



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Bureau of Health Professions Licensure
Board of Registration in Pharmacy

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CHARLES D. BAKER
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MARYLOU SUDDERS
Secretary

MONICA BHAREL, MD, MPH
Commissioner

August 10, 2017

VIA FIRST CLASS AND CERTIFIED MAIL NO. 7015 3010 0001 7080 3646,
RETURN RECEIPT REQUESTED

James Dai Dao

redacted

VIA FIRST CLASS AND CERTIFIED MAIL NO. 7015 3010 0001 7080 3639,
RETURN RECEIPT REQUESTED

James Dai Dao .

redacted

RE: In the Matter of James Dai Dao, Docket No. PHA-2014-0265
License No. PT15848 (License Expired 4/2/17)

Dear Mr. Dao:

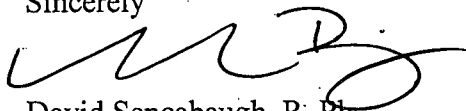
Please find enclosed the Final Decision and Order by Default issued by the Board of Registration in Pharmacy on August 10, 2017 and effective August 20, 2017. This constitutes full and final disposition of the above-referenced complaint, as well as the final agency action of the Board. Your appeal rights 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, Board Counsel at (617) 973 - 0950 with any questions that you may have concerning this matter.

Sincerely

A handwritten signature in black ink, appearing to read 'DS', written over a horizontal line.

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

Encl.

cc: Sean Casey, Esq., Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

_____)
 Board of Registration in Pharmacy)
 Petitioner)
)
 v.)
)
 James Dai Dao)
 License No. PT 15848)
 License Expired 4/02/17)
 Respondent)
 _____)

Docket No. PHA-2014-0265

FINAL DECISION AND ORDER BY DEFAULT

On May 5, 2017, the Board of Registration in Pharmacy (“Board”) issued and duly served on James Dai Dao, License No. PT 15848 (“Respondent”) an Order to Show Cause (“Show Cause Order”) related to a complaint filed regarding Respondent’s pharmacy technician license.¹ In addition to stating the allegations against the Respondent, the Show Cause Order notified Respondent that an Answer to the Show Cause Order (“Answer”) was to be submitted within twenty-one (21) days of receipt of the Show Cause Order.²

The Show Cause Order further notified the Respondent of the Right to Request a Hearing on the allegations and that any Hearing request (“Request for Hearing”) was also to be submitted within twenty-one (21) days of receipt of the Show Cause Order.³

Respondent was further notified that failure to submit an Answer within twenty one (21) days “shall result in the entry of default in the above-captioned matter” and, if defaulted, “the

¹ Pursuant to 801 CMR 1.01(6)(a).
² In accordance with 801 CMR 1.01(6)(d)(2).
³ Pursuant to G.L. c. 112, §61.

James Dao
 PT15848
 PHA-2014-0265

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 to practice as a pharmacy technician in the Commonwealth of Massachusetts, including any right to renew [Respondent's] license."

A copy of the Show Cause Order and Certificate of Service is attached to this Final Decision and Order by Default and is 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 and has not otherwise contacted the Board. 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 twenty-one (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 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:

James Dao
PT15848
PHA-2014-0265

ORDER

On August 3, 2017, 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, effective ten days from the Date Issued, by the following vote:

In favor: Philippe Bouvier; Karen Conley; William Cox; Timothy Fensky; Patrick Gannon; Michael Godek; Andrew Stein; Edmund Taglieri
Opposed: None
Abstained: None
Recused: Susan Cornacchio
Absent: Garrett Cavanaugh; Richard Tinsley; Ali Raja

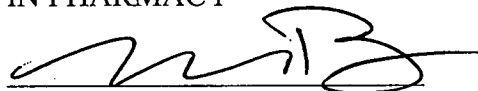
EFFECTIVE DATE OF ORDER

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: 8/10/17

James Dao
PT15848
PHA-2014-0265

Notice to:

BY FIRST CLASS MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Dai Dao
redacted

James Dai Dao
redacted

BY HAND

Sean Casey
Office of Prosecutions
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street
Boston, MA 02114

James Dao
PT15848
PHA-2014-0265



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, Boston, MA 02114

CHARLES D. BAKER
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MARYLOU SUDDERS
Secretary
MONICA BHAREL, MD, MPH
Commissioner

May 5, 2017

SENT BY FIRST CLASS AND CERTIFIED MAIL,
RETURN RECEIPT REQUESTED
ARTICLE NO. 7015 3010 0001 7079 8485

Ms. James Dai Dao
redacted

SENT BY FIRST CLASS AND CERTIFIED MAIL,
RETURN RECEIPT REQUESTED
ARTICLE NO. 7015 3010 0001 7079 8478

Mr. James Dai Dao
redacted

RE: *In the Matter of James Dai Dao.*
Docket No. NUR-2014-0265

Dear Mr. Dai Dao:

Enclosed please find an Order to Show Cause (Order). In short, to preserve your rights, it requires a prompt response.

Your conduct, as alleged, warrants disciplinary action by the Board against your registration to practice as a pharmacy technician and your right to renew same. The disciplinary action may result in other adverse collateral consequences that may affect you in Massachusetts and elsewhere. Thus, you have a right to an adjudicatory hearing (hearing) on the allegations contained in the Order 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 must 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.

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.

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.

To the extent that you choose to Request a Hearing and/or challenge the Order (by filing an Answer), kindly direct your written correspondences to my attention.

I can be reached directly at (617) 973-0880 if you have any questions or concerns.

Sincerely,



Sean J. Casey
Prosecutor
Office of the General Counsel

Enclosure

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

Board of Registration in Pharmacy)

Petitioner)

v.)

James Dai Dao)

License No. PT 15848)

License Expired 4/02/17)

Respondent)

Docket No. PHA-2014-0265

ORDER TO SHOW CAUSE¹

James Dai Dao, 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 practice as a pharmacy technician in the Commonwealth of Massachusetts, Registration No. PT 15848, or your right to renew such registration, pursuant to Massachusetts General Laws (G.L.) chapter 112, § 61 and Code of Massachusetts Regulations (CMR), Title 247, §§ 9.01 and 10.03, based upon the following facts and allegations:

Factual Allegations

1. On September 24, 2012, the Board issued you a license to practice as a pharmacy technician, License No. PT 15848, which expired on April 2, 2017.
2. On or about September 9, 2014, you worked as a pharmacy technician at CVS Store # 49 (Pharmacy), located at 333 Washington Street, Boston, Massachusetts.

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.

3. On or about September 9, 2014, you failed to properly enter a prescription for a 10 year-old adult canine, with the result that the pharmacy dispensed trazadone 50mg rather than the prescribe tramadol 50mg. .
4. On November 26, 2014, the Board opened complaint No. 2014-0265 (Complaint) alleging that you failed to fill/properly dispense a prescription medication.
5. On December 9 and 23, 2014, the Office of Public Protection (OPP) of the Massachusetts Department of Public Health, Division of Health Professions Licensure, on behalf of the Board sent to your address of record located in Quincy Massachusetts, which you had previously provided to the Board (AOR) notice of the Complaint referenced in the immediately preceding paragraph, which included the Board's request for you to respond to the Complaint. You did not provide a response to this correspondence.
6. On June 2, 2015, the Board reviewed the Complaint against your license to practice pharmacy technician, referenced in paragraph No. 4 above, and voted to refer the Complaint for prosecution or, in the alternative, to authorize resolution of the Complaint with a Non-Disciplinary Consent Agreement for Stayed Probation.
7. On August 11 and 25, 2015, Board Counsel Heather A. Engman sent to your AOR correspondence notifying you of the Boards' vote and providing you with two (2) copies of the Non-Disciplinary Consent Agreement for Stayed Probation. A response to the Board's offer of settlement was requested by September 15, 2015.
8. On December 21, 2016, Prosecuting Counsel for the Board sent an email to the email address that you had previously provided to the Board notifying you of the Board's June 2, 2015 vote and its offer of settlement. The email further notified you of the Board's efforts to contact you. In this email, you were further reminded of your obligation as a pharmacy technician license holder, in accordance with 247 CMR 8.07(3)(a), to change your AOR with the Board. You were informed that it is not the Board's obligation to conduct an extensive investigation to locate you. To date, you have not responded to this email.
9. On December 22, 2016, Prosecution Counsel for the Board left a voice message on a cellphone number provided by a person who identified themselves as your father. You were asked to contact the Prosecutor and provided with a telephone number to call back. To date, you have not responded to the voice message and have not contacted the Prosecutor.
10. On December 27, 2016, a letter was sent to an Orlando, Florida address that is listed as your address on the Florida Resident Database. The letter again notified you of the attempts made to contact you as set forth in Paragraphs Nos. 5 through 9 above. To date you have failed to contact the Prosecutor.
11. On May 1, 2017, Prosecuting Counsel left a voice message the same cell phone number referenced in Paragraph No. 9. You were asked to contact the Prosecutor and provided

with a telephone number to call back. You were further informed that your failure to respond would result in an Order to Show Cause issuing. To date, you have not responded.

12. You have changed your address and never notified the Board of same.

Legal Basis for Discipline

- A. Your conduct as alleged in Paragraphs 1 through 12 above, and any other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your registration to practice as a pharmacy technician and or right to renew, pursuant to G.L. c. 112, § 42A, for violation of the rules and regulations established by the Board.
- B. Your conduct as alleged in Paragraphs 1 through 12 above, and any other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your registration to practice as a pharmacy technician or right to renew, pursuant to G.L. c. 112, § 61, for being guilty of deceit, malpractice, or gross misconduct in the practice of the profession, or of any offense against the laws of the Commonwealth relating thereto.
- C. Your conduct as alleged in paragraph 1 through 12 above, and any other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your registration to practice as a pharmacy technician or right to renew, pursuant to 247 CMR 10.03(1)(v), for committing an act that violates recognized standards of Pharmacy practice.
- D. Your conduct as alleged in Paragraphs Nos. 5 through 12 above, and any other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your registration to practice as a pharmacy technician or right to renew, pursuant to 247 CMR 8.07(3)(a), for failing to notify the Board in writing within ten (10) working days of your change of address, thereby violating G.L. c. 112, § 24F.
- E. Your conduct as alleged in Paragraphs Nos. 1 through 12 above, and any other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your registration to practice as a pharmacy technician or right to renew in that your conduct as alleged 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 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 as a pharmacy technician in the Commonwealth of Massachusetts, including any right to renew your license.

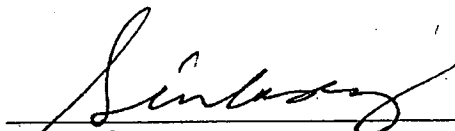
Your Answer to the Order to Show Cause and your written request for a hearing should be filed with the below-signed Prosecuting Counsel.

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) 973-0880 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION IN PHARMACY,

Dated: May 5, 2017

By:



Sean J. Casey
Prosecuting Counsel
Office of the General Counsel
Department of Public Health
239 Causeway Street, 5th floor
Boston, MA 02114
(617) 973-0880

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing cover letter, Notice to Translate, and Order to Show Cause was served upon the Respondent at:

redacted

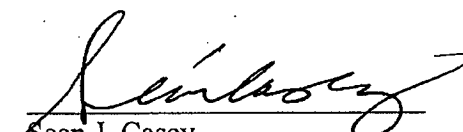
by first class mail, postage prepaid, as well as by certified mail, return receipt requested, Article No. 7015 3010 0001 7079 8485

as well as at:

redacted

by first class mail, postage prepaid, as well as by certified mail, return receipt requested, Article No. 7015 3010 0001 7079 8478

This 5th day of May, 2017.


Sean J. Casey
Prosecuting Counsel