STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION

IN THE MATTER OF:	)	
	)	
Advent Medical Products, Inc., and Randall Fincke	)	**FINDINGS, RULINGS AND ORDER**
	)	
	)	
Respondents	)	**I-2018-00036**
	)	

Procedural History

On March 28, 2023, the N.H. Department of State, Bureau of Securities Regulation (hereinafter referred to as "the Bureau") filed a Staff Petition for Relief against the above-captioned respondents alleging violation of New Hampshire RSA 421-B and requesting relief.

A Cease and Desist Order was issued on March 29, 2023 commencing the adjudicative proceeding in this matter. Service of the Staff Petition and Order was made, and on April 11, 2023, the Respondents requested a hearing.

On March 25, 2024, the Bureau filed a Motion to Amend the Staff Petition based on new evidence and allegations. The motion was granted on April 5, 2024.

One June 18, 2024, the Bureau filed a Motion in Limine seeking to deny Respondent Randall Finke as an expert witness. On June 27, 2024 counsel for the Respondent filed and Objection to Bureau's Motion in Limine. The Bureau's Motion was granted on July 5, 2024.

On July 8, 2024 a scheduling conference was held at the Bureau of Securities, 25 Capitol Street, Concord, N.H.

On July 12, 2024, the Respondents filed a Motion for Reconsideration of Hearing Officer's Order Granting Motion in Limine. The Bureau filed an Objection to Motion to Reconsider. The Respondent's Motion for Reconsideration was denied on July 19, 2024.

On August 9, 2024, the Respondents filed a Motion to Dismiss. On August 23, 2024, the Bureau filed an Objection to Respondent's Motion to Dismiss. Respondent's Motion is addressed in this order.

On August 15, 2024, the Respondents filed a Motion in Limine seeking to exclude portions of testimony of the Bureau's expert witness. On August 23, 2024, the Bureau filed an Objection to Motion in Limine to Preclude Testimony of Peter Crosby. On August 24, 2024, the Respondent's Motion was denied.

August 16, 2024 the Bureau filed a Motion in Limine requesting the admission of certain evidence at the forthcoming final hearing. On August 22, 2024, Respondents filed a Partial Objection to Bureau's August 16, 2024 Motion in Limine. On August 24, 2024, the Bureau's Motion in Limine was granted.

On August 26, 2024 the Bureau filed a Motion to Withdraw Fraud Claims Regarding Investors 2, 10 and 11. The Motion was granted.

A pre-hearing conference was held on August 16, 2024 at the Bureau of Securities Regulation.

Synopsis

On March 28, 2023, the Bureau of Securities Regulation filed a Staff Petition for Relief naming the above captioned Respondents, alleging that Advent Medical Products, Inc. and Randall Fincke sold unregistered securities to New Hampshire investors, failed to disclose to New Hampshire investors information regarding certain litigation prior to selling said securities, and making untrue statements of material fact to investors. In its petition, the Bureau has requested the secretary of state issue an order requiring the Respondents to immediately and permanently cease and desist from further selling securities in New Hampshire, pay a fine, rescind the securities sold to New Hampshire investors, and pay the Bureau's costs of investigation and enforcement. The secretary of state issued an order on March 29, 2023, and the Respondents requested a hearing.

Hearing

A hearing was held at the N.H. Department of State Archives Building, 9 Ratification Way, Concord, N.H. on August 26, 2024 and concluded on August 29, 2024. The Bureau of Securities, represented by Attorney Jeffrey Spill and Attorney Michael Kirwin offered 11 witnesses. The Respondents, represented by Attorney Lisa Wade Snow and Attorney Meredith Farrell Goldstein offered 5 witnesses. Following the conclusion of this hearing, the Bureau and Respondents filed proposed Findings of Fact and Conclusions of Law on September 20, 2024.

Testimony of Witnesses Called by the Bureau

Testimony of [redacted] Investor #7

Mr. [redacted] is employed by the University of New Hampshire and is [redacted] He has resided in New Hampshire since 2007. He considers himself to be "a fairly experienced investor, above average but not an expert" with some experience with restaurant start-ups. He met Gary Fincke at the University and would meet at his office on campus. Mr. [redacted] testified that Gary Fincke shared information about investing in Advent Medical Products, Inc. He initially invested $25,000 on April 17, 2013, signed a Promissory Note and provided a check to Gary Fincke (BSR [redacted] Exhibit #1). Mr. [redacted] testified that he visited the Advent facility along with his former husband [redacted] to perform his own due diligence and was told they (Advent) were on the cusp of developing a product and that this influenced his decision to invest an additional $40,000. Mr. [redacted] stated that he signed a

second promissory note on January 16, 2015 as well as a Stock Buyback Agreement and an Equity Ownership Agreement. When shown BSR [redacted] Exhibit #2, Mr. [redacted] testified that he received an email in February 2017 from Gary Fincke stating that he was going to "pull back" and leaving Advent Medical, and was of the belief that Gary was turning matters over to Randall Fincke. Mr. [redacted] stated that he believed Gary Finke was living in New Hampshire at the time but could not recall the town. When asked if he has received a return on any of his three investments, Mr. [redacted] replied "no, and not much in the way of communications." Asked if he was aware of any fraud findings against Randall Fincke, he replied "at the time of the investments no, it wasn't until later." Asked if it would have impacted his decision to invest, Mr. [redacted] stated "Most likely yes." When shown BSR [redacted] Exhibit #1 showing a third investment for $10,000 in August, 2013, Mr. [redacted] acknowledged the accuracy of the chart and his three investments.

During cross examination by Advent counsel, Mr. [redacted] was asked if he paid a fee for the Stock Buyback Agreement or Equity Ownership Agreement. He replied "no." When asked if he learned about the Zoll and Access Cardiosystems litigation from the Bureau of Securities, he replied "yes" and indicated that it would have influenced his decision to invest. When asked if he notified Advent of any change of address, he stated that he did not receive anything in the mail. When asked if he received a 2021 update from the company, he stated that he did not recall receiving the update nor was he aware of the battery defect issue, but was aware from more recent emails that Advent was proceeding with FDA approval of its product.

Testimony of [redacted] Investor #5

[redacted] is a retired administrator, having started with the University of New Hampshire in 1969 and appointed [redacted]. In 2012 she was appointed [redacted] and completed her work there in 2012. Ms. [redacted] resided in Portsmouth, New Hampshire in 2012, later moved to Cape Neddick, Maine, moved to Newcastle, New Hampshire in 2016 and Exeter, New Hampshire in 2024. She owns a condominium in Florida and resides there during the winter months. Ms. [redacted] testified that she has invested in several start-up companies but less than five. She met Gary Fincke at the University in the mid 1970's when he was a student. According to Ms. [redacted] she received an email from Gary Fincke on February 29, 2012 (BSR [redacted] Exhibit #1), one of numerous emails discussing investment opportunities with Advent and was told Randall Finke was developing an innovative defibrillator. Ms. [redacted] testified that when communicating with Gary Fincke via email and phone she believed Gary Fincke was residing in Hampton Falls, New Hampshire. Ms. [redacted] stated that she met with Randall Fincke at his office in Burlington, Massachusetts and received emails from Gary Fincke while in Florida including a prospectus describing the company (BSR [redacted] Exhibit #3). Ms. [redacted] testified that she received and signed a Promissory Note while in Florida but could not recall where she returned the document. She did recall receiving phone calls from Gary Fincke encouraging her to invest and was asked if she could refer him to others to invest. Ms. [redacted] stated that she was told by Gary Fincke that a percentage of company profits would be returned to investors and the University Foundation. Ms. [redacted] also testified that she introduced Gary Fincke to her friend [redacted] a Maine resident, while she was visiting ([redacted] in Florida in March, 2012. Ms.

[redacted] testified that she understood her $20,000 investment would be returned with interest when the Advent product was developed and that she sent the funds along with a signed Promissory Note, Equity Ownership Plan document, and Stock Option agreement that she had received from Gary Fincke. According to Ms. [redacted] she received a company update from Gary Fincke where it was indicated that $400,000 of company sales would go to UNH. According to Ms. [redacted] this update from Gary Fincke included his Hampton Falls, New Hampshire address (BSR [redacted] Exhibit #4). Ms. [redacted] testified that she received an Investor Update Progress Report dated July 17, 2013 (Bureau's [redacted] Exhibit #5) and an Investor Update from Randall Fincke dated November 14, 2016 (Bureau's [redacted] Exhibit #6). According to Ms. [redacted] she understood the update to be hopeful and optimistic about the product going to market. When asked by the Bureau if she was told by Gary Fincke about any lawsuits involving the company, Ms. [redacted] replied "yes", that she had explored the internet for news about Advent and became aware of additional litigation via Google. When asked if she had known about the litigation and whether it would have affected her decision to invest, she replied "yes".

During cross examination by Advent counsel, Ms. [redacted] was asked if she paid additional compensation for the Stock Buyback or Stock Option agreements. She replied "No, it was one investment in my view." When asked if at the time of the investment she sent the documents to the Burlington, Massachusetts address, she replied "no, I sent them to Gary Finke in Hampton Falls, New Hampshire." When asked if she recalled any reference in the information sent to her about problems with the product power supply, [redacted] replied "no". Ms. [redacted] was then referred to a binder of information from Advent. Ms. [redacted] stated that she had received it "out of the blue" from Randall Finke, and that she initially wrote to Randall Fincke expressing her concerns about Gary Fincke leaving the company and requested Advent's audited financials. Ms. [redacted] stated that it was at that point she received the binder but it did not contain financial information and was asked at that time to sign a non-disclosure statement. Ms. [redacted] further stated "I had a concern in my own mind if a product exists." When shown Advent's information packet (Advent Exhibit #2) and asked if she would agree it was important for Advent to fix any product defects and obtain FDA approval, Ms. [redacted] replied "yes".

Testimony of [redacted] Investor #6

[redacted] is a retired probation officer and has resided in Hampton Falls, N.H. for the past 40 years. Her husband, [redacted] passed away in 2017. Ms. [redacted] stated that she has no investing experience and learned about Advent in 2011 through her husband and his conversations with Gary Finke. Ms. [redacted] indicated that she was never part of these conversations that "always took place in the barn." She testified that in August 2012 she signed a Promissory Note, Equity Ownership Agreement, Stock Buyback Agreement, and non-disclosure agreement at her home in New Hampshire (BSR [redacted] Exhibit 1). When asked if she ever met Randall Finke or was aware of any lawsuits against Randall Fink, she replied "no", but did indicate "it would have influenced my decision to invest."

During cross examination by Advent counsel, Ms. [redacted] was asked if she knew investing could be risky, and replied "yes". Asked if she was not sure of the details of the investment, she stated "no". Asked if she had any discussions with her husband about the lawsuits involving

Randall Finke, she replied "no". Referring to the BSR Exhibit #1, Ms. [redacted] was asked if the Stock Option Certificate and Stock Buyback agreement were all part of one investment, she replied "yes". Asked if she paid extra for these agreements, she replied "no". When shown an excerpt contained on page 49 of the Access Cardiosystems, Inc. v. Fincke litigation (BSR Exhibit #4) and asked if the Judge's statement about the failure of Randall Finke to disclose the Cadent litigation and that it did not amount to securities fraud, would it have changed her decision, she replied "it wasn't my decision to invest." Asked if she ever updated her address with Advent, she replied "no" but did recall receiving an email from Randall Fincke in 2020. Asked if she discussed the investment with her husband after the fact, she stated that she told him "I do not think this is a good idea." Ms. [redacted] testified that she was unaware of any battery problem or that Randall Fincke was seeking FDA approval of the product.

Testimony of [redacted] Investor #8.

Mr. [redacted] is a resident of Peterborough, New Hampshire and resided there in 2012. He met Gary Fincke through a network marketing company connection in 2010. When asked by the Bureau if he was familiar with business start-ups, he replied "not really." Asked about his investing experience, Mr. [redacted] indicated it was limited to mutual funds and the firm Edward Jones (that handles his investments). Mr. [redacted] testified that he met Gary Fincke at a coffee shop in Portsmouth and was told by Gary Fincke that he invested a substantial money with this brother Randall Fincke's in the product. Mr. [redacted] stated "I understood it was hardware a person could have on their body – that would provide monitoring information much like what would be monitored in an ICU hospital room." He could not recall the literature provided by Gary Fincke – "a couple folders" and visited the Advent facility. Mr. [redacted] testified that he invested $10,000 in Advent and was provided with a Promissory Note, Equity Ownership Agreement, and Stock Buyback agreement (BSR [redacted] Exhibit #1). When asked if Gary Fincke provided him with information about pending litigation, he replied "no". Asked if he would have invested if he knew of the litigation, Mr. [redacted] replied "probably not".

During cross examination by Advent counsel, Mr. [redacted] was asked if he knew the risk of this investment and there was no guarantee the product would go to market. He replied "yes". Referring to BSR [redacted] Exhibit #1, Mr. [redacted] was asked if he understood all three documents were one investment. He replied "yes". He testified that he did not ask Gary Fincke about prior litigation or that he performed outside research of the company or Randall Fincke. When shown an excerpt contained on page 49 of the Access Cardiosystems, Inc. v. Fincke litigation (BSR Exhibit #4) and asked if the Judge's statement about the failure of Randall Finke to disclose the Cadent litigation did not amount to securities fraud, whether it would have affected his decision to invest, he replied "no". Asked if he was aware Advent and Randall Fincke was going to the FDA for approval (of the product), he replied "no, but I hope the product would be approved.". Mr. [redacted] testified that he was not aware of the product battery defect.

Testimony of [redacted] Investor #1

[redacted] resides in Nashua, New Hampshire. He became acquainted with Randall Fincke through a Mr. [redacted] an employee at Advent. Mr. [redacted] asked him if he wanted to invest in the company. He visited Advent in Burling Massachusetts a few weeks before he signed the agreements. Mr. [redacted] testified that he could not recall where he signed them, but emailed them to Mr. Schissler via email, but perhaps through regular mail to Advent.

Mr. [redacted] stated he signed a Promissory Note, Equity Ownership Agreement and Stock Buyback agreement (BSR [redacted] Exhibit #1), and was provided a stock certificate reflecting 60,000 shares. He testified having received an email from Randall Fincke "early this year" regarding the status of the company but could not recall any mention of litigation involving Mr. Fincke (BSR [redacted] Exhibit #2). Mr. [redacted] was shown emails to and from Randall Fincke dated March 1, 2023 (BSR [redacted] Exhibit #3) and was asked if Mr. Fincke had disclosed information about litigation, and whether it would have influenced his decision to invest. Mr. [redacted] stated "Kneejerk, it would have affected my decision to invest."

During cross examination, Mr. [redacted] was asked if he considered the Promissory Note and Stock Buyback agreement to be one investment. He replied, "I thought I would get a return on both." Asked if he was aware when Advent was testing its prototype that there was a problem or defect with the power supply, he stated "no, I would want to know about problems...do you have a beta customer who would know the problem, and what are the solutions." Asked if he was aware that Advent has submitted its application to the FDA for (product) approval, he replied "no". When asked if he had inquired about prior litigation, he replied "no, I didn't ask that question." When shown an excerpt contained on page 49 of the Access Cardiosystems, Inc. v. Fincke decision (Bureau's Exhibit #4) and asked if this changed his perspective, he replied "I'm not a legal expert, I would have to consult with an attorney... I'd like to see a return on my investment."

Testimony of [redacted] Investor #4

Ms. [redacted] currently resides in Kittery, Maine. She previously resided in Massachusetts, moving to York, Maine in 1996. She lived in Portsmouth, New Hampshire for one year, moved to Cape Neddick, Maine in 2006, and Kittery, Maine in 2019. She was employed by the University of New Hampshire, retiring in 2005. However, Ms. [redacted] performed consulting work for the University until 2016. She testified that she is friends with [redacted] and visited Ms. [redacted] home in Florida for a number of years. Ms. [redacted] testified that in February 2012 she visited Ms. [redacted] in Florida and first received information about Advent Medical. She recalls telling Ms. [redacted] that she might be interested in receiving additional material when back home in Cape Neddick, Maine. According to Ms. [redacted] she understood Gary Fincke lived in New Hampshire. When shown BSR [redacted] Exhibit #1, Ms. [redacted] testified that she received an email from Gary Fincke dated February 29, 2012 that included the investment documents and also mentioned "to assist in a very significant way towards our goal to give back to UNH." Ms. [redacted] stated that she understood the products were in the development stage and the marketing plan contemplated the European markets. Ms. [redacted] testified that she invested $20,000, signed the Advent Promissory Note and Stock Buyback

agreement in March 2012 and understood the Stock Buyback agreement was to purchase additional shares (BSR [redacted] Exhibit #2). Ms. [redacted] stated "Once I invested there would be an update from Gary Fincke that patents would be applied for, and approvals from the FDA...I felt like over 6 months approval would be any minute now – now over a year." Ms. [redacted] testified that she receive an email from Gary Fincke on February 22, 2013 (BSR [redacted] Exhibit #4), another in May, 2014 where he (Fincke) asked her to make additional investments, an email from Gary Fincke dated March 4, 2016 providing financial information but not audited financials (BSR [redacted] Exhibit #7), an email from [redacted] to Gary Fincke that included emails from [redacted] seeking information as to the status of Advent Medical (BSR [redacted] Exhibit #8) and an email from Randall Fincke dated May 19, 2020 (BSR [redacted] Exhibit # 9). Asked whether the May 19, 2020 email mentioned Access Cardio, Ms. [redacted] replied "Yes...I would have been a lot more nervous about it...it would have been a red flag."

During cross examination, Ms. [redacted] acknowledged that she did not know the location from where Gary Fincke was emailing or calling her. Ms. [redacted] stated " I knew [redacted] trusted Gary Fincke, and I relied on her. I didn't research Advent on Google or the internet. I shared information (about Advent) with someone at the UNH business school who thought it was interesting." When asked if she knew of the risk - and that the product could never make it to market, she replied "yes". When asked if she inquired of Gary Fincke about prior litigation, she replied "no" and further stated "I was completely unaware of litigation at the time of the investment." When shown an excerpt contained on page 49 of the Access Cardiosystems, Inc. v. Fincke bankruptcy decision (BSR Exhibit #4) if the findings of the judge changed her perspective on the matter, she replied "no". Asked if she understood the product issues could cause a delay, she replied "yes". When asked whether she was aware that Randall Fincke has gone to the FDA for product approval, she replied "no". Asked whether that changes her perspective, Ms. [redacted] replied "too much water over the dam." When asked if she would like a return on her investment, she replied "of course".

Testimony of [redacted]

Mr. [redacted] is a resident of Northpoint, Massachusetts. He resided in Hampton Falls, New Hampshire in 2005 before moving to Massachusetts in 2022. Mr. [redacted] testified that he was employed in the paper industry and owned a paper brokerage business for forty years. His investments include an IRA, 401(k) and an account with UBS. Mr. [redacted] stated that he invested in a couple banks, but not start-up companies. When asked about how he came to know about Advent Medical, Mr. [redacted] stated that he knew Gary Fincke from Hampton Falls. Shown BSR [redacted] Exhibit #1, Mr. [redacted] stated "It was a promissory note of my investment for $10,000 – when it went public I would get shares." When asked about when he met with Gary Fincke, Mr. [redacted] stated that they met in Hampton to discuss the investment and "showed me some things they were working on - a small defibrillator. He showed me some material and said they were looking for investors – that early investors could purchase shares when it went public." "I expected I would get 10% interest. I did not receive any return on my investment. Mr. [redacted] was asked if Gary Fincke called him later on. He replied "Yes, occasionally he would call, looking for other investors...provided an update on where they

were developing the product." "He would email me updates – always very positive, and if interested in investing more that I could, or if I knew of others who might want to invest." When asked at what point did he stop hearing from Gary Fincke, Mr. [redacted] stated that he sent him an email and heard back that he was no longer working at Advent. When asked if Gary Fincke told him about prior litigation involving Randall Fincke, Mr. [redacted] replied "No…I was aware through [redacted] that there was some mention about litigation. When asked if he recalled receiving information about the litigation in May 2014, he replied "no".

During cross examination, Mr. [redacted] was asked whether he paid anything extra for the Stock Buyback or Equity Ownership agreements. He replied "no". Asked about his conversation with [redacted] Mr. [redacted] stated "I understood Randall Fincke had successes and failures, but can't recall if any lawsuits." Counsel asked if Mr. [redacted] visited Advent and observed a demonstration of the product. He indicated it was around 2014, was not sure if he understood or knew of delays due to problems with the product, and was told FDA approval was "available". When asked if he was aware of Advent's FDA filing, preliminary approval and having met with the FDA would give him some comfort that the product will be developed, he replied "yes". Mr. [redacted] was aware that he would earn interest from the time of his investment. He stated "Gary Fincke said he and his family was heavily invested. When asked if he had any basis that Gary Fincke was not telling the truth that he was invested, Mr. [redacted] replied "No, I believed him". When asked if he advised Advent of any change of address, Mr. [redacted] stated "No. The last of the information I received was from email…I'm not sure if I received the folders – I was good about my mail being forwarded. If it was 2021, I would have received the material from Advent." Asked if he recalled receiving information from Advent about a battery problem, Mr. [redacted] replied "no, specifically no."

Testimony of [redacted] Investor #12

Mr. [redacted] is a resident of Salem, New Hampshire and was a resident there in 2015. He is a retired police officer and also works with the local police department on a part-time basis. When asked about his experience with investing, Mr. [redacted] stated he had limited investing experience and with a couple projects. Mr. [redacted] testified that he met Gary Fincke through a mutual friend who inquired if he was interested in investing in a medical product, and it was his friend who facilitated a call with Fincke in December 2015. According to Mr. [redacted] his best recollection was that Gary Fincke explained the product and that it was in the latter stages of product development and that they were nearing production. When asked by the Bureau what his impression was about going to market, Mr. [redacted] stated "That they were close". Shown BSR [redacted] Exhibit #1, Mr. [redacted] testified that after talking with Gary Fincke, he attended an investor meeting in Burlington, Massachusetts with Randall Fincke. He had a subsequent meeting there where he received a signed the Promissory Note. Mr. [redacted] stated "I learned from Randall Fincke the product was close to market, and I know 100% at the investor meeting it was portrayed as close to going to market and production." When asked if he knew anything about a 510k, Mr. [redacted] stated "I did hear mention of a 510k in 2015." "I invested $25,000 and delivered it at the Burlington office. Mr. [redacted] testified that he signed the Equity Ownership Agreement and Stock Buyback Agreement at the investor meeting in Burlington. Mr. [redacted] invested an additional $10,000 and signed a second promissory note on April 12, 2016. When shown BSR Exhibit #2, Mr. testified that he recalled receiving a 2021 update from

Advent Medical by mail. Asked if he received periodic updates, Mr. [redacted] stated "After the 2015-2016 investments, I didn't receive updates from Advent. I was a little dismayed there was no communication from the company. However, I did reach out to Randall Fincke and he did respond. Over ten years, I had communication two or three times with Randall Fincke. I received the update. He didn't avoid me, but limited contact with investors." When shown Bureau's [redacted] Exhibit #3, Mr. [redacted] indicated that he recalls receiving only two packets of information in 2021 from Advent. Shown BSR [redacted] Exhibit #4, Mr. [redacted] stated that he received the Advent Medical Investor Status Update dated November 14, 2016 and Advent appeared to be trying to raise additional funds. Mr. [redacted] was then asked to review BSR [redacted] Exhibit #5, an email dated July 8, 2018 that he sent to Randall Fincke. Mr. [redacted] confirmed that he sent the email and inquired of Fincke about not having received periodic updates on the status of the company or his investment, and that it had been almost two years since the last update. Mr. [redacted] was shown BSR [redacted] Exhibit #6, an email from Mr. [redacted] to Randall Fincke requesting an update on a case between Advent Medical and the Commonwealth of Massachusetts, and Randall Fincke's reply dated May 18, 2022 which states in part "We have worked our way through the software design reviews and have moved into the initial FSA submission process. We engaged with a regulatory consultant and are preparing the documents which are based on our currently approved FDS 510k." Mr. Fincke also indicated, in part, "The Mass Securities document has seriously hurt me and the company and only serves to make our task significantly more difficult." Asked if he was told about any litigation involving Randall Finke at the time he invested, he replied "no". Asked if it would have influenced his decision to invest, he replied "yes it would, more than likely I would not have invested.

During cross examination, Mr. [redacted] was asked if he knew his investment came with risk and that the product may never come to market. He replied "yes". Further, that he was never given a timeframe when it (the product) would come to market. He stated "no, but I received information from Randall Fincke. Randall Fincke indicated they had one or several technical problems with the battery." Shown BSR [redacted] Exhibit #1, Mr. [redacted] was asked if he viewed the Promissory Note and the Stock Buyback agreements to be one, he stated "yes". Asked if he paid additional money for them, he replied "no". Mr. [redacted] indicated that he did not know where Gary Fincke was calling from and acknowledged Fincke's Business Card was from Burlington, Massachusetts. Asked if he Googled the company or did outside research, Mr. [redacted] stated "No, I based my decision on the investment meeting." When shown an excerpt contained on page 49 of the Access Cardiosystems, Inc. v. Fincke bankruptcy decision (Bureau's Exhibit #4) if the findings of the judge would have impacted his decision to invest, Mr. [redacted] replied "It is not relevant to my decision, I don't know if it would." "They were not truthful, they just omitted something that would be important to an investor." When asked if he updated his address with Advent, Mr. [redacted] indicated that he only moved just recently in January of this year. Mr. [redacted] acknowledged that he was aware of Randall Fincke going to the FDA in the future, but unaware if he has done so.

Testimony of [redacted] Investor #13

Mr. [redacted] is a lifelong resident of Manchester, New Hampshire. He was employed as an outside technician with a utility company for 22-23 years, retiring in 2010. When ask about his experience with investing, Mr. [redacted] stated "This is it...except for my 401(k)." Mr. [redacted] testified

that he met Gary Fincke at a restaurant in North Andover, Massachusetts along with his advisor Steve Reilly. He was told about Advent by a good friend. Mr. [redacted] stated "We invested right there, with a personal check. I recall the documents but misplaced them." He could not recall the contents of the documents provided by Gary Fincke, but it was his understanding he would be paid back his investment of $50,000, but could not remember how he would be repaid. When asked if he has received any payment back, Mr. [redacted] stated "Absolutely not, they wouldn't even get in touch with me. After a while I kept sending texts saying I'd like to know something, they wouldn't and all of a sudden I got paperwork out of it just saying what the company is, that's it." Mr. [redacted] stated that he received two status update booklets from Advent in 2021. When asked if at the time of his investment whether he was told about Randall Fincke's prior litigation with Cadent and Access Cardiosystems, he replied "no". When asked if it would have affected his decision to invest, he replied "Most likely, yes". Mr. [redacted] further stated "I remember I got ahold of Gary Fincke about problems with the batteries issue over the phone." When asked what he was told at the time he invested, Mr. [redacted] stated "I was told it looks good, thought it was a good idea, but it wasn't. "I liked what I heard."

During cross examination, Mr. [redacted] was asked if he was aware problems could occur... risk. He replied, "yes, with all investments", and acknowledged that he relied on the representations of a friend to invest as well. When asked if he was aware Randall Fincke has gone to the FDA for approval, he stated "no". Asked if it was his hope to get a return on his investment, Mr. [redacted] stated "Ya". "I'm first hearing now if I have an active investment

Testimony of Steven English Reilly

Mr. Reilly is an investment advisor with Ironside Financial Group located in Massachusetts and is [redacted] financial advisor. Mr. Reilly testified that he was asked by Mr. [redacted] to sit in on a meeting with Gary Fincke and receive his help to determine if Advent Medical was a good investment. Mr. Reilly testified that Gary Fincke was present at the meeting, knew him as a salesman looking for investments and recalled seeing the product documents but not the investment documents. When asked how Mr. Kijek's $50,000 was transferred to Advent Medical, Mr. Reilly stated "I sent an ACH to [redacted] bank account in Manchester, N.H. When asked if he had any further communication with Gary Fincke after that meeting, Mr. Reilly replied "no".

Testimony of Bureau's Expert Peter Crosby

Mr. Crosby was called by the Bureau to testify as an expert witness in this matter. Following initial testimony as to his background, work experience in the field of defibrillator medical devices and the associated regulatory approval process for such devices, and review of his resume (BSR Crosby Exhibit #2), he was deemed qualified to offer expert testimony.

Mr. Crosby testified as to the scope of his assignment by the Bureau, his expert report (BSR Crosby Exhibit #1) including a review of several documents regarding Advent Medical's 510k products, disclosures, the Mark Horenstein expert opinion report, investor documents, the on-the-record testimony of Randall Fincke, and pre-market approval (PMA) documents. When shown BSR Crosby Exhibit #3, he testified that it was a letter from the Food and Drug

Administration regarding Concord Medical's 510K application which provides marketing clearance for three or four devices. Mr. Crosby provided testimony about the 510k regulatory approval process to market external defibrillator products and indicated Randall Fincke had received such clearance in April, 2010. Mr. Crosby stated the FDA pre-market approval (PMA) process includes more extensive documentation and review of safety and product efficacy. When asked for a general estimate as to how much time it would take for a PMA approval Mr. Crosby stated "The answer to the question depends on the time period. The FDA has had a period of time where it has taken two to three years to get a PMA and periods of time where its been in little as 12 to 18 months." Generally, the FDA is required by law to give a response within 180 days to the applicant and that in his experience it has been a one to two year period for a PMA approval.

Mr. Crosby testified that in February 2015 the law changed where Automated External Defibrillator (AED) devices previously applicable to the 510k clearance pathway would no longer be able to be cleared for market through a 510k, and would need a PMA. When asked if Mr. Fincke could market his devices when the law changed to PMA, Mr. Crosby replied "no". Referring to BSR Crosby Exhibit #4, Mr. Crosby described the document as a list of questions asked of the FDA and supporting documents. Asked if the document indicated if there were any prior regulatory submissions by Advent, Mr. Crosby stated the answer was no and interpreted it to mean the company (Advent) decided not to include any information from its prior submission including the 510k submissions or any information about previous interactions with the FDA. Mr. Crosby opined that if Advent were to submit their PMA on January 1, 2025, and receives its first round of question from the FDA in the third quarter of 2025, and they respond to those questions by the end of 2025, then there is another 180 day review cycle with the earliest PMA approval occurring mid-2026. If the PMA submission is in December 2025, the earliest time it would be approved would be mid-2027.

Asked if he reviewed any of the disclosures made by Advent to investors, Mr. Crosby testified that he reviewed multiple disclosures about the work that was going on at Advent, and statements made about where they were in the manufacturing, regulatory and patent process. Mr. Crosby stated "I believe they were unsupported by the evidence that I saw." When asked about his overall opinions, Mr. Crosby reviewed the four points contained in his expert report that Randall Fincke misled investors about the FDA regulatory pathway for Advent products, that Advent did not disclose to investors the time and cost of a PMA, that Mr. Fincke appears confused about the patent process. With regard to the Dr. Mark Horenstein report, Mr. Crosby testified that in his opinion the report is unreliable, that Dr. Horenstein's experience and credibility is in question, that he has no field experience with the defibrillator devices, and his report did not consider the clinical or regulatory pathway. Asked to opine on the expert report prepared by Mr. Josh Sharland dated June 14, 2024, Mr. Crosby stated that Mr. Sharland has extensive experience with veterinary medical related matters but not experienced in the area of medical devices or 510k filings.

During cross examination, Mr. Crosby was asked "You don't know what was going on at Advent at the time, for which he replied, "...only the document provided." Mr. Crosby was asked about the FDA process and testified that it involved submission of an application that the FDA must first accept the application before they review it, which takes a month or two, parts of the application are sent to multiple reviewers, and each reviewer may have questions which

are then sent to the applicant. Asked if his FDA applications were approved during the first submittal, Mr. Crosby replied "half the time...it's inevitable there will be questions by the FDA...original PMA applications are never approved without questions." When asked how many rounds of questions, Mr. Crosby stated it is impossible to predict. Asked how much time it takes from application to final approval, he replied "it's fairly variable...the FDA must first respond to the applicant in 180 days and 180 days to respond to the answers provided, typically 600 days. Asked if the timeframe with the FDA has changed over the years, he replied "yes". Mr. Crosby was asked if he reviewed the Q-Sub documents in detail, he replied "yes, I reviewed all of the documents provided in the 510k and Q-Sub, but did not do a side by side comparison. Asked if some of the information in the 510k is transferrable to a Q-sub, he indicate "yes, some could". He further stated that he had not seen the PMA application and could not predict if the application will be accepted at submission. Counsel inquired as to the number of people he thought would be necessary to bring a PMA application...if having 50 or 100 employees would be quicker to complete a PMA. Mr. Crosby replied "perhaps, it depends on what those people are doing".

Mr. Crosby was asked if he determined if Randall Fincke is an inventor and has patents on the inventions, Mr. Crosby stated "a couple, yes" recalling one involving a patent on bi-phasic waveforms. Mr. Crosby was asked when the FDA changed its regulations in 2015 if he worked on any application where the 510k applications had to be converted over to a PMA, Mr. Crosby replied "no". When asked if he knew of any of the documents that he reviewed were reviewed by N.H. investors. He replied, "I don't know, I haven't spoken to the investors."

Mr. Crosby was asked if in July 2000 if he was on the Board of Cardiac Science when it purchased Cadent Medical for $22m for which he replied "yes". When asked if he believed any known defects must be fixed before submittal to the FDA for PMA approval, he replied "yes". Mr. Crosby acknowledged that Cardiac Science has been involved in a number of recalls.

Testimony of Witnesses Called by the Respondent's

Testimony of Gary Fincke

Gary Fincke resides in Exeter, N.H. and is employed in the marketing and sales business. Over the past twenty years he has been involved with the marketing and sales of healthcare products, nutrition products, Advent Medical Products for a couple years, and a company involved in sales and marketing in the hospital space and retired part-time after that.

According to Mr. Fincke, he became involved with Advent Medical and worked for his brother Randall Fincke beginning in 2012 to help with sales, growing the company, raising capital, and bringing the company to market. Mr. Fincke was asked if he was familiar with an investor named [redacted] and where she lived at the time she invested. Mr. Fincke stated the State of Maine, that he spoke with her about her investments, that he did not meet with her in person, and those conversations were over the phone. He was unsure where those phone calls were made.

Mr. Fincke was asked a series of questions regarding his meetings with several of the investors. Mr. Fincke testified that he met with an investor named Mr. [redacted] but could not recall the exact meeting place. When asked what his impression was of the Advent product at the time, Mr. Finke stated that it was going to make a lot of difference in the healthcare space and have a big impact on the market.

Mr. Fincke was asked how he would find investors. He stated that he would contact people he believed would be potentially interested in helping grow the company, to raise capital. This included people he knew personally or professionally. When asked if he cared about the investors and whether he was an investor himself, Mr. Fincke replied "yes". Mr. Fincke testified that Advent provided him with the presentation materials to use when meeting with prospective investors, and investors were given the opportunity to ask questions during those meetings. When asked about investor trips to Advent's Burlington, Massachusetts office, he stated that he encouraged investors to visit and meet with Randall Fincke and ask questions. When asked if understood the company was ready to go to market, he replied "yes".

Mr. Fincke testified that he met a [redacted] at UNH and knew her as [redacted] and spoke with her about his working with Randall Fincke, and asked if she or anyone she knew would be interested in receiving information about the company and investing. When asked if Ms. [redacted] had any questions, asked for additional information or had any concerns, he replied "Not that I remember." Mr. Fincke testified that he knew [redacted] as [redacted], and believes he sent him company documents and presentation material that were provided to him by Advent. When asked if he recalled Mr. [redacted] having any question or concerns, Mr. Fincke replied "I don't". When asked how he met [redacted] Mr. Fincke stated that they were involved in a prior business. "I gave him a phone call." Asked if Mr. [redacted] had any questions or concerns, he replied "not that I recall or remember." Regarding his meeting with Mr. [redacted] Mr. Fincke testified that he knew him while in Hampton Falls, that he gave him a phone call and met for coffee and provided the same information about Advent. Asked if Mr. [redacted] had any questions or concerns, Mr. Fincke replied "no, not that I recall or remember." When asked how he met Mr. [redacted] he could not recall how he met him, but probably through a phone call or through a referral. Asked if Mr. [redacted] had any questions or concerns, Mr. Fincke stated "not that I recall". When asked about his meeting with [redacted] Mr. Fincke stated '[redacted] was a friend, lived in town, close by...and I knew her husband [redacted]." He met with her husband [redacted] and did not share information (about the company) with her. When asked about his meeting with [redacted], Mr. Fincke testified that they were neighbors and friends in town. When asked if any questions or concerns were raised by [redacted], he replied "no". When asked if she received the same materials, he replied "yes".

Mr. Fincke was then asked if he was aware of any unforeseen delays with bringing the Advent product to market. He stated "I was not involved in the technical side but I do recall that there were different kind of challenges, concerns that had to be addressed on the technology side before we could move forward, but as I was talking to people there were times when we would say we're expecting this to happen based on our best sense of where things were in terms of development of the company." When asked if it was his understanding the technical problem

needed to be resolved before going to market, Mr. Fincke replied "absolutely." Asked if he was involved in putting together some of the updates to investors, Mr. Fincke stated "in conjunction with the company, yes, we'd work together on it." When asked if he believed the timelines that were being shared with investors was accurate, Mr. Fincke replied "yes". Asked if there was any reason to believe any of the material provided to investors was incorrect, Mr. Fincke stated "There was no reason to believe it was incorrect." When asked if it was his understanding that Randall Fincke has met with the FDA and has every intention of bringing the product to market, he replied "correct, yes". Asked if he had any reason to believe any of the information shared with the investors was incorrect at the time it was shared, he replied "I have no reason to believe that it was incorrect."

During cross examination by the Bureau, Mr. Finke was asked about his residency, and stated that he has lived in New Hampshire since 1979 and that his house has been his primary office going back into the 1990's. When asked if he sent emails from that office, he stated "I send emails from a lot of places and that office." When asked if predominantly from that office, he replied "probably". Asked if he has a phone with a N.H. area code, Mr. Finke replied "I do". Asked if he makes most of his business calls from New Hampshire, Mr. Fincke replied "yes, probably". Asked when working for Advent who prepared the disclosures, he replied "the company". When asked who at the company prepared them, he replied "I would defer that to the company to make that call". Shown Advent Exhibit #6 and asked if those were the presentation materials and disclosures provided to New Hampshire investors, he replied "yes, I would give them the entire packet that included that." When asked if this was the disclosure he would have given to [redacted] Mr. Fincke replied "I don't know about that particular one." Asked if the disclosures were provided to [redacted], he replied "I don't know if it was that specific one." When asked if he was giving these disclosures in 2013, Mr. Fincke replied "yes". Asked about his meeting with Peter [redacted] and sharing litigation information with Advent, he replied "I shared with him what was in the presentation that included what was happening prior to Advent. The Bureau asked "so you only shared with them the disclosure documents that you claimed to show to everybody. Mr. Fincke replied, "of which there was information there." The Bureau asked, "But nothing verbal." Mr. Fincke replied, "I don't recall what I would have spoken verbally." When asked about his meeting with and soliciting [redacted] and asked to read page 94, line 10 of his OTR interview with the Bureau and whether he met with him in Manchester, Mr. Fincke stated "It looks like I did." When asked to confirm what his cell phone number was at the time he was soliciting investors for Advent, Mr. Fincke stated "I know what my cell phone number is now, I don't know what it was then, it's [redacted]. Mr. Fincke confirmed his email address as [redacted]

On redirect, counsel for Advent asked Mr. Fincke whether the 603 phone number can be used anywhere in the country, he replied "yes. When asked if he was provided the opportunity to review his OTR before this hearing, he replied "no".

Testimony of Randall Fincke

At the outset of Mr. Fincke's testimony, he displayed a series of products that he developed at Advent. The products were not introduced into evidence, but pointed to during his testimony when explaining the progression of the company's products, ultimately leading to the development of the Cortex Fusion Defibrillator, a combined Automatic External Defibrillator and monitor.

Randall Fincke is a resident of Lincoln, Massachusetts and employed with Advent Medical Products, Inc. Mr. Fincke received an undergraduate degree in mechanical engineering from the University of New Hampshire and a masters degree from Tufts. His employment history includes work at the Tufts Medical Center, Northrup Precision Products, Zoll Medical, Cadent Medical, and Advent Medical Products. While at Zoll Medical he was a research and design manager and responsible for defibrillator technology. Mr. Fincke testified that while at Zoll, he worked with bi-phasic wave technology. He left Zoll in 1996 and started Cadent Medical, developing a wearable defibrillator product for patients experiencing acute myocardial infarctions. Cadent Medical was sold to Cardiac Science. He then started Access Cardiosystems and developed a defibrillator. According to Mr. Fincke, while at Access Cardiosystems he identified a problem with the product and contacted the FDA to inform them about the product failures occurring on the production floor. The company stopped production and went into bankruptcy. Mr. Finke testified that the company retaliated against him as a whistleblower and lost almost $1m in money he seeded with the company. He then started Advent Medical. When asked if Advent is engaged in a patent strategy and currently conferring with legal counsel, Mr. Fincke replied "yes". Asked if he could go to the FDA (for approval) if he was aware of a product defect, Mr. Fincke stated "No, I would not submit it – it would be unethical, illegal."

Mr. Fincke testified about ISO certification procedures and how they work in conjunction with FDA guidance documents. He stated that Advent has received ISO 13485 certification which guides Advents quality management system, that it requires recertification which they received over multiple years, but stated "we suspended our certification when not moving forward in the 2016-2017 timeframe as it (certification) was expensive. Asked about previous references to CE marks, Mr. Fincke testified that it is a certification to sell products into certain international markets , and that he obtained CE marks many times when with Zoll. Asked if Advent had sought a CE mark at that point, Mr. Fincke stated they did a submission to the UK, but didn't execute, meaning the review was done, but Advent did not make a final payment (for certification) and was saving money at that time. When asked if submission of all CE standards for 510k approval would meet the minimum standards by the FDA, Mr. Fincke replied "yes". When asked during the 2010 timeframe, for 510k product clearance, did the FDA provide feedback on what they wanted included in the document to get the product approved. Mr. Fincke replied "...no changes to the product such a design changes, just additional statistical information..." When asked whether Advent made a Q-sub submission last Fall to the FDA, Mr. Fincke stated they resubmitted the 2010 product in the Q-sub. When asked if the FDA had any further open questions other than a user study after a January 9, 2024 Q-sub meeting, Mr. Fincke stated "No, just to provide technical reports, regression testing..."

Mr. Fincke was asked about Mr. Peter Crosby's testimony regarding 2015 changes from a 510k clearance to a PMA pathway. Mr. Fincke stated Mr. Crosby was incorrect....the FDA instituted the PMA process that focused on design of the products, the audit process and doing post-market surveillance. Mr. Fincke testified that he was aware the regulatory pathway had changed. When asked about the differences between a 510k review versus the PMA process, Mr. Fincke indicated the fundamental work is the design analysis, making the product exactly the same, documenting it and that all of the standards are exactly the same. Mr. Fincke stated, "When submitted to the FDA, they had no questions." When asked about Peter Crosby's testimony that the PMA process was substantially more expensive, Mr. Fincke replied "No, the FDA is not asking us to do anything other than what they did in the technical file." When asked if there was any substantial change in the regulatory costs over the time the investors were putting their money into the company, Mr. Fincke replied "no". When asked about the accuracy of documents that he wrote, Mr. Finke indicated that the documents he wrote including the investor updates, annual presentation documents and master documents are accurate. When asked about the three primary allegations in the Bureau's Staff Petition including the registration of investment with the State of New Hampshire, Mr. Fincke acknowledged that he did not make filings with the Bureau. Asked if prior to 2010 if Advent obtained securities legal advice about filings and registration requirements, Mr. Fincke stated "My understanding with the lawyers was we were compliant...no additional filings were required. Asked to explain Advent's intent behind the three documents that investors were asked to sign, Mr. Fincke stated "they were one document, the Note, Stock Buyback, and Equity ownership agreement were packaged to protect investors...they were one transaction...the law firm of Holland & Knight gave Advent the package." When asked if it was Advent's intent to honor all promissory notes of investors once many comes in from the sale of the products, Mr. Fincke replied "Yes, as long as I am living & breathing, or not." When asked about statements made by investors that they were not informed about the Zoll litigation, Mr. Fincke stated that Zoll admitted their research and development manager had read their documents and he told Zoll that he intended to sue them for having stolen his trade secrets. As for the Access Cardiosystems lawsuit, Mr. Fincke stated "I was a whistleblower- that product killed 24 people...it had a 100% failure rate, that they hid the data from the FDA investigator. And that six months and 1 day later, Zoll sued me...I thought it was all about retaliation." Mr. Finke further stated that Judge Boroff's decision concluded there was no product problem, and the decision described only one provision about violating the Massachusetts securities law, and "...the judged found the statement I made about the patent could be misleading and somehow connected it to me. As to the other allegations, Judge Boroff found in favor of me." When asked if he was aware of any legal requirement to tell investors about prior litigation that he was involved in, Mr. Fincke replied "no". Referring to the Bureau's Staff Petition relative to a 2013 company overview about the company making substantial progress developing products for market release and that a final AED prototype was being implement for final test, Mr. Finke testified that the product market release is accurate, that they were to begin product manufacturing in April, begin sales in the international markets using CE mark and then domestic markets, and that investors could expect a return on their investment within the first four quarters of product sales. When asked about the financial projections in 2013 and that substantial progress was being made and a correct forecast, he replied "yes". When asked if he had moved forward with international sales, would he have had sufficient profit to pay investors, and a return for investors within four quarters of production, he replied "yes".

Mr. Fincke testified that in 2014 he was raising the last investments and expecting to bring the AED product to market. However, between 2012 and 2014, Advent recognized a defect in the products circuit board, and it took a year to 18 months to qualify a new vendor. When asked if in 2014, for a product launch in 2015 if it was an accurate statement that Advent would be going to market, he replied "yes, it was". When shown his Investor Update dated June 9, 2014 (BSR Exhibit #7) and in response to a series of questions, Mr. Finke stated the representations made in the letter were accurate. When asked if during the 2015-2016 timeframe whether they were still in the slot of getting the products manufactured, he replied "yes, that is everything we are doing." When asked if during the 2015-2016 timeframe he was still of the mindset that Advent was still in the process of bring the product through the PMA pathway, he replied "yes". Mr. Fincke was asked to describe what happened between the middle of 2016 to present with Advent, Mr. Fincke stated "we're building the product...a lot of work with the technical file...however the computer and analytical analysis, the numbers were not adding up, and I asked for some engineering help." Mr. Fincke testified that they were having a battery issue that appeared to be an industry-wide problem and that during the end of 2016 into 2017, they had identified the problem, that the issue was systemic to the industry and required roughly a 24 month period to resolve.

When asked about the 2018-2019 time period, Mr. Fincke stated "we were totally slammed by Mass Securities...it totally stopped us...we had difficulty retaining contractors after the Mass Securities action." When asked whether the pandemic had any impact on the project in 2020, Mr. Fincke testified that he was working with his son Jonathan and graduate students at MIT and were cut off from the outside world. Mr. Finke testified that in 2023 they started the process of PMA approval, disclosed the mechanical problem to the FDA and "the FDA can see we're doing the right thing in the Q-Sub. Mr. Fincke stated that there are currently 2 employees plus contract help at Advent. When asked if it is his intent to see the product over the finish line, he replied "yes". When asked if he anticipates every New Hampshire investor is going to have their investment returned, he responded in the affirmative.

During cross examination by the Bureau, Mr. Fincke was asked if his brother Gary Fincke was the sole sales and marketing person for Advent, He replied "me and at least two other people." When asked if Gary Fincke was the only person approaching New Hampshire investors, he replied "No...I was involved in sales and marketing and their might have been some other people involved too...actually there were." Asked if Gary Fincke was the one who approached New Hampshire investors and solicited them for investment, he replied "In part." Asked if Gary Fincke had a home office and operated out of his home office, he replied "In part." Mr. Fincke could not recall how long Gary Fincke lived in Hampton Falls, New Hampshire or when he left Hampton Falls. Asked whether he had any formal training for raising capital, Mr. Fincke replied "no formal training". Asked if he wrote the company business overviews and updates, he replied, "Yes, through the years I did." Mr. Fincke was asked about his career path with Zoll Medical followed by Cadent, then Access Cardiosystems. Mr. Fincke testified about his experience working with these companies, the various wave forms, and the new Advent bi-phasic waveform and the defibrillation device he developed and discussed with investors. Asked when soliciting investors, if the disclosure documents and verbal conversations with investors made mention that the product was lightweight and there was a possible military application, that the military might be interested in the device, he replied "yes".

When asked about his status as a whistleblower to the FDA and the Massachusetts Attorney General's Office and whether action by taken by these agencies, Mr. Fincke stated the complaint was taken seriously and the FDA wrote a report to Access Cardiosystems and

instructed to take corrective actions. With regard to the Attorney General's office, Mr. Fincke was unsure what they did. Mr. Fincke acknowledged that he was President and founder of Access Cardiosystems. Mr. Fincke could not recall if he appealed Judge Baroff's decision to the U.S. District Court for the District of Massachusetts or whether it was affirmed by the First Circuit for the U.S. Appeals Court. Mr. Fincke testified that he believed Access Cardio retaliated against him, took away millions of dollars of his stock, and sued him. When asked if he considers the PMA regulatory path different from the 510k path, he replied "no, not really, we do the same activity so for us it's a different form." When asked if the regulatory path for PMA approval was longer than the 510k path, he replied "not necessarily, it depends on the quality of your work." Asked if the defibrillators had 510k approval at the time, he replied "yes". Referring to the Advent Company Update (Respondent's Exhibit 7), Mr. Fincke was asked if the company was on the pathway to manufacturing Class II or Class II and Class III devices, he replied "Class II and Class III". Mr. Fincke testified that the FDA never changed the requirements or standards for Class III devices. After considerable back and forth and asked if he needed approval to market a Class III device, Mr. Fincke stated "I don't know how to answer it." Asked if Advent had PMA approval from the FDA in place in February 2015, Mr. Fincke replied we had the 510k approval, but we were moving through the process. Asked if he was acquiring investors during the period 2012 to 2016, he replied "I believe that is correct". When asked "Did Advent tell either verbally or in writing to N.H. investors during this time period that the FDA requirement changed effective 2015 to require a PMA for a defibrillation device", Mr. Fincke replied "It doesn't, it's not applicable for a defibrillator, its applicable for an AED which is one portion of our product and frankly the form that we fill out, the FDA process can't be more than 5% of the total effort...a technical file, all your doing is mailing it to them, there should be no questions, you get the questions if you didn't do it right...". Asked a second time if he told New Hampshire investors that the requirement had changed with the FDA and that Advent needed FDA approval to market the device, he replied "I don't know."

The Bureau asked Mr. Fincke if he told N.H. investors during the 2012-2014 time period about the delays due to the circuit boards issue. He replied "I'm not sure...we're talking apples and oranges..." Shown Bureau's Fincke OTR Exhibit #6, Mr. Fincke indicated that he did not recognize the document, that the content was familiar...a presentation to investors..."It's out of context for me...I can't really be sure." Shown BSR [redacted] OTR Exhibit #7 and asked if he wrote the Advent Company presentations, he replied "In large part". Asked if he mentioned the litigation in this document, he replied "I don't how this is put together, I don't recognize it, I really can't answer that." Asked whether it was his practice to update company information generally on a yearly basis, Mr. Fincke replied "retrospectively, I look and it was about, the updates were about a year but not on a yearly not the other way around, they were updated, they were current to what we were doing at the time, they're independent of yearly, they happen to have a somewhat yearly result, they were updated based on events. " Asked if he would update them, Mr. Finke replied "in part". Shown BSR [redacted] deposition Exhibit #7 and the Investor's testimony that she received the document when she invested in March, 2012

and whether he believes it (the contents) was correct? He replied, "I'm not sure". Asked when [redacted] testified that she received a company disclosure in March, 2012 about the time she invested from Gary Fincke, whether that would be accurate. He replied, "I have no recollection." Referring to BSR Exhibit #11 and asked when it was delivered to investors (the time period being approximately 2015-2016), Mr. Fincke replied "I can't figure that out by scanning it like this...by scanning it I have not determine its timeframe...it could be determined, but I can't place it." Mr. Fincke was referred to pages 36, 37, 38 and 39 of Mr. Fincke' OTR Exhibit #12, and a document signed by Gary Fincke indicating "Product development is complete". Asked about pages 38 and 39 of his OTR testimony about the product line and accessories, Cortex technology and MD7 products and his statement "you could literally walk out today and sell those products with a 510k, he replied "The defibrillator products that we have the 510k for, we have, and that's true. Still have it. It's never changed."

On re-direct, Mr. Finke was asked about Gary Fincke's N.H. office, and if he also worked at the Massachusetts office as well, Mr. Fincke replied "yes".

Testimony of Nancy Fincke

Nancy Fincke is the wife of Mr. Randall Fincke. She resides with Mr. Fincke in Lincoln, Massachusetts and is employed as the director of the Lincoln Nursery School. She testified that she has known Mr. Fincke for almost 50 years having met while students at the University of New Hampshire. Asked to provide a summary of Mr. Fincke's career path, Mrs. Fincke stated that he was very serious student, received his Masters at Tufts, was first employed by Northrup, then recruited by a start-up company named Zoll where he developed products, then started his own company – Cadent then Access, and now Advent. She understood Zoll, Cadent and the other companies were all making defibrillator devices. Asked to describe the beginning of Mr. Fincke's company Advent Medical, Mrs. Fincke testified that it came after a tumultuous experience with Access where he was locked out of the company and was let go. She indicated it was a big financial risk where they had to sell their house and live in a rental for twelve years. Mrs. Fincke testified that Randall's work involved grueling hours where he worked at least a twelve hour day, often a fourteen hour day and most weekends, that he experienced challenges bringing people in (to Advent) because of the litigation and the Massachusetts Securities matter and "lots of attacks from the outside." She testified "with Randall he doesn't ever accept the phrase good enough, it has to be perfect especially with life saving devices." Mrs. Fincke testified about the difficulties they experienced due to the Massachusetts Securities Division matter. Mrs. Fincke stated that the pandemic was very disruptive to their lives and slowed things down again. Mrs. Fincke indicated that since that time, most of the work (at Advent) has been done by Mr. Fincke and Evan (Fincke), and that Mr. Fincke is up at 4:00 a.m. each day, working into the evening hours. She stated "His (Randall's) hope is to get it (the product) to market and sell the company and to pay back all the investors and I hope retire, I'm not sure if I can ever get him to retire, but that's my hope because he's really had a very difficult life since Access...even before that he always worked hard, he's relentless in his work and I just worry I don't want him to wear out."

The Bureau had no questions of Mrs. Fincke.

Testimony of Respondent's Expert Witness Josh Sharland

Mr. Sharland was called by Advent to testify as an expert witness in this matter. Following initial testimony as to his background and work experience with the FDA, experience with medical devices, training, having written and reviewed 510k and PMA submissions, and a review of his resume (Advent Exhibit #6) he was deemed qualified to offer expert testimony. Mr. Sharland outlined three opinions expressed in his expert report. First, the Advent device was on the pathway for FDA approval. When asked what research he conducted to make such a determination, Mr. Sharland stated that he investigated Advent's interaction with the FDA, certain activities that should be taking place such as the Q-sub meeting, looking at the requirements for PMA submission, looking at the interaction with the FDA and confirming that it was part of the 510k submission for FDA approval. Mr. Sharland testified that companies that are successful with the FDA if they have early and effective interaction with the FDA on the Q-sub submission. He stated "Randall Fincke was on the pathway because of his early interaction with the FDA and knew what to do with it. Referring to Advent Exhibit #20 and asked to clarify an answer in the Q-sub where Mr. Fincke answered "no" to a question regarding any related submissions or regulatory interactions, Mr. Sharland stated "What this question means is the review team wants to know about information that is not part of this submission that we (they) need to know about." Asked to review a letter from the FDA to Advent (Advent Exhibit #21), and Q-sub meeting minutes (Advent Exhibit #22) and whether the questions and responses impacted his opinion, Mr. Sharland replied "I'm a regulatory expert, to understand regulatory interaction with the FDA and Mr. Fincke, he was responsive to the FDA, and met the regulatory requirements. The information he provided was compliant with FDA regulations. Asked if Advent's Q-sub and answers to the FDA questions appropriate, Mr. Sharland replied "Advent's approach is exactly what I would recommend to a company. Asked his opinion on whether Mr. Fincke understands the regulatory process, Mr. Sharland stated "He understands it very well."

Referring to Opinion #2 in Mr. Sharland's report and asked if he thought it was important for a company to resolve an issue with a battery before seeking PMA approval, Mr. Sharland replied "Yes, it took him two years to solve the battery problem". When asked if it was prudent for Advent to raise the (battery) issue with the FDA, he replied "It is absolutely a requirement if there is a problem, you need to resolve it. Referring to Opinion #3 in his report and comments relative to Mr. Crosby's expert report and claim that misleading statements were made about the pathway and that a PMA is more expensive than a 510k, Mr. Sharland stated that cost would be what he (Mr. Fincke) decides and that cost is not an obstacle to the PMA approval pathway. Referring to Section 6 paragraph 53 of the Crosby report, Mr. Sharland was asked about Crosby's statement that a PMA application would take over one year. He replied, "no it can be less than that...that it already has 510k approval." When asked to comment on Page 18, paragraph 82 of the Crosby report where Mr. Crosby indicates that a PMA application takes more than one review cycle and an average of 627 days, Mr. Sharland stated "I disagree with Mr. Crosby's statement that the earliest they could obtain approval is seventeen months."

During cross examination by the Bureau, Mr. Sharland acknowledged that he never worked for a company that manufactured or designed an AED device or accessories, nor has he worked for a company that marketed a defibrillator. He also acknowledged that he did not have

familiarity with defibrillator technology, nor has he testified in previous cases regarding defibrillator devices. Asked if he looked at any engineering design with respect to the Advent products, he stated that he did not. When asked about the division he worked at while at the FDA, he indicated that it dealt with new animal drugs. Asked if it was correct that he is not an engineer or experienced with the technical engineering makeup of the products that were submitted as part of the Q-sub submission made in October, 2023, he stated "My job was to opine on whether or not there was a clear path to approval for Mr. Fincke's device, and my opinion based on my thirty years of experience was yes there is." Mr. Sharland acknowledged that it is his first time testifying in litigation with regard to defibrillators and was not asked to opine on company disclosures to investors regarding the purchase and sale of securities or whether the disclosures to investors were misleading. When asked how long he would expect it will take for PMA approval of Advent's product, Mr. Sharland indicated he could not give a time with regard to when the PMA submission will be made.

On re-direct counsel asked Mr. Sharland a series of questions relative to the FDA review process and the minutes of the Q-sub meeting containing red-lined FDA revisions to those minutes. Asked if he would agree the FDA was signaling that Advent was going in the right direction, Mr. Sharland testified "The letter is informative...no language in the FDA commentary that they (Advent) appear to be on the wrong track...reinforces my opinion Advent is on the right track."

Testimony of Respondent's Expert Witness Mark Horenstein

Dr. Mark Horenstein was called by Advent to testify as an expert witness in this matter. Dr. Horenstein is a retired professor of electrical engineering at Boston University, obtained a degree in electrical engineering from the Massachusetts Institute of Technology (M.I.T.), a master's degree from the University of California – Berkley, and a PhD. from M.I.T. He has authored a number of publications and was involved with a variety of research projects while at Boston University. Based on this testimony and a review of his resume (Advent Exhibit #5) he was deemed qualified to offer expert testimony in the area of electrical engineering. Referring to his expert report (Advent Exhibit #5), Dr. Horenstein testified that he first became aware of Advent Medical in 2019 through the law firm of Finx and Marx and was asked to render an opinion on the design of Advent's Cortex Fusion product. Dr. Horenstein testified that he was very impressed by Randall Fincke's presentation, the testing, qualifications, and saw a company that was following the right steps in terms of design practices being followed but was aware they had "glitches" along the way. Dr. Horenstein further testified that he understood a major issue with the Advent product was passing a drop test as the product contained lithium batteries and if damaged in any way, would catch fire and explode. Dr. Horenstein testified that he understood the product circuit boards were not protected against shock damage, and solving the issue was "a daunting challenge...but I was convinced the company was overcoming these issues to the extent that they could pass all relevant tests on the road to commercialization, product approvals, safety approvals." Dr. Horenstein testified that he believed the timeframe it took Advent to solve the battery problem was reasonable. He was also aware there were other problems involving separation of high voltage vs. low voltage. When asked if the delay producing the product from 2019 to 2024 appeared reasonable to him, Dr. Horenstein replied "I am unaware of any problems that had to be overcome since that time but many companies and I assume Advent included suffered the Covid delay and so there

is a two year period that accounts for delays in many things, so I don't know if that was a problem for them or not, if it was I'd believe it and again given the complexity of the project, once you have a prototype that works, putting it into mass production is yet another problem to overcome, how do you do it in a cost efficient way, how would you tool up for it, so I don't consider the time since 2019 to be an unreasonable delay."

During cross examination by the Bureau, Dr. Horenstein testified that he was not involved with defibrillators specifically, but was involved with pulse technology and the physics or engineering is similar to defibrillators. When asked if he ever qualified as an expert in a court proceeding, he replied "yes...but not with defibrillators specifically." Dr. Horenstein testified that he is unaware of the PMA process. When asked hypothetically if he would have been aware in 2019 that there wouldn't be a product five, six or maybe seven years depending on how the PMA process goes, would he still say the product is well on its way, he replied "...in five years? I would still consider that reasonable given that it's a life-saving health product and not a consumer device." When asked if he ever operated the Advent product, Dr. Horenstein replied "no".

Findings of Fact

The following facts are established as a result of extensive testimonial evidence and exhibits presented by the Bureau and Respondents at hearing:

1. Respondent Randall Finck is the President of Advent Medical Products, Inc. (hereinafter referred to as "Advent") and at all times resided in the Commonwealth of Massachusetts.

2. Gary Fincke was employed by Advent Medical Products, Inc. from 2012 until approximately 2017.

3. [redacted] identified as Investor #4 in the Bureau's Staff Petition for Relief is a resident of Maine.

4. [redacted] had no in-person meetings in the State of New Hampshire with Gary Fincke, Randall Fincke, or any other representative of Advent prior to her investment in Advent.

5. [redacted] identified at Investor #13 in the Bureau's Staff Petition for Relief resides in Manchester, New Hampshire.

6. [redacted] met with Gary Fincke and [redacted] financial adviser Steven Riley in North Andover, Massachusetts in April 2016 to discuss a possible investment in Advent.

7. [redacted] decided at the April 2016 meeting in Massachusetts to invest in Advent and hand-delivered a personal check for the full amount of the investment to Gary Fincke at the meeting in Massachusetts.

8. [redacted] identified as Investor # 12 in the Bureau's Staff Petition for Relief did not recall at the final hearing making a second investment with Advent, did not produce any signed documents affirming this investment, and admitted that he would have expected to remember an investment of that size, but did make said investment and acknowledged at the final hearing that he invested an additional $10,000 with Advent on April 12, 2016.

9. Although the Food and Drug Administration approval classification changed in 2015 from 510K to PMA approval for automated external defibrillators, the classification of Advent's *manual* defibrillator product that received 510K approval on or about April 1, 2010 did not change.

10. Advent offers several medical device products, which have different Food and Drug Administration approval for market classifications.

11. Testimony was heard at the final hearing from New Hampshire investors [redacted] and admitted deposition testimony with exhibits of [redacted] Investors [redacted] and [redacted] did not testify at hearing due to availability and her husband [redacted] is now deceased.

12. Gary Fincke is the brother of Respondent Randall Fincke and at the time of the purchase of the Advent Medical Products, Inc. securities by the New Hampshire Investors he lived on Prescott Lane in Hampton Falls, New Hampshire.

13. Gary Fincke is a graduate of the University of New Hampshire as is Randall Fincke.

14. Gary Fincke utilized the contacts he had made at the University of New Hampshire and in Hampton Falls, New Hampshire to solicit the New Hampshire Investors. Gary Fincke also received some referrals from Investors he knew.

15. Gary Fincke was in charge of Advent sales and marketing from 2012 until he left the company until approximately 2017.

16. Gary Fincke utilized Advent disclosure information referenced BSR [redacted] Exhibit #3 and BSR [redacted] Exhibit 7 written by Randall Fincke to solicit the New Hampshire Investors.

17. Gary Fincke utilized a home office at his home on Prescott Lane in Hampton Fall, New Hampshire as well as a New Hampshire cell telephone number and New Hampshire office number and e-mail address to promote, solicit, market, offer and sell the Advent securities.

18. Gary Fincke was in the State of New Hampshire when he met with, solicited and offered New Hampshire Investors [redacted] and [redacted] to purchase the Advent securities. The solicitation, offer to purchase and sale to these investors was made in New Hampshire and accepted in New Hampshire. Testimony provided at the final hearing and sworn on the record testimony of Gary Fincke before the Bureau supports this finding.

19. Gary Fincke testified on the record and under oath before the Bureau on December 1, 2022 that he met with and solicited Investor [redacted] in Manchester, New Hampshire.

20. The solicitation, offer to purchase and sale of the Advent securities to Investors [redacted] were made by Gary Fincke and originated from the State of New Hampshire. Testimony provided at the final hearing supports this finding.

21. The solicitation, offer to purchase and sale of Advent securities to [redacted] originated from New Hampshire because Gary Fincke was in charge of sales and marketing for AMP, and worked out of his home office in Hampton Falls, New Hampshire. Sworn on the record testimony of Gary Fincke before the Bureau on December 1, 2022 supports this finding.

22. Gary Fincke visited with his nearby neighbors [redacted] for the purpose of soliciting investments in Advent.

23. Investors [redacted] purchased Advent securities on February 17, 2012 and March 3, 2012 for $50,000 each. This is supported by sworn on the record testimony of Randall Fincke on September 29, 2022.

24. The solicitation, offer to purchase and sale of Advent securities to [redacted] was made and accepted in New Hampshire. This is supported by Mr. [redacted]'s testimony at the final hearing that he signed the Advent securities documents at his home in Nashua, New Hampshire and sent them back to Advent in Massachusetts.

25. The solicitation and offer to purchase Advent securities made by Gary Fincke originated from the State of New Hampshire. This is evidenced by communication between Fincke and Investor [redacted] that included a hand-signed letter to [redacted] (BSR [redacted] Exhibit #4) reflecting Fincke's home address in New Hampshire, his personal email address and two telephone numbers referencing a 603 area code. Investor [redacted] a Maine resident, testified at the final hearing that she understood Gary Fincke lived in New Hampshire and received an email from him dated February 29, 2012 that included investment documents (BSR [redacted] Exhibit #1). Investor [redacted] testified at the final hearing that he received a business card from Gary Fincke that referenced Fincke's telephone number with a New Hampshire area code, an email address, and was solicited via a phone call from Fincke. The cumulative evidence presented by the Bureau at hearing clearly establishes the fact that Gary Fincke solicited and continued to communicate with these New Hampshire investors including [redacted] from his home located in New Hampshire.

26. On the record testimony of Gary Finke taken on December 1, 2022 confirms that [redacted] of West Lebanon, New Hampshire was introduced to Advent Medical Products, Inc. by Randall Fincke. Gary Finke also testified under oath that he solicited [redacted] to buy the Advent securities.

27. Randall Fincke testified before the Bureau under oath on September 29, 2022 that a list of New Hampshire investors marked as Randall Fincke, Exhibit 1 was accurate. This list reflects [redacted] having invested $25,000 with Advent on March 17, 2015 and [redacted] investing $50,000 on July 13, 2014.

28. BSR Exhibit #2 reflecting Advent's securities sales breakdown establishes the date of sale, number of sales, and the noncompliance with the counting restrictions of the Uniform Limited Offering Exemption contained in RSA 421-B:17.

29. The Bureau's Affidavit of Brian Linares confirms that Advent Medical Products Inc. securities were not registered with the Bureau nor a record of any exemption from registration.

30. New Hampshire investors [redacted] and [redacted] testified at the final hearing. With the exception of [redacted] each of these investors testified that they received and signed three separate and distinct documents, namely a Promissory Note, Equity Purchase Plan, and Buyback agreement. Each Advent security had a separate heading, body of agreement and signature line for Randall Fincke and the Investor. Investor [redacted] was unable to recall the specific Advent securities but testified that he believed it was a loan to Advent.

31. [redacted] testified at the hearing that he wrote two separate checks, one for the Promissory Note in the amount of $10,000,and one for the Equity Purchase Plan for 60,000 shares at .01 cents per share in the amount of $600. The remaining New Hampshire Investors did not write separate checks because they did not purchase an Advent stock option. They wrote one check for the amount of their Promissory Note.

32. When Randall Fincke was asked during his on the record testimony before the Bureau on September 29, 2022 if the option to buy stock as part of the Equity Purchase Plan was imbedded in the promissory note, he testified "[t]hose are two separate documents. It's not imbedded."

33. Three reported court opinions addressing litigation brought by Access Cardiosystems against Randall Fincke identified at BSR Exhibits 4,5 and 6 were admitted into evidence at this final hearing as were the minutes of the United States Senate hearing of the Judiciary Committee's efforts to confirm two attorneys nominated for judgeships for the United States District Court for the Western District of Pennsylvania marked BSR Exhibit 7. The three court opinions demonstrate the progress of litigation from the United States Bankruptcy Court for the District of Massachusetts starting in 2005 through the appeals process ending in 2015. The minutes of the Judiciary Committee describe an unreported case handled by one of the nominees, involving litigation by

LifeCor, Inc. and Zoll Medical Corporation initiated in 1997 against Randall Fincke and a company he founded Cadent Medical Corporation. In the Zoll lawsuit a jury found in 2000 that Randall Fincke stole trade secrets. Following the trial the case was settled with money damages assessed against Randall Fincke and Cadent.

34. The Bankruptcy Court for the District of Massachusetts in 2009 found in the Access Cardiosystems securities fraud matter that Randall Fincke violated the Massachusetts Securities Act and committed securities fraud when he published a business plan that made a false statement concerning Access counsel opining that Access did not violate any patents. Counsel did not so opine. The matter was appealed by Randall Fincke and the matter was affirmed by the United States District Court for District of Massachusetts in 2012 and by the United States First Circuit Court of Appeals in 2015.

35. As noted in the summaries of testimony by the New Hampshire investors referenced in this Order, Randall Fincke and Advent failed to disclose these court findings either verbally or in writing when they purchased their Advent securities. When the Investors were asked if that disclosure of the litigation information would have had an effect on their decision to purchase the Advent securities, several indicated it would have affected their decision to invest.

36. The failure to disclose this information was a material omission. When comparing this information with the information that Advent and Randall Fincke did not disclose about Randall Fincke's biography and history in the defibrillation market, it makes the information disclosed misleading. An example can be found in BSR [redacted] Exhibit #3 and BSR [redacted] Exhibit #7 where Randall Fincke provides his biography and history with Zoll Medical Corporation, Cadent, and Access but omits to say that he was successfully sued by Zoll Medical and Access Cardiosystems.

37. [redacted] Investor #12 testified at this final hearing that when he invested in Advent, it was represented to him by Gary Fincke that Advent was "close to marketing" the Advent defibrillator products. That representation was material and false because at the time of the [redacted] investments on December 28, 2015 and April 12, 2016, the Food and Drug Administration changed the defibrillator medical device approval process from a 510K to a Preapproval Marketing Analysis process effective February 2015, and Advent did not have a PMA and had not even started the PMA application process which (according to the Bureau's expert witness Peter Crosby's testimony) is a long process taking up to two years to complete. Advent had not started the process at the time of these investments. According to BSR Crosby Exhibit #4, Advent did not expect to file for PMA until 2025.

38 [redacted] Investor # 7 testified at this final hearing that in 2016 when he made a second investment in Advent for $40,000 he did so because Gary Fincke told him they were on the cusp of getting to market and needed an additional push for more cash to get to market. This representation was false and material as [redacted] believed Advent was soon going to market.

39. [redacted] Investor # 13 testified at this final hearing that when he invested in April of 2016 at met with Gary Finke, it was represented to him that the Advent defibrillator products were close to being marketed. This representation was false and material as [redacted] believed Advent was soon going to market.

40. The representation to investors that Advent was going to market was material information an investor would want to be informed about in making a decision to invest in Advent because they were told they would not be paid back until Advent met certain revenue milestones.

Rulings of Law

This Presiding Officer, finding that the Bureau has presented sufficient evidence and has proven by a preponderance of the evidence each of the allegations in its Staff Petition for Relief, as amended, therefore makes the following conclusions of law:

1. Pursuant to RSA 421-B:30, I effective prior to January 1, 2016 and RSA 421-B:6-610(a) effective since January 1, 2016, the Bureau has jurisdiction to enforce the New Hampshire Uniform Securities Act when an offer to sell is made in this state. An offer to sell is made in this state, regardless of whether either party is located in this state if it originates from New Hampshire. RSA 421-B:30,III and RSA 421-B:6-610(c). The Bureau has jurisdiction over the Advent Medical Products, Inc. securities sales to the New Hampshire investors, and the one Maine investor.

2. Advent Medical Products, Inc. and Randall Fincke are both persons within the meaning of RSA 421-B:2,XVI, effective prior to January 1, 2016 and RSA 421-B:1-102(39), effective since January 1, 2016.

3. The promissory notes Advent Medical Products, Inc. and Randall Fincke sold to New Hampshire Investors [redacted] & [redacted] and [redacted] and the first sale to [redacted] on or about December 28, 2015 are securities as defined by RSA 421-B:2,XX(a) effective prior to January 1, 2016 because they are notes, evidence of indebtedness and investment contracts which are instruments for the investment of money in a common enterprise with the expectation of profits to be derived from the efforts of others.

4. The call and put options sold to New Hampshire Investors [redacted] & [redacted] and [redacted] and the first sale to [redacted] on or about December 28, 2015 are securities as defined by RSA 421-B:2,XX(a).

5. The promissory notes Advent Medical Products, Inc. and Randall Fincke sold in the second sale to [redacted] on or about April 12, 2016 and the promissory note sold to [redacted] are securities as defined by RSA 421-B:1-102(52)(A), effective since January 1, 2016 as they are notes, evidence of indebtedness and investment contracts.

The call and put options sold in the second sale to [redacted] on or about April 12, 2016 and [redacted] on or about April 28, 2016 are securities as defined by RSA 421-B:1-102(53)(A), effective since January 1, 2016, as put and call options are defined as securities and they are investment contracts.

6. Advent Medical Products, Inc. and Randall Fincke's sales of promissory notes to Investors [redacted] & [redacted] and [redacted] and the first sale to [redacted] on or about December 28, 2015 constitute the sale of securities as defined by RSA 421-B:2,XIX, effective prior to January 1, 2016. Advent Medical Products, Inc. and Randall Fincke's sales of promissory notes, call options and put options to [redacted] on or about April 12, 2016 and [redacted] on or about April 28, 2016 constitute the sale of securities as defined by RSA 421-B:1-102(49), effective since January 1, 2016.

7. Pursuant to RSA 421-B:3,I(b) effective prior to January 1, 2016 and RSA 421-B:5-501(a)(2) effective since January 1, 2016, it is unlawful for any person, in connection with the offer, sale, or purchase of any security, to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading. Except for [redacted] and [redacted] whose fraud claims were withdrawn by the Bureau as they did not appear and testify at the final hearing, Advent Medical Products, Inc. and Randall Finke violated RSA 421-B:3,I(b) by not informing [redacted] & [redacted] and [redacted] and not informing [redacted] for his first security purchase on or about December 28, 2015 that Randall Fincke was found liable in the Zoll lawsuit, or fraud under the Massachusetts Uniform Securities Act in the Access Cardiosystems action, as described in Findings of Fact 34 and 35. Advent Medical Products, Inc. and Randall Fincke violated RSA 421-B:5-501(a)(2) by not informing [redacted] and [redacted] when they purchased securities that Randall Fincke was liable in the Zoll Medical lawsuit for fraud under the Massachusetts Uniform Securities Act in the Access Cardiosystems matter. This standard has been recognized by the New Hampshire Supreme Court in the matter of State v. Bates, 2020 NH. Lexis 199 (2020) where it was held that an omission is material in a securities transaction "so long as there is a substantial likelihood that a reasonable investor would find the misrepresentation important in making an investment decision." Id. at 12.

8. Pursuant to RSA 421-B:3,I(b) effective prior to January 1, 2016 and RSA 421-B:5-501(a)(2), effective on or after January 1, 2016, it is unlawful for any person, in connection with the offer, sale, or purchase of any security to make an untrue statement of material fact. Advent Medical Products and Randall Fincke made statements to Investors [redacted] and [redacted] that Advent was close to bringing the Automated External Defibrillators to market. The testimony of the witnesses and exhibits presented at the final hearing support a finding that these statements made by Advent and Randall Fincke were untrue. They relied on these statements when they purchased the promissory notes, put options, and call options.

9. Pursuant to RSA 421-B:11,I, it is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter, the security or transaction is exempted under RSA 421-B:17, or it is a federal covered security for which the fee has been paid and documents have been filed. For Advent to qualify for this exemption under RSA 421-B:17,II(a)(2)(A), there must be ten or fewer purchasers of a security in a twelve month consecutive period and there must be twenty-five or fewer purchasers during Advent's existence. As established during the final hearing, during the twelve month period from March 26, 2010 to March 26, 2011, Advent and Randall Fincke sold Advent securities to twelve investors, and from March 26, 2008 to December 31, 2015, Advent and Randall Fincke sold securities to 71 investors. As a result, Advent exceeded the numerical threshold to qualify for the registration exemption. As a result, Advent and Randall Fincke's sales of securities to investors [redacted] and the first security sale to [redacted] on December 28, 2015 were unlawful.

10. Pursuant to RSA 421-B:26,III, effective prior to January 1, 2016 and RSA 421-B:6-604(d), since January 1, 2016, the secretary of state may impose a civil penalty up to a maximum of $2,500 for a single violation of RSA 421-B. Advent Medical Products, Inc,. and Randall Fincke are subject to this provision for (a) failing to disclose the Zoll lawsuit to investors prior to selling 14 promissory notes, 14 call options, and 14 put options (b) failing to disclose the Access Cardiosystems lawsuit to investors prior to selling 14 promissory notes, 14 call options, and 14 put options, (c) making untrue statements of material fact to three investors each of which purchased a promissory note, call option, and put option and (d) failure to register 45 securities with the state.

11. Pursuant to RSA 421-B:26,V and RSA 421-B:26,VI effective prior to January 1, 2016, and RSA 421-B:6-604(e), since January 1, 2016, after notice and hearing, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated provisions of RSA 421-B.

12. Pursuant to RSA 421-B:6-604(a)(1), If the secretary of state determines that a person has engaged, is engaging, or is about to engage, in an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, or that a person has, is, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or an order issued under this chapter, the secretary of state may: issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter.

Discussion

The above Findings of Fact and Conclusions of Law are based on a thorough examination of the record including testimony of the New Hampshire Investors, Randall Finke, Gary Finke, experts called by the Bureau and Respondents and all related exhibits. The evidence

presented at the final hearing shows that sales of Advent Medical Products, Inc. securities made to N.H. investors facilitated by Gary Finke and Randall Fincke exceeded the numerical threshold to qualify for the exemption provision in RSA 421-B. Testimony was consistent among several of the Investors that they were told and understood Advent was close to bringing its product to market, and that influenced their decision to invest in the company. Testimony of the Investors was also consistent with respect to receiving limited information from Advent or Randall Fincke after they purchased the securities. Although Gary Fincke was largely responsible for sales and marketing at Advent, in several instances investors were invited to meet with Randall Fincke in Massachusetts to discuss the Advent product, understood the product would soon be going to market, and encouraged to invest. Randall Fincke provided extensive testimony relative to the company's products and development of the Cortex Fusion AED, the process for regulatory approval of defibrillator products, the several delays he experienced due to technical problems, a shift in the FDA regulatory application and approval process from 510k to a PMA review process, the pandemic, and an action brought by the Massachusetts Securities Division and its impact of retaining staff. In most instances, the Investors were unaware of these issues. However, a determining factor here is that Investors were unaware at the time they invested that Randall Fincke was liable in the Zoll Medical lawsuit, for fraud in the Access Cardiosystems case -- a material omission, and made untrue statements that Advent was close to bringing the AED's to market.

Respondent's Motion to Dismiss

On August 9, 2024 the Respondents filed a Motion to Dismiss citing the action is barred by the statute of limitations, barred by the doctrine of laches, that the sale of securities to certain purchasers were exempt from registration, and the sale to a Maine investor is outside the scope of the Bureau's jurisdiction and must be dismissed.

The Respondents first assert that the Staff Petition for Relief is untimely, citing that the Bureau commenced its investigation in 2018 when it became aware of an administrative complaint filed by the Massachusetts Securities Division. The Respondents point to RSA 508:4h that an administrative action must be commenced within 3 years of the date an administrative agency has knowledge of the act, omission, or violation about which it complains. I disagree. In its Reply Motion, the Bureau correctly points to the precise language RSA 508:4h which states "all personal actions or civil enforcement actions in which the State is a plaintiff shall be brought within 3 years of the date when the plaintiff, agency, department, authority or official possessed actual knowledge of the act, omission or violation complained of..." The present matter is an administrative action and not a civil enforcement action that would be brought in Superior Court. RSA 421-B:6-603(a). The Bureau points out that even if RSA 508:4h were to apply, the present action would not be barred as it did not possess actual knowledge of the act, omission or violation within the proscribed 3 year period. The Bureau's recitation in its Reply Motion as to how it came to know of the Massachusetts Securities Bureau complaint, the investor complaints, receipt of investigative documents and the filing of its Staff Petition for Relief in March, 2023 demonstrates that the filing of its Staff Petition for Relief was timely.

The Respondents assert the Staff Petition should be barred by the doctrine of laches, citing four factors to be considered including (1) knowledge of the plaintiffs, (2) the conduct of the Respondents (3) the interests to be vindicated, and (4) the resulting prejudice. The

Respondents claim the Bureau's request for relief would prohibit Advent from being able to obtain any N.H. investors, and that imposition of fines and ordering restitution to the N.H. investors named in this matter would impact its ability to proceed with development and regulatory approval of its devices. The Bureau contends that laches is an equitable doctrine that can only be asserted against the government in "extraordinary and compelling circumstances." Town of Seabrook v. Vachon Mgmt., Inc., 144 N.H. 660,667-668 (2000). Laches is only a defense if the delay was unreasonable and prejudicial, and that such a defense cannot be made when the party claiming laches caused or contributed to the delay New Hampshire Donuts v. Skipitaris, 129 N.H. 774, 785-786 (1987). The Bureau also contends a laches defense does not apply here as this is an administrative proceeding and not an equitable action. As noted above, there was no significant delay in terms of the time spent by the Bureau to investigate this matter, request and receive documents, take testimony of the Respondents and then file its Petition for Relief.

The Respondents assert the Bureau's action is barred arguing that the predecessor to the current Uniform Securities Act applies to all actions or proceedings instituted based on conduct that occurred prior to the effective date of the N.H. Securities Act, that RSA 421-B:7-701 imposes a five year statute of repose on all actions based on conduct of the Respondents that occurred prior to enactment of the current Uniform Securities Act. Again, the Bureau correctly points out that this provision applies only to a civil action and not an administrative action, and therefore not a bar to the Bureau's claims.

With respect to all other claims relative to certain investors as exempt under RSA 421-B, the sales to Investors [redacted], [redacted] and [redacted] were not exempt at the time of those sales. As previously addressed in this Order, if the issuer makes sales to over 10 purchasers over any 12 month period, or 25 over its existence, it is no longer a limited offering, and any securities sales are no longer exempt from registration. I concur with the Bureau that application of this exemption as it relates to the sales made by the Respondents during the period is not a retrospective application of the law because the law was in effect at the time of the Respondent's violations. With respect to Investor [redacted] a resident of Maine, it was established at the final hearing how she came to know Gary Fincke, a New Hampshire resident, and purchased Advent securities. The Respondents argue that the Bureau lacks jurisdiction over the [redacted] transaction because she was a Maine resident at the time of the purchases. The fact that [redacted] was a Maine resident at the time is not controlling here. As noted in RSA 421-B:30 III(a) an offer to sell is made in New Hampshire when the offer originates from this state. The Bureau established by a preponderance of the evidence that Gary Finke resides in New Hampshire, was introduced to him through her friend [redacted] knew that Finke resided in New Hampshire, and that he communicated with [redacted] via email to effect the sales. Given these facts, the Bureau has jurisdiction over the sales of Advent securities to [redacted].

Therefore, Respondents Motion to Dismiss is denied.

At the conclusion of the hearing, Counsel for the Respondents requested that Respondent's Exhibits 2 & 3 as well as Exhibits 7 through 17 be withdrawn. The Bureau requested that Bureau's Exhibit 10 be withdrawn.

Order

WHEREAS, finding it necessary and appropriate and in the public interest and for the protection of investors and consistent with the intent and purpose of the New Hampshire Uniform Securities Act RSA 421-B, it is hereby ORDERED, that:

1. The Respondents shall cease and desist from further violations of N.H. RSA 421-B pursuant to N.H. RSA 421-B:6-604(a)(1).

2. The Respondents shall jointly and severally pay an administrative fine of $345,00 for 138 violations of RSA 421-B.

3. The Respondents shall jointly and severally rescind the securities sold to [redacted] & [redacted] and [redacted] prior to January 1, 2016 totaling $420,000.

4. The Respondents shall jointly and severally rescind the securities sold to [redacted] ($10,000) and [redacted] ($50,000) after January 1, 2016 totaling $60,000.

5. The Respondents shall jointly and severally pay the Bureau of Securities costs of investigation and enforcement in the amount of $60,000.

SIGNED,
DAVID SCANLAN
SECRETARY OF STATE
BY HIS DESIGNEE:

Dated: October 1, 2024

BARRY J. GLENNON, DIRECTOR,
BUREAU OF SECURITIES REGULATION