

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
BRIAN KEITH FRANKLIN)
PH-PT Registration No.13227)
(Reg. Suspended 8/16/2011))
_____)

Docket No. PH-PT-2011-0185

FINAL DECISION AND ORDER BY DEFAULT

On November 14, 2011, the Board of Registration in Pharmacy ("Board") issued and duly served on Brian Keith Franklin, ("Respondent") an Order to Show Cause ("Show Cause Order")¹ related to a complaint filed regarding Respondent's pharmacy technician registration. 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 pharmacy technician registration ...including any right to renew her license."

On November 16, 2011, the Show Cause Order was delivered by certified mail by the United States Postal Service to the Respondent's address of record. 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. (A copy of the Show Cause Order is attached to this Final Decision and Order by Default and is attached hereto and 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, § 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.

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(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, § 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 May 8, 2012, in accordance with the Board's authority and statutory mandate, the Board voted to issue this Final Decision and Order by Default and **REVOKE** any right Respondent may have to renew Pharmacy Technician registration No. 13227 (expiration 02/09/2013), which registration was suspended by the Board on August 16, 2011 by the following vote, effective as of the date issued: In favor: Stanley B. Walczyk, R.Ph.; Karen M. Ryle, R.Ph.; Donald D. Accetta, M.D.; Michael Tocco, R.Ph.; Sophia Pasedis, R.Ph., Pharm.D.; Kathy J. Fabiszewski, N.P., Ph.D.; James T. DeVita, R.Ph.; and Steven Budish. Opposed: None. Recused: Joanne M. Trifone, R.Ph. Absent: George A. Cayer, R.Ph.

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 by Default. 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 in any capacity 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

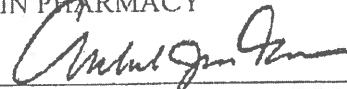
business in any setting. If at any time in the future Respondent seeks registration by the Board, Respondent will be required to meet all current requirements for licensure at the time of any such application, including, but not limited to, re-application, re-examination, re-training and moral character 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 May 8, 2012

Respondent is hereby notified of the right to appeal this Final Decision and Order by Default 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



Michael J. Tocco, R.Ph., M.Ed.
President

Issued and Effective Date: May 8, 2012

Attachment

Decision No. 2698

First Class and Certified Mail No. 7010 2780000186758176 to Respondent





The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure

239 Causeway Street, Suite 500, 5th Floor, Boston, MA 02114
(617) 973-0800
(617) 973-0895 TTY

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD
SECRETARY

JOHN AUERBACH
COMMISSIONER

Office of General Counsel

(617) 973-0865
(617) 973-0895 TTY

November 14, 2011

Brian Keith Franklin

redact

RE: In the Matter Brian Keith Franklin, Registration No. 13227
Board of Registration in Pharmacy, Docket No. PHA-2011-0185

Dear Mr. Franklin:

The Massachusetts Board of Registration in Pharmacy within the Department of Public Health, Division of Health Professions Licensure ("Division"), has completed its investigation of the above-referenced complaint against your registration to practice as a pharmacy technician. For the reasons set forth in the attached Order to Show Cause, the Board is proposing to suspend, revoke or impose other discipline against your registration (No. 13227).

The Order to Show Cause and any subsequent hearing are governed by Massachusetts General Laws Chapter 30A, the State Administrative Procedure Act, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 et seq. You must submit an Answer to the Order to Show Cause and you have a right to request a hearing by filing a written request for a hearing, as specified in the Order to Show Cause.

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 above-referenced 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 therein 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.

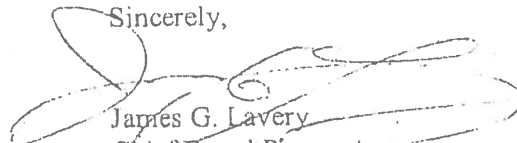
If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your registration to practice as a pharmacy technician in the Commonwealth of Massachusetts, including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

Your Answer to the Order to Show Cause and your 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, Massachusetts 02114

If you are represented by an attorney in this matter, all communications should be made through your attorney. You may contact me at (617) 973-0822 if you have any questions regarding this matter.

Sincerely,



James G. Lavery
Chief Board Prosecutor

JGL/tbm
Encl.

Certified Mail No. 7011157000081800397

COMMONWEALTH OF MASSACHUSETTS

~~SUFFOLK COUNTY~~

BOARD OF REGISTRATION
IN PHARMACY

_____)
In the Matter of)
BRIAN KEITH FRANKLIN)
PH-PT Registration No.13227)
(Reg. Suspended 8/16/2011))
_____)

Docket No. PH-PT-2011-0185

ORDER TO SHOW CAUSE

Brian Keith Franklin (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. 13227, 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 November 30, 2010, the Board issued you a pharmacy technician registration, Registration No. 13227.
2. In or about November 2010 through July 2011, you were employed as a registered pharmacy technician at Walgreens Pharmacy #5756 at One Kelly Square ("the pharmacy") in East Boston, Massachusetts.
3. During or about November 2010 through July 2011, while employed as a pharmacy technician at the pharmacy, you diverted large amounts of controlled substances including but not limited to, Clonazepam, Klonopin, Suboxone, hydrocodone/apap, etc.
4. You admitted to diverting controlled substances to Walgreens Pharmacy Loss and Prevention in a signed written statement dated, July 20, 2011.
5. Your conduct as alleged above warrants disciplinary action by the Board against your pharmacy technician registration pursuant to G. L. c. 112, §§ 42A and 61, and 247 CMR 2.00 et seq., for deceit, malpractice, gross misconduct in the practice of the profession, and offenses against the laws of the Commonwealth relating thereto.
6. 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, §§ 27, 28, and 42A, M.G.L. c. 94C, and 247 CMR 2.00 et seq.

6. 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 acts to suspend, revoke, or impose other discipline against your registration. G.L. c. 112, §§ 42A and 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). If you wish to provide for a written transcript, you must arrange for, and bear the cost of, a stenographer's presence at any hearing; and if a written transcript is prepared at your request, then said transcript shall also be provided to the Board, at your expense, for inclusion in the record. G.L. c. 30A, § 11(6), 801 CMR 1.01(10)(k); 801 CMR 1.01(10)(i).

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. 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.

Notwithstanding the earlier filing of an Answer and/or request for a hearing, your 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.

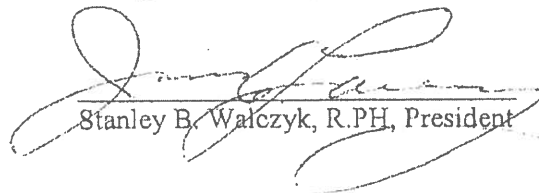
If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your registration to practice as pharmacy technician in the Commonwealth of Massachusetts, including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

James G. Lavery
Chief Board Prosecutor
Department of Public Health
Office of the General Counsel
239 Causeway Street, Fourth 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 Chief Board Prosecutor. 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,



Stanley B. Walczyk, R.PH, President

Dated: November 14, 2011

CERTIFICATE OF SERVICE

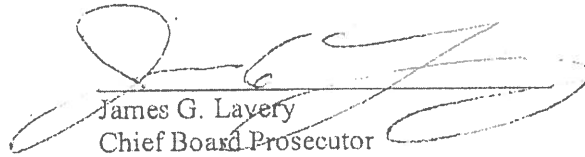
I, James G. Lavery, hereby certify that a copy of the foregoing Cover Letter, Order to Show Cause, and Certificate of Service were served upon the Respondent:

Brian Keith Franklin

redact

by first class mail, postage prepaid, and Certified Mail No. 70111570000081800397,

This 14th day of November 2011.


James G. Lavery
Chief Board Prosecutor

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
Brain Ketih Franklin)
Pharmacy Technician No. 13227)
Expiration 02/09/2013)
_____)

DOCKET NO. PHA-2011-0185

TEMPORARY ORDER OF SUMMARY SUSPENSION

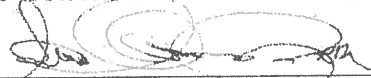
In accordance with its broad grant of authority, pursuant to Massachusetts General Laws Chapter 112, Section 42A and 247 CMR 10.07, to decide when professional standards have been violated and to discipline any violations in order to promote the public health, safety and welfare (*Strasnick v. Board of Registration in Pharmacy*, 408 Mass. 654; 562 N.E. 2d 1333 (1990); *Rosen v. Board of Registration in Medicine*, Supreme Judicial Court, June 3, 1987), the Board of Registration in Pharmacy (Board) ORDERS that:

The pharmacy technician registration of **BRAIN KEITH FRANKLIN** (Respondent), Pharmacy Technician Registration No. 13227, be **SUSPENDED**, effective August 16, 2011.

The Board has determined that, based upon the information contained in Board Complaint file Docket No. PHA-2011-0185, including a statement of Respondent dated July 20, 2011 admitting to diversion of certain medications while employed as a pharmacy technician at Walgreens Pharmacy #5756, 1 Kelly Square, Boston, Massachusetts, **the health, safety, and welfare of the public necessitates such summary action.**

Respondent may request a hearing be scheduled on the necessity of the summary action by filing a written request for such hearing with the Board at the address above by 5:00 p.m. on Thursday August 18, 2011.

BOARD OF REGISTRATION
IN PHARMACY



Stanley B. Walczyk, R.Ph.
President

Date: August 16, 2011

Decision No. 2698

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