

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN
PHARMACY

IN THE MATTER OF

Egleston Square Pharmacy, Inc.
3090 Washington Street
Roxbury, MA
Pharmacy Registration No. 3366

DOCKET NO. PHA-2009-0217

FINAL DECISION AND ORDER BY DEFAULT

On **August 13, 2010**, the Board of Registration in Pharmacy ("Board") issued and duly served on Egleston Square Pharmacy, Inc. ("Respondent") an Order to Show Cause ("Show Cause Order")¹ related to a complaint filed regarding Respondent's registration to operate a drug store. 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

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.

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

On **September 8, 2010**, Prosecuting Counsel sent notice to Respondent to file an Answer and a Request for Hearing by **September 15, 2010**. The notice again advised Respondent that if defaulted, the Board might enter a Final Decision and Order that assumes the truth of the allegations stated in the Show Cause Order and impose license discipline, 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, 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.

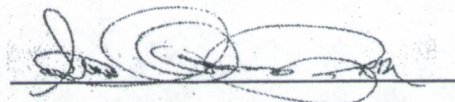
On October 19, 2010, in accordance with the Board's authority and statutory mandate, the Board voted to issue this Final Decision and Order by Default and REVOKE Respondent's Pharmacy registration (No. 3366; suspended by the Board effective March 25, 2010), effective as of the date issued (see below), 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. Absent: Joanne M. Trifone, R.Ph.

EFFECTIVE DATE

The Order of the Board shall be effective as of October 19, 2010.

Respondent is hereby notified of the 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

A handwritten signature in black ink, appearing to read 'Stanley B. Walczyk', is written over a horizontal line.

Stanley B. Walczyk, R.Ph.

President Elect

Date Issued: October 19, 2010

Dec. No. 2232

Attached: Order to Show Cause dated August 13, 2010

Final Decision and Order by Default sent to:

BY FIRST CLASS to Attorney of Record

Edward P. Harrington, Esq.
171 Milk St.
Boston, MA 02109

BY FIRST CLASS AND CERTIFIED MAIL RETURN RECEIPT REQUESTED to
No. 7009 1680 0001 1520 4154 to RESPONDENT

Chukwukere A. Nsonwu

[redacted]

BY INTEROFFICE MAIL

Vita Berg, Prosecuting Counsel
Office of Prosecutions, DPH Division of Health Professions Licensure
239 Causeway Street
Boston, MA 02114

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN
PHARMACY

IN THE MATTER OF

Egleston Square Pharmacy, Inc.
3090 Washington Street
Roxbury, MA
Pharmacy Registration No. 3366

DOCKET NO. PHA-2009-0217

ORDER TO SHOW CAUSE

Egleston Square Pharmacy, Inc., 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 registration to operate a retail drug store at 3090 Washington Street, in Roxbury, Massachusetts, Registration No. 3366, and/or your right to renew such registration, pursuant to Massachusetts General Laws (M.G.L.) Chapter 112, section 61 and Board regulations at 247 C.M.R. 2.00, et. seq., based upon the following facts and allegations:

1. At all times relevant to the allegations in this Order to Show Cause, you have been a Massachusetts corporation, owned by Chukwukere A. Nsonwu (a/k/a Aloysius Nsonwu) ("Nsonwu") who also serves your President, Treasurer, Secretary, Director and registered agent.
2. On or about June 23, 1981, the Board issued to Nsonwu a registration to engage in practice as a pharmacist in the Commonwealth of Massachusetts, Registration No. 18414 ("Nsonwu's registration").
3. On or about November 26, 2004, the Board issued to you a Retail Drug Store Permit, Registration No. 3366, to operate a retail drug store located at 3090 Washington Street in Roxbury, MA ("Pharmacy").
4. At all times relevant to the allegations in this Order to Show Cause, Nsonwu was the Manager of Record for the Pharmacy.
5. On or about March 25, 2010, the Board issued Temporary Orders of Summary Suspension against Nsonwu's registration to engage in practice as a pharmacist and against your registration to operate a retail pharmacy. On or about April 2, 2010, the Board issued Final Orders of Summary Suspension against these registrations and they remain suspended as of the date of this Order to Show Cause.

6. On various dates between December 22, 2004 and January 23, 2009, you knowingly and willfully submitted false claims on behalf of MassHealth members for medications that were not in fact dispensed.
7. On various dates between December 22, 2004 and January 23, 2009, you knowingly and willfully, obtained money in an amount greater than \$250.00 from the Commonwealth of Massachusetts by causing false claims to be made to MassHealth.
8. On various dates between December 22, 2004 and January 23, 2009, you violated M.G.L. c. 118E, § 40, a felony offense.
9. On various dates between December 22, 2004 and January 23, 2009, you violated M.G.L. c. 266, § 30, a felony offense.

* * * * *

10. Your conduct as alleged warrants disciplinary action by the Board against your registration to operate a retail drug store pursuant to G. L. c. 112, s. 61 for deceit, malpractice and gross misconduct in the practice of the profession and for offenses against the laws of the Commonwealth relating thereto.
11. Your conduct as alleged warrants disciplinary action by the Board against your registration to operate a retail drug store pursuant to Board regulation 247 C.M.R. 6.07(1)(d) for failing to fulfill the responsibilities of Manager of Record which include, but are not limited to, the establishment, monitoring and enforcement of policies and procedures which encourage acceptable standards of practice consistent with Board regulations at 247 C.M.R. 2.00, et. seq., and all other applicable federal and state laws and regulations.
12. Your conduct as alleged warrants disciplinary action by the Board against your registration to operate a retail drug store pursuant to Board regulation 247 C.M.R. 9.01, *Code of Conduct for Registered Pharmacists, Pharmacies and Pharmacy Departments*, for the following conduct:
 - a. Your conduct as alleged violates 247 C.M.R. 9.01 (1) for failing to conduct professional activities at all times in conformity with federal, state and municipal laws, ordinances and/or regulations, including the regulations of the Board;
 - b. Your conduct as alleged violates 247 C.M.R. 9.01 (6) for engaging in a fraudulent or deceptive act.
13. Your conduct as alleged warrants disciplinary action by the Board against its registration to operate a retail drug store pursuant to Board regulation 247 C.M.R. 10.03, for the following conduct:

- a. Your conduct as alleged violates 247 C.M.R. 10.03(1)(a) for violating duties and standards set out in Board regulations (247 C.M.R. 2.00, *et seq.*) or any rule or written policy adopted by the Board;
 - b. Your conduct as alleged violates 247 C.M.R. 10.03 (b) for violating any provision of M.G.L. c. 112, §§ 24 through 42A or any provision of state or federal statutes or rules or regulations promulgated thereunder related to the practice of the profession;
 - c. Your conduct as alleged violates 247 C.M.R. 10.03 (e) for engaging in misconduct in the practice of the profession;
 - d. Your conduct as alleged violates 247 C.M.R. 10.03 (k) for engaging in conduct that has the capacity of potential to place the public health, safety and welfare at risk;
 - e. Your conduct as alleged violates 247 C.M.R. 10.03 (l) for engaging in conduct that has the capacity or potential to deceive or defraud;
 - f. Your conduct as alleged violates 247 C.M.R. 10.03 (r) for engaging in conduct that demonstrates a lack of good moral character;
 - g. Your conduct as alleged violates 247 C.M.R. 10.03 (u) for engaging in conduct that undermines public confidence in the integrity of the profession;
 - h. Your conduct as alleged violates 247 C.M.R. 10.03 (v) for committing an act which violates recognized standards of pharmacy practice; and
 - i. Your conduct as alleged violates 247 C.M.R. 10.03 (w) for failing to comply with recognized ethical standards of the profession, including, but not limited to, the standards of practice of pharmacists, pharmacy interns, pharmacies and pharmacy departments set forth in 247 C.M.R. 9.01: *Code of Conduct for Registered Pharmacists, Pharmacies and Pharmacy Departments.*
14. 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 pharmacist in the Commonwealth of Massachusetts, including any right to renew your registration.

CERTIFICATE OF SERVICE

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

Chukwukere A. Nsonwu
a/k/a Aloysius Nsonwu

[redacted]

by Certified Mail No. 70091680000115204369 & first class

Chukwukere A. Nsonwu
a/k/a Aloysius Nsonwu

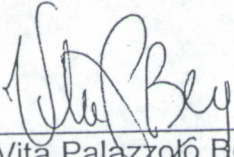
[redacted]

by Certified Mail No. 70091680000115204376 & first class

Egleston Square Pharmacy Inc
3090 Washington Street
Roxbury, MA 02119-3115

by Certified Mail No. 70091680000115204383 & first class

on this 13th day of August, 2010.



Vita Palazzolo Berg,
Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BOARD OF REGISTRATION
IN PHARMACY

In the Matters of)
EGLESTON SQUARE PHARMACY)
3090 Washington St.)
Roxbury, Massachusetts)
Pharmacy Registration No. 3366)
)
CHUKWUKERE A. NSONWU, R.Ph.)
Pharmacist License No. 18414)

DOCKET NO. PHA20090217

DOCKET NO. PHA20100017

FINAL ORDERS OF SUMMARY SUSPENSION

Order of Suspension of Pharmacy and Controlled Substance Registration
(G.L. c. 94C, ss. 13 and 14; 247 CMR 11.15)

Order of Suspension of Personal Registration
(247 CMR 10.07)

In accordance with its broad grant of authority, pursuant to Massachusetts General Laws Chapter 112, Sections 27 and 42A and Massachusetts General Laws Chapter 94C, Sections 13 and 14, 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 (1990); *Rosen v. Board of Registration in Medicine*, Supreme Judicial Court, June 3, 1987), and Board of Registration in Pharmacy (Board) regulations 247 CMR sections 10.07 and 11.15; and, after providing the opportunity for a hearing on the necessity of the summary action, the Board **ORDERS** that:

The summary SUSPENSION of the pharmacy, pharmacist and controlled substance registrations of EGGLESTON SQUARE PHARMACY and CHUKWUKERE A. NSONWU (aka Aloysius Chukwukere Nsonwu), owner and Manager of Record, effective March 25, 2010, **BE CONTINUED** pending a hearing on the merits or other agreed upon disposition of the allegations relating to the above-referenced complaints, effective as of the date of this *Final Orders of Summary Suspension*.

The Board has determined that, based upon the information contained in that certain *Statement of Facts* of Jose M. Cuevas, Trooper, Massachusetts State Police, dated March 24, 2010 and the Criminal Complaint issued regarding Chukwukere Nsonwu (Boston Municipal Court, West Roxbury Docket No. 1006CR000838), there is an imminent danger to the public health or safety that warrants the continuation of the March 25, 2010 summary action.

**BOARD OF REGISTRATION
IN PHARMACY**

Joanne M. Trifone

Joanne M. Trifone, R.Ph.

President

Date: April 2, 2010

Board Decision Nos. 2232 (Egleston)
2298 (Nsonwu)

To: Chukwukere A. Nsonwu First Class Mail [redacted]
Edward P. Harrington, Esq. First Class Mail 171 Milk St., Boston MA 02109

On June 16, 2010, Prosecuting Counsel sent notice to Respondent that he was required to file an Answer and a Request for Hearing by June 28, 2010. 2007. The notice again advised Respondent that his failure to submit a written answer and Request for a Hearing shall result in the entry of a default in these matters and shall constitute a waiver of his right to a hearing on the allegations stated in the Show Cause Order and on any Board disciplinary action. The notice informed Respondent that if defaulted, the Board will 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 pharmacist registration and the registration of the Pharmacy, 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

On July 13, 2010, the Board voted to issue this Final Decision and Order by Default and REVOKE: (1) Respondent's suspended Pharmacist registration (No. 18128); and the (2) Pharmacy suspended registration (No. 2692), effective as of the date issued (see below), by the following vote: In favor: Stanley B. Walczyk, R.Ph.; Joanne M. Trifone, 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.; and James T. DeVita, R.Ph. Opposed: None. Absent: Steven Budish, Public Member.

The Board will not review any petition for pharmacist licensure in the Commonwealth filed sooner than five (5) years from the Effective Date of this

Final Decision and Order. While Respondent's pharmacist registration is revoked, Respondent may not: (1) be employed as a pharmacist or 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, he 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.

EFFECTIVE DATE

The Order of the Board shall be effective as of July 13, 2010.

RIGHT OF APPEAL

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

Joanne M. Trifone

Joanne M. Trifone, R.Ph.

President

Date Issued: July 13, 2010

Dec. Nos. 2347 (PHA-2009-0116) and 2348 (PHA-2009-0115)

Final Decision and Order by Default sent to:

BY FIRST CLASS AND CERTIFIED MAIL RETURN RECEIPT REQUESTED

NO. 7009 1680 1520 0248 to Attorney of Record

Richard S. Weiss, Esq.

15 Court Square

Boston, MA 02108

BY INTEROFFICE MAIL

Anne McLaughlin, Prosecuting Counsel

Office of Prosecutions, DPH Division of Health Professions Licensure

239 Causeway Street

Boston, MA 02114

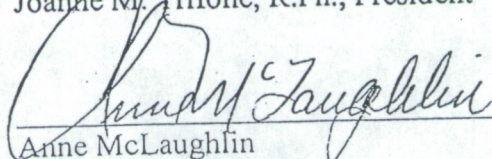
Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Anne McLaughlin, Prosecuting Counsel, at the following address:

Anne McLaughlin
Prosecuting Counsel
MA Department of Public Health
Office of the General Counsel
239 Causeway Street, Suite 200
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, please contact the Prosecuting Counsel in advance at (617) 973-0840 to schedule a time that is mutually convenient.

Board of Registration in Pharmacy,
Joanne M. Trifone, R.Ph., President

By:


Anne McLaughlin
Prosecuting Counsel
Department of Public Health

Dated: May 12, 2010

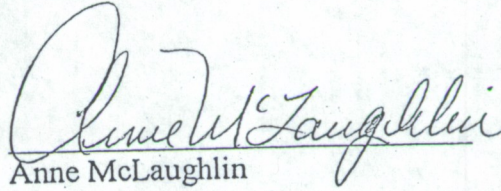
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Order to Show Cause** was served upon the Respondent through his attorney of record:

Richard S. Weiss, Esq.
15 Court Square
Boston, MA 02108

by first class mail, postage prepaid, and by certified mail no.7009-1680-0000-6389-4254.

This 12th day of May, 2010.


Anne McLaughlin
Prosecuting Counsel