



CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lieutenant Governor

Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health

Division of Health Professions Licensure  
Board of Registration in Pharmacy  
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MARYLOU SUDDERS  
Secretary

MONICA BHAREL, MD, MPH  
Commissioner

June 9, 2015

VIA FIRST CLASS AND CERTIFIED MAIL RETURN  
RECEIPT REQUESTED NO. 7009 2250 0001 8154 9142

Michael M. Dubay

**COPY**

RE: In the Matter of Michael M. Dubay, PH License No. 16047  
Board of Registration in Pharmacy Docket No. PHA-2012-0129

Dear Mr. Dubay:

As you know, the Board of Registration in Pharmacy ("Board") sent you a Final Decision and Order by Default on April 28, 2015. Please note that it recently came to our attention that the previous Final Decision and Order by Default omitted the certified mail number and notifications on the final page. Accordingly, enclosed please find a corrected Final Decision and Order. The effective date of the Board's Order is ten (10) days from the date appearing on page 3 of the *Final Order* ("Date Issued"). Your appeal rights are noted on page 3 of the *Final Order*.

Sincerely,

David Sencabaugh, R. Ph.  
Executive Director

Enc.

cc: Patricia Blackburn, Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN PHARMACY

In the Matter of  
**MICHAEL M. DUBAY**  
PH License No. 16047  
LIC. EXP. DATE 12/31/2012

**Docket No. PHA-2012-0129**

FINAL DECISION AND ORDER BY DEFAULT

On January 14, 2015, the Board of Registration in Pharmacy ("Board") issued and duly served on Michael M. Dubay, PH License No. 16047 ("Respondent") an Order to Show Cause related to a complaint filed with the Board regarding Respondent's license.<sup>1</sup> In addition to stating the allegations against Respondent, the Order to Show Cause notified Respondent that an Answer to the Order to Show Cause ("Answer") was to be submitted within twenty-one (21) days of receipt of the Order to Show Cause.<sup>2</sup> The Order to Show Cause also notified Respondent of the right to request a hearing on the allegations and that any hearing request ("Request for Hearing") was to be submitted within twenty-one (21) days of receipt of the Order to Show Cause.<sup>3</sup> Respondent was further notified that failure to submit a **Request for Hearing and an Answer** within twenty-one (21) days "shall constitute a waiver of the right to a hearing" and "shall result in the entry of default" and, if 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 [Respondent's] License, including any right to renew [Respondent's] License." A copy of the Order to Show Cause is attached to this proposed Final Decision and Order by Default and is incorporated herein by reference.

To date, Respondent has failed to file either an Answer or a Request for Hearing.

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<sup>1</sup> Order to Show Cause was issued pursuant to 801 CMR 1.01(6)(a).

<sup>2</sup> In accordance with 801 CMR 1.01(6)(d).

<sup>3</sup> In accordance with G.L. c. 112, § 61.

The Board has afforded Respondent an opportunity for a full and fair hearing on the allegations in the Order to Show Cause, as required by G.L. c. 30A, § 10, as well as 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 twenty-one (21) days of its receipt and of the consequences of failing to file an Answer or otherwise respond.

The Board may make informal disposition of any adjudicatory proceeding by default. G.L. c. 30A, § 10(2). 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:

On April 7, 2015, 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 pharmacist license (No. 16047), effective as of the date issued (see below), by the following vote: In favor: Patrick M. Gannon, R.Ph., MS, FABC; Edmund Taglieri Jr., MSM, R.Ph., NHA; Michael J. Godek, R.Ph.; Garrett J. Cavanaugh, R.Ph.; Catherine T. Basile, PharmD; R.Ph.; Karen A. Conley, DNP. RN, AOCN, NEA-BC; William E. Cox, CPhT; Susan Cornacchio, RN, JD; and Timothy D. Fensky, R.Ph., FACA; Opposed: None. Absent: Richard Tinsley.

The Board will not review any petition for reinstatement unless and until Respondent submits a passing score on the MPJE. While Respondent's pharmacist license is revoked, Respondent may not: (1) be employed as a pharmacist to provide any services related to the practice of pharmacy or be employed to provide any services in

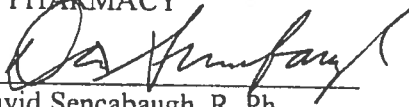
any capacity in any pharmacy setting in the Commonwealth; or (2) have any ownership, management or other interest or involvement in any pharmacy related business in any setting. If at any time in the future Respondent seeks re-licensure by the Board, Respondent will be required to meet all current requirements for licensure at the time of any such application, including, but not limited to, re-application, re-examination, re-training and moral character qualifications (including consideration of any convictions or unlawful activity), and any other reinstatement terms and conditions the Board may deem to be necessary and appropriate.

EFFECTIVE DATE OF ORDER

The Final Decision and Order by Default shall be effective as of June 19, 2015.

Respondent is hereby notified of the right to appeal this Final Decision and Order to the Supreme Judicial Court, pursuant to G.L. c. 112, § 64 and 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: 6/9/15

Notified:

VIA FIRST CLASS AND CERTIFIED MAIL RETURN  
RECEIPT REQUESTED NO. 7009 2250 0001 8154 9142

Michael M. Dubay  


BY HAND DELIVERY

Patricia Blackburn, Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN PHARMACY

In the Matter of  
**MICHAEL M. DUBAY**  
License No. PH16047  
Expired 12/31/12

Docket No. PHA-2012-0129

**ORDER TO SHOW CAUSE**

Michael M. Dubay, 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 License No. PH16047, or your right to renew such license, 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 June 17, 1974, the Board issued to you a license to practice pharmacy, Pharmacy License No. PH16047 (License). Your License expired on December 31, 2012.
2. Effective March 24, 2009, you entered into a Consent Agreement (Agreement) for a reprimand with the Board in resolution of Complaint Docket No. PH-08-090.
3. In Paragraph 2 of the Agreement, you acknowledge that you signed a form for the renewal of your License in which you falsely attested, under the pains and penalties of perjury, that you had fulfilled the requisite continuing education requirements for the period 2006 and 2007, in violation of 247 CMR 4.03(3) and G.L. c. 112, § 61.
4. In Paragraph 4 (a) of the Agreement, you freely agree that your conduct described in the immediately preceding paragraph constituted professional misconduct warranting disciplinary action under G.L. c. 112, §42A and 61, and 247 CMR 9.01(1), 9.01(6) and 10.03(1)(p).
5. Paragraph 4 (c) of the Agreement required that you take and pass the Multistate Pharmacy Jurisprudence Examination (MPJE) with a score of at least seventy-five percent (75%) within six (6) months of the effective date of the Agreement, which was September 24, 2009.
6. Paragraph 5 of the Agreement provided that failure to provide documentation of successful completion of the MPJE within six (6) months of the effective date of

the Agreement shall be considered a violation of the terms of the Agreement, subjecting you to possible further disciplinary action by the Board.

7. By letter dated March 25, 2009, you were informed that you were required to comply with the terms of the Agreement and you were provided contact information for Karen Fishman, Compliance Monitor, as well the Board's application vendor, PCS.
  - a. The March 25, 2009 letter was sent by First Class Mail to your home address in [REDACTED] and was not returned to the Board.
8. By letter dated May 18, 2012, you were informed that you were in violation of Paragraph 4 (c) of the Agreement and, as a result, the Board had issued a FINAL NOTICE to you regarding your failure to complete the MPJE as required by the terms of the Agreement. Notwithstanding this FINAL NOTICE, this letter explained that you were being permitted a final extension to take and pass the MPJE, requiring you to notify the Board within seven (7) days that you would apply to take the MPJE within thirty (30) days.
  - a. The May 18, 2012 FINAL NOTICE letter was sent by First Class Mail to your address of record in Brewster, MA 02631, and was not returned to the Board.
9. You did not contact the Board after receiving the letter referenced in the immediately preceding paragraph.
10. On June 27, 2012, the Complaint in the instant matter was filed against your License for your failure to comply with the terms of the Agreement.
11. By letter dated July 23, 2012, you were informed that you were not in compliance with Paragraph 4 (c) of the Agreement and, as a result, the Board had placed a HOLD on the renewal of your License until such time as you have complied with the Agreement by completing the MPJE. This letter explained that you would not be permitted to renew your License until such time as you had complied with the Agreement by completing the MPJE and that the Board would refer this matter for the issuance of an Order to Show Cause and the initiation of adjudicatory proceedings to suspend or revoke your license.
  - a. The July 23, 2012 letter was sent by both First Class Mail and Certified Mail to your address of record in [REDACTED] the First Class Mail was not returned and the Certified Mail was returned as "unclaimed; unable to forward."
12. You did not contact the Board after receiving the letter referenced in the immediately preceding paragraph.

13. On or about August 2012, you were employed by CVS Pharmacy and worked, at times, at Store No. 719, located on 110 Main Street, Orleans, MA 02653.
14. On September 12, 2012, you contacted the Board via emails stating, *inter alia*, that you were "trying to take the mpje [sic] exam;" that you were "sorry [you] did not comply sooner but cvs [sic] won't let [you] work now because of this;" and that you would be taking the exam in the last week of October 2012.
15. By letter dated December 27, 2013, you were informed that the Board had reviewed this Complaint against your License and voted to refer the matter to prosecution; as an alternative to formal adjudication, and in resolution of the Complaint, the letter included a Consent Agreement for Voluntary Surrender of your License, with directions for you to sign and date the document before a witness, and return it to the Board within fifteen (15) days.
  - a. The December 27, 2013 letter was sent by First Class Mail to your address of record in [REDACTED] and was not returned to the Board.
16. You did not return the Consent Agreement for Voluntary Surrender, referenced in the immediately preceding paragraph, or otherwise contact the Board after receiving the letter referenced in the immediately preceding paragraph.
17. By letter dated November 10, 2014, you were again informed that the Board had reviewed this Complaint against your License and voted to refer the matter to prosecution; and, again, as an alternative to formal adjudication, and in resolution of the Complaint, you were provided a Consent Agreement for Voluntary Surrender of your License.
  - a. The November 10, 2014 letter was sent by First Class Mail to your home address in [REDACTED] and was returned to the Board marked "no such number; unable to forward."
18. On multiple occasions, commencing in 2009 and continuing into September 2012, you provided the Board with verbal and written assurances via emails of your intent to comply with Paragraph 4 (c) of the Agreement by taking the MPJE.
19. To date, you have not complied with Paragraph 4 (c) of the Agreement because you have not taken and passed the MPJE.

#### GROUNDS FOR DISCIPLINE

20. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Pharmacist pursuant to G.L. c. 112, § 42A for violation of the rules or regulations of professional conduct adopted by the Board.

21. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Pharmacist pursuant to G. L. c. 112, § 61 for deceit, malpractice, and gross misconduct in the practice of the profession or for any offense against the laws of the Commonwealth relating thereto.
22. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Pharmacist pursuant to Board Regulation 247 CMR 10.03, including, but not limited to the following Grounds for Discipline:
  - a. 247 CMR 10.03 (1)(a) for violating any of the duties and standards set out in Board regulations or any rule or written policy adopted by the Board;
  - b. 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 and regulations promulgated there under;
  - c. 247 CMR 10.03 (1)(e) for engaging in misconduct in the practice of the profession;
  - d. 247 CMR 10.03(1)(j), by failing to comply with the terms of the Agreement, to wit, by not completing the MPJE component of the Agreement;
  - e. 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;
  - f. 247 CMR 10.03 (1)(l) for engaging in conduct that has the capacity to or potential to deceive or defraud;
  - g. 247 CMR 10.03 (1)(o) for fraudulently procuring a license or its renewal;
  - h. 247 CMR 10.03 (1)(p) for providing false information on your renewal application;
  - i. 247 CMR 10.03(q), for failing, without cause, to provide the Board with requested information;
  - j. 247 CMR 10.03 (1)(r) for engaging in conduct that demonstrates a lack of good moral character;
  - k. 247 CMR 10.03 (1)(u) for engaging in conduct which undermines public confidence in the integrity of the profession;
  - l. 247 CMR 10.03 (1)(v) for committing an act that violates recognized standards of pharmacy practice; and



- m. 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 set forth in 247 CMR 9.01: Code of Conduct for Registered Pharmacists, Pharmacies and Pharmacy Departments.
23. 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); *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).
24. Your conduct as alleged warrants disciplinary action by the Board against your registration to practice as a Pharmacy Technician pursuant to Board Regulation 247 CMR 10.03 (1)(q)

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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 registration to practice as a Pharmacy Technician 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 Patricia M. Blackburn, Prosecuting Counsel, at the following address:

Patricia M. Blackburn, Esq.  
Prosecuting Counsel  
Department of Public Health  
Office of the General Counsel, 5<sup>th</sup> Floor  
239 Causeway Street  
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) 973-0841 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION IN PHARMACY  
Patrick M. Gannon, R.Ph., MS, FABC, President

By: 

Patricia M. Blackburn, Esq.  
Prosecuting Counsel  
Department of Public Health

Date: January 14, 2015

Michael M. Dubay OTSC  
License No. PH16047  
Docket PHA-2012-0129


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order to Show Cause, with accompanying cover letter and Certificate of Service, was served upon the Respondent Michael Dubay at the following address:

Michael Dubay  


by first class mail, postage prepaid, and by Certified Mail No. 7014 0510 0001 0374 6946

This 14<sup>th</sup> day of January, 2015.

  
Patricia M. Blackburn  
Prosecuting Counsel

Michael M. Dubay OTSC  
License No. PH16047  
Docket PHA-2012-0129



Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
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MARYLOU SUDDERS  
Secretary

MONICA BHAREL, MD, MPH  
Commissioner

April 28, 2015

VIA FIRST CLASS AND CERTIFIED MAIL RETURN  
RECEIPT REQUESTED NO. 707009 2250 0001 8154 9036  
Michael M. Dubay

RE: In the Matter of Michael M. Dubay, PH License No. 16047  
Board of Registration in Pharmacy Docket No. PHA-2012-0129

Dear Mr. Dubay:

Enclosed is the *Final Decision and Order by Default* ("Final Order") issued by the Board of Registration in Pharmacy (Board) in connection with the above-referenced matter. The effective date of the Board's Order is ten (10) days from the date appearing on page 3 of the *Final Order* ("Date Issued"). Your appeal rights are noted on page 3 of the *Final Order*.

Sincerely,

David Sencabaugh, R. Ph.  
Executive Director

Enc.

cc: Patricia Blackburn, Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN PHARMACY

In the Matter of

**MICHAEL M. DUBAY**

PH License No. 16047

LIC. EXP. DATE 12/31/2012

**Docket No. PHA-2012-0129**

FINAL DECISION AND ORDER BY DEFAULT

On January 14, 2015, the Board of Registration in Pharmacy ("Board") issued and duly served on Michael M. Dubay, PH License No. 16047 ("Respondent") an Order to Show Cause related to a complaint filed with the Board regarding Respondent's license.<sup>1</sup> In addition to stating the allegations against Respondent, the Order to Show Cause notified Respondent that an Answer to the Order to Show Cause ("Answer") was to be submitted within twenty-one (21) days of receipt of the Order to Show Cause.<sup>2</sup> The Order to Show Cause also notified Respondent of the right to request a hearing on the allegations and that any hearing request ("Request for Hearing") was to be submitted within twenty-one (21) days of receipt of the Order to Show Cause.<sup>3</sup> Respondent was further notified that failure to submit a **Request for Hearing and** an Answer within twenty-one (21) days "shall constitute a waiver of the right to a hearing" and "shall result in the entry of default" and, if 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 [Respondent's] License, including any right to renew [Respondent's] License." A copy of the Order to Show Cause is attached to this proposed Final Decision and Order by Default and is incorporated herein by reference.

To date, Respondent has failed to file either an Answer or a Request for Hearing.

<sup>1</sup> Order to Show Cause was issued pursuant to 801 CMR 1.01(6)(a).

<sup>2</sup> In accordance with 801 CMR 1.01(6)(d).

<sup>3</sup> In accordance with G.L. c. 112, § 61.

The Board has afforded Respondent an opportunity for a full and fair hearing on the allegations in the Order to Show Cause, as required by G.L. c. 30A, § 10, as well as 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 twenty-one (21) days of its receipt and of the consequences of failing to file an Answer or otherwise respond.

The Board may make informal disposition of any adjudicatory proceeding by default. G.L. c. 30A, § 10(2). 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:

On April 7, 2015, 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 pharmacist license (No. 16047), effective as of the date issued (see below), by the following vote: In favor: Patrick M. Gannon, R.Ph., MS, FABC; Edmund Taglieri Jr., MSM, R.Ph., NHA; Michael J. Godek, R.Ph.; Garrett J. Cavanaugh, R.Ph.; Catherine T. Basile, PharmD, R.Ph.; Karen A. Conley, DNP, RN, AOCN, NEA-BC; William E. Cox, CPhT; Susan Cornacchio, RN, JD; and Timothy D. Fensky, R.Ph., FACA; Opposed: None. Absent: Richard Tinsley.

The Board will not review any petition for reinstatement unless and until Respondent submits a passing score on the MPJE. While Respondent's pharmacist license is revoked, Respondent may not: (1) be employed as a pharmacist to provide any services related to the practice of pharmacy or be employed to provide any services in

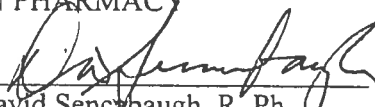
any capacity in any pharmacy setting in the Commonwealth; or (2) have any ownership, management or other interest or involvement in any pharmacy related business in any setting. If at any time in the future Respondent seeks re-licensure by the Board, Respondent will be required to meet all current requirements for licensure at the time of any such application, including, but not limited to, re-application, re-examination, re-training and moral character qualifications (including consideration of any convictions or unlawful activity), and any other reinstatement terms and conditions the Board may deem to be necessary and appropriate.

EFFECTIVE DATE OF ORDER

The Final Decision and Order by Default shall be effective as of May 4, 2015.

Respondent is hereby notified of the right to appeal this Final Decision and Order to the Supreme Judicial Court, pursuant to G.L. c. 112, § 64 and 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: 4/28/15

Decision No. \_\_\_\_\_

Certified Mail No. \_\_\_\_\_/First Class Mail

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN PHARMACY

In the Matter of  
**MICHAEL M. DUBAY**  
License No. PH16047  
Expired 12/31/12

Docket No. PHA-2012-0129

**ORDER TO SHOW CAUSE**

Michael M. Dubay, 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 License No. PH16047, or your right to renew such license, 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 June 17, 1974, the Board issued to you a license to practice pharmacy, Pharmacy License No. PH16047 (License). Your License expired on December 31, 2012.
2. Effective March 24, 2009, you entered into a Consent Agreement (Agreement) for a reprimand with the Board in resolution of Complaint Docket No. PH-08-090.
3. In Paragraph 2 of the Agreement, you acknowledge that you signed a form for the renewal of your License in which you falsely attested, under the pains and penalties of perjury, that you had fulfilled the requisite continuing education requirements for the period 2006 and 2007, in violation of 247 CMR 4.03(3) and G.L. c. 112, § 61.
4. In Paragraph 4 (a) of the Agreement, you freely agree that your conduct described in the immediately preceding paragraph constituted professional misconduct warranting disciplinary action under G.L. c. 112, §42A and 61, and 247 CMR 9.01(1), 9.01(6) and 10.03(1)(p).
5. Paragraph 4 (c) of the Agreement required that you take and pass the Multistate Pharmacy Jurisprudence Examination (MPJE) with a score of at least seventy-five percent (75%) within six (6) months of the effective date of the Agreement, which was September 24, 2009.
6. Paragraph 5 of the Agreement provided that failure to provide documentation of successful completion of the MPJE within six (6) months of the effective date of



the Agreement shall be considered a violation of the terms of the Agreement, subjecting you to possible further disciplinary action by the Board.

7. By letter dated March 25, 2009, you were informed that you were required to comply with the terms of the Agreement and you were provided contact information for Karen Fishman, Compliance Monitor, as well the Board's application vendor, PCS.
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8. By letter dated May 18, 2012, you were informed that you were in violation of Paragraph 4 (c) of the Agreement and, as a result, the Board had issued a FINAL NOTICE to you regarding your failure to complete the MPJE as required by the terms of the Agreement. Notwithstanding this FINAL NOTICE, this letter explained that you were being permitted a final extension to take and pass the MPJE, requiring you to notify the Board within seven (7) days that you would apply to take the MPJE within thirty (30) days.
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9. You did not contact the Board after receiving the letter referenced in the immediately preceding paragraph.
10. On June 27, 2012, the Complaint in the instant matter was filed against your License for your failure to comply with the terms of the Agreement.
11. By letter dated July 23, 2012, you were informed that you were not in compliance with Paragraph 4 (c) of the Agreement and, as a result, the Board had placed a HOLD on the renewal of your License until such time as you have complied with the Agreement by completing the MPJE. This letter explained that you would not be permitted to renew your License until such time as you had complied with the Agreement by completing the MPJE and that the Board would refer this matter for the issuance of an Order to Show Cause and the initiation of adjudicatory proceedings to suspend or revoke your license.
  - a. The July 23, 2012 letter was sent by both First Class Mail and Certified Mail to your address of record in [REDACTED] the First Class Mail was not returned and the Certified Mail was returned as "unclaimed; unable to forward."
12. You did not contact the Board after receiving the letter referenced in the immediately preceding paragraph.

13. On or about August 2012, you were employed by CVS Pharmacy and worked, at times, at Store No. 719, located on 110 Main Street, Orleans, MA 02653.
14. On September 12, 2012, you contacted the Board via emails stating, *inter alia*, that you were "trying to take the mpje [sic] exam;" that you were "sorry [you] did not comply sooner but cvs [sic] won't let [you] work now because of this;" and that you would be taking the exam in the last week of October 2012.
15. By letter dated December 27, 2013, you were informed that the Board had reviewed this Complaint against your License and voted to refer the matter to prosecution; as an alternative to formal adjudication, and in resolution of the Complaint, the letter included a Consent Agreement for Voluntary Surrender of your License, with directions for you to sign and date the document before a witness, and return it to the Board within fifteen (15) days.
  - a. The December 27, 2013 letter was sent by First Class Mail to your address of record in [REDACTED] and was not returned to the Board.
16. You did not return the Consent Agreement for Voluntary Surrender, referenced in the immediately preceding paragraph, or otherwise contact the Board after receiving the letter referenced in the immediately preceding paragraph.
17. By letter dated November 10, 2014, you were again informed that the Board had reviewed this Complaint against your License and voted to refer the matter to prosecution; and, again, as an alternative to formal adjudication, and in resolution of the Complaint, you were provided a Consent Agreement for Voluntary Surrender of your License.
  - a. The November 10, 2014 letter was sent by First Class Mail to your home address in [REDACTED] and was returned to the Board marked "no such number; unable to forward."
18. On multiple occasions, commencing in 2009 and continuing into September 2012, you provided the Board with verbal and written assurances via emails of your intent to comply with Paragraph 4 (c) of the Agreement by taking the MPJE.
19. To date, you have not complied with Paragraph 4 (c) of the Agreement because you have not taken and passed the MPJE.

#### **GROUND FOR DISCIPLINE**

20. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Pharmacist pursuant to G.L. c. 112, § 42A for violation of the rules or regulations of professional conduct adopted by the Board.

21. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Pharmacist pursuant to G. L. c. 112, § 61 for deceit, malpractice, and gross misconduct in the practice of the profession or for any offense against the laws of the Commonwealth relating thereto.
22. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Pharmacist pursuant to Board Regulation 247 CMR 10.03, including, but not limited to the following Grounds for Discipline:
- a. 247 CMR 10.03 (1)(a) for violating any of the duties and standards set out in Board regulations or any rule or written policy adopted by the Board;
  - b. 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 and regulations promulgated there under;
  - c. 247 CMR 10.03 (1)(e) for engaging in misconduct in the practice of the profession;
  - d. 247 CMR 10.03(1)(j), by failing to comply with the terms of the Agreement, to wit, by not completing the MPJE component of the Agreement;
  - e. 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;
  - f. 247 CMR 10.03 (1)(l) for engaging in conduct that has the capacity to or potential to deceive or defraud;
  - g. 247 CMR 10.03 (1)(o) for fraudulently procuring a license or its renewal;
  - h. 247 CMR 10.03 (1)(p) for providing false information on your renewal application;
  - i. 247 CMR 10.03(q), for failing, without cause, to provide the Board with requested information;
  - j. 247 CMR 10.03 (1)(r) for engaging in conduct that demonstrates a lack of good moral character;
  - k. 247 CMR 10.03 (1)(u) for engaging in conduct which undermines public confidence in the integrity of the profession;
  - l. 247 CMR 10.03 (1)(v) for committing an act that violates recognized standards of pharmacy practice; and

- m. 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 set forth in 247 CMR 9.01: Code of Conduct for Registered Pharmacists, Pharmacies and Pharmacy Departments.
23. 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); *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).
24. Your conduct as alleged warrants disciplinary action by the Board against your registration to practice as a Pharmacy Technician pursuant to Board Regulation 247 CMR 10.03 (1)(q)

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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.

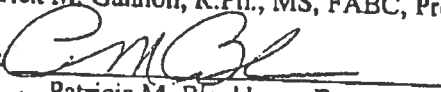
**If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your registration to practice as a Pharmacy Technician in the Commonwealth of Massachusetts, 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 Patricia M. Blackburn, Prosecuting Counsel, at the following address:

Patricia M. Blackburn, Esq.  
Prosecuting Counsel  
Department of Public Health  
Office of the General Counsel, 5<sup>th</sup> Floor  
239 Causeway Street  
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) 973-0841 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION IN PHARMACY  
Patrick M. Gannon, R.Ph., MS, FABC, President

By:   
Patricia M. Blackburn, Esq.  
Prosecuting Counsel  
Department of Public Health

Date: January 14, 2015

Michael M. Dubay OTSC  
License No. PH16047  
Docket PHA-2012-0129


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order to Show Cause, with accompanying cover letter and Certificate of Service, was served upon the Respondent Michael Dubay at the following address:

Michael Dubay  


by first class mail, postage prepaid, and by Certified Mail No. 7014 0510 0001 0374 6946

This 14<sup>th</sup> day of January, 2015.

  
Patricia M. Blackburn  
Prosecuting Counsel

Michael M. Dubay OTSC  
License No. PH16047  
Docket PHA-2012-0129