

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN
PHARMACY

IN THE MATTER OF
BRANDON J. ZARR
PH-PT LICENSE NO. 9744
LICENSE EXPIRED 10/15/2010

DOCKET NO. PHA-2010-0215

FINAL DECISION AND ORDER BY DEFAULT

On May 5, 2011, the Board of Registration in Pharmacy ("Board") issued and duly served on Brandon J. Zarr ("Respondent"), an Order to Show Cause ("Show Cause Order")¹ related to a complaint filed regarding Respondent's license. 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 Order². The Show Cause Order also notified Respondent of the right to request a hearing on the allegations³, and that any hearing request ("Request for Hearing") was to be submitted within 21 days of receipt of the Show Cause Order.⁴ Respondent was further notified that failure to submit an Answer within 21 days "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] license." A copy of the Show Cause Order is attached to this Final Decision and Order by Default and is incorporated herein by reference.

¹ Pursuant to 801 CMR 1.01(6)(a).

² In accordance with 801 CMR 1.01(6)(d)(2).

³ Pursuant to M.G.L. c. 112, s. 61.

⁴ Respondent was also notified that failure to timely submit a Request for Hearing would constitute a waiver of the right to a hearing.

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, s. 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, s. 11(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 its receipt and of the consequences of failing to file an Answer or otherwise respond.

As authorized by M.G.L. c. 30A, s. 10(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:

On June 7, 2011, in accordance with the Board's authority and statutory mandate, the Board voted to issue this Final Decision and Order by Default and REVOKE Respondent's Pharmacy Technician registration (No. 9744; suspended by the Board effective December 14, 2010), effective as of the date issued (see below), by the following vote: In favor: Stanley B. Walczyk, R.Ph.; Karen M. Ryle, R.Ph., George A. Cayer, R.Ph.; Donald D. Accetta, M.D.; Michael Tocco, R.Ph., Kathy J. Fabiszewski, Ph.D., N.P.; Sophia Pasedis, R.Ph., Pharm.D.; Steven Budish, Public Member and James T. DeVita, R.Ph. Opposed: None. Recused: Joanne M. Trifone, R.Ph. Absent: None.

The Board will not review any petition for pharmacy technician licensure in the Commonwealth filed sooner than five (5) years from the Effective Date of this Final Decision and Order. While Respondent's pharmacy technician registration is revoked, Respondent may not: (1) be employed as pharmacy technician to provide any services related to the practice of pharmacy or be employed to provide any services in any capacity in any pharmacy setting in the Commonwealth; or (2) have any ownership, management or other interest or involvement in any pharmacy related business in any setting. If at any time in the future Respondent seeks re-licensure by the Board, she will be required to meet all current requirements for licensure at the time of any such application, including, but not limited to, re-application, re-examination, re-training and moral character qualifications (including consideration of any convictions or unlawful activity) and any other reinstatement terms and conditions the Board may deem to be necessary and appropriate. Respondent is hereby advised that the Board does not envision any terms or conditions pursuant to which the Board would consider Respondent to be qualified for licensure as a pharmacy technician in the Commonwealth in the future.

EFFECTIVE DATE OF ORDER

The Order of the Board shall be effective as of June 7, 2011.

Respondent is hereby notified of his right to appeal this Final Decision and Order to the Supreme Judicial Court, pursuant to G.L. c. 112, § 64 and G.L. c. 30A, §§ 14 and 15, within thirty days of receipt of notice of this Final Decision and Order by Default.

BOARD OF REGISTRATION
IN PHARMACY



Stanley J. Walczyk, R.Ph.
President Elect

Date: June 10, 2011

Decision No. 2628

Certified Mail No. 7009 1680 0000 6389 7606/First Class Mail

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN PHARMACY

IN THE MATTER OF
BRANDON J. ZARR
PH-PT REGISTRATION NO. 9744
REG. EXP. DATE: 10/15/2010

DOCKET NO. PHA-2010-0215

ORDER TO SHOW CAUSE

Brandon J. Zarr, 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. 9744, or your right to renew such registration, pursuant to Massachusetts General Laws 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 May 16, 2008, the Board issued to you a pharmacy technician registration, Registration No. 9744. Your registration expired on October 15, 2010.
2. From or about August 2007 through November 2010, you were employed at Walgreens Pharmacy #10401, 220 Grafton Street, Worcester, Massachusetts ("Walgreens #10401") and Walgreens Pharmacy #9233, 225 Boston Turnpike, Shrewsbury, Massachusetts ("Walgreens #9233").
3. From or about May 2010 through November 2010, while working as a pharmacy technician at Walgreens #10401, you diverted approximately 13,412 units of schedules CIII and CVI controlled substances and, while working as a pharmacy technician at Walgreens #9233, you diverted approximately 1,705 units of schedules CIII and CVI controlled substances for your personal use or gain.
4. On or about November 17, 2010, while working as a pharmacy technician at Walgreens, you were arrested for possession of heroin, operating under the influence of drugs and driving with a suspended license.
5. On or about November 18, 2010, you admitted in a signed statement to Walgreens Loss Prevention that you diverted schedules CIII and CVI controlled substances for personal use or gain over an eight month period.
6. On or about December 14, 2010, as a result of the events described in paragraphs three and four, above, the Board issued a temporary order of summary suspension ("order") of your registration to practice as a pharmacy technician. That order advised you of your right to request a hearing on the necessity of continuing the summary suspension of your

registration by filing a written request with the Board by December 17, 2010. You failed to request such a hearing.

7. On or about December 17, 2010, the Board issued a Voluntary Surrender Statement of your registration to practice as a pharmacy technician.

8. Your conduct as alleged warrants disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to G. L. c. 112, §§ 28 and 42A, G.L. c. 94C, § 14 and 247 CMR 10.07.
9. Your conduct as alleged demonstrates a lack of the good moral character required for registration as a pharmacy technician in the Commonwealth pursuant to Board regulation 247 CMR 8.02 (1)(a)3.
10. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as pursuant to G.L. c. 112, § 61, for deceit, malpractice, gross misconduct in the practice of the profession, or any offense against the laws of the Commonwealth relating thereto.
11. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacy technician pursuant to Board regulation 247 C.M.R. 10.03, et. seq. for violation of the following:
 - a. Your conduct as alleged violates 247 C.M.R. 10.03 (1) §§ (a), (b), (e), (h), (k), (l), (n), (r), (u), (v) and (x); and
 - b. Your conduct as alleged violates G.L. c. 94C, §§ 17, 25, 26 and 37.
12. Your conduct as alleged also constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the 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 promptly 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 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 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, failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or 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 Tarah Provencal at the following address:

Tarah Provencal
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
239 Causeway Street, Suite 500, 5th 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) 973-0923 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION
IN PHARMACY,
Stanley B. Walczyk, R.Ph., President

By: Tarah Provencal
Tarrah Provencal
Prosecuting Counsel
Department of Public Health

Date: May 5, 2011