

ORDER

III.

On the basis of Respondent's Offer and information obtained by the Board in this matter, the Board finds^{2/} that:

A. Respondent

1. Nardi, 51, of Erial, New Jersey, is a certified public accountant licensed by the Pennsylvania State Board of Accountancy (license no. CA018378L). At all times relevant to these proceedings, Nardi was a partner in the Philadelphia, Pennsylvania office of BDO Seidman, LLP ("BDO"), a registered public accounting firm, and an associated person of BDO, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).^{3/} At all times relevant to these proceedings, Nardi was also the Practice Office Assurance Director for BDO's Philadelphia office with responsibility for, among other things, providing technical guidance to other partners and managers on audit engagements, coordinating the office's quality control activities, and overseeing the scheduling and assignment of audit personnel to audit engagements. At all times relevant to these proceedings, Nardi directly supervised most of the audit managers and senior managers in the Philadelphia office. He also influenced promotion decisions affecting managers and other Philadelphia office audit personnel.

^{2/} The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding. The sanction that the Board is imposing on Respondent in this Order may be imposed only if a respondent's conduct meets one of the conditions set out in Section 105(c)(5) of the Act, 15 U.S.C. § 7215(c)(5). The Board finds that Respondent's conduct described in this Order meets the condition set out in Section 105(c)(5)(A), which provides that such sanction may be imposed in the event of "intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard."

^{3/} In part as a result of the conduct described in this Order, BDO asked Nardi to resign, and his separation from the firm became effective on March 21, 2006.

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B. Respondent Violated PCAOB Auditing Standard No. 3

2. Nardi was the engagement partner for BDO's audit of the financial statements of Hemispherx Biopharma, Inc. ("Hemispherx") for the fiscal year ("FY") ended December 31, 2004. At all times relevant to these proceedings, Hemispherx, a Delaware corporation whose common stock is registered with the United States Securities and Exchange Commission ("Commission") under Section 12(b) of the Securities Exchange Act of 1934, was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

3. In the late fall of 2004, Nardi assigned an audit manager in BDO's Philadelphia office (the "Manager") to manage the Hemispherx audit engagement. After completing the audit planning phase, Nardi directed the Manager to cease all work on the Hemispherx financial statement audit so that she could concentrate her efforts on another Nardi-supervised audit engagement for a larger issuer client. Following Nardi's direction, the Manager stopped all work on the Hemispherx audit. After the Manager ceased working on the engagement, she neither supervised nor reviewed any of the work performed by more junior members of the engagement team. The field work on the Hemispherx audit was completed by an audit senior without the supervision of an audit manager.

4. In the absence of an audit manager on the engagement, the work performed by the audit senior and other BDO staff was never subjected to a detailed review as required by BDO policy. For public audit engagements, BDO's Assurance Manual and Quality Control ("QC") Manual required, among other things, that a detailed review be completed before the audit report is released. The detailed review, which was required to include a review of all work papers, was intended to, among other things, ensure compliance with PCAOB auditing standards, generally accepted accounting principles, and BDO policies. The detailed review was required to be performed by either the engagement partner or manager provided that he or she does not review work that is primarily his or her own.

5. Nardi authorized issuance of BDO's audit report on Hemispherx's FY 2004 financial statements on March 16, 2005, and that report was included with the company's Form 10-K filed that day with the Commission. Thereafter, the audit senior on the engagement assembled a final set of audit documentation for retention and caused the audit documentation to be archived on or about May 1, 2005. At the time the audit senior completed the archiving, however, neither Nardi, nor the Manager, nor



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anyone else had done the detailed review required by BDO's policy, nor had the Manager initialed or signed the work papers to indicate that a detailed review had occurred.

6. In the late spring of 2005, Nardi was formally notified that BDO would be performing a weeklong internal inspection of selected Philadelphia office audit engagements beginning on Monday, August 15, 2005. The inspection was pursuant to BDO QC policies and procedures requiring formal inspections ("QC Inspections") of local office audit practices on a rotating basis. The QC Inspections were conducted by a review team ("QC reviewers") consisting of BDO partners from other offices of the firm. The purposes of the QC Inspections were, among other things, to determine the quality of work performed, to assess compliance with PCAOB auditing standards, generally accepted accounting principles, and BDO policy, to correct any identified deviations, and to provide recommendations for improvement. This was accomplished by reviewing, on a sample basis, the work papers and reports of selected audit and other engagements.

7. Upon learning of the impending QC Inspection, Nardi became concerned that staffing shortages experienced during the FY 2004 "busy season" (*i.e.*, late fall 2004 to early spring 2005) may have resulted in documentation and other deficiencies in audit engagements falling within the inspection's scope.^{4/} With this concern in mind, Nardi directed an effort in the Philadelphia office to perform "cold reviews" of work papers for public audit engagements he thought were likely candidates for selection by the QC reviewers. These "cold reviews" entailed reviews of audit work papers by managers not involved in the engagements for the purpose of identifying audit and work paper deficiencies that might be cited by the QC reviewers.

8. On Thursday, August 11, 2005, Nardi learned that the Hemispherx FY 2004 financial statement audit was among the engagements selected for QC Inspection the following week. Over that weekend, Nardi directed a subordinate in the Philadelphia office not previously familiar with the engagement to perform a "cold review" of the Hemispherx FY 2004 audit work papers. The subordinate noted, among other things, the absence of initials and signatures indicating that a detailed review had been performed.

^{4/} Nardi was familiar with BDO's QC Inspection process because he had served as a QC reviewer on inspections of other BDO offices.

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9. The Manager, who had been on vacation the previous week, returned to the office the morning of Monday, August 15, 2005, the first day of the QC Inspection. Soon after she arrived, Nardi entered the Manager's office and directed her to initial and sign the Hemispherx FY 2004 financial statement audit work papers to indicate that she had performed a timely detailed review. The Manager at first protested that she could not sign off as the detailed reviewer because she did not perform the work and could not address questions and issues that might be raised by the QC reviewers. Ultimately, however, the Manager acceded to Nardi's direction and affixed her initials and signatures to the Hemispherx audit work papers, which had been tabbed to indicate where initials and signatures were missing. She backdated her initials and signatures to dates preceding the March 16, 2005 issuance of BDO's audit report.

10. When Nardi directed the Manager to initial and sign the Hemispherx FY 2004 work papers as the detailed reviewer, he knew that neither she nor any one else had done a detailed review of the work performed after the Manager ceased working on the engagement. Nardi further knew that such detailed reviews were required by BDO's Assurance and QC Manuals. After the Manager affixed her backdated initials and signatures to the work papers to falsely indicate that she had performed a timely detailed review, Nardi provided those work papers to the QC reviewers. In addition, Nardi initialed certain of the Hemispherx FY 2004 work papers in August 2005 before providing them to the QC reviewers. The initials added by Nardi in August 2005 were backdated to dates preceding the March 16, 2005 issuance of BDO's FY 2004 Hemispherx audit report.

PCAOB Auditing Standard No. 3

11. BDO's audit of Hemispherx's FY 2004 financial statements was subject to PCAOB Auditing Standard No. 3, *Audit Documentation* ("AS No. 3"). AS No. 3 requires auditors to "document the procedures performed, evidence obtained, and conclusions reached with respect to relevant financial statement assertions."^{5/} Audit documentation must clearly demonstrate that the work was in fact performed.^{6/} Audit documentation must contain sufficient information to enable an experienced auditor, having no previous connection with the engagement, to understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached, and to

^{5/} AS No. 3, ¶ 6.

^{6/} Id.

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determine who performed the work and the date such work was completed, as well as the person who reviewed the work and the date of such review.^{7/}

12. AS No. 3 additionally provides that a complete and final set of audit documentation should be assembled for retention as of a date not more than 45 days after the report release date (*i.e.*, the "documentation completion date").^{8/} In circumstances that may require additions to audit documentation after the report release date, "[a]udit documentation must not be deleted or discarded after the documentation completion date, however, information may be added. Any documentation added must indicate the date the information was added, the name of the person who prepared the additional documentation, and the reason for adding it."^{9/}

13. In August 2005, three months after the Hemispherx FY 2004 audit work papers had been finalized for retention, Nardi directed the Manager to alter the work papers by entering initials and signatures to falsely indicate that she had performed a timely detailed review. As Nardi was aware at the time, the initials and signatures affixed by the Manager were backdated to dates preceding issuance of the audit report on March 16, 2005, there was no indication that her initials and signatures were added in August 2005, and there was no explanation of why her initials and signatures were added in August 2005. This had the purpose and effect of leaving an experienced auditor, having no previous connection with the engagement (in this case, the BDO QC reviewer who reviewed the work papers in the course of a QC Inspection) with a false understanding of the nature, timing, and extent of the review procedures employed in the audit, and a false impression that the Manager had completed a timely detailed review of the work performed by more junior members of the engagement team. As a result of the foregoing, Nardi violated AS No. 3. Nardi also violated AS No. 3 when, in August 2005, he added and backdated his own initials to certain Hemispherx FY 2004 audit work papers and failed to document any reason for the addition.

^{7/} Id., ¶ 6.

^{8/} Id., ¶ 15.

^{9/} Id., ¶ 16.

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IV.

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, fair, and independent audit reports, the Board determines it appropriate to impose the sanction agreed to in Respondent's Offer. Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Stephen J. Nardi is barred from being an associated person of a registered public accounting firm, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i); and
- B. After one (1) year from the date of this Order, Respondent may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm.

ISSUED BY THE BOARD.

/s/ J. Gordon Seymour

J. Gordon Seymour
Secretary

December 14, 2007