

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

BOARD OF REGISTRATION)
IN PHARMACY)
Petitioner)
)
v.)
)
KIMBERLY SPRY)
PT No. 13295)
Registration expired 05/16/17)
Respondent)

Case No. PHA-2016-0160

FINAL DECISION AND ORDER BY DEFAULT

On June 14, 2017, the Board of Registration in Pharmacy ("Board") issued and duly served on KIMBERLY SPRY ("Respondent"), via certified mail, an Order to Show Cause ("Order")¹ relating to a complaint filed against Respondent's pharmacy technician registration. The U.S. Postal Service tracking system indicates that the letter sent to the Respondent was accepted for delivery at that address on June 16, 2017.²

The Order delivered to the Respondent's address stated the allegations against Respondent and also notified Respondent that an Answer to the Order was to be submitted within 21 days of receipt of the Order³. Further, the Order notified Respondent of her right to request a hearing on the allegations⁴ and that any hearing request ("Request for Hearing") was to be submitted within 21 days of receipt of the Order.⁵ Respondent was further notified that failure to submit an Answer within 21 days "shall

¹ Pursuant to 801 CMR 1.01(6)(a).

² The Order was also served at two other addresses associated with the Respondent.

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.

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 Order and may revoke, suspend, or take other disciplinary action against your registration...including any right to renew your registration.” A copy of the Order is attached to this Final Decision and Order by Default and at Exhibit A and incorporated herein by reference.

The Respondent failed to file either an Answer or a Request for Hearing within the prescribed period after having received the Order. As such, on or about September 7, 2017, the Board voted to issue a Final Decision and Order by Default and Revoke Kimberly Spry’s pharmacy technician license.

Following its September 7th vote, the Board learned that Respondent emailed Prosecuting Counsel on or about September 5, 2017 and requested a hearing. Because the Board prefers to have cases resolved on the merits rather than on procedural defaults, it reconsidered its decision to revoke Respondent’s license, despite the fact that she failed to respond to the Order to Show Cause in a timely manner. On October 5, 2017, the Board voted to rescind its September 7, 2017 vote to issue a Final Decision and Order by Default and to continue with the administrative hearings process.

On or about October 18, 2017, the Chief Administrative Magistrate (“CAM”) issued an Order directing Respondent and Prosecuting Counsel to participate in a telephone conference on November 8, 2017. Respondent failed to participate in the November 8, 2017 telephone conference as ordered.

On or about November 10, 2017, Chief Administrative Magistrate issued an Order, via email, directing Respondent and Prosecuting Counsel to participate in a

telephone conference with the CAM on December 13, 2017. Respondent failed to participate in the telephone conference as ordered. Prosecuting Counsel filed a Motion for Entry of Default on December 13, 2017 based on Respondent's failure to participate in two telephone conferences.

On or about December 14, 2017, Respondent emailed Prosecuting Counsel and described various reasons for her failure to participate in the telephone conferences, including that she had not received notice of the December 13, 2017 conference.

On December 22, 2017 Chief Administrative Magistrate denied Prosecuting Counsel's Motion for Entry of Default and issued an Order that specifically explained both parties' responsibilities in the administrative hearings process up to and including the full adjudicatory hearing. The Order of December 22, 2017 stated:

A hearing is not the only part of this case. The order dated October 18, 2017 attached the practice guide. The practice guide provided a general sense of participants' potential obligations before a hearing such as initial conference, initial joint report, discovery, expert disclosure, joint pre-hearing memorandum, and pre-hearing conference. Whether Prosecution or Respondent, whether represented or not, a party is "bound by the same procedural Rules." *Lawless v. Board of Registration in Pharmacy*, 466 Mass. 1010, 1011 n. 3 (2013).

The Order of December 22, 2017 further stated, "Respondent should not expect to avoid entry of default if she fails to comply with this order." The Order of December 22, 2017 also required both parties to confer and file a joint report by January 17, 2018.

Chief Administrative Magistrate issued an Order on February 22, 2018 that noted Respondent again failed to confer with Prosecuting Counsel and file a joint report by January 17, 2018 and that email correspondence between Respondent and Prosecuting Counsel evidenced that Respondent was aware of the Order requiring the joint report. The Order of February 22, 2018 required both parties to appear for a conference on May

18, 2018. The Order clearly stated, "Failure by Respondent to comply with this order will result in entry of default."

Respondent failed to appear for the May 18, 2018 conference. As such, the CAM issued an Order of Default Against Respondent on May 18, 2018, attached hereto at Exhibit B.

The Board has afforded Respondent an opportunity for a full and fair hearing on the allegations in the Order as required by M.G.L. c. 30A, § 10, and sufficient notice of the issues involved to allow the Respondent a reasonable opportunity to prepare and present evidence and argument as required by M.G.L. c. 30A, § 11(1). Respondent, however, failed on multiple occasions to comply with the administrative hearings process, as required by the Standard Rules of Adjudicatory Procedure and Orders issued by the Chief Administrative Magistrate. See 801 CMR 1.01(6)(d) and 801 CMR 1.01(10)(a). Specifically, Respondent: (1) failed to respond to the Order to Show Cause within the required time period; (2) failed to participate in the November 18, 2017 telephone conference, as required by the Order of October 18, 2017; (3) failed to participate in the December 13, 2017 telephone conference, as required by the email Order dated November 10, 2017; (4) failed to confer with Prosecuting Counsel and submit a joint report by January 17, 2017, as required by the Order of December 22, 2017; and failed to appear for the May 18, 2018 conference, as required by the Order of February 22, 2018.

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

ORDER

On June 28, 2018, 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, PT13295, effective ten days from the Date Issued, by the following vote:

In favor:	Philippe Bouvier; Patrick Gannon; Leah Giambarresi; Michael Godek; Stephanie Hernandez; Julie Lanza; Andrew Stein; Kim Tanzer
Opposed:	None
Abstained:	None
Recused:	Susan Cornacchio
Absent:	Timothy Fensky; Carly Jean-Francois; Dawn Perry; Ali Raja

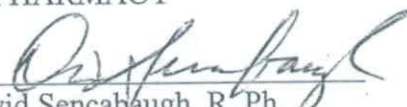
EFFECTIVE DATE OF ORDER

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:

7/10/2018

Notice to:

BY FIRST CLASS MAIL & CERTIFIED MAIL 7016 1370 0001 4117 1761
RETURN RECEIPT REQUESTED

Kimberly Spry
29 Oak Ridge Road
Reading, MA 01867

BY HAND

Richard Banks
Prosecuting Counsel
Massachusetts Department of Public Health
Office of the General Counsel
250 Washington Street
Boston, MA 02108



I do hereby certify the foregoing to be a true and certified copy of the document on file with the Massachusetts Board of Registration in Nursing.

 7-24-18
Authorized Signature Date