

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

IN THE MATTER OF
JENNETTE FERRY
PT LICENSE NO. 9723
PT LICENSE SUSPENDED 5/15/09¹

DOCKET NO. PHA-2009-0064

FINAL DECISION AND ORDER BY DEFAULT

On August 12, 2009, the Board of Registration in Pharmacy (Board) issued an Order to Show Cause ordering Jennette Ferry (Respondent) to appear and show cause why the Board should not suspend, revoke or otherwise take action against her registration to practice as a pharmacy technician in the Commonwealth of Massachusetts. A copy of the Order to Show Cause is attached to this Final Decision and Order by Default and is incorporated herein by reference. On September 17, 2009, Respondent filed an answer and request for hearing. On October 1, 2009, the Board issued a Notice of Status Conference requiring the parties to appear for an October 27, 2009 status conference.² On October 27, 2009, the Administrative Hearings Counsel (AHC) convened the status conference. Despite due notice, Respondent failed to appear at the status conference and Prosecuting Counsel moved for default.

The Board granted Prosecuting Counsel's motion and on October 27, 2009 issued to Respondent a written notice of default, notifying her that she had until November 3, 2009 to show good cause for failing to appear and to request removal of the default. The notice further informed Respondent that if she did not remove the default on time, or if she did not show good cause for failing to appear the Board may enter a Final Decision and Order by Default which assumes the truth of the allegations in the Order to Show Cause and revoke,

¹ On or about May 15, 2009, the Board issued a temporary order of summary suspension against Respondent's registration as a pharmacy technician based upon allegations, among other things, that she diverted methadone oral solution from the Lahey Clinic, Burlington, Massachusetts for her own use. On or about May 29, 2009, the Board issued a final order of summary suspension against Respondent's registration as a pharmacy technician. Respondent's registration remains suspended as of the date of this Final Decision and Order by Default.

² The Notice informed Respondent as follows:

Failure to appear or be represented at the Status or Pre-Hearing Conference without good cause, even if an Answer is on file, may result in the entry of default. Upon default, the Board may enter a Final Decision and Order that assumes the truth of the allegations in the Order to Show Cause and may revoke, suspend or take other appropriate disciplinary action against Respondent's registration or right to renew.

suspend or take other discipline as appropriate against her pharmacy technician registration in the Commonwealth of Massachusetts, including any right to renew.

On November 3, 2009, Respondent timely filed a request to remove the default. In support, she submitted a letter stating that she was unable to attend the October 27, 2009 status conference because her car's power steering pump broke on the way to the status conference, she does not have a cell phone, and she was stuck on the side of the highway for almost four hours. The AHC found that Respondent had timely filed a motion to remove the default, but had not demonstrated good cause. On November 3, 2009, the AHC issued a written ruling allowing Respondent until November 13, 2009 to supplement her motion by filing supporting third party documentation in support of the assertions made in her motion. As of this date of this Final Decision and Order by Default, Respondent has failed to supplement her motion.³

The Board has afforded Respondent an opportunity for a full and fair hearing on the allegations in the Order to Show Cause 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 her obligation to appear and defend or be subject to default. Despite such notice, Respondent has failed to demonstrate good cause for failing to appear at the October 27, 2009 status conference and is defaulted.

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

ORDER

On November 17, 2009, the Board voted to issue this Final Decision and Order by Default and REVOKE Respondent's Pharmacy technician registration effective as of the date issued (see "Date Issued" below), by the following vote:

³ Respondent duly notified of the default. The mailings issued by the Board in this adjudicatory proceeding beginning with the August 12, 2009 Order to Show Cause through and including the November 3, 2009 Procedural Order were mailed to Respondent at her address of record on file with the Board via first class and certified mail. The record shows that Respondent has in fact received mail at this address, as she has responded in writing to some of the notices. In addition, none of the first class mail has been returned to the Board and is presumed received. 801 CMR 1.01 (4) (c).

In favor: Stanley B. Walczyk, R.Ph.; Steven Budish, Public Member; Joanne M. Trifone, R.Ph.; William A. Gouveia, R.Ph., M.S., 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: None.

Respondent is ordered to return her wallet registration to the Board of Registration in Pharmacy administrative office (239 Causeway St., Suite 200, 2d Floor, Boston, MA 02114 (envelope enclosed) immediately on receipt of this Order.

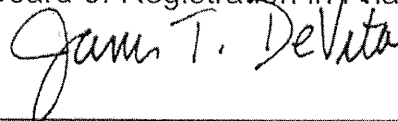
EFFECTIVE DATE

The Order of the Board shall be effective as of November 17, 2009.

RIGHT OF APPEAL

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

Board of Registration in Pharmacy



James T. DeVita

President

Date Issued: November 17, 2009

Final Decision and Order by Default be sent to:

BY FIRST CLASS AND CERTIFIED MAIL

RETURN RECEIPT REQUESTED NO. 7008 3230 4164 4224

Jennette Ferry



BY INTEROFFICE MAIL

Vita Berg, Prosecuting Counsel

Office of Prosecutions

Division of Health Professions Licensure

Department of Public Health

239 Causeway Street

Boston, MA 02114

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN PHARMACY

IN THE MATTER OF
JEANETTE FERRY
PHARMACY TECHNICIAN NO. 9723
LIC. EXP. DATE: 08/03/10

DOCKET NO. PHA-2009-0064

ORDER TO SHOW CAUSE

Jeanette Ferry (hereinafter "you" or "Respondent"), 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 as a pharmacy technician in the Commonwealth of Massachusetts, Registration No. 9723, or your right to renew such license, pursuant to Massachusetts General Laws (G. L.) Chapter 112, § 61 and Board regulations at 247 C.M.R. 2.00, et. seq. based upon the following facts and allegations:

1. On or about May 13, 2008, the Board issued to you a registration as a pharmacy technician (no. 9723) in the Commonwealth of Massachusetts.
2. During the period from December 1, 2008 to January 26, 2009, you were employed as a pharmacy technician at the Pharmacy Department of the Lahey Clinic in Burlington, Massachusetts (hereinafter "Lahey Clinic").
3. While so employed at the Lahey Clinic, you accessed and tampered with bottles of methadone oral solution on numerous occasions.
4. You diverted methadone oral solution from the Lahey Clinic for your own use.
5. On three occasions between January 26, 2009 and May 15, 2009, the Board requested that you provide a written response to a complaint against your registration concerning the allegations in paragraphs 2 through 4 of this Order to Show Cause. You failed to provide any such response.
6. On or about May 15, 2009, the Board issued a temporary order of summary suspension against your registration as a pharmacy technician based upon the allegations in paragraphs 2 through 5 of this Order to Show Cause.
7. On or about May 29, 2009, the Board issued a final order of summary suspension against your registration as a pharmacy technician based upon the allegations in paragraphs 2 through 4 of this complaint and upon your continued failure to respond to the Board's inquiries regarding the same. Your registration remains suspended.

* * * * *

8. Your conduct as alleged warrants disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to G. L. c. 112, § 61 for deceit, malpractice and gross misconduct in the practice of the profession and for offenses against the laws of the Commonwealth relating thereto.
9. Your conduct as alleged warrants disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to Board regulation 247 C.M.R. 10.00, et. seq. for violation of the following:
 - (a) Your conduct as alleged violates 247 C.M.R. 8.02(1)(a)(3) for your failing to meet the requirement for registration as a pharmacy technician that you be of good moral character.
 - (b) Your conduct as alleged violates 247 C.M.R. 10.03(1)(a) for violating any of the duties and standards set out in Board regulations (247 CMR 2.00 et seq.) or any rule or written policy adopted by the Board;
 - (c) Your conduct as alleged violates 247 C.M.R. 10.03(1)(b) for violating any provision of M.G.L. c. 112, ss. 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 violates 247 C.M.R. 10.03(1)(e) for engaging in misconduct in the practice of the profession;
 - (e) Your conduct as alleged violates 247 C.M.R. 10.03(1)(h) for engaging in abuse or illegal use of prescription drugs or controlled substances;
 - (f) Your conduct as alleged violates 247 C.M.R. 10.03(1)(k) for engaging in conduct that has the capacity or potential to place the public health, safety or welfare at risk;
 - (g) Your conduct as alleged violates 247 C.M.R. 10.03(1)(l) for engaging in conduct that has the capacity or potential to deceive or defraud;
 - (h) Your conduct as alleged violates 247 C.M.R. 10.03(1)(q) for failing without cause, to cooperate with any request by the Board to appear before it or to provide requested information; failing to respond to a Board subpoena or failing to furnish the Board, its investigators or representatives with records, documents, information or testimony to which the Board is legally entitled;
 - (i) Your conduct as alleged violates 247 C.M.R. 10.03(1)(r) for engaging in conduct that demonstrates a lack of good moral character;
 - (j) Your conduct as alleged violates 247 C.M.R. 10.03(1)(u) for engaging in conduct which undermines public confidence in the integrity of the profession;
 - (k) Your conduct as alleged violates 247 C.M.R. 10.03(1)(v) for committing an act that violates recognized standards of pharmacy practice; and

- (l) Your conduct as alleged violates 247 C.M.R. 10.03(1)(x) for violation of M.G.L. c. 94C or any rules or regulations promulgated thereunder.
10. 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 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 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 license to practice as a pharmacist in the Commonwealth of Massachusetts, including any right to renew your license.

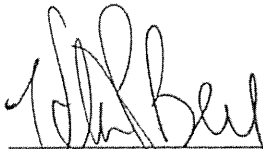
Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Vita Palazzolo Berg, Prosecuting Counsel, at the following address:

Vita Palazzolo Berg,
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
239 Causeway Street, Second Floor
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, then please contact Prosecuting Counsel in advance at (617) 973-0865 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION
IN PHARMACY,
Sophia Pasedis, R.Ph., Pharm.D., President

By:



Vita Palazzolo Berg,
Prosecuting Counsel
Department of Public Health

Date: August 12, 2009

CERTIFICATE OF SERVICE

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

Jeanette Ferry



by Certified Mail No. 7008 3230 0002 4164 9472 and by first class mail on this 12th day of August, 2009.

A handwritten signature in cursive script, appearing to read 'Vita Berg', written over a horizontal line.

Vita Palazzolo Berg
Prosecuting Counsel