

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Bureau of Health Professions Licensure
Board of Registration in Pharmacy
239 Causeway Street, Suite 500, Boston, MA 02114

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MARYLOU SUDDERS
Secretary
MONICA BHAREL, MD, MPH
Commissioner

March 23, 2021

VIA FIRST CLASS & CERTIFIED MAIL NO. 7020 1810 0002 3137 9424,
RETURN RECEIPT REQUESTED

Ernest Marasa
95 Higher Brook Drive
Ludlow, MA 01065

RE: In the Matter of Ernest Marasa, Docket No. PHA-2019-0046
License No. PH18396 (Expired 12/20/2020)

Dear Mr. Marasa:

Please find enclosed the **Final Decision and Order by Default** issued by the Board of Registration in Pharmacy ("Board") on March 23, 2021 and **effective April 2, 2021**. This constitutes full and final disposition of the above-referenced complaint, as well as the final agency action of the Board. Your appeal rights are noted on page 3.

Please note that as of the effective date, your license status will change to **Revoked; Expired**. It will remain in **revocation** status until the Board notifies you of a change in license status in accordance with the terms of the order.

Please direct all questions, correspondence and documentation relating to licensure reinstatement to the attention of Lisa Ferguson at the address above. You may also contact Ms. Ferguson at (617) 973 – 0950.

You may contact Heather Engman, Esq., Board Counsel at (617) 973 – 0950 with any questions that you may have concerning this matter.

Sincerely,

David Sencabaugh, R. Ph.
Executive Director,
Board of Registration in Pharmacy

Encl.

Cc: Noah Ertel, Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

Board of Registration in Pharmacy)
Petitioner)
v.)
Ernest Marasa)
PH License No. PH18396)
License Expires 12/20/2020)
Respondent)

Docket No. PHA-2019-0046

FINAL DECISION AND ORDER BY DEFAULT

On April 24, 2020, the Board of Registration in Pharmacy (“Board”) issued and duly served on Ernest Marasa (“Respondent”), an Order to Show Cause (“Show Cause Order”) related to a complaint filed against 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.” 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.

On or about May 25, 2020, Respondent submitted an email response to the Order to Show Cause stating in part, "I am not yet prepared to answer the Order." On June 5, 2020, Prosecuting Counsel filed a Motion for a More Specific Answer to the Order to Show Cause. Chief Administrative Magistrate Barshak subsequently ordered a telephone hearing on the motion for July 21, 2020. Respondent did not call into the telephone hearing on July 21, 2020. Chief Administrative Magistrate Barshak ordered a second telephone hearing July 29, 2020. Again, Respondent did not attend the July 29, 2020 telephone hearing or communicate in any other way with Prosecuting Counsel or Chief Administrative Magistrate Barshak.

On July 29, 2020, Prosecuting Counsel filed a Motion for Default. Respondent did not file any opposition. Chief Administrative Magistrate Barshak allowed Prosecuting Counsel's Motion for Default on September 21, 2020.

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).

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 March 5, 2021, 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 pharmacist license, PH18396, effective ten days from the Date Issued, by the following vote:

In favor: Caryn Belisle; Jennifer Chin; Susan Cornacchio; Timothy Fensky; Leah Giambarresi; Sebastian Hamilton; Carly Jean-Francois; Julie Lanza; Richard Lopez; Dawn Perry; Andrew Stein; Katie Thornell

Opposed: None
Abstained: None
Recused: None
Absent: None

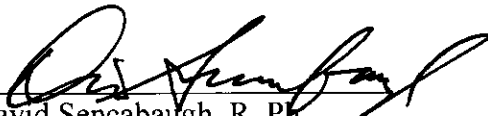
EFFECTIVE DATE OF ORDER

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 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: 3/23/2021

Notice to:

VIA FIRST CLASS & CERTIFIED MAIL NO. 7020 1810 0002 3137 9424
RETURN RECEIPT REQUESTED

Ernest Marasa
95 Higher Brook Drive
Ludlow, MA 01065

BY HAND

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

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

Board of Registration in Pharmacy)
Petitioner)
v.)
Ernest Marasa)
PH License No. PH18396)
License Expires 12/20/2020)
Respondent)

Docket No. PHA-2019-0046

ORDER TO SHOW CAUSE¹

Ernest Marasa 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 Pharmacist ("PHA") in the Commonwealth of Massachusetts, License No. PH18396, 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 (1)(k) and (u) based upon the following facts and allegations:

Factual Allegations

1. On or about June 23, 1981, the Board issued to you a license to engage in the practice as a Pharmacist (PHA) in the Commonwealth of Massachusetts, License No. PH18396. This license expires on December 20, 2020.
2. On or about November 19, 2018, the Palmer District Court issued a criminal complaint against you, alleging the following:
 - a. Two counts of Assault with a Dangerous Weapon, G.L. c. 265, §15B(b);
 - b. One count of Witness Intimidation, G.L. c. 268, §13B; and,

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;" due process does not require Prosecuting Counsel to provide a detailed description of evidence they intend 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.

c. One count of Vandalizing Property, G.L. c. 166, §126A.

3. According to the Ludlow Police Department narrative, it is alleged that:

- a. On November 17, 2018, you got into an argument with your girlfriend at your home in Ludlow, Massachusetts, and locked her out of the home refusing to allow her to retrieve her primary cell phone or vehicle parked in the garage;
- b. Your girlfriend called the police who escorted her into the home to retrieve her belongings;
- c. When they were entering your home, the police announced their presence identifying themselves as police officers several times;
- d. You confronted the police and stated words to the effect of "get the fuck out of my house" multiple times while pointing to the door with one hand;
- e. Your other hand was behind your back and you were holding a knife with your other hand;
- f. The police gave you multiple verbal commands to show both your hands and advised you would be "tased" if you did not comply;
- g. When you showed both your hands you were holding an open folding knife with an approximately three - four inch blade, which you discarded;
- h. You were placed under arrest, taken to the Ludlow Police Station, and placed in a holding cell;
- i. You displayed your middle finger in your booking photograph; and,
- j. You urinated on the floor inside the holding cell.

4. On or about November 19, 2018 you were arraigned in the Palmer District Court on the Criminal Complaint identified in Paragraph 2.

5. On or about February 28, 2019 you spoke with Board Investigator, Greg Melton, over the telephone, and during that conversation you stated words to the effect that:

- a. On November 17, 2018 you and your girlfriend argued about the care of a new puppy in your home;
- b. During the argument you threw the puppy outside of your home;

- c. Your girlfriend went out to get the puppy and you locked her out in order to teach her a lesson about following through with the agreement you had regarding caring for the puppy;
- d. When the police escorted your girlfriend into the home you were preparing your breakfast using a camping style folding knife with a four inch blade to slice bread;
- e. You heard the police escorting your girlfriend into the home and believed they were burglars;
- f. When you saw the saw the uniformed police in your home you stated "get the fuck out of my house;"
- g. You did not immediately drop the knife you were holding; and,
- h. You told the police to "get the fuck out" again, and then complied with their commands.

Legal Basis for Discipline

- A. Your conduct as alleged in Paragraphs 2 through 5 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your license to practice as a pharmacist 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 in Paragraphs 2 through 5 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your license to practice as an pharmacist pursuant to Board regulation 247 CMR 10.03 (1)(k) for engaging in conduct that had the capacity to or potential to place the public health, safety or welfare at risk.
- C. Your conduct as alleged in Paragraphs 2 through 5 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your license to practice as a pharmacist pursuant to Board regulation 247 CMR 10.03 (1)(u) for engaging in conduct which undermines public confidence in the integrity of the profession.
- D. Your conduct as alleged in Paragraphs 2 through 8 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 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 license to practice as a Pharmacist in the Commonwealth of Massachusetts, including any right to renew your license.

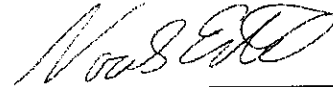
Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Noah Ertel, Prosecuting Counsel, at the following address:

Prosecuting Counsel
Department of Public Health
Office of the General Counsel, 2th 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) 624-5264 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION IN PHARMACY,
David Sencabaugh, R.Ph., Executive Director,

By:



Noah Ertel, Esq.
Prosecuting Counsel
Department of Public Health
noah.ertel@state.ma.us

Dated: April 24, 2020

CERTIFICATE OF SERVICE

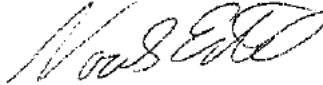
I hereby certify that a copy of the foregoing Order to Show Cause was served upon the Respondent:

Ernest Marasa
95 Higher Brook Dr
Ludlow, MA 01056

by First Class Mail, postage prepaid, and Certified Mail No. 7019 0140 0000 7224 9004;

and by e-mail: [REDACTED]

This 24 day of April, 2020



Noah Ertel, Esq.
Prosecuting Counsel
noah.ertel@state.ma.us