

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

IN THE MATTER OF)
MICHAEL J. DUGGAN, R.Ph.)
PH REGISTRATION 25866)
(License Expired 12/31/08))

DOCKET NO. PH-07-059

FINAL DECISION AND ORDER BY DEFAULT

Pursuant to Massachusetts General Laws Chapter 30A, § 10(2), 801 CMR 1.01 (6) (d) (2) and (7) (a) (1), the failure of Michael J. Duggan ("Respondent"), after due notice, to defend in this matter, and Prosecuting Counsel's Motion for Entry of Default Judgment and for Final Decision and Order by Default ("Motion for Default"), the Board of Registration in Pharmacy ("Board") grants Prosecuting Counsel's Motion for Default and issues this Final Decision and Order by Default.

PROCEDURAL BACKGROUND

On March 25, 2009, the Board served on Respondent an Order to Show Cause ("Order"), issued on November 14, 2008,¹ ordering Respondent to show cause why the Board should not suspend, revoke, or otherwise take action against his registration no. 25866 to practice as a pharmacist in the Commonwealth of Massachusetts based on the allegations in the Order. (A copy of the Order to Show Cause is attached hereto as Exhibit 1). Among other things, the Order advised Respondent that failure to respond to notices, or failure to appear for any scheduled conference or hearing, or failure to otherwise defend in this action would result in entry of default. The Order specified the consequences of an entry of default, noting that the Board may enter a Final Decision and Order that assumes the truth of the allegations set forth in the Order and may result in revocation, suspension, or other appropriate disciplinary action against Respondent's pharmacy license. By agreement of the parties, Attorney John M. Mick filed an Answer and Request for Hearing for Respondent on April 21, 2009. (Exhibit 2)

¹ The Order was originally served on Respondent on November 14, 2008. Respondent retained counsel to represent him in this matter; however, in or about March 2009, counsel withdrew his appearance. As a result and to avoid any confusion with regard to Respondent's responsibility to respond to the Order and defend, the Order was again served on Respondent on March 25, 2009. (Exhibit 1) Thereafter, Respondent retained Attorney John M. Mick to represent him in the instant proceeding.

On June 22, 2009, the Board convened a Status Conference and issued a Scheduling Order directing the parties to file a Status Report by July 22, 2009 and setting a tentative date for hearing on October 7, 2009. (Exhibits 3, 4)

On July 22, 2009, the parties filed, via electronic mail ("e-mail"), a Status Report stating that it would be necessary to proceed to hearing. Via e-mail on July 22, 2009, the parties were notified that a Pre-Hearing Conference would be held on October 26, 2009 and a Hearing would be convened on November 16, 2009. Formal notices of the Pre-Hearing Conference and Hearing were issued on August 19, 2009. (Exhibits 5, 6)

On September 9, 2009, Administrative Hearings Counsel granted Prosecuting Counsel's Motion to Amend Order to Show Cause and ordered Respondent to file his Answer to the Amended Order to Show Cause ("Amended Order") by September 25, 2009. (Exhibit 7) Respondent failed to file a timely Answer to the Amended Order and has not done so to date.

On September 28, 2009, Attorney John M. Mick filed a Motion to Withdraw as Counsel for Respondent ("Motion to Withdraw") and a Motion for Continuance, seeking a sixty (60) day continuance of the Pre-Hearing Conference and Hearing. (Exhibit 8) Prosecuting Counsel filed her response to said motions on October 1, 2009. (Exhibit 9) On October 2, 2009, Administrative Hearings Counsel ("AHC") issued her rulings on the motions ("rulings"), allowing the Motion to Withdraw and denying the Motion for Continuance, with an order that Respondent file his overdue Answer to the Amended Order by October 9, 2008. Additionally, the Board issued a Notice of Status Conference for October 19, 2009 and ordered Counsel for Respondent, Mr. Mick, to "promptly" provide to Respondent copies of the rulings and the Notice of Status Conference. (Exhibit 11)

Via e-mail on October 2, 2009, Mr. Mick forwarded to AHC an e-mail he had sent to Respondent that same day. Attached to the e-mail sent to Respondent, were the rulings on the motions and the Notice of Status Conference. (Exhibit 11) Mr. Mick's e-mail explicitly advised Respondent that he was required to attend the Status Conference on October 19, 2009 at 10:00 a.m. and that failure to do so could result in a default judgment.²

Despite the clear directives regarding Respondent's obligations to appear and defend, Respondent failed to file an Answer to the Amended Order and to appear for the October 19, 2009 Status Conference. Respondent made no attempt to contact Prosecuting Counsel or the AHC relative to his failure to appear and defend.

² The Notice of Status Conference specifically stated, "The status conference will not be continued. **Should Respondent fail to appear at the Status Conference, upon written motion and notwithstanding the earlier filing of an Answer and/or request for hearing, Prosecuting Counsel may move for the entry of default judgment against Respondent.**" The Notice of Status Conference advised Respondent that entry of default judgment could lead to a Final Decision and Order assuming the truth of the allegations against Respondent, which could result in revocation, suspension, or other disciplinary action against Respondent's license to practice as a pharmacist. (Exhibit 9)

On October 20, 2009, Prosecuting Counsel served on Respondent and filed with AHC her Motion for Entry of Default Judgment and for Final Decision and Order by Default, including Prosecuting Counsel's Affidavit. By letter to Respondent dated October 21, 2009, Prosecuting Counsel informed Respondent that any response he wished to file to the Motion for Default must be served on AHC within seven (7) days, with a copy to Prosecuting Counsel. Respondent failed to file a timely response to the Motion for Default and has not responded to the Motion for Default to date. Additionally, Respondent failed to appear for the Pre-Hearing Conference on October 26, 2009 and failed to contact AHC or Prosecuting Counsel regarding his failure to appear.³ (As noted above, Respondent has also missed two deadlines for filing an Answer to the Amended Order).

Prosecuting Counsel made every effort to work with and accommodate Respondent and his attorneys, both of whom eventually withdrew their appearances in this matter. Since Mr. Mick's withdrawal, Respondent has repeatedly ignored his obligations to appear and defend. On multiple occasions, Respondent was clearly warned that such conduct could result in a default judgment and discipline against his license, including, but not limited to, revocation or suspension. In disregarding the Board's orders and failing to appear and defend, Respondent has impeded the progress of this proceeding.

EXHIBITS

The Board takes administrative notice of the following exhibits that are a part of the administrative record. The Amended Order to Show Cause is incorporated herein by reference and attached hereto:

1. March 25, 2009 Cover Letter, Certificate of Service, and Order to Show Cause (issued November 14, 2008), served on Respondent *via* first class and certified mail
2. Respondent's Request for Hearing and Answer, filed April 21, 2008
3. Notice of Status Conference, issued May 4, 2009
4. Scheduling Order, issued June 22, 2009
5. Notice of Pre-Hearing Conference, issued August 19, 2009
6. Notice of Hearing, issued August 19, 2009

³ The Notice of Pre-Hearing Conference specifically stated that failure to appear and defend as required may result in a default judgment. (Exhibit 5)

As the Pre-Hearing Conference was convened after Prosecuting Counsel had filed her Motion for Default, Respondent's failure to appear at that conference is not among the grounds included in the Motion for Default.

7. Prosecuting Counsel's Motion to Amend Order to Show Cause, First Amended Order to Show Cause, and Ruling on Motion, issued September 1, 2009
8. Motion to Withdraw as Counsel and Motion for Continuance, filed September 28, 2009
9. Prosecuting Counsel's Response to Motion to Withdraw as Counsel and Motion for Continuance, filed October 1, 2009
10. Ruling on Motion to Withdraw as Counsel and Motion for Continuance, issued October 2, 2009
11. Electronic mail correspondence: Mick to Duggan, cc: Bendix and Dolberg, October 2, 2009
12. Letter: Dolberg to Duggan, October 21, 2009

DISCUSSION

By reason of Respondent's failure to appear and defend as required by the Board and his continuing failure to respond to Prosecuting Counsel's Motion for Default, and upon consideration of Prosecuting Counsel's Motion for Default, the Board **GRANTS** Prosecuting Counsel's Motion for Default. Productora e Importadora de Papel S. A. de C.V. v. Fleming, 376 Mass. 826, 833-835 (1978); University Hospital v. MCAD, 396 Mass. 533, 539 (1986); Wang v. Board of Registration in Medicine, 405 Mass. 15, 19-20 (1989) (where professional lacked current license to practice in the Commonwealth, board had jurisdiction based on professional's inchoate right to renew license). The Board finds that the allegations in the Amended Order to Show Cause and the violations of statutes and regulations stated therein are deemed admitted and established. Respondent was afforded an opportunity for a full and fair hearing as required by G.L. c. 30A, §§ 10 and 11 (1), G.L. c. 112, § 62 and 801 CMR 1.01 (4) (c). Wherefore, in accordance with the Board's authority and statutory mandate, the Board orders as follows:⁴

ORDER

On November 17, 2009, the Board voted to issue this Final Decision and Order by Default and **SUSPENDS** Respondent's expired pharmacist registration, effective as of the date issued (see "Date Issued" below), for an indefinite period and not less than three years according to the terms and conditions as set forth below, by the following vote: In favor: Stanley B. Walczyk, R. Ph.; Steven Budish,

⁴ In that the evidence in this default proceeding, consisting of the above referenced exhibits, was before the Board, no tentative decision is required. 801 CMR 1.01 (11).

Public Member; Joanne M. Trifone, R. Ph.; William A. Gouveia, R. Ph., M.S.; George A. Cayer, R. Ph.; Donald D. Accetta, M.D.; Kathy J. Fabiszewski, Ph.D, N.P.; Sophia Pasedis, R. Ph., Pharm. D. Opposed: None. Recused: Michael Tocco, R. Ph.; James T. DeVita, R. Ph. Absent: None

The Board will not review any petition for termination of the suspension of Respondent's license filed sooner than three years from the effective date of this Order. As a condition precedent to the filing of any petition for a stay of the suspension of his license, Respondent will be required to demonstrate successful participation in MPRS for the three-year period preceding any such petition. Additionally, Registrant will be required to complete any retraining and re-examination requirements and meet other conditions as determined by the Board prior to Board review of any petition for termination of the suspension of his pharmacist license.

RIGHT TO APPEAL

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

Board of Registration in Pharmacy

Joanne M. Trifone

Date Issued: November 20, 2009

Joanne M. Trifone, R. Ph.
President Elect

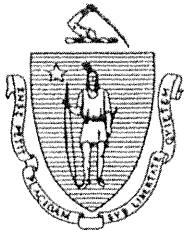
Notified:

VIA FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7008 3230 0002 4164 2770
Michael J. Duggan



BY HAND DELIVERY

Nancy Dolberg, Prosecuting Counsel
Office of Prosecutions
Division of Health Professions Licensure
Department of Public Health
239 Causeway Street
Boston, MA 02114



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
239 Causeway Street, 4th Floor
Boston, MA 02114

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD
SECRETARY

JOHN AUERBACH
COMMISSIONER

Office of the General Counsel
(617) 973-0865

November 14, 2008

BY FIRST CLASS AND CERTIFIED MAIL
(CERTIFIED MAIL NO. 7006 2760 0003 7733 9422)

Michael J. Duggan
[REDACTED]

RE: In the Matter of Michael J. Duggan, PH Registration No. 25866
Board of Registration in Pharmacy, Docket No. PH-07-059

Dear Mr. Duggan:

The Massachusetts Board of Registration in Pharmacy within the Department of Public Health, Division of Health Professions Licensure (Division), has completed its investigation of the above-listed complaint against your registration to practice as a pharmacist. For the reasons set forth in the attached Order to Show Cause, the Board is proposing to suspend, revoke or impose other discipline against your registration as a pharmacist (Registration # 25866).

The Order to Show Cause and any subsequent hearing are governed by Massachusetts General Laws Chapter 30A, the State Administrative Procedure Act, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 et. seq. You must submit an Answer to the Order to Show Cause **and** you have a right to request a hearing by filing a written request for a hearing, as specified in the Order to Show Cause.

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 above-referenced 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 therein 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, 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.

Department of Public Health
Office of the General Counsel

November 15, 2008
Michael J. Duggan

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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 pharmacist in Massachusetts, including any right to renew your registration.

The request for a hearing and your Answer must be filed with Nancy Dolberg, Prosecuting Counsel at the following address:

Nancy Dolberg
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
239 Causeway Street, Fourth floor
Boston, Massachusetts 02114

If you are represented by an attorney in this matter, all communications should be made through your attorney.

You may contact me at (617) 973-0880 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Dolberg".

Nancy Dolberg
Prosecuting Counsel

Encl: Order to Show Cause
Certificate of Service

cc: Louann Stanton, Admin. Assistant

This is an important notice. Please have it translated.

Este é um aviso importante. Queira mandá-lo traduzir.

Este es un aviso importante. Sirvase mandarlo traducir.

ĐÂY LÀ MỘT BẢN THÔNG CÁO QUAN TRỌNG
XIN VUI LÒNG CHO DỊCH LẠI THÔNG CÁO ẤY

Ceci est important. Veuillez faire traduire.

本通知很重要。請將之譯成中文。

នេះគឺជាជំនាញសំខាន់ សូមមេត្តាបកប្រែជូនផង

ΠΡΟΣΟΧΗ, ΑΥΤΟ ΕΙΝΑΙ ΣΗΜΑΝΤΙΚΟ. ΠΑΡΑΚΑΛΩ ΜΕΤΑΦΡΑΣΤΕ

Questo è un 'avviso importante. Si pregadi farlo tradurre.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN PHARMACY

IN THE MATTER OF
MICHAEL J. DUGGAN, R.PH.
PH REGISTRATION 25866
LIC. EXP. DATE: 12/31/08

DOCKET NO. PH-07-059

ORDER TO SHOW CAUSE

Michael J. Duggan, 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 pharmacist in the Commonwealth of Massachusetts, License No. 25866, or your right to renew such license, pursuant to Massachusetts General Laws (G. L.) Chapter 112, § 61 and Board regulations at 247 C.M.R. 2.00, et. seq. based upon the following facts and allegations:

1. On or about October 28, 2003, the Board issued to you a license to engage in practice as a pharmacist in the Commonwealth of Massachusetts. Your registration is current and will expire on December 31, 2008, unless renewed.
2. On various dates during the approximately 19 month period of your employment as a "floater" pharmacist at CVS Pharmacy terminating on or about November 2006, you filled prescriptions for yourself without prescriber authorization on several occasions, including:
 - (a) renewal of a prescription for Tramadol;
 - (b) addition of refills to a prescription for HC-Pramozine; and
 - (c) change of strength of hydrocodone/APAP.
- * * * * *
3. Your conduct as alleged warrants disciplinary action by the Board against your registration to practice as a pharmacist pursuant to G. L. c. 112, § 61 for deceit, malpractice and gross misconduct in the practice of the profession and for offenses against the laws of the Commonwealth relating thereto.
4. Your conduct as alleged warrants disciplinary action by the Board against your registration to practice as a pharmacist pursuant to Board regulation 247 C.M.R. 2.00, et. seq. for violation of the following:

- a. Your conduct as alleged violates G.L. c. 94C, § 7 regarding the registration of persons who manufacture, distribute, dispense or possess controlled substances;
- b. Your conduct as alleged violates G.L. c. 94C, § 18 regarding the issuance of prescriptions by practitioner or physician;
- c. Your conduct as alleged violates G.L. c. 94C, § 33(b) regarding unlawful use of registration numbers in manufacture or distribution or fraudulently obtaining possession of controlled substances;
- d. Your conduct as alleged violates G.L. c. 94C § 34 regarding unlawful possession of particular controlled substances, including heroin and marijuana;
- e. Your conduct as alleged violates 247 C.M.R. 9.01 for failing to at all times 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 violates 247 C.M.R. 9.01 (2) for dispensing drugs, devices, or other substances in a manner which is intended, either directly or indirectly, to circumvent the law;
- g. Your conduct as alleged violates 247 C.M.R. 9.01 (6) for engaging in any fraudulent or deceptive act;
- h. Your conduct as alleged violates 247 C.M.R. 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 violates 247 C.M.R. 10.03 (1)(b) for violating any provision of M.G.L. c. 112, ss. 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 violates 247 C.M.R. 10.03 (1)(e) for engaging in misconduct in the practice of the profession;
- k. Your conduct as alleged violates 247 C.M.R. 10.03 (1)(f) for engaging in conduct beyond the authorized scope of a pharmacist, pharmacy intern or pharmacy technician;
- l. Your conduct as alleged violates 247 C.M.R. 10.03 (1)(u) for engaging in conduct which undermines public confidence in the integrity of the profession;
- m. Your conduct as alleged violates 247 C.M.R. 10.03 (1)(v) for committing an act that violates recognized standards of pharmacy practice;
- n. Your conduct as alleged violates 247 C.M.R. 10.03 (1)(w) for failing to comply with recognized ethical standards of the profession, including, but not limited to, the standards

of practice of pharmacists, pharmacy interns, pharmacies and pharmacy departments set forth in 247 CMR 9.01 Code of Conduct for Registered Pharmacists, Pharmacies and Pharmacy Departments; and

- o. Your conduct as alleged violates 247 C.M.R. 10.03 (1)(x) for violating M.G.L. c. 94C or any rules or regulations promulgated thereunder.
- 5. Your conduct as alleged also constitutes 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 promptly 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 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 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, 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 license to practice as a pharmacist in the Commonwealth of Massachusetts, including any right to renew your license.

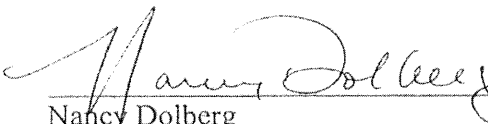
Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Nancy Dolberg, Prosecuting Counsel at the following address:

Nancy Dolberg
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
239 Causeway Street, Fourth 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,
Sophia Pasedis, R.Ph., Pharm.D., President

By:



Nancy Dolberg
Prosecuting Counsel
Department of Public Health

Date: November 14, 2008

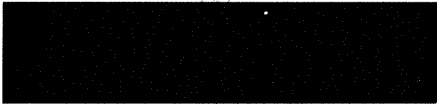
CERTIFICATE OF SERVICE

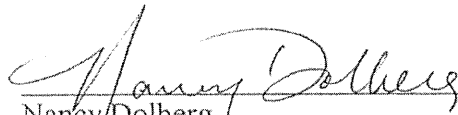
I, Nancy Dolberg, hereby certify that on November 14, 2008, I caused notice to be given of the following documents:

1. Order to Show Cause,
2. Cover letter from Nancy Dolberg, Esq., and
3. Certificate of Service

To the Respondent by first class mail and Certified Mail No. 7006 2760 0003 7733 9422

Michael J. Duggan





Nancy Dolberg,
Prosecuting Counsel