

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

Board of Registration in Pharmacy,
Petitioner,

v.

Catalina Lopera
License No. PT20293
License Expires 07/28/2020
Respondent

Docket No. PHA-2018-0068

FINAL DECISION AND ORDER BY DEFAULT

On July 3, 2019, the Board of Registration in Pharmacy ("Board") issued and duly served on Catalina Lopera ("Respondent"), an Order to Show Cause ("Show Cause Order") related to a complaint filed regarding Respondent's license.¹ In addition to stating the allegations against Respondent, the Show Cause Order notified Respondent that an Answer to the Show Cause Order was to be submitted within 21 days of receipt of the Show Cause Order.² The Show Cause Order also notified Respondent of the right to request a hearing on the allegations,³ 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 above-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." Copies of

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.

Catalina Lopera

PT20293

PHA-2018-0068

Final Decision and Order by Default

the Show Cause Order are attached to this Final Decision and Order by Default and are incorporated herein by reference.

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 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 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 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 Show Cause Order 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

On September 5, 2019, 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 license, PT20293, effective ten days from the Date Issued, by the following vote:

In favor:	Timothy Fensky; Patrick Gannon; Leah Giambarresi; Michael Godek; Sebastian Hamilton; Julie Lanza; Richard Lopez; Dawn Perry
Opposed:	None
Abstained:	None
Recused:	None
Absent:	Susan Cornacchio; Stephanie Hernandez; Carly Jean-Francois; Andrew Stein; Kim Tanzer

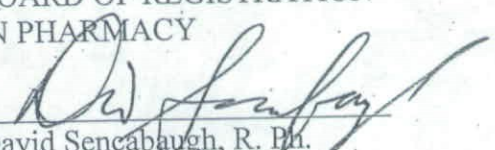
EFFECTIVE DATE OF ORDER

The Final Decision and Order by Default shall be effective 10 days from the Date Issued.

RIGHT TO APPEAL

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

BOARD OF REGISTRATION
IN PHARMACY


David Sencabaugh, R. Ph.
Executive Director

Date Issued: 9/9/2019

Catalina Lopera
PT20293
PHA-2018-0068
Final Decision and Order by Default

Notice to:

BY FIRST CLASS & CERTIFIED MAIL NO. 7019 0700 0000 1934 7165,
RETURN RECEIPT REQUESTED

Catalina Lopera
88 Front Street
Ashland, MA 01721

BY HAND

Jaclyn Gagne
Prosecuting Counsel
Massachusetts Department of Public Health
Office of the General Counsel
250 Washington Street
Boston, MA 02108

Catalina Lopera
PT20293
PHA-2018-0068
Final Decision and Order by Default

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

Board of Registration in Pharmacy,
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Catalina Lopera
License No. PT20293
License Expires 07/28/2020
Respondent

Docket No. PHA-2018-0068

ORDER TO SHOW CAUSE

Catalina Lopera ("Lopera" or "You"), 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 license to practice as a pharmacy technician in the Commonwealth of Massachusetts, License No. PT20293, or your right to renew such license, pursuant to Massachusetts General Laws (G.L.) chapter 112, §§ 42A and 61 and Code of Massachusetts Regulations (CMR), Title 247, §10.03, based upon the following facts and allegations:

Factual Allegations

1. The Board issued to you a license to practice as a pharmacy technician in the Commonwealth of Massachusetts, License No. PT20293. Your license is currently active and will expire on July 28, 2020 unless otherwise renewed.
2. At all times relevant to the allegations in this Order to Show Cause, CVS #1875 operated as a pharmacy in Ashland, Massachusetts.
3. You were employed at CVS #1875 as a pharmacy technician in 2017 and 2018.
4. On or about September 14, 2018, the Manager of Record at CVS #1875 notified the Board that you diverted numerous Schedule III and Schedule IV controlled substances while employed as a pharmacy technician in violation of G.L.c. 94C.
5. On or about July 11, 2018, CVS #1875 discovered discrepancies in quantities of several Schedule III and IV Controlled Substances.

6. On or about July 11, 2018, CVS #1875 determined that you had diverted the following controlled substances:
 - a. 856 Tramadol 50mg tablets, a Class IV Controlled Substance;
 - b. 17 Acetaminophen-codeine 300-30mg tablets, a Class III Controlled Substance;
 - c. 55 Tramadol-acetaminophen 37.5-325 mg tablets, a Class IV Controlled Substance;
 - d. 17 Buprenorphine-naloxone 8-2mg sublingual tablets, a Class III Controlled Substance;
 - e. 2 Buprenorphine-naloxone 2-0.5mg sublingual films, a Class III Controlled Substance;
 - f. 4 Buprenorphine-naloxone 8-2mg sublingual films, a Class III Controlled Substance;
 - g. 1 Acetaminophen-codeine 300-60mg tablet, a Class III Controlled Substance; and
 - h. 2 Buprenorphine 8 mg tablets, a Class III Controlled Substance.
7. CVS Asset Protection conducted employee interviews as part of its internal investigation during which you admitted that you had diverted controlled substances.
8. You signed a statement on or about July 11, 2018 wherein you admitted that you had caused losses at CVS #1875 including:
 - a. cashing checks with insufficient funds;
 - b. fraudulently returning items for cash;
 - c. refunding insurance adjustments onto money cards;
 - d. failing to pay for drinks and snacks during breaks; and
 - e. diverting controlled substances from the pharmacy without a prescription.
9. In your signed statement, dated July 11, 2018, you also stated that you [REDACTED]
[REDACTED]
10. In your signed statement dated July 11, 2018, you admitted to diverting medications from CVS in February 2017 and July 2017.
11. Your employment at CVS #1875 was terminated.
12. The losses described in your signed statement referred to in paragraph 8 above were referred to the Ashland Police Department for investigation.

Legal Basis for Discipline¹

- A. Your conduct as alleged in Paragraphs 1 through 12 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your license to practice as a pharmacy technician pursuant to G.L. c. 112, § 61 for being guilty of deceit, malpractice, gross misconduct in the practice of the profession, or of any offense against the laws of the Commonwealth relating thereto.
- B. Your conduct as alleged, without limitation, in Paragraphs 1 through 12 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR 10.03(1)(h) for engaging in abuse or illegal use of prescription drugs or controlled substances.
- C. Your conduct as alleged, without limitation, in Paragraphs 1 through 12 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR 10.03(1)(x) for violating G.L. c. 94C or any rules or regulations promulgated thereunder.
- D. Your conduct as alleged in Paragraphs 1 through 12 above, and any other evidence that may be adduced at hearing, also constitute 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 license. 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

¹ It is well-settled administrative law that due process requires that "notice must be given that is reasonably calculated to apprise an interested party of the proceeding and to afford him an opportunity to present his case," and does not require Prosecuting Counsel to provide a detailed description of evidence he intends to introduce at a disciplinary hearing. *Langlitz v. Board of Registration of Chiropractors*, 396 Mass. 374, 376-377 (1985). *See Lapointe v. License Board of Worcester*, 389 Mass. 454, 458 (1983) ("Due process requires notice of the grounds on which the board might act rather than the evidentiary support for those grounds"). Certainly, notice pleadings do not require Prosecuting Counsel to match factual allegations to grounds for discipline. Accordingly, where, as here, there exists significant overlap between factual allegations and grounds for discipline contained within the Order to Show Cause, Prosecuting Counsel's matching of factual allegations to grounds for discipline are offered as suggestions, and not as an exhaustive characterization of the evidence to be adduced at a hearing.

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 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 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 operate as a pharmacy and your controlled substances permit in the Commonwealth of Massachusetts, including any right to renew your license.


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

Jaclyn K. Gagné, Esq.
Prosecuting Counsel
Department of Public Health
Office of the General Counsel, 2nd Floor
250 Washington Street
Boston, MA 02108

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) 624-5249 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION IN PHARMACY
By its attorney,

By: _____


Jaclyn K. Gagné, Esq.
Prosecuting Counsel
Department of Public Health

Date: July 3, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order to Show Cause was served upon the Respondent:

Catalina Lopera
88 Front Street
Ashland, MA 01721

by first class mail, postage prepaid, and by Certified Mail No. 7017 0530 0000 0223 3613

and by e-mail at Redacted

This 3rd day of July, 2019.



Jaclyn K. Gagné, Esq.
Prosecuting Counsel