

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of
MICHELLE MONTELONGO
PH-PT registration No. 6823
Registration expired 06/14/2011

Docket No. PHA-2011-0069

FINAL DECISION AND ORDER BY DEFAULT

On May 10, 2011, the Board of Registration in Pharmacy ("Board") issued and duly served on Michelle Montelongo ("Respondent") a Temporary Order of Summary Suspension related to a complaint filed regarding Respondent's pharmacy technician registration. That Order advised the Respondent that she may file a Request for a Hearing by May 13, 2011. The Respondent failed to file a Request for a Hearing.

On May 16, 2011, a Final Order of Summary Suspension was issued on behalf of the Board of Registration in Pharmacy ("Board") and served upon the Respondent.

On August 22, 2011, the Board of Registration in Pharmacy ("Board") issued and duly served on Michelle Montelongo ("Respondent") an Order to Show Cause ("Show Cause Order")¹ related to a complaint filed regarding Respondent's pharmacy technician registration. In addition to stating the allegations against Respondent, the Show Cause Order notified Respondent that an Answer to the Show Cause Order ("Answer") was to be submitted within 21 days of receipt of the Show Cause Order². The Show Cause Order also notified Respondent of the right to request a hearing on the allegations³, and that any hearing request ("Request for Hearing") was to be submitted within 21 days of

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.

that any hearing request ("Request for Hearing") was to be submitted within 21 days of receipt of the Show Cause Order.⁴ Respondent was further notified that failure to submit an Answer within 21 days "shall result in the entry of default in the captioned matter" and, if defaulted, "the Board may enter a Final Decision and Order that assumes the truth of the allegations in the Show Cause Order and may revoke, suspend, or take other disciplinary action against Respondent's license...including any right to renew Respondent's license." A copy of the Show Cause Order is attached to this Final Decision and Order by Default and is 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 M.G.L. c. 30A, s. 10, and sufficient notice of the issues involved to afford Respondent reasonable opportunity to prepare and present evidence and argument as required by M.G.L. c. 30A, s. 11(1). The Board has also notified Respondent of the obligation under 801 CMR 1.01(6)(d) to file an Answer to the Show Cause Order within 21 days of its receipt and of the consequences of failing to file an Answer or otherwise respond.

As authorized by M.G.L. c. 30A, s. 10(2), the Board may make informal disposition of any adjudicatory proceeding by default. Upon default, the allegations of the complaint against Respondent are accepted as true. *Danca Corp. v. Raytheon Co.*, 28 Mass. App. Ct. 942, 943 (1990).

Based on the foregoing, the Board enters a default in the above-captioned matter and, consequently, the allegations in the Order to Show Cause are deemed to be true and Respondent has waived the right to be heard. In accordance with the Board's authority and statutory mandate, the Board orders as follows:

⁴ Respondent was also notified that failure to timely submit a Request for Hearing would constitute a waiver of the right to a hearing.

On October 18, 2011, in accordance with the Board's authority and statutory mandate, the Board voted to issue this Final Decision and Order by Default and **REVOKE** any right Respondent may have to renew expired Pharmacy Technician registration No. 6823 (expired 6/14/2011) which registration was suspended by the Board on May 10, 2011) by the following vote, effective as of the date issued : In favor: Stanley B. Walczyk, R.Ph.; Karen M. Ryle, R.Ph.; Donald D. Accetta, M.D.; Michael Tocco, R.Ph.; Sophia Pasedis, R.Ph., Pharm.D.; Kathy J. Fabiszewski, N.P.; Ph.D.; James T. DeVita, R.Ph. and Steven Budish. Opposed: None. Absent: Joanne M. Trifone, R.Ph. and George A. Cayer, R.Ph. Recused: None

The Board will not review any petition for pharmacy technician licensure in the Commonwealth filed sooner than five (5) years from the Effective Date of this Final Decision and Order by Default. While Respondent's pharmacy technician registration is revoked, Respondent may not: (1) be employed as pharmacy technician to provide any services related to the practice of pharmacy or be employed in any capacity 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 registration 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. Respondent is hereby advised that the Board does not envision any terms or conditions pursuant to which the Board would consider Respondent to be qualified for licensure as a pharmacy technician in the Commonwealth in the future.

EFFECTIVE DATE OF ORDER

The Order of the Board shall be effective as of October 18, 2011.

Respondent is hereby notified of the right to appeal this Final Decision and Order by Default to the Supreme Judicial Court, pursuant to G.L. c. 112, § 64 and G.L. c. 30A, §§ 14 and 15, within thirty days of receipt of notice of this *Final Decision and Order by Default*.

BOARD OF REGISTRATION
IN PHARMACY



Stanley J. Walczyk, R.Ph.
President

Date Issued: October 18, 2011

Decision No. 2672

First Class and Certified Mail No. 7005 11600 0001 3500 3930 to

Michelle Montelongo [REDACTED]

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
Michelle Montelongo)
PH - PT Registration No. 6823)
Registration Expired 6/14/2011)
_____)

Docket No. PHA-2011-0069

ORDER TO SHOW CAUSE

Michelle Montelongo, 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 right to renew your registration to practice as a Pharmacy Technician in the Commonwealth of Massachusetts, Registration No. 6823, pursuant to Massachusetts General Laws (G.L.) Chapter 112, §§ 42A and 61, and Board regulations at 247 CMR 2.00 et seq. based upon the following facts and allegations:

1. On or about December 21, 2005, the Board issued a registration to you to practice as a Pharmacy Technician in the Commonwealth of Massachusetts. Your registration expired on June 14, 2011 and has not been renewed to date.
2. From approximately August 16, 2005 to March 23, 2011, and at all times relevant to this Order to Show Cause, you were employed as a Pharmacy Technician by Walgreens Pharmacy, Store No. 4535, at 13101 Chestnut Street in Randolph, Massachusetts.
3. On or about March 1, 2011, at approximately 3:50 PM, you ostensibly sold a prescription for Suboxone (Prescription No. 1620796) for Patient A at the Drive-Thru Register of Walgreens Pharmacy and modified the price to zero using the reason of a "Waived Co-Pay".
4. Your conduct referenced in paragraph 3 was discovered on or about March 21, 2011. On said date, Patient A attempted to get his Suboxone prescription filled but was told by the pharmacist that it was too soon to refill since the prescription had already been dispensed to him on March 1, 2011. Patient A insisted that he did not obtain his prescription for Suboxone on March 1, 2011, and a subsequent investigation was undertaken into the matter. Suboxone is a controlled substance often used to treat substance abuse.

5. Pursuant to the investigation referenced in paragraph 4, Walgreens Pharmacy managers reviewed the closed circuit TV footage of you working on March 1, 2011. The footage indicates that you were working at the drive-thru register (Terminal No. 035) at the time the Suboxone prescription was modified to zero.
6. The closed circuit TV footage referenced in paragraph 5 further shows you placing the Suboxone prescription in a bag at 15:49 and leaving it until 15:50, at which time you took the bag and removed it from the pharmacy department. At 15:51, the closed circuit TV footage shows you walking out the front door and returning to the pharmacy with nothing in your hands.
7. You removed the Suboxone prescription from the pharmacy without authorization from your employer and without a valid prescription. You took the Suboxone for your own use.
8. You were terminated for your conduct referenced in paragraphs 3 – 7 by Walgreens Pharmacy on March 23, 2011.
9. On May 10, 2011, the Board issued a Temporary Order of Summary Suspension of your registration to practice as a Pharmacy Technician. You failed to request a hearing on the Temporary Order of Summary Suspension, and the Board issued a Final Order of Summary Suspension on May 16, 2011. Your registration to practice as a Pharmacy Technician remains suspended pending a final decision and order of the Board in this matter.
10. Your conduct as alleged warrants disciplinary action by the Board against your registration to practice as a Pharmacy Technician 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.
11. 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, Grounds for Discipline, namely:
 - a) 10.03(1)(a), 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;
 - b) 10.03(1)(b), Violating any provision of M.G.L. c. 112, §§ 24 through 42A or any provision of state or federal statutes or rules or regulations promulgated there under related to the practice of the profession;
 - c) 10.03(1)(e), Engaging in misconduct in the practice of the profession;
 - d) 10.03(1)(h), Engaging in abuse or illegal use of prescription drugs or controlled substances;

- e) 10.03(1)(l), Engaging in conduct that has the capacity or potential to deceive or defraud;
 - f) 10.03(1)(k), Engaging in conduct that has the capacity or potential to place the public health, safety or welfare at risk;
 - g) 10.03(1)(r), Engaging in conduct that demonstrates a lack of good moral character;
 - h) 10.03(1)(u), Engaging in conduct that undermines public confidence in the integrity of the profession;
 - i) 10.03(1)(v), Committing an act that violates recognized standards of pharmacy practice; and
 - x) 10.03(1)(x), Violation of M.G.L. c. 94C or any rules or regulations promulgated there under.
11. Your conduct as alleged 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).

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 an Answer to the Order to Show Cause within twenty-one (21) days of receipt of the Order to Show Cause *shall result in the entry of default* in the captioned matter. Your failure to submit a written request for a hearing within twenty-one (21) days of receipt of this Order to Show Cause *shall constitute a waiver of the right to a hearing* on the allegations herein and on any Board disciplinary action.

Notwithstanding the earlier filing of an Answer and/or request for a hearing, your failure to respond to notices or correspondence, your failure to appear for any scheduled status conference, pre-hearing conference or hearing dates, or your failure to otherwise defend this action shall result in the entry of default.

If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your license to practice as a Registered Pharmacy Technician in the Commonwealth of Massachusetts, including any right to renew your registration.

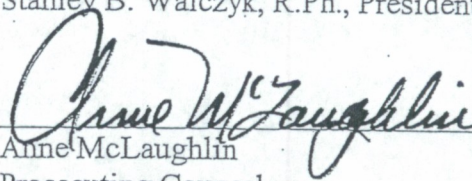
Your Answer to the Order to Show Cause and your written request for a hearing must be filed with Anne McLaughlin, Prosecuting Counsel, at the following address:

Anne McLaughlin, Esq.
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
239 Causeway Street, 5th 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, please contact the Prosecuting Counsel in advance at (617) 973-0840 to schedule a time that is mutually convenient.

Board of Registration in Pharmacy,
Stanley B. Walczyk, R.Ph., President

By:


Anne McLaughlin
Prosecuting Counsel
Department of Public Health

Date: August 22, 2011

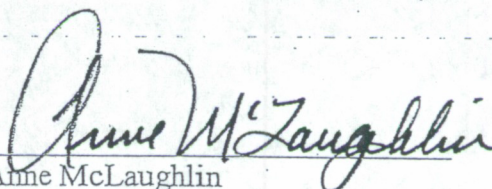
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order to Show Cause was served upon the Respondent at the following address:

Michelle Montelongo


by first class mail, postage prepaid and by certified mail no.7010-1870-0002-2380-7121.

This 22nd day of August, 2011.


Aime McLaughlin
Prosecuting Counsel