

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Bureau of Health Professions Licensure
Board of Registration in Pharmacy
239 Causeway Street, Suite 500, Boston, MA 02114

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MARYLOU SUDDERS
Secretary

MONICA BHAREL, MD, MPH
Commissioner

August 13, 2020

VIA FIRST CLASS & CERTIFIED MAIL NO. 7019 0700 0000 1846 2098,
RETURN RECEIPT REQUESTED

Melissa Landry
5 Uxbridge Rd.
Mendon, MA 01756

RE: In the Matter of Melissa Landry, Docket No. PHA-2019-0040
License No. PT15903

Dear Ms. Landry:

Please find enclosed the **Final Decision and Order by Default** issued by the Board of Registration in Pharmacy ("Board") on August 13, 2020 and **effective August 23, 2020**. This constitutes full and final disposition of the above-referenced complaint, as well as the final agency action of the Board. Your appeal rights are noted on page 3.

Please note that as of the effective date, your license status will change to **Revoked**. It will remain in **revocation** status until the Board notifies you of a change in license status in accordance with the terms of the order.

Please direct all questions, correspondence and documentation relating to licensure reinstatement to the attention of Lisa Ferguson at the address above. You may also contact Ms. Ferguson at (617) 973 - 0950.

You may contact Heather Engman, Esq., Board Counsel at (617) 973 - 0950 with any questions that you may have concerning this matter.

Sincerely,

David Sencabaugh, R. Ph.
Executive Director,
Board of Registration in Pharmacy

Encl.

Cc: Brad Tully, Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

)
Board of Registration in Pharmacy,)
Petitioner,)
)
v.)
)
Melissa Landry)
License No. PT15903)
License Expired 07/14/2021)
Respondent)
_____)

Docket No. PHA-2019-0040

FINAL DECISION AND ORDER BY DEFAULT

On February 26, 2020 the Board of Registration in Pharmacy (“Board”) issued and duly served on Melissa Landry (“Respondent”), an Order to Show Cause (“Show Cause Order”) related to a complaint filed regarding Respondent’s license.¹ In addition to stating the allegations against Respondent, the Show Cause Order notified Respondent that an Answer to the Show Cause Order was to be submitted within 21 days of receipt of the Show Cause Order.² The Show Cause Order also notified Respondent of the right to request a hearing on the allegations,³ 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 above-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] license...including any right to renew [Respondent’s] license.” Copies of

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.

the Show Cause Order are attached to this Final Decision and Order by Default and are incorporated herein by reference.

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 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 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 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 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 July 17, 2020, 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, PT15903, effective ten days from the Date Issued, by the following vote:

In favor: Susan Cornacchio; Patrick Gannon; Leah Giambarresi; Sebastian Hamilton; Julie Lanza; Richard Lopez; Andrew Stein; Kim Tanzer; Katie Thornell

Opposed: None

Abstained: None

Recused: None

Absent: Timothy Fensky; Stephanie Hernandez; Carly Jean-Francois; Dawn Perry

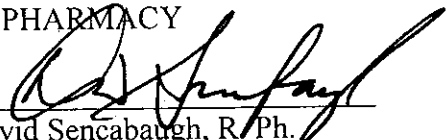
EFFECTIVE DATE OF ORDER

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:

9/12/20

Notice to:

**BY FIRST CLASS & CERTIFIED MAIL NO. 7019 0700 0000 1846 2098,
RETURN RECEIPT REQUESTED**

Melissa Landry
5 Uxbridge Road
Mendon, MA 01756

BY HAND
Brad Tully
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

Board of Registration in Pharmacy)
Petitioner)
v.)
Melissa Landry)
PT License No. PT15903)
License Expires 07/14/2021)
Respondent)

Docket No. PHA-2019-0040

ORDER TO SHOW CAUSE¹

Melissa Landry, 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 license to practice as a pharmacy technician (PT) in the Commonwealth of Massachusetts, License No. PT15903, or your right to renew such license, pursuant to Massachusetts General Laws (G.L.) chapter 112, §§ 42A and 61, and Board regulations 247 CMR 10.03(1)(h) & (x), based upon the following facts and allegations:

Factual Allegations

1. On or about October 4, 2012, the Board issued to you a license to engage in the practice as a pharmacy technician in the Commonwealth of Massachusetts, License No. PT15903. This license expires on July 14, 2021.
2. You were employed at the Walgreens Pharmacy (Walgreens) in Southborough, Massachusetts, as a PT from December 2018 to February 2019.

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;” due process does not require Prosecuting Counsel to provide a detailed description of evidence they intend 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 are offered as suggestions, and not as an exhaustive characterization of the evidence to be adduced at a hearing.

3. During your employment at Walgreens you diverted the following Controlled Substances:
 - a. Thirty (30) D-amphetamine salt combo 10mg extended release (ER) capsules, as schedule II Controlled Substance;
 - b. Thirty (30) D-amphetamine salt combo 15mg extended release (ER) capsules;
 - c. Twenty-Two (22) D-amphetamine salt combo 20mg extended release (ER) capsules;
 - d. One (1) D-amphetamine salt combo 30mg extended release (ER) capsules;
 - e. Thirty (30) Methylphenidate 27mg ER tablets, a Schedule II Controlled Substance;
 - f. Seven (7) Methylphenidate 27mg ER tablets;
 - g. Four (4) Butalbital-Acetaminophen-Caffeine 50-325-40mg tablets, a Schedule VI Controlled Substance; and
 - h. Twenty (20) Amoxicillin 875mg tablets, a Schedule VI Controlled Substance.
4. On February 14, 2019 you were interviewed by Walgreens Asset Protection personnel, during which interview you admitted to diverting multiple Schedule II and VI Controlled Substances.
5. During the interview you provided a written statement in which you made the following admissions:
 - a. "I have taken Adderall 20mg and 30mg, not sure of the qty but less than 30. I took these to possibly sell a [REDACTED]"
 - b. "I have also taken Amoxicillin 875 tablets [REDACTED] [REDACTED] I have taken 20 of those;"
 - c. "Also fioricet tablets for [REDACTED] [REDACTED] and,
 - d. "Recently I've taken methylphenidate 27 and 36 thinking I could sell if needed."

6. On February 15, 2019 you were interviewed by the Massachusetts State Police (State Police), and during the interview you returned the following Controlled Substances you diverted:
 - a. Twenty (20) orange capsules marked, "M Amphet salts 20mg" (Adderall), a schedule II Controlled Substance;
 - b. Twenty-two (22) blue capsules marked, "M Amphet salts 10mg;"
 - c. Seven (7) white capsules marked, "Alza 36" (Concerta), a schedule II Controlled Substance; and,
 - d. Thirty (30) grey tablets marked, "Alza 27."
7. During your interview with the State Police you made the following paraphrased admissions:
 - a. You admitted that you diverted "Adderall" and "Concerta" on two separate occasions;
 - b. You admitted you diverted the "Adderall" sometime in early January 2019;
 - c. You admitted you diverted the "Concerta" on February 12, 2019; and,
 - d. You admitted you diverted the Controlled Substances in order to sell them.
8. On February 20, 2019 the Westborough District Court issued a criminal complaint against you (Docket No. 1967CR000271), charging you with two (2) violations of G.L. c. 94C § 33 – Obtaining a Drug by Fraud for the twenty (20) "Adderall capsules," seven (7) "Concerta 36mg capsules," and thirty (30) "Concerta 27mg capsules" you returned to the State Police during your interview.
9. On March 11, 2019 you were arraigned in the Westborough District Court on the criminal complaint.
10. On May 30, 2019 you admitted to sufficient facts for a finding of guilty on both counts of the criminal complaint and were placed on administrative probation for six (6) months.

Legal Basis for Discipline

- A. Your conduct as alleged in Paragraphs 2 through 10 above, and any other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your registration to practice as a pharmacist technician and or right

to renew, pursuant to G.L. c. 112, § 42A for violation of the rules and regulations established by the Board.

- B. Your conduct as alleged in Paragraphs 2 through 10 above, and any other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your registration to practice as a pharmacist technician or right to renew, 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.
- C. Your conduct as alleged in paragraph 2 through 10 above, and any other evidence that may adduced at hearing warrants disciplinary action by the Board against your registration to practice as a pharmacist technician or right to renew, pursuant to 247 CMR 10.03(1)(h) for engaging in the abuse or illegal use of prescription drugs or controlled substances.
- D. Your conduct as alleged in paragraph 2 through 10 above, and any other evidence that may adduced at hearing warrants disciplinary action by the Board against your registration to practice as a pharmacist technician or right to renew, pursuant to 247 CMR 10.03(1)(x) for violation of G.L. c. 94C or any rules or regulations promulgated thereunder.
- E. Your conduct as alleged in Paragraphs 2 through 10 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 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 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 license to practice nursing in the Commonwealth of Massachusetts, including any right to renew your license.

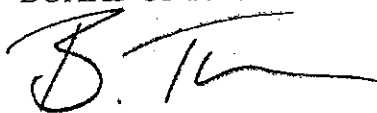
Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Brad Tully, Prosecuting Counsel, at the following address:

Brad Tully
Prosecuting Counsel
Department of Public Health
Office of the General Counsel, 2th Floor
250 Washington Street
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) 624-5239 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION IN NURSING,

By:



Brad Tully
Prosecuting Counsel
Department of Public Health

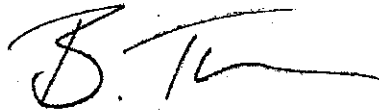
Date: May 29, 2020

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order to Show Cause was served upon the Respondent the following address via First Class and Certified Mail 7019 0140 0000 7224 3736:

Melissa Landry
5 Uxbridge Road
Mendon, MA 01756

This 29th day of May, 2020

A handwritten signature in black ink, appearing to read "B. Tully", written over a horizontal line.

Brad Tully
Prosecuting Counsel