

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure

DEVAL L. PATRICK
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LAUREN A. SMITH, MD, MPH
INTERIM COMMISSIONER

Board of Registration in Pharmacy
239 Causeway Street, Suite 500, 5th Floor
Boston, MA 02114
617-973-0954

May 13, 2013

VIA FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7010 2780 0001 8675 9920

Jennifer L. Dulong

redact

RE: In the Matter of Jennifer L. Dulong, PT License No. PT8742
Board of Registration in Pharmacy Docket No. PHA-2011-0196

Dear Ms. Dulong:

Enclosed is the *Final Decision and Order by Default* ("Final Order") issued by the Board of Registration in Pharmacy (Board) in connection with the above-referenced matter. The effective date of the Board's Order is ten (10) days from the date appearing on page 3 of the *Final Order* ("Date Issued"). Your client's appeal rights are noted on page 3 of the *Final Order*.

Sincerely,

Margaret Cittadino
Associate Director
Board of Registration in Pharmacy

Enc.

cc: Paul Moore, Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of
Jennifer L. Dulong
PH-PT Registration No. 8742
License expired 6/29/2009

Docket No. PHA-2012-0196

FINAL DECISION AND ORDER BY DEFAULT

On March 11, 2013, the Board of Registration in Pharmacy ("Board") issued and duly served on Jennifer L. Dulong ("Respondent") an Order to Show Cause ("Show Cause Order")¹ related to a complaint filed regarding Respondent's registration. 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 right to renew Respondent's registration." 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.

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. In accordance with the Board's authority and statutory mandate, the Board orders as follows:

On May 7, 2013, in accordance with the Board's authority and statutory mandate, the Board voted to issue this Final Decision and Order by Default and REVOKE Massachusetts Pharmacy Technician Registration No. 8742 (expired 6/29/09; summarily suspended by the Board effective 10/22/12) by the following vote: in favor: J. DeVita, Rph; J. Franke, RN, MHA, K. Ryle, RPh, MS, E. Taglieri, RPh, MSM, NHA, J. Trifone, RPh, A. Young, RPh, EdD, P. Gannon, RPh, MS; opposing: none; abstaining: none.

The Board will not review any petition for pharmacy technician registration in the Commonwealth filed sooner than five (5) years from the Effective Date of this Final Decision and Order by Default. While Respondent's pharmacy technician registration is REVOKED, Respondent may not: (1) be employed in any capacity to provide any services 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 licensure or registration by the Board, Respondent will be required to meet all current requirements for licensure or registration at the time of any such application, including but not limited to, re-application, re-examination and re-training. The Respondent must also show proof of sobriety and closure of all criminal matters for at least one (1) year and any other reinstatement terms and conditions the Board may deem to be necessary and appropriate. The Board does not envision any terms or conditions pursuant to which Respondent would be considered to be appropriate for licensure or registration in the future.

EFFECTIVE DATE OF ORDER

The Order of the Board shall be effective ten days from the date issued, specified below.

Respondent is hereby notified of the right to appeal this Final Decision and Order by Default 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*.

Date issued: May 13, 2013

BOARD OF REGISTRATION IN
PHARMACY


Margaret Cittadino
Associate Director

Notice to:

BY FIRST CLASS MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED 7010 2780 0001 8675 9920

Jennifer L. Dulong

redact

BY HAND

Paul Moore, Esq.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
Jennifer L. Dulong)
PH - PT Registration No. 8742)
(Registration expired 6/29/2009))
_____)

Docket No. PHA-2012-0196

ORDER TO SHOW CAUSE

Jennifer L. Dulong, 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 right to renew your registration to practice as a pharmacy technician in the Commonwealth of Massachusetts, registration no. 8742, or your right to renew your registration, pursuant to Massachusetts General Laws ("G.L.") Chapter 112, §§ 42A and 61, and Board regulations at 247 Code of Massachusetts Regulations ("CMR") 2.00 et seq., based upon the following facts and allegations:

1. On or about October 16, 2007, the Board issued to you a registration to practice as a pharmacy technician. Your registration expired on June 29, 2009 and has not been renewed to date.
2. During the approximate period May, 2012 through September 7, 2012 ("the relevant time period"), you also held a registration as a pharmacy technician in the State of New Hampshire, registration number 8140.
3. During the relevant time period, you were employed as a pharmacy technician at Hannaford's Pharmacy ("Hannaford's") in Hampstead, New Hampshire. During the relevant time period, staff at Hannaford's suspected that you were diverting controlled substances from Hannaford's, an allegation to which you admitted when questioned by Hannaford's staff.
4. Specifically, you admitted to Hannaford's staff that you had diverted approximately sixty (60) tablets of clonazepam and sixty (60) tablets of hydrocodone during the relevant time period.
5. Based on your admission to diverting controlled substances at Hannaford's, on or about September 14, 2012, the State of New Hampshire Board of Pharmacy ("New Hampshire Board") issued an Order of Emergency License Suspension and Notice of Hearing based on the New Hampshire Board's belief that your acknowledged conduct constituted an imminent danger to life and/or health.

6. On or about September 19, 2012, the New Hampshire Board accepted the voluntary surrender of your New Hampshire pharmacy technician registration, which you had tendered on September 17, 2012.
7. As a result of the events described in paragraphs two through five of this Order to Show Cause, on or about October 9, 2012, the Board issued a temporary order of summary suspension ("order") of your right to renew your registration to practice as a pharmacy technician in Massachusetts. That order advised you of your right to request a hearing on the necessity of continuing the summary suspension of your right to renew your registration by filing a written request with the Board by October 11, 2012. You failed to request such a hearing.
8. On or about October 22, 2012, the Board issued a final order of summary suspension of your right to renew your registration to practice as a pharmacy technician in Massachusetts.
9. Your conduct as described warrants disciplinary action by the Board against your right to renew your registration to practice as a pharmacy technician pursuant to G.L. c. 112, § 61, for deceit, malpractice, gross misconduct in the practice of pharmacy, or for any offense against the laws of the Commonwealth relating thereto.
10. Your conduct as described demonstrates a lack of the good moral character required for registration as a pharmacy technician in the Commonwealth pursuant to Board regulation 247 CMR 8.02(1)(a)3.
11. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(a) for violating any of the duties and standards set out in Board regulations or any rule or written policy adopted by the Board.
12. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(b) for violating provisions of state and federal statutes, rules and regulations related to the practice of pharmacy.
13. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(e) for engaging in misconduct in the practice of pharmacy.
14. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(h) for engaging in abuse or illegal use of prescription drugs or controlled substances.
15. Your conduct as described constitutes grounds for discipline pursuant to 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.

16. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(l) for engaging in conduct that has the capacity or potential to deceive or defraud.
17. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(r) for engaging in conduct that demonstrates a lack of good moral character.
18. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(t) for having been disciplined in another jurisdiction in any way for reasons substantially the same as those set forth in 247 CMR 10.03.
19. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(u) for engaging in conduct which undermines public confidence in the integrity of the pharmacy profession.
20. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(v) for committing an act (or acts) that violates recognized standards of pharmacy practice.
21. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(x) for violation of G.L. c. 94C, the Massachusetts Controlled Substances Act, or any rules or regulations promulgated thereunder.
22. Your conduct as described constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the pharmacy profession.
Sugarman v. Board of Registration in Medicine, 422 Mass. 338, 342 (1996);
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 acts to suspend, revoke, or impose other discipline against your right to renew your registration. G.L. c. 112, §§ 42A and 61. Your right to a hearing may be claimed by submitting a written request for a hearing *within twenty-one (21) days of your receipt of this Order to Show Cause*. Failure to make a timely request shall constitute a waiver of the right to a hearing with regard to the Board's action. 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 your 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)(j)(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 on an ongoing basis directly to the Presiding Officer by the stenographer or transcription service. The transcript will be made available to the undersigned 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 is 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 21 (twenty-one) 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 21 (twenty-one) 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 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 right to renew your registration to practice as a pharmacy technician in the Commonwealth of Massachusetts.


Your written request for a hearing and your Answer to the Order to Show Cause, shall be submitted for filing to:

Paul C. Moore, Esq.
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
239 Causeway Street, 5th 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,
James T. DeVita, R.Ph.
President

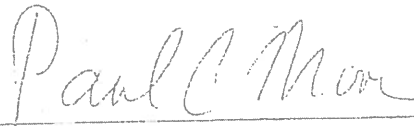
By:


Paul C. Moore, Esq.
Prosecuting Counsel
Department of Public Health

Date: March 11, 2013

CERTIFICATE OF SERVICE

I, Paul C. Moore, Esq. hereby certify that a copy of the foregoing Order to Show Cause was served upon the Respondent, Jennifer L. Dulong, by mailing a copy by first class mail, postage prepaid, to her address of record, [redact] [redact] and also by mailing a copy by certified mail no. 7012 0470 0001 3611 7954, to the same address; and also, by mailing a copy by first class mail, postage prepaid, to a second address, [redact]



Paul C. Moore, Esq.
Prosecuting Counsel

Dated: March 11, 2013 .