



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure
Board of Registration in Pharmacy
239 Causeway Street, Suite 500, Boston, MA 02114

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Governor

KARYN E. POLITO
Lieutenant Governor

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www.mass.gov/dph/boards/pharmacy

MARYLOU SUDDERS
Secretary

MONICA BHAREL, MD, MPH
Commissioner

March 5, 2015

VIA FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO. 7014 2120 0002 1354 2532

Thomas Chhay

RE: In the Matter of Thomas Chhay, PT License No. 16406
Board of Registration in Pharmacy Docket No. PHA-2013-0164

Dear Mr. Chhay:

Enclosed is a copy of 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 Order is February 12, 2015. Inadvertently you were sent the incorrect Order to Show Cause with the Final Decision and Order by Default sent to you on February 12, 2015 and again on February 25, 2015. I apologize for any inconvenience this may have caused.

Sincerely,

David Sencabaugh, R. Ph.
Executive Director

Enc.

cc: Patricia Blackburn, Esq., Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
THOMAS CHHAY)
PT Registration No. 16406)
Registration Expires 10/10/2015)

Docket No. PHA-2013-0164

FINAL DECISION AND ORDER BY DEFAULT

On November 3, 2014, the Board of Registration in Pharmacy ("Board") issued and duly served on Thomas Chhay ("Respondent"), an Order to Show Cause ("Show Cause Order")¹ related to a complaint filed regarding Respondent's 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 Order.² 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 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, 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] registration...including any right to renew [Respondent's] registration." 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 G.L. c. 30A, §10, and sufficient

¹ Pursuant to 801 CMR 1.01(6)(a).

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

³ Pursuant to 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.

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 21 days of its receipt and of the consequences of failing to file an Answer or otherwise respond.

As authorized by 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:

On January 6, 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 registration (PH16406), effective as of the date issued (see below), by the following vote: In favor: P. GANNON, E. TAGLIERI, R. TINSLEY, G. CAVANAUGH, M. GODEK, T. FENSKY, and W. COX; Opposed: None; Abstain: None; Absent: None.

The Board will not review any petition for pharmacist 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 pharmacist registration is revoked, Respondent may not: (1) be employed as pharmacist or 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),

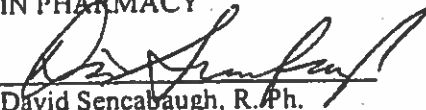
and any other reinstatement terms and conditions the Board may deem to be necessary and appropriate.

EFFECTIVE DATE OF ORDER

The Final Decision and Order by Default shall be effective as of February 12, 2015.

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 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: February 12, 2015

Notice to:

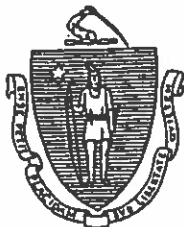
VIA FIRST CLASS AND CERTIFIED MAIL RETURN
RECEIPT REQUESTED NO.

Thomas Chhay



BY HAND DELIVERY

Patricia Blackburn, Esq., Prosecuting Counsel



file copy

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Professions Licensure
Office of General Counsel
239 Causeway Street, Suite 500, Boston, MA 02114

DEVAL L. PATRICK
GOVERNOR
JOHN W. POLANOWICZ
SECRETARY
CHERYL BARTLETT, RN
COMMISSIONER

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www.mass.gov/dph/boards

November 3, 2014

BY FIRST CLASS AND CERTIFIED MAIL

7012 0470 0001 3612 0008

Mr. Thomas Chhay



RE: In the Matter of Thomas Chhay PT License No. 16406
Board of Registration in Pharmacy, Docket No. PHA-2013-0164

Dear Mr. Chhay:

The Massachusetts Board of Registration in Pharmacy ("Board") 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 Pharmacy Technician. 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 as a Pharmacy Technician (PT License No. 16406).

The Order to Show Cause and any subsequent hearing are governed by G.L. c. 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 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 above-referenced 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, 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.

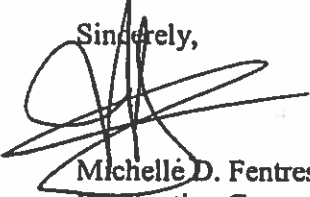
If you are defaulted, the Board may enter a Final Decision and Order that assumes the truth of the allegations in this Order to Show Cause, and may revoke, suspend, or take other disciplinary action against your registration to practice as a Pharmacy Technician in the Commonwealth of Massachusetts, including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

The request for a hearing and your Answer must be filed with Michelle D. Fentress, Prosecuting Counsel at the following address:

Michelle D. Fentress
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
239 Causeway Street, Suite 500
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) 973-0979 if you have any questions regarding this matter.

Sincerely,

Michelle D. Fentress
Prosecuting Counsel

Encl: Order to Show Cause
Certificate of Service

This is an important notice. Please have it translated.

Este é um aviso importante. Queira mandá-lo traduzir.

Este es un aviso importante. Sirvase mandarlo traducir.

ĐÂY LÀ MỘT BẢN THÔNG CÁO QUAN TRỌNG

XIN VUI LÒNG CHO DỊCH LẠI THÔNG CÁO ẤY

Ceci est important. Veuillez faire traduire.

本通知很重要。请将其译成中文。

នេះគឺជាជំនាញសំខាន់ សូមមេត្តាបកប្រែជូនផង

ΠΡΟΣΟΧΗ, ΑΥΤΟ ΕΙΝΑΙ ΣΗΜΑΝΤΙΚΟ. ΠΑΡΑΚΑΛΩ ΜΕΤΑΦΡΑΣΤΕ

Questo è un 'avviso importante. Si pregadi farlo tradurre.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

)
In the Matter of)
THOMAS CHHAY)
PT Registration No. 16406)
Registration Expires 10/10/2015)
_____)

Docket No. PHA-2013-0164

ORDER TO SHOW CAUSE

THOMAS CHHAY 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 Technician registration in the Commonwealth of Massachusetts, Registration No. 16406 or your right to renew such registration, pursuant to Massachusetts General Laws Chapter 112, §§42A and 61, and Board regulations 247 CMR 2.00 *et seq.*, based upon the following facts and allegations:

Factual Allegations

1. On or about February 19, 2013, the Board issued to you a Pharmacy Technician ("PT") registration, Registration No. 16406.
2. You were employed as a Pharmacy Technician at CVS pharmacy #604 ("CVS") located at 199 Sudbury Road, Concord, Massachusetts, from July 25, 2012 through November 5, 2013.
3. On November 5, 2013, while being interviewed by a representative from CVS' Loss Prevention Department ("LP"), you informed LP that during the course of your employment as a Pharmacy Technician for CVS, you took from CVS, 260 tablets of Hydrocodone 5/325 (Schedule III Controlled Substance) and six (6) tablets of Hydrocodone 10/325 (Schedule III Controlled Substance) for your personal use. You further explained that, between two (2) to three (3) times per week, you took tablets from CVS.
4. During the interview referred to in Paragraph No. 3, you further informed LP that during the course of your employment as a Pharmacy Technician for CVS, you took credit cards belonging to two (2) customers who had forgotten their credit cards at CVS, and you then used the credit cards to purchase items for your personal use at CVS and other stores without the consent or authorization of the two customers.
5. As a result of your conduct described in Paragraphs Nos. 3 and 4, CVS incurred a total loss of \$1,331.25, of which \$1,127.37 was the total amount of the unauthorized credit

card purchases you made at CVS, and \$203.98 was the value of tablets you stole from CVS.

6. On November 5, 2013, you signed a voluntary statement, which you offered to CVS as true and to the best of your knowledge, and within the statement, you acknowledged your involvement in the conduct referred to in Paragraph Nos. 3-5.
7. In the November 5, 2013 signed statement, you further acknowledged that you had not been threatened, coerced, or promised any leniency by any agent of CVS/pharmacy to compel you to submit the statement.
8. On November 5, 2013, you signed a Promissory Note ("Note") in which you acknowledged that you engaged in an "unauthorized conversion of certain property of CVS" and you agreed to make full restitution in the amount of \$1,331.35, payable to CVS.
9. In the Note referred to in Paragraph No. 8, you further acknowledged that you entered into the Note voluntarily, without duress, and with your full knowledge and consent to its terms.
10. On or about November 5, 2013, you were arrested in Concord, Massachusetts, as a result of your conduct referred to in Paragraph Nos. 2 through 5, and you were interviewed by a Detective with the Concord Police Department ("Concord Detective").
11. The Concord Detective informed you of your Miranda rights, specifically, that you have the right to remain silent; that anything you say can and will be used against you in a court of law; that you have the right to an attorney; and that if you cannot afford an attorney, one will be provided to you.
12. You waived the rights referred to in Paragraph No. 11 and you spoke to the Concord Detective during an audio-recorded interview.
13. The officer informed you that he knew you took the credit cards referred to in Paragraph No. 4 and that you used them to make purchases for your personal use.
14. In response to the officer's statement referred to in Paragraph No. 13, you acknowledged that you took the items set forth in Paragraph No. 4, and you further informed the officer that you had stolen varying quantities of Vicodin (Schedule III Controlled Substance), Viagra, and Celexa from CVS on prior occasions.
15. On June 17, 2013, you were scheduled for arraignment in the 10th Circuit-Salem District Court, County of Rockingham, New Hampshire, Docket No. [REDACTED] on the following charges: one (1) count of Possession of a Controlled Substance/Narcotic (Vicodin); and one (1) count of Possession of a Controlled Substance/Narcotic (Ecstasy).

16. On July 8, 2013 you entered a plea of guilty in the 10th Circuit-Salem District Court, County of Rockingham, New Hampshire for the charge of Possession of a Controlled Substance/Narcotic (Vicodin). The State of New Hampshire elected not to prosecute the remaining charge of Possession of a Controlled Substance/Narcotic (Ecstasy) referred to in Paragraph No. 15 by filing a nolle prosequi. You were ordered to pay a fine of \$1500, of which \$500 would be waived if you were not charged with any violation, misdemeanor or felony within two (2) years of July 8, 2013.
17. A Default Warrant has issued against you based on your failure to pay the fine referred to in Paragraph No. 16.
18. On November 22, 2013, you were arraigned in the Concord District Court, Docket No. [REDACTED] on the following charges: two (2) counts of Larceny of a Credit Card; two (2) counts of Credit Card Fraud over \$250; one (1) count of Possession of a Class B Substance (one (1) Vicodin tablet); and one (1) count of Possession of a Class E Substance (nine (9) Citalopram Hydrobromide tablets).
19. On June 4, 2014 you admitted to sufficient facts to warrant a finding of guilty in the Concord District Court for the charges referred to in Paragraph No. 18 and you were placed on probation until December 3, 2015.

Grounds for Discipline

- A. 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, §§24D and 42A.
- B. Your conduct as alleged warrants disciplinary action by the Board against your registration to practice as an Pharmacy Technician pursuant to G.L. c. 112, §61 for deceit, malpractice, and gross misconduct in the practice of the profession and for any offense against the laws of the Commonwealth relating thereto.
- C. 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)(e) because you engaged in misconduct in the practice of the profession.
- D. 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)(h) because you engaged in abuse or illegal use of prescription drugs or controlled substances.
- E. 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)(l) because you engaged in conduct that has the capacity or potential to deceive or defraud.

- F. 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)(n) because you been convicted of a crime and you have admitted to sufficient facts to warrant a finding of guilty of a crime.
- G. 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)(r) because you engaged in conduct that demonstrates lack of good moral character.
- H. 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)(u) because you engaged in conduct which undermines public confidence in the integrity of the profession.
- I. 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)(v) because you committed an act that violates recognized standards of pharmacy practice.
- J. 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)(w) because you failed to comply with recognized ethical standards of the profession, including, but not limited to, the standards of practice of pharmacists, pharmacy interns, pharmacies and pharmacy departments set forth in 247 CMR 9.01 *Code for Conduct for Registered Pharmacists, Pharmacies and Pharmacy Departments*.
- K. 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)(x) because you violated G.L. c. 94C or any rules and regulations promulgated thereunder.
- L. Your conduct as alleged also constitutes unprofessional conduct and conduct that undermines public confidence in the integrity of the nursing 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 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 registration to practice 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 Michelle Fentress, Prosecutor at the following address:

Michelle D. Fentress, Esq.
Prosecuting Counsel
Department of Public Health
Office of the General Counsel
239 Causeway Street, Suite 500
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 Prosecutor. If you elect to undertake such an examination, then please contact Prosecuting Counsel in advance at (617) 973-0979 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION
IN PHARMACY,
Karen M. Ryle, MS RPh, President

By: 

Michelle D. Fentress, Esq.
Prosecuting Counsel
Department of Public Health

Date: November 3, 2014

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 Respondent, Thomas Chhay at the following address of record with the Board:

Thomas Chhay


by first class mail, postage prepaid, and certified mail no. 7012 0470 0001 3612 0008

This 3rd day of November, 2014.



Michelle D. Fentress, Esq.
Prosecuting Counsel