

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

In the Matter of:

Docket No. 2013-01

Brittany E. Bertone Pharm. Tech.

Registration No. PT7394

(Adjudicatory Proceedings)

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

1. RSA 318:30-a authorizes the New Hampshire Board of Pharmacy (“Board”) to order the suspension of any license, permit, registration, certification, or privilege granted by the Board 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 318:30-a. The Board may not continue such a hearing without the consent of the registrant to the continuation of the emergency suspension. See RSA 318:30-a. Postponement of the proceeding is prohibited unless the registrant agrees to continue the suspension pending issuance of the Board’s final decision. See RSA 318:30-a.

2. Brittany E. Bertone, Pharmacy Technician (“Ms. Bertone” or “Respondent”), holds an active registration No. PT7394, issued on November 30, 2010, to practice as a pharmacy technician in the State of New Hampshire.

3. The Board initially received information that a loss prevention investigation conducted by her pharmacy employer had developed evidence that Ms. Bertone had diverted

quantities of controlled substances from her employer's inventory during a six-month period. During the course of its investigation, the Board has received information indicating that Respondent's continued practice as a pharmacy technician poses an imminent danger to life and/or health, which warrants the temporary suspension of Respondent's registration to practice pending a hearing on whether permanent and/or temporary disciplinary sanctions should be imposed.

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

- A. Ms. Bertone is a pharmacy technician registered by the New Hampshire Board of Pharmacy.
- B. Ms. Bertone is alleged to have stolen at least 300 hydrocodone tablets from her pharmacy employer's inventory between June and December of 2012. She has been criminally charged by the Exeter, New Hampshire Police Department for theft and felony possession of narcotics.

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 Registration 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/or RSA 318:30-a and/or

Ph 805.01, which warrants the continued imposition of a temporary suspension, the imposition of permanent disciplinary sanctions, or both. The specific issues to be determined in this proceeding are:

- A. Whether Ms. Bertone's alleged diversion of narcotics from her employer's inventory poses an imminent danger to life or health, in violation of RSA 318:29, II; 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 with at least fifteen (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 Registration 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.

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

IT IS FURTHER ORDERED that an adjudicatory proceeding shall commence 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 Brittany E. Bertone, Pharmacy Technician, shall appear before the Board on **January 16, 2013 at 1:00 p.m.**, at the Board's office located at 57 Regional Drive, Concord, N.H., to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 318:29, IV and/or Ph 805.01; 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 Jeffrey S. Cahill, Senior Assistant Attorney General, N.H. Department of Justice, 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 Board President Vahrij Manoukian 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 Seven (7) copies, and with an additional copy mailed to any party to the proceeding, and to Assistant Attorney General Lynmarie Cusack, 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 within ten (10) days of receipt of such motion 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 no later than three (3) days before the date of the hearing. Respondent shall pre-mark her 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 at least three (3) days 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,

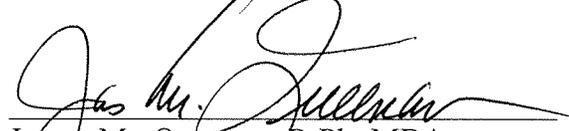
IT IS FURTHER ORDERED that the entirety of all oral proceedings be recorded verbatim by the Board. Upon the request of any party made at least ten (10) days prior to the proceeding or conference or upon the Board's own initiative, a shorthand court reporter shall be provided at the hearing or conference 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

IT IS FURTHER ORDERED that a copy of this Notice of Hearing shall be served upon Respondent by hand delivery and by certified mail addressed to the address she supplied to the Board in her latest renewal application. See Ph 202.03(d). A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE BOARD*


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

Dated: January 9, 2013

* Recused Board members not participating:

