

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
KELLY KRAUSE)
PH-PT Reg. No. 6402)
(Expiration 9/13/07))
_____)

Docket No. PH-08-079

FINAL DECISION AND ORDER BY DEFAULT

On May 15, 2008, the Board of Registration in Pharmacy ("Board") issued and duly served on Kelly Krause ("Respondent") an Order to Show Cause ("Show Cause Order")¹ related to a complaint filed regarding Respondent's pharmacy technician registration (No. 6402/Expired 9/13/07). 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 pharmacy technician registration ...including any right to renew her license." 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.

On July 22, 2008, Prosecuting Counsel sent notice to Respondent to file an Answer and a Request for Hearing by July 30, 2008. 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 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 has waived the right to be heard. In accordance with the Board's authority and statutory mandate, the Board orders as follows:

ORDER

The Board voted to issue this *Final Decision and Order by Default* and REVOKE the Respondent's inchoate right to renew her Pharmacy technician registration on September 9, 2008 by the following vote: In favor: Sophia Pasedis, R.Ph., Pharm.D., Marilyn M. Barron, MSW, Public Member, Steven Budish, Public Member;

Stanley B. Walczyk, R.Ph., James T. DeVita, R.Ph., Joanne M. Trifone, R.Ph.;

George A. Cayer, R.Ph. and Donald D. Accetta, M.D., Michael Tocco, R.Ph.

Opposed: None. Recused: None. Absent: Kathy J. Fabiszewski, Ph.D., N.P. and

William A. Gouveia, R.Ph., M.S.

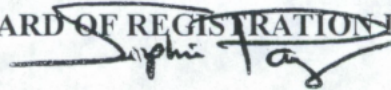
EFFECTIVE DATE OF ORDER

This *Final Decision and Order by Default* becomes effective upon the date it is issued (see "Date Issued" below).

RIGHT TO APPEAL

Respondent is hereby notified of the right to appeal this *Final Decision and Order by Default* within thirty (30) days of receipt of notice of this Final Decision pursuant to G.L. c. 112, § 64.

BOARD OF REGISTRATION IN PHARMACY



Sophia Pasedis, R.Ph., Pharm.D.
President

Date Issued: September 10, 2008

Dec. No. 1913

Attachment: Order to Show Cause dated May 15, 2008

Notified:

First Class Mail and Certified Mail/Receipt No. 7007 3020 0000-4324 to

Kelly Krause



Kelly Krause



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
KELLY KRAUSE)
PH-PT Reg. No. 6402)
(Reg. Lapsed 9/13/07))
_____)

Docket No. PH-08-079

ORDER TO SHOW CAUSE

Kelly Krause (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 pharmacy technician registration, Registration No. 6402, or your right to renew such registration, pursuant to Massachusetts General Laws (G. L.) Chapter 112, §§ 42A and 61 and Board regulations 247 CMR 2.00 et seq. based upon the following facts and allegations:

1. On or about May 18, 2005, the Board issued you a pharmacy technician registration, Registration No. 6402. Your Registration lapsed on September 13, 2007.
2. In or about December 2007 though March 2008, you were employed as a registered pharmacy technician at Rite Aid Pharmacy #10089 ("the pharmacy"), located at 557 Main Street, in Shrewsbury, Massachusetts.
3. In or about December 2007 though March 2008, while employed as a pharmacy technician at the pharmacy, you diverted numerous bottles of controlled substances, including Hydrocodone/APAP 10/325 mg, on a weekly basis from the pharmacy.
4. You admitted to the Rite Aid Pharmacy Loss Prevention Manager and to the Shrewsbury Police Department that you diverted controlled substances from the pharmacy.
5. You were arrested and charged by the Shrewsbury Police with the following criminal charges: Larceny Over \$250, Possession of Class B, and Possession of Class B with Intent to Distribute. The criminal charges are currently pending.

6. Your conduct as alleged above warrants disciplinary action by the Board against your pharmacy technician registration pursuant to G. L. c. 112, §§ 42A and 61, for deceit, malpractice, gross misconduct in the practice of the profession, or for any offense against the laws of the Commonwealth relating thereto.
7. Your conduct as described above constitutes failure to conduct professional activities in conformity with federal, state and municipal laws, ordinances and/or regulations, of the Board and therefore warrant disciplinary action by the Board pursuant to M.G.L. c. 112, §§ 28, and 42A, M.G.L. c. 94C, and 247 CMR 2.00 et seq., specifically:
 - a. Your conduct as described above violates G.L. c. 94C, §§ 33, 34 and 37, for failing to comply with the Massachusetts Controlled Substances Act.
 - b. Your conduct as described above violates 247 CMR 10.03(a),(b), (e), (k), (l), (u), and (x) for violating various provisions elicited in the Board of Registration of Pharmacy grounds for discipline.
8. Your conduct as described above also 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); 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 acts to suspend, revoke, or impose other discipline against 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 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 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. 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.

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 pharmacy registration in the Commonwealth of Massachusetts, including any right to renew your registration.

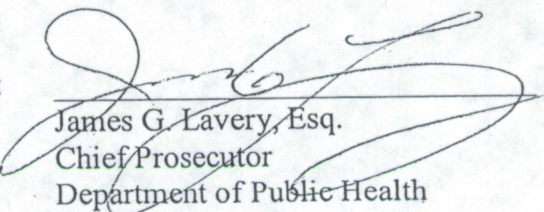
Your Answer to the Order to Show Cause and your written request for a hearing must be filed with James G. Lavery, Prosecuting Counsel, at the following address:

James G. Lavery
Chief Board Prosecutor
Department of Public Health
Office of the General Counsel
239 Causeway Street, 4th 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) 973-0822 to schedule a time that is mutually convenient.

Board of Registration in Pharmacy,
Sophia Pasedis, Pharm.D, R.Ph, President

By:



James G. Lavery, Esq.

Chief Prosecutor

Department of Public Health

May 15, 2008

CERTIFICATE OF SERVICE

I, James G. Lavery, hereby certify that a copy of the foregoing Cover Letter and Order to Show Cause were served upon the Respondent:

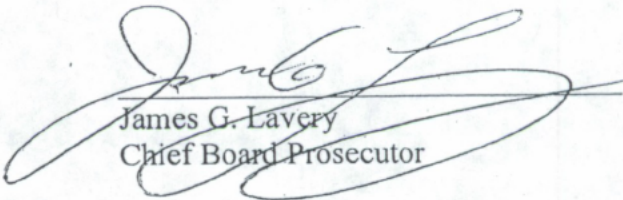
Kelly Krause
[REDACTED]

&

Kelly Krause
[REDACTED]

by Certified Mail Nos. 70073020000043452863 and 70073020000043452856

This 15th day of May 2008.


James G. Lavery
Chief Board Prosecutor