



The Commonwealth of Massachusetts
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Bureau of Health Professions Licensure
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Commissioner

December 13, 2016

VIA FIRST CLASS AND CERTIFIED MAIL NO. 7016 0340 0000 4975 9636.
RETURN RECEIPT REQUESTED

Valerie Jacobson

[redacted]

RE: In the Matter of Valerie Jacobson , PH License No. 20982
Board of Registration in Pharmacy Docket No. PHA-2016-0016

Dear Ms. Jacobson:

Enclosed is 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 Board's Order is ten (10) days from the date appearing on page 4 of the *Final Order* ("Date Issued"). Your appeal rights are noted on page 3 of the *Final Order*.

Sincerely,

David Sencabaugh, R. Ph.
Executive Director

Enc.

cc: Eugene Langner, Prosecuting Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
Valarie Jacobson)
License No. PH20982)
License Expires 12/31/16)
_____)

Docket No. PHA-2016-0016

FINAL DECISION AND ORDER BY DEFAULT

On September 30, 2016, the Board of Registration in Pharmacy (Board) issued and duly served on Valarie Jacobson (Respondent) an Order to Show Cause (Show Cause Order) ¹ related to a complaint filed regarding Respondent's license. 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 Order². 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 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] license...including any right to renew

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, s. 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.

[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 October 25, 2016, Prosecuting Counsel sent notice to Respondent to file an Answer and a Request for Hearing by November 4, 2016. The notice again advised Respondent that if defaulted, the Board might enter a Final Decision and Order that assumes the truth of the allegations stated in the Show Cause Order and impose license discipline, including discipline on any right to renew.

As of the date of this Final Decision and Order by Default, Respondent has failed to file an Answer or 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 Massachusetts General Laws (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 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 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

On December 6, 2016, 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, PH20982, effective ten days from the Date Issued, by the following vote:

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

The Board will not review any petition for reinstatement of Respondent's pharmacy technician license prior to January 1, 2022.

While Respondent's pharmacist license is revoked, Respondent may not: (1) be employed as pharmacist, 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.

EFFECTIVE DATE OF ORDER

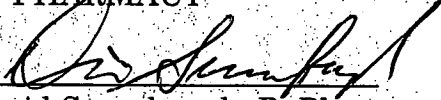
The Final Decision and Order by Default shall be effective 10 days from the Date Issued.

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: 12/13/2016

Notice to:

Valerie Jacobson

[redacted]

BY FIRST CLASS MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

BY HAND

Eugene Langner
Office of Prosecutions
Department of Public Health
Division of Health Professions Licensure
239 Causeway Street
Boston, MA 02114

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

BOARD OF REGISTRATION
IN PHARMACY

In the Matter of)
Valarie Jacobson)
License No. 20982)
License Expires 12/31/16)
_____)

Docket No. PHA-2016-0016

ORDER TO SHOW CAUSE

Valarie Jacobson, 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 in the Commonwealth of Massachusetts, License No. 20982, or your right to renew such license, pursuant to Massachusetts General Laws (G.L.) chapter 112, § 61 and Code of Massachusetts Regulations (CMR), Title 247, §§ 9.01 and 10.03, based upon the following facts and allegations:

Factual Allegations

1. On or about January 23, 1990, the Board issued to you a license to practice as a pharmacist in the Commonwealth of Massachusetts, License No. 20982. Your license is current and expires on December 31, 2016.
2. Between or about November 13, 2015 and December 19, 2015, while you were employed by Harbor Health Services, Inc. (Harbor) at Geiger Gibson Community Health Center (Geiger), the following quantities of controlled substances were found unaccounted for:
 - a. Thirty-three (33) tablets of generic Fioricet, a non-scheduled controlled substance, on November 13, 2015;
 - b. Four (4) 60 mg tablets of SudoGest, a non-scheduled controlled substance, on November 17, 2015;
 - c. Four (4) 60 mg tablets of SudoGest on November 21, 2015;
 - d. Sixteen (16) tablets of generic Fioricet on November 28, 2015;
 - e. Seven (7) 60 mg tablets of SudoGest on December 5, 2015; and
 - f. Twelve (12) 60 mg tablets of SudoGest on December 19, 2015.
3. Between or about November 22, 2015 and December 20, 2015, while you were employed by Harbor at Neponset Health Center (Neponset), the following quantities of controlled substances were found unaccounted for:

- a. Twenty-seven (27) tablets of generic Fioricet on November 22, 2015;
 - b. Ten (10) tablets of generic Fioricet on November 29, 2015;
 - c. Twenty-five (25) tablets of generic Fioricet on December 6, 2015; and
 - d. Forty-two (42) tablets of generic Fioricet on December 20, 2015.
4. You were the only Harbor pharmacy staff member employed at Geiger on all the dates referenced in Paragraph 2 above, and at Neponset on all the dates referenced in Paragraph 3 above.
 5. On or about April 4, 2016, in connection with the Board's investigation of the matters referenced in Paragraphs 2 through 4 above, you acknowledged in writing that you diverted quantities of Fioricet and SudoGest, as well as one (1) 150 mg tablet of fluconazole, a non-scheduled controlled substance, while employed as a pharmacist at Geiger and Neponset during November and December of 2015.

Legal Basis for Discipline

- A. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist for violation of G.L. c. 94C, § 34.
- B. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to G.L. c. 112, § 42A for violation of the rules and regulations established by the Board.
- C. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to G.L. c. 112, § 61 for being guilty of deceit, malpractice, gross misconduct in the practice of the profession, or of any offense against the laws of the Commonwealth relating thereto.
- D. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to 247 CMR 9.01(1) for failing to conduct professional activities in conformity with federal, state and municipal laws, ordinances and/or regulations, including the regulations of the Board.
- E. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to 247 CMR 9.01(2) for dispensing drugs in a manner which is intended, either directly or indirectly, to circumvent the law.
- F. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to 247 CMR 9.01(6) for engaging in any fraudulent or deceptive act.
- G. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to 247 CMR 10.03(1)(a) for violating

any of the duties and standards set out in Board regulations, 247 CMR 2.00 *et seq.*, or any rule or written policy adopted by the Board.

- H. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to 247 CMR 10.03(1)(b) for violating any provision of G.L. c. 112, §§ 24 through 42A or any provision of state or federal statutes or rules or regulations promulgated thereunder related to the practice of the profession.
- I. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to 247 CMR 10.03(1)(e) for engaging in misconduct in the practice of the profession.
- J. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to 247 CMR 10.03(1)(f) for engaging in conduct beyond the authorized scope of a pharmacist.
- K. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to 247 CMR 10.03(1)(h) for engaging in abuse or illegal use of prescription drugs or controlled substances.
- L. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist 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.
- M. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to 247 CMR 10.03(1)(l) for engaging in conduct that has the capacity or potential to deceive or defraud.
- N. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to 247 CMR 10.03(1)(r) for engaging in conduct that demonstrates a lack of good moral character.
- O. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to 247 CMR 10.03(1)(u) for engaging in conduct which undermines public confidence in the integrity of the profession.
- P. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to 247 CMR 10.03(1)(w) for failing to comply with recognized ethical standards of the profession, including, but not limited to, the standards of practice for pharmacists, pharmacy interns, pharmacies and pharmacy departments set forth in 247 CMR 9.01: *Code of Conduct for Registered Pharmacists, Pharmacies and Pharmacy Departments.*

- Q. Your conduct as alleged warrants disciplinary action by the Board against your license to practice as a pharmacist pursuant to 247 CMR 10.03(1)(x) for violating G.L. c. 94C or any rules or regulations promulgated thereunder.
- R. Your conduct as alleged also constitutes unprofessional conduct and conduct which undermines public confidence in the integrity of the 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 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, 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 as a pharmacist 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 Eugene Langner, Prosecuting Counsel, at the following address:

Eugene Langner, Esq.
Prosecuting Counsel
Department of Public Health
Office of the General Counsel, 5th Floor
239 Causeway Street
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) 973-0838 to schedule a time that is mutually convenient.

BOARD OF REGISTRATION IN PHARMACY
Edmund J. Taglieri, R.Ph., MSM, NHA, President

By: _____

Eugene Langner, Esq.
Prosecuting Counsel
Department of Public Health

Date: / September 30, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order to Show Cause was served upon the Respondent:

Valarie Jacobson

[redacted]

by first class mail, postage prepaid, and by Certified Mail No. 7016 1370 0001 4117 6209

This 30th day of September, 2016.


Eugene Langner
Prosecuting Counsel