

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

)
Board of Registration in Pharmacy)
Petitioner)
v.)
Richard Vallette)
License No. PH21687)
License Expired 12/31/2018)
Respondent)

Docket No. PHA-2021-0113

FINAL DECISION AND ORDER BY DEFAULT

On January 13, 2023, the Board of Registration in Pharmacy (“Board”) issued and duly served on Richard Vallette (“Respondent”), an Order to Show Cause (“Show Cause Order”) related to a complaint filed regarding Respondent’s license.¹ In addition to stating the allegations against Respondent, the Show Cause Order notified Respondent that an Answer to the Show Cause Order (“Answer”) was to be submitted within 21 days of receipt of the Show Cause Order.² The Show Cause Order also notified Respondent of the right to request a hearing on the allegations,³ and that any hearing request (“Request for Hearing”) was to be submitted within 21 days of receipt of the Show Cause Order.⁴ Respondent was further notified that failure to submit an Answer within 21 days “shall result in the entry of default in the above-captioned matter” and,

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, § 61.

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

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, § 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(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, § 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:

ORDER

On September 7, 2023 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, PH21687.

In Favor: Sebastian Hamilton, Delilah Barnes, Katie Thornell, Caryn Belisle, Dawn Perry, Richard Lopez, Jennifer Chin, John Rocchio, Sami Ahmed, Rita Morelli, Johanna Lopez, and Julie Lanza

Opposed: None

Abstained: None

Recused: None

Absent: Carly Jean-Francois

EFFECTIVE DATE OF ORDER

The Final Decision and Order by Default shall be effective 10 days from the Date Issued.

RIGHT TO APPEAL

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

BOARD OF REGISTRATION
IN PHARMACY

David Sencabaugh MB

David Sencabaugh
Executive Director

Date Issued: September 21, 2023

Notice to:

Via First Class & Certified Mail No. 7022 2410 0001 6855 4603,
Return Receipt Requested

Richard Vallette
[REDACTED]
[REDACTED]

Via First Class & Certified Mail No. 7022 2410 0001 6855 4610,
Return Receipt Requested

Richard Vallette
[REDACTED]
[REDACTED]

Interoffice

Richard Banks, Esq.
Prosecuting Counsel
Office of General Counsel
250 Washington Street, 2nd Floor
Boston, MA 02108

Karen Gray Carruthers, Esq.
Acting Chief Administrative Magistrate
Office of General Counsel
250 Washington Street, 2nd Floor
Boston, MA 02108

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

Board of Registration in Pharmacy,
Petitioner

v.

RICHARD VALLETTE
PH License No. 21687
License Expired: 12/31/2018
Respondent

Docket No. PHA-2021-0113

ORDER TO SHOW CAUSE

RICHARD VALLETTE, 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 Registered Pharmacist (RPh) in the Commonwealth of Massachusetts, License No. PH21687, or your right to renew such license, pursuant to G.L. c. 112, §§ 42A and 61 and Board regulation 247 CMR 10.03(1)(e), (k), (l), (n), (r), and (t) based upon the following facts and allegations:

1. On or about January 23, 1992, the Board issued to you a license to engage in the practice of pharmacy in the Commonwealth of Massachusetts, License No. PH21687. Your license expired on December 31, 2018.
2. On or about January 14, 2020, while licensed to practice as an RPh in Massachusetts, you pleaded guilty to six counts of Patient Brokering (Florida Statute 817.505(1)(a) and (4)) and six counts False and Fraudulent Insurance Claim (<\$20,000) (Florida Statute 817.234(1)(a) and (4)) ("Guilty Pleas"). Both statutory violations constitute felony convictions.
3. On August 2, 2021, while licensed to practice as an RPh in Massachusetts, the Florida Department of Public Health (FL DPH) summarily suspended (FL Summary Suspension) your license to practice as pharmacist as a result of your Guilty Pleas.

4. On February 25, 2022, as a result of your Guilty Pleas, FL DPH issued a Final Order in which it [FL DPH] revoked your FLA pharmacist licenses, PS32403 and PU5552.
5. A copy of the FL DPH's Final Order dated February 25, 2020 is attached hereto as Exhibit A and incorporated into this Order to Show Cause by reference. A copy of the National Association of Boards of (NABP) Discipline Case Summary Report for Richard Vallette, printed on December 14, 2022 is attached hereto as Exhibit 2 and incorporated into this Order to Show Cause by reference.

Grounds for Discipline¹

6. Your conduct as alleged in Paragraph Nos. 1- 4 above, as well as any other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as an RPh pursuant to G.L. c. 112, §42A for violation of the rules and regulations established by the Board.
2. Your conduct as alleged in Paragraph Nos. 1-4 above, as well as any other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as an RPh pursuant to G.L. c. 112, §61, for deceit, malpractice, and/or gross misconduct in the practice of the profession and for any offense against the laws of the Commonwealth relating thereto.
3. Your conduct, and the resulting discipline to your FL pharmacist license, as alleged in Paragraph Nos. 1- 4, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as an RPh pursuant to Board regulation 247 CMR 10.03(1)(e), for engaging in conduct engaging in misconduct in the practice of the profession.
4. Your conduct, and the resulting discipline to your FL pharmacist license, as alleged in Paragraph Nos. 1- 4, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as an RPh pursuant to Board regulation 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.
5. Your conduct, and the resulting discipline to your FL pharmacist license, as alleged in Paragraph Nos. 1- 4, as well as other evidence that may be adduced at hearing, warrants

¹ It is well-settled administrative law that due process requires that "notice must be given that is reasonably calculated to apprise an interested party of the proceeding and to afford him an opportunity to present his case;" due process does not require Prosecuting Counsel to provide a detailed description of evidence they intend to introduce at a disciplinary hearing. *Langlitz v. Board of Registration of Chiropractors*, 396 Mass. 374, 376-377 (1985). See *Lapointe v. License Board of Worcester*, 389 Mass. 454, 458 (1983) ("[d]ue process requires notice of the grounds on which the board might act rather than the evidentiary support for those grounds"). Thus, notice pleadings do not require Prosecuting Counsel to match factual allegations to grounds for discipline. Similarly, factual allegations are not necessarily an exhaustive characterization of the evidence to be adduced at a hearing.

disciplinary action by the Board against your license to practice as an RPh pursuant to Board regulation 247 CMR 10.03(1) (l), for engaging in conduct that has the capacity or potential to deceive or defraud.

6. Your conduct, and the resulting discipline to your FL pharmacist license, as alleged in Paragraph Nos. 1 - 4, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as an RPh pursuant to Board regulation 247 CMR 10.03(1) (n), for entering a plea of guilty to any crime.
7. Your conduct, and the resulting discipline to your FL pharmacist license, as alleged in Paragraph Nos. 1 - 4, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to Board regulation 247 CMR 10.03(1) (r), for engaging in conduct that demonstrates a lack of good moral character.
8. Your conduct, and the resulting discipline to your FL pharmacist license, as alleged in Paragraph Nos. 1 - 4, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as a RPh pursuant to Board regulation 247 CMR 10.03(1) (t), for having been disciplined in another jurisdiction in any way for reasons substantially the same as those set forth in 247 CMR 10.03.
9. Your conduct, and the resulting discipline to your FL pharmacist license, as alleged in Paragraph Nos. 1 - 4, as well as other evidence that may be adduced at hearing, also constitutes unprofessional conduct and/or conduct that 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).
10. Your conduct, and the resulting discipline to your FL pharmacist license, as alleged in Paragraph Nos. 1 - 4, as well as other evidence that may be adduced at hearing, warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to Massachusetts case law. *See, Anusavice v. Board of Registration in Dentistry*, 451 Mass. 786 (2008).

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 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 offered 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 above-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 Registered Nurse 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 Jaclyn Gagne, Chief Administrative Magistrate, at the following address:

Jaclyn Gagné, Esq.
Chief Administrative Magistrate
Department of Public Health
Office of the General Counsel
250 Washington Street, 2nd floor
Boston, MA 02108-4619

A copy of your Answer to the Order to Show Cause and your written request for a hearing must also be served upon

Tracy J. Ottina, Esq.
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
250 Washington Street, 2nd floor
Boston, MA 02108-4619

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 Prosecutor. If you elect to undertake such an examination, please contact Prosecuting Counsel in advance at (781) 657-3435 or via e-mail at tracy.j.ottina2@mass.gov to schedule a time that is mutually convenient.

BOARD OF REGISTRATION IN PHARMACY,

David Sencabaugh MB

David Sencabaugh, R.Ph.
Executive Director

By: */s/ Tracy J. Ottina*

Tracy J. Ottina, Esq.
Prosecuting Counsel
Department of Public Health

December 16, 2022

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Cover Letter, Order to Show Cause, and Certificate of Service were served upon the Licensee, Richard Vallette at his address of record with the Board and via email at his email of record with the Board:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

by First Class Mail, postage prepaid, and Certified Mail No.: **7020 0090 0000 1279 2517**

This 16 day of December, 2022

/s/ Tracy J. Ottina

Tracy J. Ottina (BBO #670742)
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