

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

CHRISTY C. ADAMS,)
)
 Plaintiff)
)
 v.) **Civil No. 00-226-P-H**
)
 RITE AID OF MAINE, INC., et al.,)
)
 Defendants)

**RECOMMENDED DECISION ON DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT**

Rite Aid of Maine, Inc. (“Rite Aid”) and Reginald S. Gracie, Jr. move for summary judgment as to all counts against them in this eight-count employment-related action removed from the Maine Superior Court (Knox County). Defendants’ Motion for Summary Judgment, etc. (“Defendants’ Motion”) (Docket No. 7) at 1-2; Defendants’ Notice of Removal (Docket No. 1); Complaint (Docket No. 1B). Plaintiff Christy C. Adams withdraws Counts IV and VII, effectively conceding the defendants’ entitlement to summary judgment as to those claims.¹ Plaintiff’s Amended Opposition to Defendants’ Motion for Summary Judgment, etc. (“Plaintiff’s Opposition”) (Docket No. 21) at 1. For the reasons that follow, I recommend that the Defendants’ Motion be granted as to Counts I-IV, VII and a portion of Count VIII, and that the court decline to exercise supplemental jurisdiction as to the remaining state-law claims, which I recommend be remanded to the Maine Superior Court.

¹ I do not construe Adams’ “withdrawal” as a motion to amend his complaint pursuant to Fed. R. Civ. P. 15(a) something that per Rule 15(a) may be accomplished at this stage of the litigation “only by leave of court or by written consent of the adverse party[.]”

I. Summary Judgment Standards

Summary judgment is appropriate only if the record shows “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). “In this regard, ‘material’ means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant By like token, ‘genuine’ means that ‘the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party’” *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995) (citations omitted). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party’s case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences in its favor. *Cadle Co. v. Hayes*, 116 F.3d 957, 959 (1st Cir. 1997). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, “the nonmovant must contradict the showing by pointing to specific facts demonstrating that there is, indeed, a trialworthy issue.” *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995) (citing *Celotex*, 477 U.S. at 324); Fed. R. Civ. P. 56(e). “This is especially true in respect to claims or issues on which the nonmovant bears the burden of proof.” *International Ass’n of Machinists & Aerospace Workers v. Winship Green Nursing Ctr.*, 103 F.3d 196, 200 (1st Cir. 1996) (citations omitted).

II. Factual Context

As a preliminary matter, the defendants ask the court to alter the landscape of facts cognizable on summary judgment by precluding Adams from relying on materials generated during the course of other proceedings. Defendants’ Reply Memorandum (“Defendants’ Reply”) (Docket No. 24) at 1-2.

In issue are (i) the Deposition of Gregory W. Cameron, R.Ph., dated May 10, 2000, *State v. Adams*, Docket No. 99-259 (Me. Admin. Ct.) (“Cameron Dep.”), attached as Exh. D to Plaintiff’s Amended Response to Defendant’s [sic] Amended Statement of Material Facts (“Plaintiff’s Opposing SMF”) (Docket No. 20); (ii) the Deposition of Reginald S. Gracie, Jr. dated March 10, 2000, *State v. Adams*, Docket No. 99-259 (Me. Admin. Ct.), attached as Exh. E to Plaintiff’s Opposing SMF; (iii) the Deposition of Bonita Perkins dated December 13, 2000, *Adams v. Rite Aid of Maine, Inc.* (Me. Workers’ Comp. Bd.), attached as Exh. J to Plaintiff’s Opposing SMF; (iv) the Deposition of Patsy Towle dated December 13, 2000, *Adams v. Rite Aid of Maine, Inc.* (Me. Workers’ Comp. Bd.), attached as Exh. K to Plaintiff’s Opposing SMF; (v) testimony of Adams and of Linda Adams, Transcript of Hearing held September 20, 2000, *Adams v. Rite Aid of Maine, Inc.* (Me. Workers’ Comp. Bd.) (“WCBI”), attached as Exh. M to Plaintiff’s Opposing SMF; and (vi) testimony of Gracie, Transcript of Hearing held November 16, 2000, *Adams v. Rite Aid of Maine, Inc.* (Me. Workers’ Comp. Bd.), attached as Exh. N to Plaintiff’s Opposing SMF. *Id.* at 2.

The defendants seek exclusion of (i) the Cameron, Perkins and Towle depositions and Linda Adams’ hearing testimony on the basis of failure to meet the requirements of Fed. R. Civ. P. 32; (ii) the Gracie deposition and Adams’ and Gracie’s hearing testimony on the basis that it constitutes cumulative evidence excludable pursuant to Fed. R. Evid. 403; (iii) the Perkins and Towle depositions and Adams’ and Linda Adams’ hearing testimony on the basis that it constitutes inadmissible hearsay; (iv) the Perkins and Towle depositions on the basis that they were taken subsequent to the discovery and motion deadlines in this case; and (v) all of the above-cited materials on the basis that they collectively exceed the number of depositions permitted by the court’s Scheduling Order. *Id.* at 1-2.

These arguments miss the mark. The controlling rule in this context is Fed. R. Civ. P. 56 which, as construed by the First Circuit, permits consideration of hearing testimony taken in other proceedings:

The appellants urge that, since AFC's motion for *brevis* disposition was filed only in 83-1460, the court below erred in relying on evidence adduced in 83-1522 in reaching the determination. Yet, this contention overlooks or misperceives the consolidation of the two cases in August, 1983 and it further attempts unduly to restrict the wide sweep of Fed. R. Civ. P. 56(e). If a party, for summary judgment purposes, may rely on affidavits which "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein," and if depositions and answers to interrogatories may be considered, there is no sensible rationale which would preclude reliance on sworn testimony faithfully recorded during the conduct of a judicially-supervised adversarial proceeding. All of the hallmarks of reliability attend upon such trial transcripts.

Advance Fin. Corp. v. Isla Rica Sales, Inc., 747 F.2d 21, 27 (1st Cir. 1984) (citations omitted). The same logic applies to the consideration of deposition transcripts. *See, e.g., Diamonds Plus, Inc. v. Kolber*, 960 F.2d 765, 767-68 (8th Cir. 1992) ("The Federal Rules specifically allow depositions to be used in opposition to motions for summary judgment, and [a] deposition is at least as good as an affidavit and should be usable whenever an affidavit would be permissible, even though the conditions of the rule on use of a deposition at trial are not satisfied.") (citations and internal quotation marks omitted).²

The fact that the Towle and Perkins depositions were taken subsequent to the discovery and motion deadlines in this case is irrelevant. In the context of summary judgment, such depositions are the functional equivalent of affidavits, the date of which is immaterial so long as they are submitted with timely filed summary judgment papers. Nor did Adams contravene the deposition limit imposed

² The defendants' exclusion request is in addition noteworthy for its cursoriness and lack of citation to relevant caselaw. The defendants do not specify how the plaintiffs' materials are cumulative, constitute hearsay or fail to meet the requisites of Fed. R. Civ. P. 32. *See* Defendants' Reply at 1-2. Such deficiencies are particularly glaring in the context of a reply memorandum, which without leave of court for a surreply represents the "last word" on the subject.

by the Scheduling Order. That order merely limited Adams to the taking of five depositions in this matter; it did not arbitrarily cap the number of depositions from this or other matters to which he could refer in the context of a motion for summary judgment. *See* Scheduling Order (Docket No. 4).

The defendants' request to preclude Adams from relying on extraneous materials is denied. With that issue resolved, the parties' statements of material facts, credited to the extent that they are either admitted or supported by record citations in accordance with Loc. R. 56, reveal the following relevant to this recommended decision:

Adams began working as a pharmacist in 1984. Plaintiff's Opposing SMF ¶ 5; Defendants' Reply Statement of Material Facts ("Defendants' Reply SMF") (Docket No. 25) ¶ 5. He commenced work at Brooks Pharmacy ("Brooks") in Rockland, Maine in 1989 when Richard Cannon, then a Brooks pharmacy manager, agreed to assist Adams in his efforts to return to the practice of pharmacy following Adams' voluntary surrender of his license to practice pharmacy in the State of Maine. Defendants' Amended Statement of Material Facts ("Defendants' SMF") (Docket No. 13) ¶¶ 4-5; Plaintiff's Opposing SMF ¶¶ 4-5.

Adams had surrendered his license following his admission to "procuring without prescription the following substances: Dilaudid, Cocaine, Anexia, and Tussionex Susp., Codeine, Ativan and Halcion." *Id.* ¶ 4. In 1988, at the urging of his treating physician, Dr. Richard Corbett, Adams had successfully applied for reinstatement of his pharmacy license with certain conditions, one of which was that he complete an internship under the supervision of a licensed pharmacist. Plaintiff's Opposing SMF ¶ 4; Defendants' Reply SMF ¶ 4. In 1989 Adams told Cannon that he had lost his pharmacy license because of drug abuse. Defendants' SMF ¶ 5; Plaintiff's Opposing SMF ¶ 5. Years later, he told Cannon that he had been taking excessive amounts of Tussionex while working as a

pharmacist at LaVerdiere's and that he was surprised that it had taken LaVerdiere's so long to catch him. *Id.*

With the exception of one year during which Adams worked in a pharmacy in Calais, he worked as a staff pharmacist in Cannon's pharmacy from 1989 to 1997. *Id.* Cannon worked as a pharmacy manager in the Brooks Rockland pharmacy through the Rite Aid acquisition of that pharmacy and through a move of the store into a new building, until August 1997. *Id.*

In 1991 Cannon wrote a letter to the State of Maine Board of Pharmacy (the "Pharmacy Board") supporting Adams' application to improve his licensing status. *Id.* ¶ 6. The state that year eliminated certain drug-testing requirements from Adams' licensing conditions. Plaintiff's Opposing SMF ¶ 4; Defendants' Reply SMF ¶ 4.

From 1991 to 1995 Adams' treating physician, Dr. Gilliam, prescribed several different anti-inflammatory medicines for Adams, all of which irritated Adams' intestinal lining. *Id.*³ In 1995 Dr. Gilliam prescribed Ultram.⁴ *Id.* Ultram is the brand name of the drug tramadol, manufactured and marketed by Ortho-McNeil Pharmaceutical. Defendants' SMF ¶ 1; Plaintiff's Opposing SMF ¶ 1. Tramadol, which is not a controlled substance, originally was promoted as a pain medication that did not present a high potential for addiction. *Id.* However, by early 1996 research established that it had the potential to cause psychic and physical dependence of the morphine type and had been associated with craving, drug-seeking behavior and tolerance development. *Id.* On March 20, 1996 Ortho-McNeil Pharmaceutical sent a letter to physicians and pharmacists describing the results of its post-marketing research, *Id.* That month it also revised the information sent to pharmacists as an enclosure

³ As the defendants point out, Adams' further statement that he was being treated for an arthritic condition is based on hearsay, namely, his testimony that he had been told by a rheumatologist that he had some kind of rheumatoid disease. See Plaintiff's Opposing SMF ¶ 4; Defendants' Reply SMF ¶ 4; WCBI at 58-59.

⁴ Adams' additional statements that Ultram was marketed as not being a stomach irritant and as non-addictive, Plaintiff's Opposing SMF ¶ 4, and that Dr. Gilliam assured Adams that Ultram was safe and non-addictive, *id.* ¶ 1, are not supported by the record (*continued on next page*)

with Ultram. *Id.* Adams should have known by approximately March 1996 that Ultram potentially was addictive and that the maximum dosage was eight 50-milligram tablets per day. *Id.*

On or about October 3, 1995, following Rite Aid's acquisition of Brooks, Adams became a Rite Aid employee. *Id.* ¶¶ 5, 54. At that time he continued to practice pharmacy under the terms of a modified consent agreement that provided: "[A]ny use at any time in the future, whether in Maine or elsewhere, of any Illicit Substance shall constitute a violation of the Consent Agreement and shall result in immediate, automatic license suspension and in the mandatory revocation or non-renewal of the Licensee's license. Given the Licensee's history of substance abuse, the Licensee understands and agrees that there shall be no second chance." *Id.* ¶ 54. The consent agreement defines "Illicit Substances" as "alcohol, mood or mind altering substances, whether licit or illicit; and all drugs which are dispensed to or prescribed for the Licensee by anyone other than a treating physician knowledgeable of the Licensee's history of substance abuse." *Id.*

On or by August 31, 1997 Adams was promoted from staff pharmacist to pharmacy manager and received a raise. *Id.* ¶¶ 55-56. Between the time that he was hired by Rite Aid on October 3, 1995 and the time he was promoted, he received two annual raises, on April 14, 1996 and April 13, 1997. *Id.*

During the first several months of 1996 Cannon became aware (via reports of pharmacy technician Mary Simmons) that Adams was purchasing Ultram by printing a "price check" on a quantity of the drug, dispensing it and asking Simmons to transact the purchase. *Id.* ¶ 7.⁵ This type of transaction would leave no record of the purchase other than appearing as a cash transaction on Rite

citations given.

⁵ Simmons considered Adams to be a friend outside of the work context. Defendants' SMF ¶ 44; Plaintiff's Opposing SMF ¶ 44. After she began taking college classes to become a substance abuse counselor, she spoke to Adams about his drug use in the past. *Id.* She knew that he attended AA meetings and had attended meetings with him as part of her studies. *Id.* Simmons testified that she began to notice changes in Adams' behavior in 1995, including a change in eating habits and edginess. *Id.* ¶ 45.

Aid's register tape. *Id.* Although Adams routinely asked Cannon to fill prescriptions such as antibiotics, he purchased Ultram only through the pharmacy technician. *Id.* During this time frame, Cannon made physical counts of Ultram at the close of his shift and before he began work at the close of Adams' shift to determine whether Ultram tablets were missing. *Id.* He discovered shortages. *Id.* Cannon reported this information to Rite Aid's market security manager, William Miller. *Id.*⁶

Miller conducted an investigation that included installation of security cameras in the pharmacy to determine whether Adams was engaging in theft. *Id.* ¶ 8. The security tapes revealed that Adams arrived at work very early in the morning, between 5:30 and 6:00 a.m., and moved around the pharmacy for approximately twenty minutes before he turned on the lights. *Id.* He was in the area where Ultram was stored, but because he had not turned on the lights, the tapes did not capture what he was doing. *Id.* As a result, the investigation was terminated. *Id.* Adams denies that a person could be in the pharmacy with the lights off. Plaintiff's Opposing SMF ¶ 8; Defendants' Reply SMF ¶ 8.

At the time Simmons—who has been described by other pharmacists who worked with her as unstable and not credible—relayed information to Cannon, Cannon had received no complaints about Adams' performance at the pharmacy. *Id.* ¶¶ 7, 44. Cannon had no evidence that Adams had forged prescriptions or otherwise obtained a prescription improperly in 1996; however, he suspected that Adams had filled illegitimate prescriptions for Ultram based on his professional experience as a pharmacist and his familiarity with the physicians whose names appeared on the prescriptions,

⁶ Miller had been security manager for LaVerdiere's at the time Adams' employment there was terminated, an event in which he had been involved. Defendants' SMF ¶ 72; Plaintiff's Opposing SMF ¶ 72. Adams did not see Miller again until Adams became a Rite Aid employee. *Id.* He did not think that Miller had any prejudice or bias against him until June 1997, when, according to Adams, Miller warned him that if he abused Ultram again his employment would be terminated. *Id.* Around Christmas time 1997 Miller approached Adams in the store, reached out and shook his hand and wished him a merry Christmas. *Id.* Miller also told Adams, "I am glad you are doing well." *Id.* Adams felt at the time that Miller was sincere. *Id.*

including a pediatrician. *Id.* ¶ 7. Adams denies that he has ever obtained Ultram without a legal prescription. *Id.* ¶ 9.⁷

Cannon received more reports regarding Adams' use of Ultram in the summer of 1996. Defendants' SMF ¶ 9; Plaintiff's Opposing SMF ¶ 9. At that time Simmons again reported that Adams asked her to transact purchases of Ultram for which he did not have a prescription. *Id.* Cannon again took inventories of Ultram before and after Adams worked in the pharmacy. *Id.* He added up the Ultram purchased by Adams during a six-week period in the summer of 1996, including amounts that Rite Aid's customer history report indicated were purchased pursuant to a prescription, amounts that (according to the defendants) Adams had purchased without a prescription and missing amounts. *Id.*⁸ These counts showed that Adams was taking Ultram in amounts exceeding the manufacturer's maximum dosage and amounts exceeding his prescribed dose. *Id.* Cannon had doubts that the prescriptions reflected in Rite Aid's customer history report were valid because he found it hard to believe that physicians would prescribe such a large quantity of Ultram and because the report listed a well-known local pediatrician as the prescribing physician for one of the Ultram prescriptions. *Id.* Simmons also reported unusual behavior by Adams, which raised enough concern to Cannon that he cancelled a business trip so that he could be available if Adams was unable to work. *Id.*

In reviewing Adams' customer history report, Cannon saw that Adams was following a pattern of filling Ultram prescriptions from one physician, which he submitted to his insurance company for reimbursement, and filling Ultram prescriptions from another physician exclusively for cash

⁷ Adams asserts that the chief inspector of the Pharmacy Board testified that there was no evidence Adams illegally used drugs in 1998. However, as the defendants point out, the witness lacked personal knowledge, stating that he had no idea whether Adams had done so. Plaintiff's Opposing SMF ¶ 18; Defendants' Reply SMF ¶ 18; Cameron Dep. at 72-73.

⁸ A "customer history report," which is also sometimes referred to by the parties and in the record materials as a "profile," is "a listing of medications that have been dispensed from a pharmacy." Defendants' Reply SMF ¶ 14. A customer history report, with regard to a particular patient, reflects "[w]hat medications they're taking, how often they're taking it, if they're taking it appropriately following the correct the doctor's dose." *Id.* Customer history reports are confidential medical records and were not part of Adams' personnel file. Plaintiff's Opposing SMF ¶ 14; Defendants' Reply SMF ¶ 14.

purchases. *Id.* Cannon believed that this was an effort by Adams to avoid discovery by his insurance carrier and others of the large quantity of Ultram he was taking. *Id.* Cannon determined that during July and August 1996 Adams was taking more than three times the manufacturer's recommended dose of Ultram. *Id.* He gave this information to Ronald Cavaretta, Rite Aid's pharmacy development manager, who supervised both Adams and Cannon. *Id.*⁹

In September 1996 Miller, Cavaretta and Adams met regarding Adams' use of Ultram. *Id.* ¶ 30. At the outset of the meeting Adams said that there were no problems. *Id.* Miller told Adams that he did not feel Adams was telling the truth. *Id.* Adams then responded, "I'm having some real problems," and admitted that in preceding months he had been using Ultram excessively. *Id.* At the end of the meeting Miller warned Adams that "if you go backwards and your use of Ultram is in violation of policy or pharmacy laws, that you jeopardize being terminated." *Id.*

Adams agrees that in fall 1996 Cavaretta asked him to sign a document that stated that he purchased Ultram through a pharmacy technician without a prescription and used what the pharmacy development manager felt was an excessive amount of Ultram. *Id.* ¶ 70. Adams read the letter and signed it. *Id.* The incident in question concerned Adams' purchase of eleven Ultram tablets despite the fact that his prescription had expired. Defendants' Reply SMF ¶ 9. He obtained a prescription the following day, a Monday, and did for himself exactly what he would have done for a customer. Plaintiff's Opposing SMF ¶ 70; Defendants' Reply SMF ¶ 70. This is a common practice among pharmacists, including Rite Aid pharmacists. *Id.* Cavaretta assured Adams that their discussion about the 1996 allegation that Adams had obtained Ultram through a technician without a prescription was "a

⁹ Also in September 1996 Adams' wife, Linda, initiated a meeting with Cannon at his house to alert him to her concerns about Adams' use of Ultram. Defendants' SMF ¶ 10; Plaintiff's Opposing SMF ¶ 10. She told Cannon that she had "thrown [Adams] out of the house" over the Ultram issue and was upset by his lying about his use of the drug. *Id.* Adams' account of this meeting is not supported by the record citation given. *Id.*

mere formality” and “no big deal.” *Id.* Adams did not understand that the letter Cavaretta asked him to sign constituted any sort of warning or disciplinary action by Rite Aid. *Id.*

Although the letter that Adams signed indicated that Cavaretta thought Adams was using Ultram excessively, Cavaretta told Adams that the doctors he contacted informed him that there was no problem there. *Id.* In a memorandum dated September 12, 1996, Cavaretta confirmed that Adams’ Ultram prescriptions were authorized and filled according to how they were prescribed. *Id.* ¶ 9.

In May 1997, although Adams experienced headaches and cravings associated with use of Ultram, he continued to work. Defendants’ SMF ¶ 71; Plaintiff’s Opposing SMF ¶ 71. From May 23-28, 1997 Adams was hospitalized for substance-abuse treatment at Mid-Maine Medical Center. *Id.* ¶ 57. By the time Adams left Mid-Maine Medical Center he had stopped taking both Ultram and Fioricet. *Id.* ¶ 59. Cannon was aware that Adams received treatment for Ultram use in spring 1997, having rearranged his work calendar so that Adams could complete his treatment at the hospital. *Id.* ¶ 11. Adams also testified that he told both Cavaretta and Miller in June 1997 that he had undergone a five-day detox program for treatment of Ultram and Fioricet dependency and told Cavaretta that he was receiving counseling. *Id.* ¶ 62. According to Adams, he also specifically told Miller that he could not work more than forty hours per week pursuant to his doctor’s recommendation and that he needed some time flexibility to attend counseling sessions. Plaintiff’s Opposing SMF ¶ 30; Defendants’ Reply SMF ¶ 30.¹⁰ According to Adams, Miller told him at the meeting “that if it happened again” referring to his dependency on Ultram “I was out, I would be fired.” *Id.*; *see also* Defendants’ SMF ¶ 62; Plaintiff’s Opposing SMF ¶ 62. Per Adams, Miller also commented to

¹⁰ Adams’ assertion that he told Cavaretta as well as Miller is not supported by the record citation given, although the underlying material indicates that Adams handed Miller and Cavaretta written materials concerning the forty-hour restriction. Plaintiff’s Opposing SMF ¶ 30; Defendants’ Reply SMF ¶ 30; Deposition of Christy C. Adams (“Adams Dep.”), attached as Exh. A to Plaintiff’s Opposing SMF, at 44. The defendants dispute that the June 1997 meeting ever occurred or that Cavaretta or Miller ever were informed about the detox treatment or the counseling. *Id.*

Adams that he was “either very smart or [he] had something up [his] sleeve.” Plaintiff’s Opposing SMF ¶ 30; Defendants’ Reply SMF ¶ 30.

Adams testified that his work hours “dramatically increased” when he returned to work after the detox treatment. Defendants’ SMF ¶ 60; Plaintiff’s Opposing SMF ¶ 60. However, the calendar that he maintained regarding his work hours establishes that his first week back he worked extra hours for Cannon, who had covered for Adams during his hospitalization, but that he did not work extra hours for the next seven weeks. *Id.* Beginning in August he worked extra hours associated with one day that Cannon took off as a personal day, a week that he worked in a store other than his regular store and the last two weeks of August when Cannon was on vacation. *Id.*

Adams feels that he would not have started to use Ultram again after the May 1997 detox treatment if Rite Aid had allowed him to limit his work to forty hours per week because he could have attended counseling sessions at Choice Skyward and NA and AA meetings. *Id.* ¶ 63. In early September, immediately after his promotion to pharmacy manager, Adams became concerned that the new job was limiting his time off because Rite Aid had not hired a staff pharmacist to work with him. *Id.* ¶ 65. It became a more significant concern by the end of September 1997. *Id.* That month Gracie became Adams’ pharmacy development manager. *Id.* ¶ 66. At no time between September 1997 and January 1998 did Adams speak to Gracie about his alleged forty-hour-a-week work restriction. *Id.* ¶ 66.

Adams complained to the state pharmacy inspector that the pharmacy was understaffed to meet customer demand and that this situation could pose a danger to the public. Plaintiff’s Opposing SMF ¶ 60; Defendants’ Reply SMF ¶ 60.¹¹ By either February 1998 (according to the defendants) or March

¹¹ Adams states that he did so in February or March 1998, but that portion of his statement is not supported by the record citation given. Plaintiff’s Opposing SMF ¶ 60; Defendants’ Reply SMF ¶ 60.

1998 (according to Adams) Rite Aid hired two additional pharmacists to work as staff pharmacists in Adams' store. *Id.* ¶ 65; Defendants' SMF ¶ 61; Plaintiff's Opposing SMF ¶ 61.

Adams began to take Ultram again in February 1998. Defendants' SMF ¶ 67; Plaintiff's Opposing SMF ¶ 67. It was prescribed by Dr. Alan Woodruff at Adams' request when Adams told him he could not reach his usual prescribing physician. *Id.* ¶ 41. Dr. Woodruff never saw Adams in his office, has no written record of any of the prescriptions he gave to Adams, did not consider himself to be Adams' regular treating physician, never billed Adams for any treatment, never submitted any charges to Adams' health insurance carrier, did not know the name of Adams' other health-care providers and was not aware that Adams was hospitalized for any treatment at all during 1997. *Id.* ¶ 39. Nor did Dr. Woodruff know that Adams was practicing pharmacy under the terms of a modified consent agreement or that Adams had previously surrendered his license to practice pharmacy. *Id.* ¶ 40.¹² At the time Dr. Woodruff prescribed Ultram for Adams, he did not have any concern about its potential for addiction; however, subsequently a patient with a history of drug abuse reported to Dr. Woodruff that he or she had "some positive beneficial effect in terms of feeling good, like you might with a narcotic." Plaintiff's Opposing SMF ¶ 2; Defendants' Reply SMF ¶ 2.

In April 1998 Cannon again received a report from Simmons that Simmons believed Adams was engaging in improper conduct with respect to Ultram. Defendants' SMF ¶¶ 2, 12; Plaintiff's Opposing SMF ¶¶ 2, 12. Cannon reported this information to Gracie. *Id.* ¶ 12.¹³ Cannon also told

¹² Adams asserts that Dr. Woodruff permitted him to take more than the recommended daily dosage of eight Ultram a day. Plaintiff's Opposing SMF ¶ 2. The defendants object that this is inadmissible hearsay, *see* Defendants' Reply SMF ¶ 2; however, it is based on Adams' testimony as to the dosage he was prescribed, not the dosage Dr. Woodruff told him was prescribed, *see* Adams Dep. at 134.

¹³ Specifically, Cannon relayed that (per Simmons' report), Adams had purchased Ultram three times during the week of April 17, 1998 without a prescription; Adams, a non-smoker, was chewing nicotine gum; Adams was "not eating" and going to the bathroom to take medication; he was going out for a smoke with another employee; and he was having difficulty reading. Defendants' SMF ¶ 12; Plaintiff's Opposing SMF ¶ 12. Adams states that the Rockland pharmacy was so busy that he barely had time to go to the bathroom, let alone take breaks. Plaintiff's Opposing SMF ¶ 12; Defendants' Reply SMF ¶ 12. Simmons felt that Adams' mind was not on his job and that he was "dazed." Defendants' SMF ¶ 49; Plaintiff's Opposing SMF ¶ 49. However, she did not notice any impairment of
(continued on next page)

Miller that he believed Adams was using excessive amounts of Ultram and purchasing it without benefit of a prescription. *Id.* Gracie recalls that in the spring of 1998 Cannon called him, mentioned that Simmons had spoken to him about Adams and asked Gracie to look at Adams' customer history report. *Id.* ¶ 13.¹⁴ Gracie also recalls that Cannon made some statement to the effect that in his opinion Adams was "off the wagon." Plaintiff's Opposing SMF ¶ 13; Defendants' Reply SMF ¶ 13. Gracie claims that he interpreted the phrase "off the wagon" to mean Adams was either doing something wrong or doing something improperly with some substance. *Id.*¹⁵

Gracie believes that he responded by reviewing Adams' customer history report and talking to Miller. Defendants' SMF ¶ 14; Plaintiff's Opposing SMF ¶ 14.¹⁶ He also looked at Adams' personnel file and, upon reading the consent agreement regarding his past drug use, "concluded that [Adams] had a problem in the past and perhaps that he had relapsed at this point." Plaintiff's Opposing SMF ¶ 14; Defendants' Reply SMF ¶ 14. Miller advised Gracie to interview people at the store and to look at the actual physical prescriptions on file there. Defendants' SMF ¶ 14; Plaintiff's Opposing SMF ¶ 14. Gracie would have been looking for evidence of false prescriptions. Plaintiff's Opposing SMF ¶ 14; Defendants' Reply SMF ¶ 14. He testified that "when you are looking at an abuse situation, there is [sic] generally patterns. First, you have multiple doctors, any type of changing on prescriptions, numbers changed, refills changed, those types of things, doctor shopping, and pharmacy shopping, that's generally in the public when we watch for abuse." Defendants' SMF ¶ 14; Plaintiff's Opposing SMF ¶ 14.

Adams' abilities as a pharmacist attributable to the use of Ultram. Plaintiff's Opposing SMF ¶ 15; Defendants' Reply SMF ¶ 15.

¹⁴ Adams further asserts that Gracie testified that he "he only recalls Cannon saying that he wanted Gracie to look at Plaintiff's profile because Cannon thought he was using medication improperly and that Plaintiff was 'all through'; however, the statement is not supported by the citation given. Plaintiff's Opposing SMF ¶ 3; Defendants' Reply SMF ¶ 3.

¹⁵ Gracie previously had heard some information about Adams' use of drugs when Gracie worked as a student and an intern at LaVerdiere's and Brooks pharmacies. Defendants' SMF ¶ 13; Plaintiff's Opposing SMF ¶ 13.

¹⁶ Gracie admitted that he would not have allowed any other employer access to a customer history report; he viewed the fact that he possessed the password as sufficient authority to look at these records for evidence of abuse. Plaintiff's Opposing SMF ¶ 77; (continued on next page)

The only person Gracie remembers talking to in the store is Simmons. *Id.* ¶ 15. Simmons told Gracie that Adams was filling Ultram prescriptions for himself and that she had concerns that he was filling Ultram prescriptions at Goodnow's, the pharmacy across the street, and taking Ultram while working. *Id.* She told Gracie that several times during the workday Adams would go out to his truck and across the street to Goodnow's Pharmacy. *Id.*¹⁷ Gracie testified that he does not remember anyone, including Simmons, ever telling him that he or she saw Adams taking Ultram or any other drug at work. Plaintiff's Opposing SMF ¶ 14; Defendants' Reply SMF ¶ 14.

After Simmons spoke with Cannon and Gracie an inventory check was conducted that showed an "increase" but that "we were within our range of whatever it was supposed to be." *Id.* ¶ 15. This referred to inventory in general, not Ultram specifically; inventories reflect total dollar value of all non-controlled substances in the pharmacy. *Id.*

When Gracie reviewed the physical prescriptions he found Ultram prescriptions in Adams' handwriting. Defendants' SMF ¶ 16; Plaintiff's Opposing SMF ¶ 16. He selected two for further investigation. *Id.* In July 1998 he called Dr. Woodruff, whose name appeared on those prescriptions, to verify that he had written them. *Id.* Dr. Woodruff stated that he had not authorized either prescription. *Id.*¹⁸ Gracie communicated the results of this conversation to Miller and set up a meeting with Adams. *Id.* ¶ 17. The purpose of the meeting was to determine whether Adams was engaging in theft, whether he was violating Rite Aid policies such that his excessive use of Ultram

Defendants' Reply SMF ¶ 77. Simmons had done the same thing. *Id.*

¹⁷ Simmons based her suspicion that Adams was leaving the pharmacy to take medication on her observation that he "was leaving the pharmacy very frequently." Plaintiff's Opposing SMF ¶ 15; Defendants' Reply SMF ¶ 15.

¹⁸ Adams points out that Dr. Woodruff wrote a letter on or about July 24, 1998 stating that he did not recall every prescription he wrote for Adams but that he would not doubt Adams' recollection. Plaintiff's Opposing SMF ¶ 16; Defendants' Reply SMF ¶ 16. However, at deposition Dr. Woodruff recalled that, although he verified to Gracie that he had authorized some Ultram prescriptions for Adams, he informed Gracie that he had not authorized two specific prescriptions about which Gracie asked. *Id.*; see also Defendants' SMF ¶ 42; Plaintiff's Opposing SMF ¶ 42.

would be detrimental to Rite Aid's pharmacy credentials and licensing, and whether his use of Ultram was impairing his health and performance on the job. *Id.* ¶ 31.

According to Adams, Miller began the July 22, 1998 interview by asking whether Adams had used Soma. Plaintiff's Opposing SMF ¶ 32; Defendants' Reply SMF ¶ 32. Adams knew that the only way Miller could have known that he had used Soma was to have gained access to his customer history report at Goodnow's Pharmacy, the only place where Adams had a prescription for Carisoprodol, the generic form of Soma. *Id.* ¶ 18; Defendants' Reply SMF ¶ 76. Miller then asked whether Adams had used any controlled substances, which Adams denied. Plaintiff's Opposing SMF ¶ 18; Defendants' Reply SMF ¶ 18. Miller asked when Adams had last used Ultram; because Adams felt Miller had no right to ask such a question, he told him that the last time he had refilled his Ultram prescription was the previous week. *Id.* Miller also accused Adams of forging prescriptions, which Adams denied. *Id.* Adams denied current excessive use of Ultram but said that there had been a period during which his use was excessive. Defendants' SMF ¶ 32; Plaintiff's Opposing SMF ¶ 32. Adams denied relabeling old prescriptions. *Id.*

Miller felt Adams was not being truthful based on Adams' body language and lack of eye contact. *Id.* ¶ 35. He did not believe a statement by Adams that the last time he had taken Ultram was the previous week. *Id.*

At the time of the meeting, Gracie felt that Adams' employment "was probably going to be terminated" for unauthorized prescriptions, excessive use of Ultram and unprofessional conduct. *Id.* ¶ 19. Although Gracie had no evidence that Adams had made prescription errors, he was concerned that if Adams were using excessive amounts of Ultram he might make such an error in the future. *Id.* The customer history report indicated that Adams was taking "well beyond what the manufacturer recommended to use in a day." *Id.* Adams denies that Gracie could have been concerned about either

excessive Ultram use or filling of unauthorized prescriptions inasmuch as Gracie had allowed him to work between sixty and one hundred hours per week. Plaintiff's Opposing SMF ¶ 18; Defendants' Reply SMF ¶ 18.

Gracie had not received any complaints, reports or statements concerning a problem with Adams' performance or conduct as a pharmacist, had no evidence that Adams ever made a mistake while working as a pharmacist and had no evidence that Adams had relabeled old prescriptions. *Id.* ¶ 19.¹⁹

At the end of the meeting Miller asked Adams to write a statement. Defendants' SMF ¶ 20; Plaintiff's Opposing SMF ¶ 20. Adams wrote: "I agree my use has been excessive." *Id.* ¶ 73. By the term "excessive," Adams meant that he was taking more Ultram tablets than the recommended daily dosage of eight, but was within the daily amount prescribed by his doctor, which was twelve. Plaintiff's Opposing SMF ¶ 20; Defendants' Reply SMF ¶ 20. He did not feel that the amount of Ultram he was using between July 1, 1998 and July 23, 1998 in any way impaired his ability to function at work. *Id.* In his statement, Adams also wrote: "I had been using in March and April 12 to 15 tabs per day, no use in May, and again 10 to 15 tabs per day in June, July." Defendants' SMF ¶ 74; Plaintiff's Opposing SMF ¶ 74. He agrees that these numbers represent his "rough estimates" of his Ultram consumption during the specified time frames. *Id.* He also wrote: "All prescriptions are legal from the physicians, even those on file at Goodnow's Drug." *Id.* ¶ 75. In addition, he wrote: "The last time I took Ultram was last week." *Id.* ¶ 77. Adams admits that this statement was not correct and that he had taken Ultram that morning. *Id.* Adams also testified that as of July 22, 1998 he believes he was addicted to Ultram. *Id.* ¶ 78.

¹⁹ Dr. Woodruff viewed Adams as one of the two most outstanding pharmacists in the Rockland area. Plaintiff's Opposing SMF ¶ 39; Defendants' Reply SMF ¶ 39. This view was shared by other pharmacists in the area. *Id.*

The upshot of the meeting was that Adams was suspended without pay pending further investigation. *Id.* ¶ 81; Plaintiff’s Opposing SMF ¶ 21; Defendants’ Reply SMF ¶ 21.

After the meeting Gracie offered to meet with Adams, and Adams agreed. Plaintiff’s Opposing SMF ¶ 21; Defendants’ Reply SMF ¶ 21. They drove to a Dunkin Donuts restaurant and had a brief conversation. *Id.* Adams asked Gracie how long the investigation would take to complete; Gracie avoided answering. *Id.* Gracie then proceeded to ask Adams if he would find any drugs missing if he did an inventory. *Id.* Specifically, Gracie asked if any controlled substances would be found missing. *Id.* He eventually asked if any Ultram would be missing. *Id.* Adams told Gracie that he might find one hundred Ultram tablets missing. *Id.*²⁰ At his deposition, Adams explained that what he had meant by this was that because Ultram is not a controlled substance and there is no exact inventory, “we could have been shorted drugs and never know it.” *Id.* “And there was no way I’m going to take responsibility if there was some Ultram missing and he’s going to accuse me of it. Because I don’t have any idea in the first place if I ever got shorted any Ultram.” *Id.*²¹

Gracie interpreted Adams’ response as an admission that he had taken two hundred Ultram from the pharmacy. Defendants’ SMF ¶ 21; Plaintiff’s Opposing SMF ¶ 21. Gracie acknowledges that Adams did not admit that he had stolen or obtained Ultram without a proper authorization; however, according to Gracie, Adams “implied” that Gracie would find up to two hundred Ultram tablets missing because of Adams. Plaintiff’s Opposing SMF ¶ 22; Defendants’ Reply SMF ¶ 22. Gracie did not ask Adams why he would find one hundred or two hundred tablets missing. *Id.* At the end of the Dunkin Donuts meeting, Gracie did not feel that Adams had been completely truthful with him. Defendants’ SMF ¶ 22; Plaintiff’s Opposing SMF ¶ 22.

²⁰ The defendants state that Adams indicated that Gracie would find up to two hundred missing Ultram. Defendants’ SMF ¶ 21.

²¹ Adams states that he told Gracie he might find Ultram tablets missing “because Ultram is not a controlled substance and there is not an exact inventory.” Plaintiff’s Opposing SMF ¶ 21. However, as the defendants point out, the cited deposition testimony does not
(continued on next page)

When Gracie returned to the pharmacy he began to conduct an audit of the controlled drugs but did not complete it because he had not uncovered any evidence that Adams had obtained controlled substances. *Id.* ¶ 23. Gracie did not conduct an audit of noncontrolled substances because it would have been impossible to detect a loss in the relatively small amount of two hundred tablets. *Id.*

Later that afternoon Linda Adams contacted Gracie to ask him to meet with Adams that evening. *Id.* ¶ 24. That evening, Adams admitted that he was taking four or six Ultram tablets in the morning before he went to work. *Id.* This was a major concern to Gracie “because taking that many can precipitate a seizure.” *Id.* During the meeting, Gracie pressed Adams to admit what he had done wrong. Plaintiff’s Opposing SMF ¶ 24; Defendants’ Reply SMF ¶ 24. Thinking Gracie was referring to forging prescriptions, Adams called Dr. Woodruff, but Gracie refused to speak with him. *Id.* Gracie never clarified what he wanted Adams to admit. *Id.*

The information provided by Adams during the Dunkin Donuts meeting contributed to the decision to terminate Adams’ employment because it “was another piece that shows a pattern of unprofessional conduct.” Defendant’s SMF ¶ 25; Plaintiff’s Opposing SMF ¶ 25. Miller did not participate in any further investigation or audit because there was no issue of theft. Plaintiff’s Opposing SMF ¶ 36; Defendants’ Reply SMF ¶ 36.²²

From Gracie’s perspective, the final decision to terminate Adams’ employment was made after the Pharmacy Board sent Adams’ license for permanent revocation proceedings. Defendants’ SMF ¶

indicate that Adams explained this to Gracie at the time. *See* Defendants’ Reply SMF ¶ 21; Adams Dep. at 154-55.

²² Miller completed a report regarding the July 1998 investigation in which he indicated that he had concluded that Adams’ excessive use of the drug Ultram was deceptive and that he felt Adams took drugs without a legal prescription on file. Defendants’ SMF ¶ 38; Plaintiff’s Opposing SMF ¶ 38. Although Miller does not recall any specific facts regarding the decision to terminate Adams, he believes he recommended that his employment be terminated. *Id.* ¶ 37.

26; Plaintiff's Opposing SMF ¶ 26. Gracie assumed at that point that Adams did not have a valid license to practice pharmacy in the State of Maine. *Id.*²³

On September 22, 1998 Gracie faxed to Rite Aid's payroll department a payroll status form that effected a termination of Adams' employment. *Id.* ¶ 27. However, Adams was sent a COBRA notice dated September 10, 1998 notifying him that his employer-provided health insurance benefits had ended on August 31, 1998. *Id.*

Adams began intensive outpatient treatment within a week after his employment was suspended. *Id.* ¶ 83. However, because he could not stop taking Ultram, he decided to enter the Talbott Recovery Campus in Atlanta, Georgia. *Id.* He was in a residential treatment program, first at Talbott and then at an affiliated entity, St. Jude's (also in Atlanta), from August 8, 1998 to May 1999. *Id.* He then completed two additional weeks of treatment at Talbott. *Id.* He feels that he was totally disabled from practicing pharmacy from August 8, 1998 through May 8, 1999. *Id.* ¶ 85. Gracie learned from Simmons that Adams was undergoing substance-abuse treatment in Georgia. *Id.* ¶ 28.²⁴

III. Analysis

A. Counts I and II: ADA and MHRA Violations

In Count I of his complaint, Adams charges that Rite Aid terminated his employment in violation of the Americans with Disabilities Act ("ADA") on the basis of his actual or perceived disability of drug addiction or his record of having had such a disability. Complaint ¶¶ 28-31. He

²³ Adams' assertions that (i) the Pharmacy Board neither revoked his license nor sent it to the Attorney General's office for the express purpose of revocation and (ii) Gracie could not reasonably have believed that, as of September 8, 1998, Adams did not or would not have a license are not supported by any record citation. Plaintiff's Opposing SMF ¶ 26; Defendants' Reply SMF ¶ 26. The following additional statement is not supported by the citations given: that the Administrative Court rejected the Pharmacy Board's attempt to revoke the license. *Id.*

²⁴ Adams' statement that Gracie learned this information on or before August 11, 1998 is not supported by the record citation given. Plaintiff's Opposing SMF ¶ 28; Defendants' Reply SMF ¶ 28.

alleges in Count II that Rite Aid discriminated against him on the basis of disability in violation of the Maine Human Rights Act (“MHRA”). *Id.* ¶¶ 32-34.

The ADA proscribes discrimination by a covered entity “against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a).

The defendants seek summary judgment as to Count I on three alternative grounds: that (i) Adams was “currently engaging in the illegal use of drugs” at the time of his discharge and thus per 42 U.S.C. § 12114(a) was not a “qualified” person with a disability; (ii) Adams fails to adduce evidence that he was fired on the basis of disability rather than misconduct or that misconduct was a pretext; and (iii) Adams was not a person with a “disability” inasmuch as his drug addiction neither was disabling nor regarded by Rite Aid as having been so. Defendants’ Motion at 3-13; Defendants’ Reply at 3-6.²⁵ The defendants seek summary judgment as to Count II on the basis that the ADA analysis is dispositive of the MHRA claim. Defendants’ Motion at 13. The defendants’ first ground for summary judgment is unavailing; however, the third or, alternatively, the second grounds are dispositive as to both Counts I and II.

In their first ground for summary judgment, the defendants rely on an ADA provision explicitly addressing the taking of adverse employment action against an employee based on current drug or alcohol abuse: “[T]he term ‘qualified individual with a disability’ shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the

²⁵ Although the third ground is presented for the first time in a reply memorandum, a circumstance that normally would counsel its disregard, *see, e.g., In re One Bancorp Sec. Litig.*, 134 F.R.D. 4, 10 n.5 (D. Me. 1991) (court generally will not address an argument advanced for the first time in a reply memorandum), the defendants in this instance fairly respond to a point put in play by Adams, *see* Plaintiff’s Opposition at 8-9; Loc. R. 7(c) (reply memorandum “shall be strictly confined to replying to new matter raised in the objection or opposing memorandum.”).

basis of such use.” *Id.* § 12114(a). A “drug” is defined as “a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.” *Id.* § 12111(6)(B). The term “illegal use of drugs” is defined as “the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act.” *Id.* § 12111(6)(A).

Ultram is not a controlled substance. The defendants do not cite, nor can I find, any authority pursuant to which section 12114(a) has been applied (even by analogy) in the context of usage of a non-controlled substance. The provision simply is inapposite.

The defendants nonetheless argue persuasively that Adams is excluded from the ambit of the ADA on another basis: that he does not meet the definition of “disability” for purposes of the ADA. Defendants’ Reply at 3-4.

The ADA defines “disability” as “(A) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.” 42 U.S.C. § 12102(2). Adams asserts that (i) drug addiction and alcoholism are recognized essentially as *per se* covered disabilities under the ADA, (ii) there is ample evidence of record that he suffered from addiction to Ultram and (iii) he was perceived by certain Rite Aid employees as a drug addict. Plaintiffs’ Opposition at 8-9. However, as the defendants point out, Defendants Reply at 3, the ADA contemplates individualized assessment of the fact of “disability.” *See, e.g., Albertson’s, Inc. v. Kirkingburg*, 527 U.S. 555, 567 (1999) (“[T]he Act requires monocular individuals, like others claiming the Act’s protection, to prove a disability by offering evidence that the extent of the limitation in terms of their own experience . . . is substantial.”); *Quint v. A.E. Staley Mfg. Co.*, 172 F.3d 1, 13 (1st Cir. 1999) (“The ADA explicitly contemplates that

the ‘disability’ determination is to be made by the factfinder on an individualized, case-by-case basis.”²⁶

EEOC regulations define “major life activities” as “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working,” and “substantially limits” as “[u]nable to perform a major life activity that the average person in the general population can perform” or “[s]ignificantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.” 29 C.F.R. § 1630.2(i) & (j).

Even under theories of historic and perceived disability, analysis of degree of limitation (real or perceived) is central. Pursuant to EEOC regulations:

(k) Has a record of such impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(l) Is regarded as having such an impairment means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation;

²⁶ The Supreme Court in *Albertson’s* arguably left the door open to treatment of certain impairments as inherently “disabling” for purposes of the ADA. *Albertson’s*, 527 U.S. at 566 (“While some impairments may invariably cause a substantial limitation of a major life activity, we cannot say that monocularly does. . . . These variables [in the level of restriction caused by monocularly] are not the stuff of a per se rule.”). In a case cited by Adams, Plaintiff’s Opposition at 8, the First Circuit observed that “case law under both [the ADA and the Federal Rehabilitation Act] treats alcoholism as a covered disability.” *Evans v. Federal Express Corp.*, 133 F.3d 137, 139 (1st Cir. 1998). The defendant in *Evans* had conceded disability. *Id.* I do not construe this dictum (the defendant had conceded disability) as standing for the proposition that alcoholism is *per se* disabling for ADA purposes; however, even if it did, I neither find First Circuit caselaw addressing whether drug addiction properly is so categorized nor am willing to assume that it inherently causes substantial limitation regardless of type of drug and mental or physical characteristics of individual. Indeed, the facts adduced in this case suggest that, as in the case of monocularly, there are many variables. See also *Zenor v. El Paso Healthcare Sys., Ltd.*, 176 F.3d 847, 860 (5th Cir. 1999) (“[E]ven a plaintiff who suffers from a condition such as alcoholism or drug addiction or is perceived as suffering from such a condition must demonstrate that the condition substantially limits, or is perceived by his employer as substantially limiting, his ability to perform a major life function.”); *Buckley v. Consolidated Edison Co. of New York*, 127 F.3d 270, 273-74 (2d Cir. 1997), *vacated on reconsideration on other grounds*, 155 F.3d 150 (2d Cir. 1998) (noting that, although ADA covers recovering drug addicts, an individual alleging a record of disability “must demonstrate that he was actually addicted to drugs or alcohol in the past, and that this addiction substantially limited one or more of his major life activities.”).

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraphs (h) (1) or (2) of this section but is treated by a covered entity as having a substantially limiting impairment.

Id. § 1630.2.

Even assuming *arguendo* that Rite Aid perceived Adams as a “drug addict,” there is no evidence from which a trier of fact reasonably could conclude that as of September 22, 1998 (the day Adams’ employment officially was terminated), Rite Aid regarded him as having had an affliction that substantially limited one or more major life activities. To the contrary, Rite Aid had given him raises and a promotion and had permitted him to work substantial overtime hours.

Nor did Adams have a record of having had such an impairment. He did indeed have a longstanding history of addiction; however, he adduces no evidence that this condition ever manifested itself in limitation on such activities as caring for himself, walking, seeing or hearing. With respect to the major life activity of working, the record reveals two events of note: (i) a five-day hospitalization for substance-abuse treatment in May 1997 and (ii) a contemporaneous admonishment from Adams’ treating physician that he limit himself to a forty-hour workweek. However, neither establishes a record of “substantial limitation.” Absences as long as seven months for hospitalization or treatment have been deemed too short to establish substantial limitation on ability to work. *See, e.g., Colwell v. Suffolk County Police Dep’t*, 158 F.3d 635, 646 (2d Cir. 1998) (“A jury could reasonably find that Ellinger was unable to work during his recuperation from the hemorrhage (one month in the hospital and six months at home), but a seven-month impairment of his ability to work, with the non-particularized and unspecific residual limitations described on his police work, is of too short a duration and too vague an extent to be ‘substantially limiting.’); *see also Burch v. Coca-Cola Co.*, 119 F.3d 305, 312, 316-17, 322 (5th Cir. 1997) (ten-day hospitalization for alcohol abuse followed by

period of outpatient treatment during which plaintiff sought to work part-time did not establish substantial limitation on major life activity or existence of record of such an impairment). And Adams adduces no evidence that the restriction to a forty-hour workweek constituted a substantial limitation on working in the sense contemplated by EEOC regulations “significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities.” 29 C.F.R. § 1630.2(j)(3)(i); *see also Tardie v. Rehabilitation Hosp. of Rhode Island*, 168 F.3d 538, 542 (1st Cir. 1999) (“[T]he fact that appellees may have regarded Tardie as unable to work more than 40 hours per week, and thereby unable to perform her particular job, does not mean that appellees regarded her as being substantially limited in the major life activity of working. An impairment that disqualifies a person from only a narrow range of jobs is not considered a substantially limiting one.”) (citations and internal quotation marks omitted).

Nor, finally, does Adams demonstrate that as of either July 22, 1998 (when he was suspended) or September 22, 1998 (when his employment was terminated) he was then a person with a “disability.” Following his suspension, Adams entered a treatment program in Georgia on August 8, 1998. Approximately six weeks later his employment was terminated. As it turned out, Adams was hospitalized and considers himself to have been disabled from working until May 1999, a period of nine months. As an initial matter, it is doubtful that even a nine-month leave for treatment of what arguably is a chronic or permanent condition constitutes a “substantial limitation” on ability to work in the absence of any evidence of expected residual restriction. *See, e.g., Colwell*, 158 F.3d at 646; *see also Santiago Clemente v. Executive Airlines, Inc.* 213 F.3d 25, 31 (1st Cir. 2000) (“Even assuming that Santiago’s impairment was potentially long-term, however, there is no evidence that the temporary diminution in her right-ear hearing had a *severe* impact on her functional ability to hear. . . . Nor is

there any evidence that the hearing loss actually affected Santiago’s activities in some specific way.”) (emphasis in original).

In any event, the language of EEOC guidelines suggests that the relevant inquiry is not whether, in the light of hindsight, Adams could be viewed as “disabled” but whether, as of the time of his employment termination, his restrictions reasonably could have been expected to rise to a “disabling” level:

Although short-term, temporary restrictions generally are not substantially limiting, an impairment does not necessarily have to be permanent to rise to the level of a disability. Some conditions may be long-term or potentially long-term, in that their duration is indefinite and unknowable or is expected to be at least several months. Such conditions, if severe, may constitute disabilities.

Katz v. City Metal Co., 87 F.3d 26, 31 (1st Cir. 1996) (quoting 2 EEOC Compliance Manual, Interpretations (CCH) § 902.4, ¶ 6884, p. 5319 (1995)); *see also Aldrich v. Boeing Co.*, 146 F.3d 1265, 1270 (10th Cir. 1998) (doctors’ statements would enable reasonable jury to conclude that plaintiff’s flexor tenosynovitis became substantially limiting and duty to accommodate arose as of December 9, 1992, as of which time it was “a severe condition that was permanent or was expected to persist on a long-term basis because its anticipated duration was indefinite, unknowable, or was expected to be at least several months.”).²⁷

Adams adduces no evidence regarding whether, as of September 1998, his treatment was expected to last any particular length of time or the need for such treatment was expected to recur. Although, on summary judgment, one must draw all reasonable inferences in favor of the non-movant,

²⁷ I find one reported case in which the Court of Appeals for the Fourth Circuit held, in response to an employee’s claim that his employer could not have known at the time of his discharge that his condition was only temporary: “Even if true, that fact is of no import. The relevant inquiry in this case is not whether [the employer] knew at the time [the employee] was terminated that his injury was only temporary (and, therefore, not a substantial limitation on his ability to work), but whether [the employee’s] injury was in fact only temporary.” *Halperin v. Abacus Tech. Corp.*, 128 F.3d 191, 200 n.13 (4th Cir. 1997), *abrogated on other grounds by Baird ex rel. Baird v. Rose*, 192 F.3d 462 (4th Cir. 1999). By this, the *Halperin* court did not mean that significance of restrictions post-dating an employee’s termination must be judged in the light of hindsight, but rather that the employer’s knowledge is immaterial. *See id.* at 200 (observing that “[t]he evidence in the record regarding the expected duration of [the employee’s] impairment strongly (continued on next page)

it is too great a stretch simply to infer from the fact that the hospitalization lasted nine months that it could have been expected as of September 22, 1998 to have done so. Accordingly, Adams fails to demonstrate that at any relevant time he was a person with a “disability” and accordingly entitled to the protection of the ADA.

In any event, even assuming *arguendo* that Adams were a person with a “disability,” he fails to demonstrate that there is a triable issue whether he was “fired because of his disability, or that his disability was a motivating factor in [Rite Aid’s] decision to fire him.” *Katz*, 87 F.3d at 33.

Adams first points to what he contends are three comments directly evidencing Rite Aid’s animus toward his disability: (i) Miller’s 1997 comment that if Adams relapsed and began using Ultram again, he would be fired; (ii) Cannon’s remark to Gracie in spring 1998 that Adams was “off the wagon again,” which Gracie understood referred to Adams’ past addiction problems; and (iii) Gracie’s testimony that when he looked in Adams’ personnel file during his 1998 investigation and read the consent agreement, he concluded that Adams “had a problem in the past and perhaps that he had relapsed at this point.” Plaintiff’s Opposition at 13.

None of these remarks reasonably can be construed as evidencing animus against a person with the disability of addiction *per se*. Rather, all three comments reflect concern about possible ongoing, active misuse of the prescription drug Ultram — an entirely contradistinct and legitimate area of concern for the employer of a pharmacist.²⁸ *See, e.g., Figueroa v. Fajardo*, 1 F. Supp.2d 117, 122 (D. P.R. 1998) (“[W]e must distinguish between the particular conduct of a disabled individual and the disabling condition *per se*. In this particular case, ‘Courts have recognized a distinction between

suggests that it was only transitory.”).

²⁸ In addition, there is no evidence that Cannon was a decisionmaker with regard to Adams’ suspension or termination from employment. Hence, his “stray” remark is of little to no probative value. *See, e.g., Fernandes v. Costa Bros. Masonry, Inc.*, 199 F.3d 572, 581 (1st Cir. 1999) (“stray remarks, such as statements by nondecisionmakers, or statements by decisionmakers unrelated to the decisional process itself,” do not constitute direct evidence of discriminatory animus) (citation and internal quotation marks *(continued on next page)*)

termination of employment because of misconduct and termination of employment because of a disability.’”) (quoting *Collings v. Longview Fibre Co.*, 63 F.3d 828, 832 (9th Cir. 1995)).

Even accepting that, as Adams contends, he was not in fact misusing Ultram and his job performance at Rite Aid was unaffected by his use, Rite Aid had reasonable basis for concern. Adams had a past history not only of addiction but also of serious misconduct. His maintenance of a license to practice pharmacy was conditioned on avoidance of any further drug misuse. In both 1997 and 1998 Simmons reported behavior consistent with drug misuse including Adams’ use of Simmons to purchase Ultram via cash-register transactions.

Whatever Simmons’ credibility and Adams adduces no evidence that any Rite Aid decisionmaker had reason at the relevant times to doubt it in both 1997 and 1998 Cannon, Miller and Gracie turned up independent evidence tending to corroborate their concerns. In 1997, for example, Cannon discovered shortages of Ultram and noted that several physicians were listed as having prescribed Ultram for Adams including a pediatrician. Adams himself acknowledged that he was having a problem with Ultram when confronted at that time. In 1998, Cannon again discovered that several physicians, including a pediatrician, were listed as having prescribed Adams’ Ultram. When contacted by Gracie, Dr. Woodruff denied having authorized two specific Ultram prescriptions for Adams. At the July 22, 1998 meeting with Miller and Gracie, Adams acknowledged in writing that he was using “excessive” amounts of Ultram. When Gracie asked Adams at the Dunkin Donuts meeting whether upon inventorying he would find any Ultram missing, Adams answered in the affirmative with respect to the quantity of one hundred tablets.

Adams adduces evidence that (i) after the conversation with Gracie, Dr. Woodruff wrote a letter indicating that he had no reason to doubt Adams’ word as to which Ultram prescriptions had

omitted).

been authorized for Adams; (ii) when Adams admitted to “excessive” use he did not mean to imply that he was taking more than Dr. Woodruff had prescribed; and (iii) when Adams indicated that Gracie would find Ultram missing, he hardly meant to imply that he was responsible for its disappearance but, to the contrary, was indicating that Ultram might be missing because it is not a controlled substance and not tightly inventoried. However, none of this creates any serious doubt that, at the time of its adverse actions, Rite Aid reasonably if wrongly believed that Adams had forged two Ultram prescriptions, had admitted to misusing Ultram and had acknowledged responsibility for the disappearance of a small quantity of Ultram from the pharmacy. As Adams concedes, inquiry into whether an employee was fired based on misconduct versus actual or perceived disability “primarily focuses on what the employer knew at the time of the termination.” Plaintiff’s Opposition at 14 (citing *Collings*, 63 F.3d at 834).²⁹

Finally, Adams’ history with Rite Aid and its predecessor, Brooks, tends to undermine any finding that the three remarks in issue evidence discriminatory animus. In 1989, Cannon assisted Adams in regaining his license despite his knowledge that Adams not only suffered from drug dependency but also had surrendered his license as a result of related misconduct. Rite Aid had given Adams three raises and a promotion despite Cannon’s and Miller’s detailed knowledge and Gracie’s passing knowledge of Adams’ drug-abuse problems.

Adams next contends alternatively that he adduces sufficient indirect evidence of pretext to survive summary judgment. Plaintiff’s Opposition at 14-20. He notes that Rite Aid in October 1998 sent a letter explaining the reasons for his termination, each of which (in his view) could be found by a trier of fact to be pretextual. *Id.* at 15-16. I disagree. The Rite Aid letter noted:

²⁹ Adams’ arguments notwithstanding, it is difficult to imagine how Adams could have perceived Gracie, during the Dunkin Donuts conversation, as asking anything other than whether Adams had stolen Ultram tablets from Rite Aid. Gracie made clear that he intended to do a complete inventory and wanted to save time in determining whether anything would be “missing.”

1. That Adams had received a September 12, 1996 written warning for purchasing Ultram without a valid prescription. *Id.* at 15. According to Adams, this is pretext inasmuch as Adams was told by his then-supervisor, Cavaretta, that this was not “not a problem” and pharmacists routinely provide patients with enough medicine to hold them over until they can get a new prescription. *Id.* at 16. Nonetheless, there is no question that Adams did in fact receive the written warning in question and that it was based on his having obtained Ultram without a then-valid prescription.

2. That in June 1998 “it was brought to management’s attention by both a pharmacist and a technician that we should start an investigation into your medication usage for the safety of Rite Aid patients and for your own well-being.” *Id.* at 15. Adams states that Simmons’ rumors were not based on direct evidence, that he did not in fact take frequent breaks as reported by Simmons and that Simmons’ credibility is dubious. *Id.* at 16-17. However, Adams does not dispute that Simmons did make the reports in question. Under the circumstances which included Adams’ history of serious drug misuse and conditional licensing Rite Aid acted entirely reasonably in investigating (rather than simply ignoring) the Simmons “rumors.” Moreover, there is no evidence that Rite Aid decisionmakers had reason at the relevant times to question Adams’ credibility.

3. That on July 13, 1998 Dr. Alan Woodruff was contacted and denied authorizing two Ultram prescriptions for Adams. *Id.* at 15. According to Adams, Dr. Woodruff merely stated in a general sense that he did not recall calling in a prescription for Adams at any store but Rockland and would not have written a prescription for Adams that allowed five refills of Ultram. *Id.* at 17. Adams also asserts that there is evidence that Dr. Woodruff did in fact write prescriptions allowing up to five refills for Adams. *Id.* Nonetheless, at deposition Dr. Woodruff confirmed that he did deny to Gracie that he had authorized the two prescriptions in question. Whether he actually ever authorized them is beside the point. Adams again fails to demonstrate pretext.

4. That on July 22, 1998 Adams admitted in writing that his Ultram usage had been “excessive,” that he further wrote that the last time he had taken Ultram was “last week” and that he subsequently admitted the latter statement was false. *Id.* at 15. Adams explains that by “excessive,” he meant that he had on occasion taken more than the recommended daily limit of eight but not more than permitted by prescription and that he lied because he felt that Miller and Gracie had no business asking questions about his lawful use of a lawful drug and were trying to establish that he was an addict. *Id.* at 17. Again, none of this establishes pretext. Adams did in fact write that his use had been “excessive” and did in fact admit that he had lied regarding the last time he had taken Ultram. There is no reason to believe either that Gracie and Miller (i) knew what Adams meant by “excessive” (there being no evidence that he explained it at the time) or (ii) would have been trying to establish that Adams was an “addict” (his history was by then known to both).

5. That on July 22, 1998 Adams stated that upon auditing the medication Ultram at the Rockland store Rite Aid would find a shortage of approximately two hundred tablets and that Adams implied that he was responsible for that. *Id.* at 15. Adams contends that he never admitted stealing Ultram; that Gracie never directly asked Adams whether he was responsible for any missing amounts; and that Adams did not think it necessary at the time to clarify his meaning that one hundred tablets might be missing simply because inventory of Ultram is not as tightly monitored as is the case with controlled substances. *Id.* at 18. Adams establishes at most that Rite Aid labored under an unfortunate misunderstanding not that this ground for termination was a pretext. Under the circumstances, Gracie reasonably understood Adams to be implying that he was responsible for the disappearance of the tablets in question.

6. That on September 8, 1998 the Pharmacy Board referred Adams’ license to the Maine Attorney General to commence permanent revocation proceedings. *Id.* at 15. Adams asserts that the

minutes of the Pharmacy Board meeting state that the board voted to refer the case for “possible” revocation; that Gracie should have understood that the board action did not mean that Adams’ license would be revoked; that the board in fact did not revoke his license; and that Gracie himself initiated the complaint to the Pharmacy Board based on scant evidence so that the Pharmacy Board could do the “heavy lifting” against Adams. *Id.* at 19. These statements are not cognizable on summary judgment inasmuch as the relevant portions of Adams’ statement of material facts are neither admitted nor supported by record citations as required by Loc. R. 56.

Even were these statements cognizable, no reasonable trier of fact could conclude that Rite Aid’s citation of the Pharmacy Board action was a pretext for termination based on disability. If Gracie did initiate a report, he did so based on reasonable (if mistaken) perceptions of misconduct. Gracie may have negligently or even recklessly misperceived Adams’ license status (Adams does not claim that Gracie knowingly lied), but Adams’ license fairly could have been perceived at the time as being in serious jeopardy. In any event, in view of Rite Aid’s five additional, nonpretextual grounds for Adams’ termination and its history of having given him raises and a promotion despite its knowledge of his drug-addiction problems, no reasonable trier of fact could find that Rite Aid’s citation of the Pharmacy Board action was a pretext for discrimination based on disability. *See, e.g., Reeves v. Sanderson Plumbing Prods., Inc.*, 120 S.Ct. 2097, 2108-09 (2000) (noting that, although “it is permissible for the trier of fact to infer the ultimate fact of discrimination from the falsity of the employer’s explanation,” there are instances where such a showing is inadequate to sustain a finding of liability; “[f]or instance, an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer’s decision, or if the plaintiff created only a weak issue of fact as to whether the employer’s reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred.”).

For these reasons, the defendants are entitled to summary judgment as to Adams' ADA claim (Count I). The defendants contend that the same analysis controls the outcome with respect to Adams' MHRA claim (Count II). Defendants' Motion at 13. Adams disagrees, arguing that the MHRA's definition of "physical or mental handicap" is arguably broader than that of the ADA and that the MHRA, unlike the ADA, does not expressly exclude persons currently using illegal drugs. Plaintiff's Opposition at 20. There is no question that Adams has an "impairment," and this decision does not turn on application of the inapposite illegal-drug provision. However, on the questions whether a person is "disabled" and whether he or she has been subject to discrimination based on disability, MHRA analysis tracks that of the ADA. *See, e.g., Bilodeau v. Mega Indus.*, 50 F. Supp.2d 27, 46 (D. Me. 1999) (applying pretext prong of *McDonnell Douglas* burden-shifting analysis to both ADA, MHRA disability discrimination claims); *Soileau v. Guilford of Maine, Inc.*, 928 F. Supp. 37, 45, 47-52 (D. Me. 1996), *aff'd*, 105 F.3d 12 (1st Cir. 1997) (applying same definition of "disability" in both ADA, MHRA context). On this basis the defendants are entitled to summary judgment as to Count II.

B. Count III (FMLA)

Adams asserts in Count III of his complaint that Rite Aid violated the federal Family and Medical Leave Act ("FMLA") by failing to respond to his request for FMLA leave and retaliating against him for asserting his rights under the FMLA. Complaint ¶¶ 35-40. Adams' termination clearly was not in retaliation for assertion of FMLA rights; according to his complaint, he did not request retroactive leave until October 1, 1998, eight days after his employment was terminated. *See id.* ¶ 38.

Nor does Adams prove a substantive FMLA violation. "Pursuant to the FMLA, 'an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period . . . [b]ecause of a serious health condition that makes the employee unable to perform the functions of the

position of such employee.” *Watkins v. J & S Oil Co.*, 164 F.3d 55, 59 (1st Cir. 1998) (quoting 29 U.S.C. § 2612(a)(1)(D)). “Any employee who takes such a leave ‘shall be entitled, on return from such leave (A) to be restored by the employer to the [previous] position . . . or (B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.” *Id.* (quoting 29 U.S.C. § 2614(a)(1)(A), (B)).

Adams states that he considered himself disabled from working from August 8, 1998 through May 8, 1999. Hence, his leave would have extended considerably beyond the protected twelve-week period. He therefore was not deprived of restoration to a job to which he would have been entitled absent his termination. *See, e.g., Bellido-Sullivan v. American Int’l Group*, 123 F.Supp.2d 161, 168 n.10 (S.D.N.Y. 2000) (to make out claim under FMLA employee must demonstrate *inter alia* that leaves of absence did not exceed maximum allowable).

Nor does Adams argue that Rite Aid’s failure to acknowledge his request for FMLA leave in itself interfered with his substantive FMLA rights. Plaintiff’s Opposition at 20-22; *compare, e.g., Ragsdale v. Wolverine Worldwide, Inc.*, 218 F.3d 933, 939-40 (8th Cir. 2000) (“There are various situations in which an employer’s failure to give notice may function to interfere with or to deny an employee’s substantive FMLA rights. For example, notice could be necessary where the employee claims that the sole reason she exceeded her FMLA leave was due to the employer’s failure to notify her that her leave was designated as FMLA leave and if she had been so notified, she would have returned to work at the end of twelve weeks.”).³⁰

³⁰ *Weeden v. Sears, Roebuck & Co.*, 1999 WL 970538 (D. N.H. 1999), on which Adams heavily relies, is distinguishable. The employer in *Weeden* asserted that it had not been put on notice of Weeden’s need for FMLA leave until after he was, or was in the process of being, fired, and thus Weeden was no longer eligible to request FMLA leave. *Id.* at *5. The court held that a genuine issue of material fact existed as to whether this was so, precluding summary judgment. *Id.* Weeden’s employer did not contend, as Rite Aid does here, that Weeden’s FMLA leave would have exceeded twelve weeks. In any event, Adams adduces no evidence cognizable on summary judgment (*i.e.*, either admitted or supported by the record citations given) that he put Rite Aid on notice of his need for FMLA leave prior to his letter dated October 1, 1998, by which point his employment clearly had been terminated.

The defendants hence are entitled to summary judgment with respect to Adams' FMLA claim (Count III).

C. Counts V, VI and VIII: State-Law Claims

The foregoing recommended disposition would leave no remaining federal claims. Accordingly, I further recommend that (i) the court enter summary judgment in favor of the defendants as to that portion of Count VIII (punitive damages) premised on violation of Counts I-IV and VII, and that (ii) the court refrain from exercising its supplemental jurisdiction over the remaining state-law claims, Count V (libel), Count VI (invasion of privacy) and that portion of Count VIII (punitive damages) premised on violation of Counts V and VI, which I recommend be remanded to the Maine Superior Court (Knox County). *See* Complaint ¶¶ 43-54, 59-61; *Camelio v. American Fed'n*, 137 F.3d 666, 672 (1st Cir. 1998) (“[T]he balance of competing factors ordinarily will weigh strongly in favor of declining jurisdiction over state law claims where the foundational federal claims have been dismissed at an early stage in the litigation.”).³¹

IV. Conclusion

For the foregoing reasons, I recommend that the Defendants' Motion be **GRANTED** as to Counts I-IV, Count VII and that portion of Count VIII predicated on violation of Counts I-IV and Count VII, and that the remaining counts (Counts V-VI and that portion of Count VIII predicated on violation of Counts V-VI) be **REMANDED** to the Maine Superior Court (Knox County).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B)

³¹Adams' MHRA claim, which is disposed of on the same basis as his ADA claim, properly is reached on the merits. *See Van Harken v. City of Chicago*, 103 F.3d 1346, 1354 (1st Cir. 1997) (noting appropriateness of exercise of supplemental jurisdiction to adjudicate state-law claim that is coterminous on merits with federal claim).

for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 8th day of February, 2001.

*David M. Cohen
United States Magistrate Judge*

TRLIST STNDRD

U.S. District Court
District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 00-CV-226

ADAMS v. RITE AID OF MAINE, et al
Assigned to: JUDGE D. BROCK HORNBY
Demand: \$0,000
Lead Docket: None
Dkt # in Knox SC : is 00-046

Filed: 08/07/00
Jury demand: Both
Nature of Suit: 442
Jurisdiction: Federal Question

Cause: 29:2615 Family and Medical Leave Act

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