PCAOB
Public Company Accounting Oversight Board

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ORDER INSTITUTING DISCIPLINARY PROCEEDINGS, MAKING FINDINGS, AND IMPOSING SANCTIONS *In the Matter of Ann Marie Fitzpatrick, CPA,* *Respondent.*	PCAOB Release No. 105-2007-007 December 14, 2007

By this Order, the Public Company Accounting Oversight Board ("Board" or "PCAOB") is censuring Ann Marie Fitzpatrick, CPA. The Board is imposing this sanction on the basis of its findings concerning Respondent's violations of PCAOB rules and standards in connection with alterations of audit documentation relating to one audit.

I.

The Board deems it necessary and appropriate, for the protection of investors and to further the public interest in the preparation of informative, fair, and independent audit reports, that disciplinary proceedings be, and hereby are, instituted pursuant to Section 105(c) of the Sarbanes-Oxley Act of 2002 ("Act") and PCAOB Rule 5200(a)(1) against Ann Marie Fitzpatrick ("Fitzpatrick" or "Respondent").

II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondent has submitted an Offer of Settlement ("Offer") that the Board has determined to accept. Solely for purposes of these proceedings and any other proceedings brought by or on behalf of the Board, or to which the Board is a party, and without admitting or denying the findings herein, except as to the Board's jurisdiction over her and the subject matter of these proceedings, which is admitted, Respondent consents to entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.

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III.

On the basis of Respondent's Offer and information obtained by the Board in this matter, the Board finds[1/] that:

A. Respondent

1. Fitzpatrick, 36, of Vorhees, New Jersey, is a certified public accountant licensed by the Pennsylvania State Board of Accountancy (license no. CA034382L). At all times relevant to these proceedings, Fitzpatrick was an audit manager 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). She voluntarily resigned from BDO in February 2006.

B. Respondent Violated PCAOB Auditing Standard No. 3

2. In the late fall of 2004, Fitzpatrick was assigned as the manager 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. Fitzpatrick was assigned to the Hemispherx FY 2004 audit by the BDO partner in charge of that engagement (the "Engagement Partner"). At all times relevant to these proceedings, the Engagement Partner was a partner in BDO's Philadelphia office, where he also served as the Practice Office Assurance Director. In the latter role, the Engagement Partner was responsible 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, the Engagement Partner also directly supervised most of the audit managers and senior

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[1/] 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.

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managers in the Philadelphia office, including Fitzpatrick. He also influenced promotion decisions affecting managers and other Philadelphia office audit personnel.

4. After Fitzpatrick completed the planning phase of the Hemispherx FY 2004 audit, the Engagement Partner directed her to cease all work on that audit so that she could concentrate her efforts on another larger engagement also supervised by the Engagement Partner. Following the Engagement Partner's direction, Fitzpatrick stopped all work on the Hemispherx audit. After Fitzpatrick 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.

5. 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.

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

7. BDO's Philadelphia office was scheduled for a weeklong internal inspection of selected 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

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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.

8. On Thursday, August 11, 2005, the Engagement Partner learned that the Hemispherx FY 2004 financial statement audit was among the engagements selected for the QC Inspection. Fitzpatrick, 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 Fitzpatrick arrived, the Engagement Partner entered her 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. Fitzpatrick 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, Fitzpatrick acceded to the Engagement Partner'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.

PCAOB Auditing Standard No. 3

9. 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."[2/] Audit documentation must clearly demonstrate that the work was in fact performed.[3/] 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

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[2/] AS No. 3, ¶ 6.

[3/] 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.[4/]

10. 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").[5/] 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."[6/]

11. In August 2005, three months after the Hemispherx FY 2004 audit work papers had been finalized for retention, Fitzpatrick, at the Engagement Partner's direction, altered the work papers by entering initials and signatures to falsely indicate that she had performed a timely detailed review. Fitzpatrick backdated her initials and signatures to dates preceding issuance of the audit report on March 16, 2005, failed to indicate that her initials and signatures were added in August 2005, and failed to explain 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 Fitzpatrick had completed a timely detailed review of the work performed by more junior members of the engagement team. As a result of the foregoing, Fitzpatrick violated AS No. 3.

[4/] Id., ¶ 6.

[5/] Id., ¶ 15.

[6/] 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, pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), Ann Marie Fitzpatrick, CPA is censured.

ISSUED BY THE BOARD.

/s/ J. Gordon Seymour

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J. Gordon Seymour
Secretary

December 14, 2007