

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

_____)
Board of Registration in Pharmacy)
Petitioner)
v.)
James Mielhs)
License No. PTT100467)
License Expired: 10/5/2024)
Respondent)
_____)

Docket No. PHA-2024-0019
CASE-2024-0010

FINAL DECISION AND ORDER BY DEFAULT

On October 4, 2024,¹ the Board of Registration in Pharmacy (“Board”) issued and duly served on James Mielhs (“Respondent”), an Order to Show Cause (“Show Cause Order”) related to a complaint filed regarding Respondent’s license.² 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 Order.³ The Show Cause Order also notified Respondent of the right to request a hearing on the allegations,⁴ and that any hearing request (“Request for Hearing”) was to be submitted within 21 days of receipt of the Show Cause Order.⁵ 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

¹ On September 12, 2024, the Show Cause Order was issued to the Respondent’s address of record (AOR) with the Board. On October 4, 2024, an updated Show Cause Order was issued to the Respondent to the corrected AOR.

² Pursuant to 801 CMR 1.01(6)(a).

³ In accordance with 801 CMR 1.01(6)(d)(2).

⁴ Pursuant to M.G.L. c. 112, § 61.

⁵ Respondent was also notified that failure to timely submit a Request for Hearing would constitute a waiver of the right to a hearing.

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 at Attachment #1 and is incorporated herein by reference.

On November 8, 2024, Prosecuting Counsel filed a Motion for Entry of Default (“Motion”)⁶ asking that the Respondent be found in DEFAULT in the above referenced matter. On November 26, 2024, Chief Administrative Magistrate Jessica Uhing-Luedde entered an Order of Entry of Default Against Respondent (“Order”). A copy of the Order is attached at Attachment #2 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.

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

⁶ Pursuant to 801 CMR 1.01(7)

has waived the right to be heard. In accordance with the Board's authority and statutory mandate, the Board orders as follows:

ORDER

On January 9, 2025 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 trainee license, PTT100467.

In Favor: K. Thornell, S. Ahmed, R. Morelli, C. Belisle, R. Lopez, S. Hamilton, J. Rocchio, M. Sciaraffa, J. Dorgan, F. Lombardo, S. Dino

Opposed:

Abstained:

Recused:

Absent: D. Barnes

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

Michael J. Godek, R.Ph.

Michael J. Godek, R.Ph.
Executive Director

Date Issued: January 13, 2025

Notice to:

Via Email, First Class & Certified Mail No.: 9589 0710 5270 1788 9286 82

Return Receipt Requested

James Michls
1205 Hampden Street
Holyoke, MA 01040-2414

Via Email, First Class & Certified Mail No.: 9589 0710 5270 1788 9286 99

Return Receipt Requested

James Michls

[REDACTED]

[REDACTED]

Interoffice:

Allison Callahan, Esq.
Prosecuting Counsel
Department of Public Health
Office of General Counsel
250 Washington Street, 2nd Floor
Boston, MA 02108

Jessica Uhing-Luedde, Esq.
Chief Administrative Magistrate Department of Public Health
Office of the General Counsel
250 Washington Street, 2nd Floor
Boston, MA 02108

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

Board of Registration in Pharmacy,
Petitioner

v.

James Miehl
License No. PTT100467
License Expires: 10/05/2024
Respondent

Docket No. PHA-2024-0019

ORDER TO SHOW CAUSE

James Miehl, 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 Trainee (PTT) in the Commonwealth of Massachusetts, License No. PTT100467, or your right to renew such license, pursuant to G.L. c. 112, §§ 42A and 61 and Code of Massachusetts Regulations (CMR), Title 247, §10.03, based upon the following facts and allegations:

1. On or about October 5, 2023, the Board issued to you a license to engage in the practice of a Pharmacy Technician Trainee in the Commonwealth of Massachusetts, License No. PTT100467. Your license will expire on October 5, 2024, unless otherwise renewed.
2. On December 7, 2023, while you were employed as a PTT at Walgreens Pharmacy #2710, in Westfield, MA, you filled a prescription for 60 Ritalin 20 mg tablets.
3. On December 13, 2023, a patient attempted to pick up a prescription for 60 Ritalin 20 mg tablets from Walgreens Pharmacy #2710. The pharmacy technician waiting on the patient was unable to locate the prescription in the prescription bins.
4. On December 21, 2023, a Walgreens assistant pharmacy manager interviewed you. You verbally admitted to stealing the prescription from the pharmacy. You refused to sign a written statement of admission and restitution. At the conclusion of the interview your employment with Walgreens was terminated.

Grounds for Discipline¹

- A. Your conduct as alleged in Paragraph Nos. 1 – 4, above, as well as any other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as a PTT pursuant to G.L. c. 112, §42A for violation of the rules and regulations established by the Board.
- B. Your conduct as alleged in Paragraph Nos. 1 – 4, above, as well as any other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as a PTT pursuant to G.L. c. 112, §61, for deceit, malpractice, and/or gross misconduct in the practice of the profession and for any offense against the laws of the Commonwealth relating thereto.
- C. Your conduct as alleged in Paragraph Nos. 1 – 4, above, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as a PTT pursuant to Board regulation 247 CMR 10.03(1) (a), 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.
- D. Your conduct as alleged in Paragraph Nos. 1 – 4, above, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as a PTT pursuant to Board regulation 247 CMR 10.03(1)(k) for engaging in conduct that has the capacity or potential to place the public health, safety or welfare at risk.
- E. Your conduct as alleged in Paragraph Nos. 1 – 4, above, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as a PTT pursuant to Board regulation 247 CMR 10.03(1)(r) for engaging in conduct that demonstrates a lack of good moral character.
- F. Your conduct as alleged in Paragraph Nos. 1 – 4, above, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as a PTT pursuant to Board regulation 247 CMR 10.03(1)(u) for engaging in conduct constitutes unprofessional conduct and/or conduct that 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*

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) (“[d]ue process requires notice of the grounds on which the board might act rather than the evidentiary support for those grounds”). Thus, notice pleadings do not require Prosecuting Counsel to match factual allegations to grounds for discipline. Similarly, factual allegations are not necessarily an exhaustive characterization of the evidence to be adduced at a hearing.

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).

- G. Your conduct as alleged in Paragraph Nos. 1 – 4. above, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as a PTT pursuant to Board regulation 247 CMR 10.03(1)(v) for engaging in conduct that violates standards of pharmacy practice.
- H. Your conduct as alleged in Paragraph Nos. 1 – 4. above, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as a PTT pursuant to Board regulation 247 CMR 10.03(1)(w) for failing to comply with recognized ethical standards of the profession.
- I. Your conduct as alleged in Paragraph Nos. 1 – 4. above, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as a PTT pursuant to Board regulation 247 CMR 10.03(1)(x) for violating M.G.L. c. 94C or any rules or regulations promulgated thereunder.

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 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 offered 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 above-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 license to practice as a Pharmacy Technician Trainee 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 Jessica Uhing-Luedde, Chief Administrative Magistrate, at the following address:

Jessica Uhing-Luedde, Esq.
Chief Administrative Magistrate
Department of Public Health
Office of the General Counsel
250 Washington Street, 2nd Floor
Boston, MA 02108-4619

A copy of your Answer to the Order to Show Cause and your written request for a hearing must also be served upon

Allison Callahan, Esq.
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
250 Washington Street, 2nd Floor
Boston, MA 02108-4619

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 Prosecutor. If you elect to undertake such an examination, please contact Prosecuting Counsel in advance at (781) 824-6099 or via e-mail at allison.callahan@mass.gov to schedule a time that is mutually convenient.

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

By: /s/ Allison Callahan
Allison Callahan, Esq.
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
250 Washington Street, 2nd Floor
allison.callahan@mass.gov
(781) 824-6099

September 12, 2024

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Cover Letter and Order to Show Cause were served upon the Respondent, James Miehl, by email and by First Class and Certified Mail at the Respondent's Address of Record and Email Address of Record:

By First Class and Certified Mail No. 9589 0710 5270 1788 9291 39
James Miehl
1205 Hampden Street
Holyoke, MA 01040

By First Class and Certified Mail No. 9589 0710 5270 1788 9291 46
James Miehl

[REDACTED]

By Email:

[REDACTED]

/s/ Allison Callahan
Allison Callahan, Esq.
Prosecuting Counsel

October 4, 2024