruction. Respondent stated that his record keeping had become “sloppy” during this time. Respondent suggested during his interview that he had consumed controlled substances while at work. Surveillance video

footage from the pharmacy captured Respondent placing pills in his mouth while at work.

- G. Upon learning that Respondent was under investigation, he was immediately placed on administrative leave by his employer.
- H. Respondent has been charged with felony level possession of controlled drugs. Charges of driving under the influence of drugs and reckless conduct are also pending.

5. Based upon the above information, the Board finds that the case involves imminent danger to life and/or health. Further, the Board believes there is a reasonable basis for both immediately suspending Respondent's license on a temporary basis, and for commencing an expedited disciplinary proceeding against Respondent pursuant to RSA 318:30-a and 541-A:30, III.

6. The purpose of this proceeding will be to determine whether Respondent has engaged in professional misconduct contrary to RSA 318:29, II and RSA 318:30-a, which warrants the continued imposition of a temporary license suspension, the imposition of permanent disciplinary sanctions, or both. The specific issues to be determined in this proceeding are:

- A. Whether, during the Summer and early Fall months of 2013, Respondent committed professional misconduct by diverting controlled substances while working as a pharmacist at a rehabilitation facility's pharmacy in Effingham Falls, New Hampshire, in violation of RSA 318:29, II (c); and/or

B. If the above allegation is proven, whether, and to what extent, Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 318:29, IV.

7. While RSA 318:31, II requires that the Board furnish Respondent at least 15 days' notice of allegations of professional misconduct and the date, time and place of an adjudicatory hearing, RSA 318:30-a requires the Board to commence an adjudicatory hearing within thirty (30) days after the date of an immediate, temporary license suspension order.

8. The Board intends to complete this adjudicative proceeding within the sixty (60) day time period provided by RSA 318:30-a. Accordingly, neither the date of the initial evidentiary hearing nor the date for concluding this proceeding shall be postponed or extended unless Respondent agrees to continue the suspension period pending issuance of the Board's final decision in this matter. *See* RSA 318:30-a and 541-A:30, III.

THEREFORE, IT IS ORDERED that Respondent's New Hampshire license to practice pharmacy is immediately suspended until further order of the Board; and,

IT IS FURTHER ORDERED that an adjudicatory proceeding be commenced for the purpose of resolving the issues articulated above pursuant to RSA 318:29; 318:30-a; 318:31, II; and 541-A:30, III. To the extent that this order or the Board's rules do not address an issue of procedure, the Board shall apply the New Hampshire Department of Justice Rules, Part 800; and,

IT IS FURTHER ORDERED that James T. Nixon, R.Ph. shall appear before the Board on **November 6, 2013 at 9:00 a.m.**, at the Board's office located at 57 Regional Drive

Concord, N.H. 03301 to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 329:17, VII; and,

IT IS FURTHER ORDERED that if Respondent elects to be represented by counsel, at Respondent's own expense, said counsel shall file a notice of appearance at the earliest date possible; and,

IT IS FURTHER ORDERED that Respondent's failure to appear at the time and place specified above may result in the hearing being held *in absentia*, or the imposition of disciplinary sanctions without further notice or an opportunity to be heard, or both; and,

IT IS FURTHER ORDERED that Matthew G. Mavrogeorge, 33 Capitol Street, Concord, N.H., 03301 is appointed to act as Hearing Counsel in this matter with all the authority within the scope of RSA Chapter 318 to represent the public interest. Hearing Counsel shall have the status of a party to this proceeding; and,

IT IS FURTHER ORDERED that Charles Fanaras, R.Ph., President, or any other person whom he may designate, shall act as presiding officer in this proceeding; and,

IT IS FURTHER ORDERED that any proposed exhibits, motions or other documents intended to become part of the record in this proceeding, be filed by the proponent with the Board, in the form of an original and nine (9) copies, and with an additional copy mailed to any party to the proceeding, and to Senior Assistant Attorney General Michael Brown, Counsel to the Board, N.H. Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301. All responses or objections to such motions or other documents are to be filed in similar fashion on or before the hearing or other document unless otherwise ordered by the Board; and,

IT IS FURTHER ORDERED that a witness and exhibit list and any proposed exhibits, pre-marked for identification only, shall be filed with the Board or before the date of the hearing. Respondent shall pre-mark his exhibits with capital letters, and Hearing Counsel shall pre-mark her exhibits with Arabic numerals; and,

IT IS FURTHER ORDERED that unless good cause exists, all motions shall be filed on or before the date of any hearing, conference, event or deadline which would be affected by the requested relief, except any motion seeking to postpone a hearing or conference, which shall be filed at least ten (10) days before the hearing or conference in question; and,

IT IS FURTHER ORDERED that the entirety of all oral proceedings be recorded verbatim by the Board. Upon the request of any party made at least three (3) days prior to the proceeding or conference or upon the Board's own initiative, a shorthand court reporter shall be provided at the hearing or conference and such record shall be transcribed by the Board if the requesting party or agency shall pay all reasonable costs for such transcription; and,

IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to James Queenan, R.Ph., Executive Secretary, N.H. Board of Pharmacy, 57 Regional Drive, Concord, N.H. 03301-8518; and

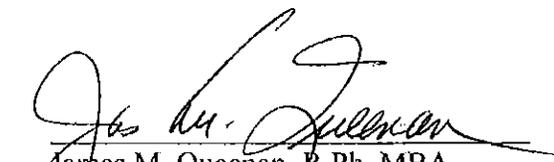
IT IS FURTHER ORDERED that routine procedural inquiries may be made by telephoning James Queenan, R.Ph., Executive Secretary, N.H. Board of Pharmacy, at 271-2350, but that all other communications with the Board shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Board's regulations; and

*In the Matter of James T. Nixon, R.Ph.  
NH Board of Pharmacy  
Order of Emergency License Suspension and Notice of Hearing*

IT IS FURTHER ORDERED that a copy of this Notice of Hearing shall be served upon Respondent by certified mail addressed to the office address he supplied to the Board in his latest renewal application. See, RSA 329:18, VI, Med. 501.02 (c) and RSA 329:16 (f). A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE BOARD

Dated: October 25, 2013

  
James M. Queenan, R.Ph. MBA  
Executive Secretary  
Authorized Representative of the  
New Hampshire Board of Pharmacy