

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of **Adam S. Lee**)
PH-PT Reg. No. 1412)
License Expiration Date 08/26/04)

Docket No. PH-PT-07-082

FINAL DECISION AND ORDER BY DEFAULT

On September 18, 2007, pursuant to 801 CMR 1.01(6)(a), the Board of Registration in Pharmacy ("Board") issued and duly served on **Adam S. Lee** ("Respondent") an Order to Show Cause ("Show Cause Order") related to a complaint filed regarding Respondent's registration as a pharmacy technician. In addition to stating the allegations against Respondent, the Show Cause Order notified Respondent that an Answer to the Show Cause Order ("Answer") was to be submitted within 21 days of receipt of the Show Cause Order in accordance with 801 CMR 1.01(6)(d)(2); of the right to request a hearing on the allegations pursuant to M.G.L. c. 112, s. 61; and that any hearing request ("Request for Hearing") was to be submitted within 21 days of receipt of the Show Cause Order and that failure to do so would constitute a waiver of the right to a hearing. Respondent was further notified that failure to submit an Answer within 21 days of receipt of the Show Cause Order "*shall result in the entry of default* in the captioned matter" and, if defaulted, "the Board may enter a Final Decision and Order that assumes the truth of the allegations in the Show Cause Order and may revoke, suspend, or take other disciplinary action against [Respondent's] license...including any right to renew" Respondent's registration." A copy of the Show Cause Order is attached to this Final Decision and Order by Default and is incorporated herein by reference.

On October 17, 2007, Prosecuting Counsel sent notice to Respondent to file an Answer and a Request for Hearing by October 26, 2007. The notice again advised Respondent that if defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations stated in the Show Cause Order and impose discipline on Respondent's registration, including discipline on any right to renew.

As of the date of this Final Decision and Order by Default, Respondent has failed to file either an Answer or a Request for Hearing.

The Board has afforded Respondent an opportunity for a full and fair hearing on the allegations in the Show Cause Order as required by M.G.L. c. 30A, § 10, and sufficient notice of the issues involved to afford Respondent reasonable opportunity to prepare and present evidence and argument as required by M.G.L. c. 30A, § 11, subsection (1). The Board has also notified Respondent of the obligation under 801 CMR 1.01(6)(d) to file an Answer to the Show Cause Order within 21 days of receipt and of the consequences of failing to file an Answer or otherwise respond.

As authorized by M.G.L. c. 30A, §§ 10, subsection (2), the Board may make informal disposition of any adjudicatory proceeding by default. Upon default, the allegations of the complaint against Respondent are accepted as true. *Danca Corp. v. Raytheon Co.*, 28 Mass. App. Ct. 942, 943 (1990).

Based on the foregoing, the Board enters a default in the above-captioned matter and, consequently, the allegations in the Order to Show Cause are deemed to be true and Respondent has waived the right to be heard.

In accordance with the Board's authority and statutory mandate, the Board orders as follows:

ORDER

The Board voted to issue this Final Decision and Order by Default and REVOKE Respondent's inchoate right to renew Pharmacy Technician Registration No. 1412 at its meeting on November 20, 2007 by the following vote:

In favor: George A. Cayer, R.Ph., Karen Ryle, R.Ph., M.S., Joel R. Berman, R.Ph., Sophia Pasedis, R.Ph., Pharm.D., Kathy J. Fabiszewski, Ph.D., N.P., Steven Budish, Public Member.

Opposed: None. Recused: James T. DeVita, R.Ph., Michael Tocco, R.Ph., M.S.

Absent: Donald D. Accetta, M.D., William A. Gouveia, R.Ph. M.S.,

Marilyn M. Barron, MSW, Public Member. Abstained: None.


EFFECTIVE DATE OF ORDER

This Final Decision and Order by Default becomes effective upon the date it is issued (see "Date Issued" below).

RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this Final Decision and Order by Default within thirty (30) days of receipt of notice of this Final Decision pursuant to G.L. c. 112, § 64.

BOARD OF REGISTRATION
IN PHARMACY


Sophia Pasedis, R.Ph., Pharm.D.
President Elect
Date Issued: November 20, 2007

Attachment: Order to Show Cause dated September 18, 2007

Notified:

First Class Mail and Certified Mail/Receipt No. 7006 2760 0003 7733 3154

Board Use Dec. No. _____

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
ADAM S. LEE)
PHPT Reg. No. 1412)
License exp. 8/26/04)
_____)

Docket No. PH-PT-07-082

ORDER TO SHOW CAUSE

Adam S. Lee (hereinafter "you" or "Respondent"), you are hereby ordered to appear and show cause why the Massachusetts Board of Registration in Pharmacy ("Board") should not suspend, revoke or otherwise take action against your pharmacy technician registration, Registration No. 1412, or your right to renew such registration, pursuant to Massachusetts General Laws (G. L.) Chapter 112, §§ 42A and 61, and Board regulations 247 CMR 2.00 et seq., based upon the following facts and allegations:

1. On or about December 5, 2002, the Board issued you a pharmacy technician registration, Registration No. 1412. Your registration expired on August 26, 2004.
2. In or about December 2006, you were employed as a registered pharmacy technician at Bay State Medical Center in Springfield, Massachusetts.
3. On or about December 21, 2006, while employed as a pharmacy technician at the Bay State Medical Center, you stole 240 tablets of 10mg Oxycontin and 240 tablets of 20mg Oxycontin.

4. On or about January 19, 2007, you entered a Walgreens Pharmacy located at 60 Springfield Street, Agawam, Massachusetts and uttered a false prescription for 180 tablets of 30mg oxycodone.
5. You forged the false prescription that you uttered on January 19, 2007 at Walgreens Pharmacy.
6. Based on your conduct described in paragraphs #4 and #5, you were criminally charged by the Agawam police department with uttering a false prescription for a controlled substance, in violation of G.L. c. 94C, § 33, a misdemeanor. You were also charged with forgery, in violation of G.L. c. 267, § 1, a felony.

7. Based on your conduct described in paragraphs #4 and #5, on or about June 4, 2007 in the Westfield District Court, you admitted to sufficient facts to both of the listed charges and were sentenced to supervised probation until June 4, 2008.

8. In or about March 2007 through April 2007, you were employed as a pharmacy technician at CVS # 838 in Westfield, Massachusetts. Your pharmacy technician registration expired on August 26, 2004. Throughout your employment at CVS #838, you were working on an expired pharmacy technician registration.

9. In or about November 2006 through January 2007, you were employed as a registered pharmacy technician at Bay State Medical Center in Springfield, Massachusetts. Your pharmacy technician registration expired on August 26, 2004. Throughout your employment at Bay State Medical Center, you were working on an expired pharmacy technician registration.

10. Your conduct as alleged above warrants disciplinary action by the Board against your pharmacy technician registration pursuant to G. L. c. 112, § 61, for deceit, malpractice, gross misconduct in the practice of the profession, or for any offense against the laws of the Commonwealth relating thereto.
11. Your conduct as described above constitutes failure to conduct professional activities in conformity with federal, state and municipal laws, ordinances and/or regulations, of the Board and therefore warrant disciplinary action by the Board pursuant to M.G.L. c. 112, §§ 28, and 42A, M.G.L. c. 94C, and 247 CMR 2.00 et seq., specifically:
- a. Your conduct as described above violates G.L. c. 94C, §§ 33, 34 and 37, for failing to comply with the Massachusetts Controlled Substances Act.
 - b. Your conduct as described above violates 247 CMR 8.02(1) and (4) for failing to comply with the requirements for registration as a pharmacy technician.
 - c. Your conduct as described above violates 247 CMR 8.07(2)(b) for failing to comply with registration and renewal procedures.
 - d. Your conduct as described above violates 247 CMR 10.03(a),(b), (e), (i), (l), (n), (r), (u), (v), (w), and (x) for violating various provisions elicited in the Board of Registration of Pharmacy grounds for discipline.

12. Your conduct as described above also constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the pharmacy profession. *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338, 342 (1996); see also, *Kvitka v. Board of Registration in Medicine*, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708, 713 (1982).

You have a right to an adjudicatory hearing ("hearing") on the allegations contained in the Order to Show Cause before the Board determines whether to suspend, revoke, or impose other discipline against your registration. G.L. c. 112, § 61. Your right to a hearing may be claimed by submitting a written request for a hearing *within twenty-one (21) days of receipt of this Order to Show Cause*. You must also submit an Answer to this Order to Show Cause in accordance with 801 CMR 1.01(6)(d) *within twenty-one (21) days of receipt of this Order to Show Cause*. The Board will give you prior written notice of the time and place of the hearing following receipt of a written request for a hearing.

Hearings shall be conducted in accordance with the State Administrative Procedure Act, G.L. c. 30A, §§ 10 and 11, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03, under which you are granted certain rights including, but not limited to, the rights: to a hearing, to secure legal counsel or another representative to represent your interests, to call and examine witnesses, to cross-examine witnesses who testify against you, to testify on your own behalf, to introduce evidence, and to make arguments in support of your position.

The Board will make an audio recording of any hearing conducted in the captioned matter. In the event that you wish to appeal a final decision of the Board, it is incumbent on you to supply a reviewing court with a "proper record" of the proceeding, which may include a written transcript. *New Bedford Gas and Light Co. v. Board of Assessors of Dartmouth*, 368 Mass. 745, 749-750 (1975). Upon request, the Board will make available a copy of the audio recording of the proceeding at [your] own expense. Pursuant to 801 CMR 1.01 (10) (i)(1), upon motion, you "may be allowed to provide a public stenographer to transcribe the proceedings at your own expense upon terms ordered by the Presiding Officer". Those terms may include a requirement that any copy of the transcript produced must be sent immediately upon completion, and on an ongoing basis, directly to the Presiding Officer by the stenographer or transcription service. The transcript will be made available to the Prosecutor representing the Board. Please note that the administrative record of the proceedings, including but not limited to, the written transcript of the hearing is a public record and subject to the provisions of G.L. c. 4, § 7 and G.L. c. 66, § 10.

Your failure to submit an Answer to the Order to Show Cause within twenty-one (21) days of receipt of the Order to Show Cause *shall result in the entry of default* in the captioned matter. Your failure to submit a written request for a hearing within twenty-one (21) days of receipt of this Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations herein and on any Board disciplinary action.

Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, your failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or your failure to otherwise defend this action shall result in the entry of default.

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your registration to practice as a pharmacy technician in the Commonwealth of Massachusetts, including any right to renew your registration.

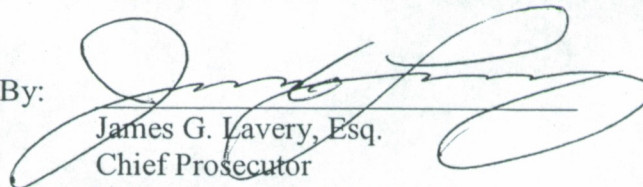
Your Answer to the Order to Show Cause and your written request for a hearing must be filed with James G. Lavery, Prosecuting Counsel, at the following address:

James G. Lavery, Esq.
Chief Board Prosecutor
Department of Public Health
Office of the General Counsel
239 Causeway Street, 4th Floor
Boston, MA 02114

You or your representative may examine Board records relative to this case prior to the date of the hearing during regular business hours at the office of the Prosecuting Counsel. If you elect to undertake such an examination, then please contact Prosecuting Counsel in advance at (617) 973-0822 to schedule a time that is mutually convenient.

Board of Registration in Pharmacy,
Sophia Pasedis, Pharm.D., R.Ph., President-Elect

By:


James G. Lavery, Esq.
Chief Prosecutor
Department of Public Health

Dated: September 18, 2007