

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

BOARD OF REGISTRATION)
IN PHARMACY)
Petitioner)

v.)

Case No. PHA-2016-0035

SHANA CHRISTINE DESROCHERS)
PT No. 15783)
Registration expired 08/08/17)
Respondent)

FINAL DECISION AND ORDER BY DEFAULT

On June 13, 2017, the Board of Registration in Pharmacy (“Board”) issued and duly served on SHANA CHRISTINE DESROCHERS (“Respondent”), via certified mail, an Order to Show Cause (“Order”)¹ relating to a complaint filed against Respondent’s pharmacy technician registration. The U.S. Postal Service tracking system indicates that the letter sent to the Respondent was accepted for delivery at that address on June 15, 2017.²

The Order delivered to the Respondent’s address stated the allegations against Respondent and also notified Respondent that an Answer to the Order was to be submitted within 21 days of receipt of the Order³. Further, the Order notified Respondent of her right to request a hearing on the allegations⁴ and that any hearing request (“Request for Hearing”) was to be submitted within 21 days of receipt of the Order.⁵

¹ Pursuant to 801 CMR 1.01(6)(a).

² The Order was also served at two other addresses associated with the Respondent.

³ In accordance with 801 CMR 1.01(6)(d)(2).

⁴ Pursuant to M.G.L. c. 112, s. 61.

⁵ Respondent was also notified that failure to timely submit a Request for Hearing would constitute a

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 Order and may revoke, suspend, or take other disciplinary action against your registration...including any right to renew your registration." A copy of the Order is attached to this Final Decision and Order by Default and is incorporated herein by reference.

More than 21 days have passed since the service of the Order at the Respondent's address of record and, as of the date of this Final Decision and Order by Default, the Respondent has failed to file either an Answer or a Request for Hearing within the prescribed period after having received the Order.

The Board has afforded Respondent an opportunity for a full and fair hearing on the allegations in the Order as required by M.G.L. c. 30A, s. 10, and sufficient notice of the issues involved to allow the Respondent a 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 her right to be heard. In accordance with the Board's authority and statutory mandate, the Board orders as follows:

waiver of the right to a hearing.

ORDER

On September 7, 2017, 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 pharmacy technician license, PT15783, effective ten days from the Date Issued, by the following vote:

In favor: Garrett Cavanaugh; Karen Conley; William Cox; Timothy Fensky;
Michael Godek; Ali Raja; Andrew Stein
Opposed: None
Abstained: None
Recused: Susan Cornacchio
Absent: Philippe Bouvier; Patrick Gannon; Richard Tinsley

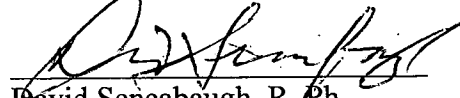
EFFECTIVE DATE OF ORDER

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, R. Ph.
Executive Director

Date Issued: 9/25/2017

Notice to:

BY FIRST CLASS MAIL AND CERTIFIED MAIL NO. 7015 3010 0001 7079 7815.
RETURN RECEIPT REQUESTED

Shana Desrochers
7 Pleasant Street
South Hadley, MA 01075

BY HAND

Richard Banks
Prosecuting Counsel
Massachusetts Department of Public Health
Office of the General Counsel
250 Washington Street
Boston, MA 02108

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SHANA CHRISTINE DESROCHERS
PT No. 15783
Registration expires 08/08/17
Respondent

Case No. PHA-2016-0035

ORDER TO SHOW CAUSE

SHANA CHRISTINE DESROCHERS ("Registrant"), you are hereby ordered to appear and show cause why the Massachusetts Board of Registration in Pharmacy ("Board") should not suspend, revoke or otherwise take action against your registration to practice as a Pharmacy Technician, Registration No. 15783, and/or your right to renew that registration, pursuant to Massachusetts General Laws (G. L.) Chapter 112, §§ 42A and 61 and Board regulations 247 CMR 10.00 et seq. based upon the following facts and allegations:

1. On or about September 7, 2012, the Board granted to you the authorization to practice as a registered Pharmacy Technician, PT Registration No. 15783. Your registration is current as of the date of this Order to Show Cause and will expire on August 8, 2017 unless it is renewed before that date.
2. From roughly January of 2008 through January of 2016 you were employed as a Pharmacy Technician for CVS Pharmacy ("CVS").
3. On or about January 6, 2017, while working as a Pharmacy Technician at the CVS in Chicopee, Massachusetts, you diverted controlled substances including a quantity of Lorazepam tablets from the pharmacy inventory for your personal use.

4. You admitted to CVS Loss Prevention staff on January 6, 2017 that you diverted eleven (11) tablets of 0.5 mg. strength Lorazepam.

GROUNDS FOR DISCIPLINE¹

- A. Your conduct as alleged violates 247 CMR 10.03(1)(h) for engaging in abuse or illegal use of prescription drugs or controlled substances (§3 - §4 individually or collectively, and facts as adduced at hearing).
- B. Your conduct as alleged violates 247 CMR 10.03(1)(x) for Violation of M.G.L. c. 94C or any rules or regulations promulgated thereunder (§3 - §4 individually or collectively, and facts as adduced at hearing).
- C. Your conduct as described above violates M.G.L. c.94C, §34 and warrants disciplinary action by the Board under M.G.L. c.112, §§ 42A & 61.
- D. 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 registration as a Pharmacy Technician. 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*

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) (“Due process requires notice of the grounds on which the board might act rather than the evidentiary support for those grounds”). Certainly, notice pleadings do not require Prosecuting Counsel to match factual allegations to grounds for discipline. Accordingly, where, as here, there exists significant overlap between factual allegations and grounds for discipline contained within the Order to Show Cause, Prosecuting Counsel’s matching of factual allegations to grounds for discipline are offered as suggestions, and not as an exhaustive characterization of the evidence to be adduced at a hearing.

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 registration as a 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 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,
David Sencabaugh, R.Ph., Executive Director

By:


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

Date: June 13, 2017