

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

Board of Registration)
in Pharmacy,)
Petitioner,)
)
v.)
)
Kassandra Hernandez)
PT Registration No. PT9200)
Registration Expired 10/26/16,)
Respondent)
_____)

Docket No. PHA-2016-0046

FINAL DECISION AND ORDER BY DEFAULT

On June 28, 2017, the Board of Registration in Pharmacy (Board) issued and duly served on Kassandra Hernandez (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] registration... including any right to

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.

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.

On July 27, 2017, Prosecuting Counsel sent notice to Respondent to file an Answer and a Request for Hearing by August 7, 2017. The notice again advised Respondent that if defaulted, the Board might enter a Final Decision and Order that assumes the truth of the allegations stated in the Show Cause Order and impose license discipline, including discipline on any right to renew.

As of the date of this Final Decision and Order by Default, Respondent has failed to file an Answer or 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 Massachusetts General Laws (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 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 matters 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 September 7, 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, PT9200, effective ten days from the Date Issued, by the following vote:

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

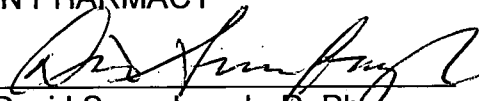
EFFECTIVE DATE OF ORDER

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: 9/25/2017

Notice to:

BY FIRST CLASS & CERTIFIED MAIL NO. 7015 3010 0001 7079 7822.
RETURN RECEIPT REQUESTED

Kassandra Hernandez
193 Hildreth Street, Apt. 33
Lowell, MA 01850

BY HAND

Eugene Langner
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

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Board of Registration in Pharmacy,)
Petitioner,)

v.)

Docket No. PHA-2016-0046

)
Kassandra Hernandez)
PT Registration No. PT9200)
Registration Expired 10/26/16,)
Respondent)
_____)

ORDER TO SHOW CAUSE

Kassandra Hernandez, 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, PT Registration No. PT9200, 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 or about January 9, 2008, the Board issued you a registration to practice as a pharmacy technician in the Commonwealth of Massachusetts, PT Registration No. PT9200. Your registration expired on October 26, 2016, and has not been renewed to date.
2. Between or about January 12, 2016 and March 22, 2016, you were employed as a pharmacy technician at Medical Center Pharmacy in Billerica, Massachusetts (MCP).
3. While employed as described in the preceding paragraph, MCP's owner and manager of record (MOR) discovered that between twenty-five (25) and thirty (30) sixteen ounce bottles of promethazine with codeine 6.25/5 ml oral syrup, a Schedule V Controlled Substance, were missing from MCP's inventory.
4. At no time during the period referenced in Paragraph 2 above did you have a prescription for promethazine with codeine.

5. When MCP's MOR asked you about the missing bottles referenced in Paragraph 3 above, you acknowledged having diverted them and having provided them to a relative.
6. On or about December 13, 2016, in connection with the matters referenced in Paragraphs 2 through 3 above, you admitted to sufficient facts to support a charge of larceny of a drug in violation of G.L. c. 94C, § 37, in Lowell District Court Docket No. 1611CR001961.
7. The matter referenced in the preceding paragraph was continued without a finding for a period of one (1) year, during which time you were ordered to refrain from using drugs.

Legal Basis for Discipline¹

- A. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to G.L. c. 94C, § 34 for knowingly or intentionally possessing a controlled substance other than pursuant to a valid prescription or order.
- B. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to G.L. c. 94C, § 37 for stealing a controlled substance from a registered manufacturer, wholesale druggist, pharmacy or other person authorized to dispense or possess any controlled substance.
- C. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to G.L. c. 112, § 42A for violation of the rules and regulations established by the Board.
- D. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against

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," and does not require Prosecuting Counsel to provide a detailed description of evidence he intends 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 is offered as suggestions, and not as an exhaustive characterization of the evidence to be adduced at a hearing.

your registration to practice as a pharmacy technician 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.

- E. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR 9.01(1) for failing to conduct professional activities in conformity with federal, state and municipal laws, ordinances and/or regulations, including the regulations of the Board.
- F. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR 9.01(2) for dispensing drugs in a manner which is intended, either directly or indirectly, to circumvent the law.
- G. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR 9.01(6) for engaging in any fraudulent or deceptive act.
- H. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR 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.
- I. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR 10.03(1)(b) for violating any provision of 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.
- J. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR 10.03(1)(e) for engaging in misconduct in the practice of the profession.
- K. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR

10.03(1)(f) for engaging in conduct beyond the authorized scope of a pharmacy technician.

- L. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician 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.
- M. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR 10.03(1)(l) for engaging in conduct that has the capacity or potential to deceive or defraud.
- N. Your conduct as alleged, without limitation, in Paragraphs 6 and 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR 10.03(1)(n) for being convicted of any crime, entering a plea of guilty to any crime, entering a plea of *nolo contendere* to any crime, or admitting to sufficient facts to warrant a finding of guilty of any crime.
- O. Your conduct as alleged, without limitation, in Paragraphs 6 and 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR 10.03(1)(r) for engaging in conduct that demonstrates a lack of good moral character.
- P. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR 10.03(1)(u) for engaging in conduct which undermines public confidence in the integrity of the profession.
- Q. Your conduct as alleged in Paragraphs 2 through 7 above, and any other evidence that may be adduced at hearing, warrant disciplinary action by the Board against your registration to practice as a pharmacy technician pursuant to 247 CMR 10.03(1)(w) for failing to comply with recognized ethical standards of the profession, including, but not limited to, the standards of practice for pharmacists, pharmacy interns, pharmacies and pharmacy departments set forth in 247 CMR 9.01: *Code of Conduct for Registered Pharmacists, Pharmacies and Pharmacy Departments*.
- R. Your conduct as alleged in Paragraphs 2 through 7 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 registration. 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.

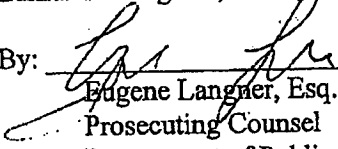
If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your registration to practice as a pharmacy technician in the Commonwealth of Massachusetts, including any right to renew your registration.

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

Eugene Langner, Esq.
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
250 Washington Street, 2nd Floor
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) 624-5263 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION IN PHARMACY
Edmund J. Taglieri, R.Ph., MSM, NHA, President

By: 
Eugene Langner, Esq.
Prosecuting Counsel
Department of Public Health

Date: June 26, 2017

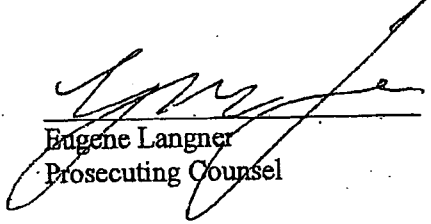
CERTIFICATE OF SERVICE

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

Kassandra Hernandez
193 Hildreth Street, Apt. 33
Lowell, MA 01850

by first class mail, postage prepaid, and by Certified Mail No. 7016 1370 0001 4117 5745

This 28th day of June, 2017.


Eugene Langner
Prosecuting Counsel