

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION IN  
PHARMACY

IN THE MATTER OF  
**TIMOTHY J. MADEIRA**  
PH-PT NO. 10716

DOCKET NO. PHA-2009-0053

FINAL DECISION AND ORDER BY DEFAULT

On July 17, 2009, the Board of Registration in Pharmacy ("Board") issued and duly served on Timothy J. Madeira, ("Respondent") an Order to Show Cause ("Show Cause Order")<sup>1</sup> 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<sup>2</sup>. The Show Cause Order also notified Respondent of the right to request a hearing on the allegations<sup>3</sup>, and that any hearing request ("Request for Hearing") was to be submitted within 21 days of receipt of the Show Cause Order.<sup>4</sup> 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 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.

<sup>1</sup> Pursuant to 801 CMR 1.01(6)(a).

<sup>2</sup> In accordance with 801 CMR 1.01(6)(d)(2).

<sup>3</sup> Pursuant to M.G.L. c. 112, s. 61.

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

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:

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** the Respondent's Pharmacy technician registration on August 18, 2009 by the following vote: In favor: Stanley B. Walczyk, R.Ph.; Steven Budish, Public Member; William A. Gouveia, R.Ph., M.S., George A. Cayer, R.Ph. and Donald D. Accetta, M.D., Michael Tocco, R.Ph., James T. DeVita, R.Ph. Recused: Joanne M. Trifone, R.Ph.

Opposed: None. Absent: Kathy J. Fabiszewski, Ph.D., N.P., Sophia Pasedis, R.Ph.,  
Pharm.D.

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/Sm*

James. T. DeVita, R.Ph.

President

Date Issued: August 18, 2009

Attachment: Order to Show Cause dated July 17, 2009

Notified: Respondent by First Class Mail and Certified Mail/Receipt No. 7008

3230 0002 4323 to [REDACTED]

First Class Mail to [REDACTED]

Paul Moore, Board Prosecutor BY HAND

Dec. No. 2147

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION  
IN PHARMACY

\_\_\_\_\_)  
In the Matter of \_\_\_\_\_)  
Timothy J. Madeira \_\_\_\_\_)  
PH - PT Registration No. 10716 \_\_\_\_\_)

Docket No. PHA-2009-0053

ORDER TO SHOW CAUSE

Timothy J. Madeira (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 registration to practice as a pharmacy technician in the Commonwealth of Massachusetts, Registration No. 10716, or your right to renew your registration pursuant to Massachusetts General Laws (G.L.) Chapter 112, §§ 42A and 61, and Board regulations at 247 Code of Massachusetts Regulations ("CMR") 2.00 et seq., based upon the following facts and allegations:

1. On or about February 24, 2009, the Board issued to you a registration to practice as a pharmacy technician.
2. Since on or about October 15, 2008, you were employed at Walgreen's Store #2689 ("Walgreen's") located at 91 Prospect Street, Milford, Mass.
3. On or about March 12, 2009, you admitted to a Walgreen's loss prevention supervisor that you diverted at least twelve tablets of Hydrocodone, a narcotic and a controlled substance, during the course of your employment at Walgreen's as a full-time pharmacy technician. You allegedly told the loss prevention supervisor that you diverted these drugs for use by your cousin.
4. On or about March 12, 2009, you admitted to a Walgreen's loss prevention supervisor that you **Redacted**
5. As a result of your admissions described in paragraphs three and four, above, Walgreen's terminated your employment with them effective immediately.
6. On or about May 18, 2009, as a result of the events described in paragraphs three through five, above, the Board issued a temporary order of summary suspension ("order") of your registration to practice as a pharmacy technician. That order advised you of your right to request a hearing on the necessity of continuing the summary suspension of your registration by filing a written request with the Board by May 25, 2009. You failed to request such a hearing.

7. On or about May 29, 2009, the Board issued a final order of summary suspension of your registration to practice as a pharmacy technician.
8. Your conduct as described demonstrates a lack of the good moral character required for registration as a pharmacy technician in the Commonwealth pursuant to Board regulation 247 CMR 8.02(1)(a)3.
9. Your conduct as described warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to G.L. c. 112, § 61, for deceit, malpractice, gross misconduct in the practice of the profession, or for any offense against the laws of the Commonwealth relating thereto.
10. Your conduct as described violates G.L. c. 94C, § 37 for stealing a controlled substance from a registered pharmacy.
11. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(b) for violating provisions of state or federal statutes or rules or regulations promulgated under the General Laws related to the practice of pharmacy;
12. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(e) for engaging in misconduct in the practice of pharmacy;
13. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(h) for engaging in abuse or illegal use of prescription drugs or controlled substances;
14. Your conduct as described constitutes grounds for discipline pursuant to 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;
15. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(r) for engaging in conduct that demonstrates a lack of good moral character;
16. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(u) for engaging in conduct which undermines public confidence in the integrity of the pharmacy profession;
17. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(v) for committing an act that violates recognized standards of pharmacy practice;
18. Your conduct as described constitutes grounds for discipline pursuant to 247 CMR 10.03(1)(x) for committing violations of G.L. c. 94C or any rules promulgated thereunder; and
19. Your conduct as alleged 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);  
*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).

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You have a right to an adjudicatory hearing ("hearing") on the allegations contained in the Order to Show Cause before the Board acts to suspend, revoke, or impose other discipline against your registration. G.L. c. 112, §§ 42A and 61. Your right to a hearing may be claimed by submitting a written request for a hearing *within twenty-one (21) days of your receipt of this Order to Show Cause*. Failure to make a timely request shall constitute a waiver of the right to a hearing with regard to the Board's action. 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 your 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 promptly upon completion on an ongoing basis directly to the Presiding Officer by the stenographer or transcription service. The transcript will be made available to the undersigned 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 is subject to the provisions of G.L. c. 4, § 7 and G.L. c. 66, § 10.

Your failure to submit a written request for a hearing within 21 (twenty-one) 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 21 (twenty-one) 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 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 written request for a hearing and your Answer to the Order to Show Cause, shall be submitted for filing to:

Paul C. Moore, Esq.  
Prosecuting Counsel  
Department of Public Health  
Office of the General Counsel  
239 Causeway Street, 2<sup>nd</sup> 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) 973-0865 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION  
IN PHARMACY,  
James T. DeVita, R.Ph.  
President

By:

  
Paul C. Moore, Esq.  
Prosecuting Counsel  
Department of Public Health

Date: July 17, 2009

### CERTIFICATE OF SERVICE

I, Paul C. Moore, Esq. hereby certify that a copy of the foregoing Order to Show Cause was served upon the Respondent, Timothy L. Madeira, by mailing a copy, first class, postage prepaid to his address of record, [REDACTED] and by certified mail no. 7008 3230 0002 4164 9410, return receipt requested, to the same address; and also by mailing a copy, first class, postage prepaid to a second address, [REDACTED]

This 17<sup>th</sup> day of July, 2009.

A handwritten signature in cursive script that reads "Paul C. Moore". The signature is written in dark ink and is positioned above a horizontal line.

Paul C. Moore, Esq.  
Prosecuting Counsel