

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of **Monty Schwartz, R.Ph**)
PH Reg. No. 14670)
License Expiration Date 12/31/06)

Docket No. PH-07-063

FINAL DECISION AND ORDER BY DEFAULT

On October 5, 2007, pursuant to 801 CMR 1.01(6)(a), the Board of Registration in Pharmacy ("Board") issued and duly served on **Monty Schwartz, R.Ph.** ("Respondent") an Order to Show Cause ("Show Cause Order") related to a complaint filed regarding Respondent's license to practice as a pharmacist in the Commonwealth of Massachusetts. In addition to stating the allegations against Respondent and referencing the Board's three year suspension of Respondent's license for the three year period commencing June 26, 2005, 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 Order in accordance with 801 CMR 1.01(6)(d)(2); of the right to request a hearing on the allegations pursuant to M.G.L. c. 112, s. 61; and that any hearing request ("Request for Hearing") was to be submitted within 21 days of receipt of the Show Cause Order and that failure to do so would constitute a waiver of the right to a hearing. Respondent was further notified that failure to submit an Answer within 21 days of receipt of the Show Cause Order "*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 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 Show Cause Order is attached to this Final Decision and Order by Default and is incorporated herein by reference.

On November 13, 2007, Prosecuting Counsel sent notice to Respondent to file an Answer and a Request for Hearing by November 20, 2007. The notice again advised Respondent that if defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations stated in the Show Cause Order and impose discipline on Respondent's registration, including discipline on any right to renew.

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, § 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, § 11, subsection (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 receipt and of the consequences of failing to file an Answer or otherwise respond.

As authorized by M.G.L. c. 30A, §§ 10, subsection (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

The Board voted to issue this Final Decision and Order by Default and REVOKE Respondent's inchoate right to renew his Pharmacist License No. 14670 at its meeting on December 11, 2007 by the following vote:

In favor: James T. DeVita, R.Ph., M.S., Marilyn M. Barron, MSW, Public Member, George A. Cayer, R.Ph., Karen Ryle, R.Ph., M.S., Sophia Pasedis, R.Ph., Pharm.D., William A. Gouveia, R.Ph., M.S. and Steven Budish, Public Member.

Absent: Kathy J. Fabiszewski, N.P., Ph.D., Donald D. Accetta, M.D., and Joel R. Berman, R.Ph.

Opposed: None. Recused: Michael Tocco, R.Ph., M.S. Abstained: None.

EFFECTIVE DATE OF ORDER

This Final Decision and Order by Default becomes effective upon the date it is issued (see "Date Issued" below).

RIGHT TO APPEAL

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

BOARD OF REGISTRATION
IN PHARMACY

James T. DeVita

James T. DeVita, R.Ph.
President

Date Issued: December 11, 2007

Attachment: Order to Show Cause dated October 5, 2007

Dec. No. 1658

Notified:

First Class Mail and Certified Mail/Receipt No. 7006 2760 0003 7733 3192
[redacted]

First Class Mail and Certified Mail/Receipt No. 7006 2760 0003 7733 3208
[redacted]

RESENT 12/17/2007

First Class Mail and Certified Mail/Receipt No. 7006 2760 0003 7733 3390
[redacted]



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street, Suite 200, 2nd 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

October 5, 2007

By First Class and Certified Mail
No. 7006 2760 0003 7733 2638

Monty Schwartz
[redacted]

By First Class and Certified Mail
No. 7006 2760 0003 7733 2645


Monty Schwartz
[redacted]

Dear Mr. Schwartz:

It has come to the attention of the Massachusetts Board of Registration in Pharmacy (the "Board") that you may have moved your residence without notifying the Board. For that reason, a copy of the Order to Show Cause issued in July of 2007 is being resent to you at your official address of record and at a forwarding address provided by the U.S. Postal Service. Please respond as directed by the attached Order to Show Cause (and cover letter) and officially notify the Board of any change in your residence to avoid discipline on this issue.

Thank you.

Sincerely,


Richard L. Banks, Jr. Esq.
Prosecutor



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street, Suite 200, 2nd Floor, Boston, MA 02114

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Monty Schwartz
[redacted]

By First Class and Certified Mail
No. 7006 2760 0003 7733 2645

Monty Schwartz
[redacted]

Dear Mr. Schwartz:

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 license 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 license to practice as a Pharmacist (License No. 14670).

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 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, 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.


The request for a hearing and your Answer must be filed with Richard L. Banks, Jr., Prosecuting Counsel, at the following address:

Richard L. Banks, Jr., Esq.
Department of Public Health
Office of the General Counsel
239 Causeway Street, 4th 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) 973-0835 if you have any questions regarding this matter.

Sincerely,


Richard L. Banks, Jr. Esq.
Prosecutor

RLB/tbm

Encl: Order to Show Cause
Certificate of Service

cc: James D. Coffey, R.Ph. Executive Director, Board of Pharmacy
Louann Stanton, Admin. Assistant

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of
MONTY SCHWARTZ

Pharmacist License No. 14670
License expired 12/31/06

Docket No. PH-07-063

ORDER TO SHOW CAUSE

Monty Schwartz (hereinafter "you" or "Respondent"), 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 Pharmacist, Pharmacy License No. 14670, or your right to renew that 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 or about June 20, 1966, the Board issued to you a license to practice as a Pharmacist in Massachusetts, License No. 14670.
2. Your license was suspended for three (3) years, effective in June of 2005, following the Board's determination that you were responsible for several medication dispensing errors. (see Board of Registration in Pharmacy Dkt. Nos. PH-03-006, PH-03-022, & PH-03-026)
3. In December of 2005, you were indicted on the following federal criminal charges: one (1) count of the *Sale of Misbranded Drugs*, one (1) count of the *Sale of Drug Samples*, one (1) count of *Health Care Fraud*, and 13 counts of *Mail Fraud*. (U.S. District Court for the District of Massachusetts Dkt. No. 05 CR 30079).
4. In December of 2005, you were also indicted on five (5) federal criminal charges of *Violation of Filing False Corporate Income Tax Returns* -one count was alleged for each year from 1999-2003, inclusive. (U.S. District Court for the District of Massachusetts Dkt. No. 05 CR 30080).
5. Your license expired on December 31, 2006 and has not been renewed since that date.

6. In September of 2006, you pled guilty to all counts alleged in the indictments referenced in ¶3 and ¶4 of this Order to Show Cause.
7. On July 9, 2007, you were sentenced to serve twenty (20) months in prison, to complete a two (2) year probationary period upon your release from prison, and to pay restitution in the amount of \$459,000 (payable to Medicaid) on U.S. District Court Dkt. No. 05 CR 30079.
8. On July 9, 2007, you were sentenced to serve twelve (12) months in prison on U.S. District Court Dkt. No. 05 CR 30080. The sentence in this matter was ordered to be served concurrently with the sentence imposed in Dkt. No. 05 CR 30079.
9. Your conduct as alleged above warrants disciplinary action by the Board against your pharmacy license pursuant to G. L. c. 112, §§ 42A and 61, and 247 CMR 2.00 et seq., for deceit, malpractice, gross misconduct in the practice of the profession, and offenses against the laws of the Commonwealth relating thereto.
10. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a Pharmacist or right to renew said license pursuant to Board regulation 247 CMR 9.00 for violation of the Code of Professional Conduct for Registered Pharmacists; specifically,
 - (a) 247 CMR 9.01(1) for failing to conduct professional activities in conformity with federal, state, and municipal laws, ordinances and/or regulations including, but not limited to, your violation of provisions of 21 U.S.C. §§ 331 & 333, 18 U.S.C. §§ 1341 & 1347, and 22 U.S.C. § 7206;
 - (b) 247 CMR 9.01(2) for dispensing drugs in a manner that is intended, directly or indirectly, to circumvent the law;
 - (c) 247 CMR 9.01(3) for failing to observe the standards of the current United States Pharmacopoeia;
 - (d) 247 CMR 9.01(4) for dispensing drugs in a manner that is intended, directly or indirectly, to circumvent the law;
 - (e) 247 CMR 9.01(6) for engaging in fraudulent and deceptive acts;
 - (f) 247 CMR 9.01(9) for aiding and/or abetting the unlawful practice of pharmacy;
11. Your conduct as described above also constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the pharmacy 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 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 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, 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 Pharmacy 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 Richard L. Banks, Prosecuting Counsel, at the following address:

Richard L. Banks, Jr., Esq.
Department of Public Health
Office of the General Counsel
239 Causeway Street, 4th 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) 973-0835 to schedule a time that is mutually convenient.

Board of Registration in Pharmacy,
James D. Coffey, R.Ph., Executive Director

By:


Richard L. Banks, Jr., Esq.
Department of Public Health

Date: July 18, 2007

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of
MONTY SCHWARTZ

Pharmacist License No. 14670
License expired 12/31/06

Docket No. PH-07-063

CERTIFICATE OF SERVICE

I, Richard L. Banks, Jr., hereby certify that I have served a copy of the *Order to Show Cause* in the above-captioned matter upon the Respondent, Monty Schwartz, at the addresses listed below and in the manner indicated below:

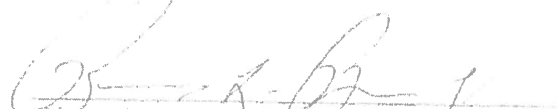
By First Class and Certified Mail
No. 7006 2760 0003 7733 2638

upon: Monty Schwartz
[redacted]

By First Class and Certified Mail
No. 7006 2760 0003 7733 2645

upon: Monty Schwartz
[redacted]

Sworn this 5th day of October, 2007


Richard L. Banks, Jr., (Prosecuting Counsel)